

It Pays to Be Sick in the Tri-State Area!

Paid Sick Days Gaining Momentum on the East Coast

Presented to the
NY Metro Chapter of
the APA

Sept. 11, 2015

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Are HR and Payroll Sick of Paid Sick Days Yet?

The Compliance Migraine



“Sick! I’m Getting Paid Today?”



Our Roadmap

- History
- Current Status across the U.S.
- Details on Tri-State area
- Compliance Challenges
- Practical Applications
- The Blanket Policy Challenge!



The History

- Connecticut was the first state– 2012
- Some cities much earlier – SF 2007; DC 2008
- Federal legislation first proposed 2005
- On Obama's agenda – 1 hr/30 worked up to 56 in year, for ERs with 15+ EEs
- Urging states and cities to adopt legislation
- As of 8/31/15 – 4 states, 21 cities/counties

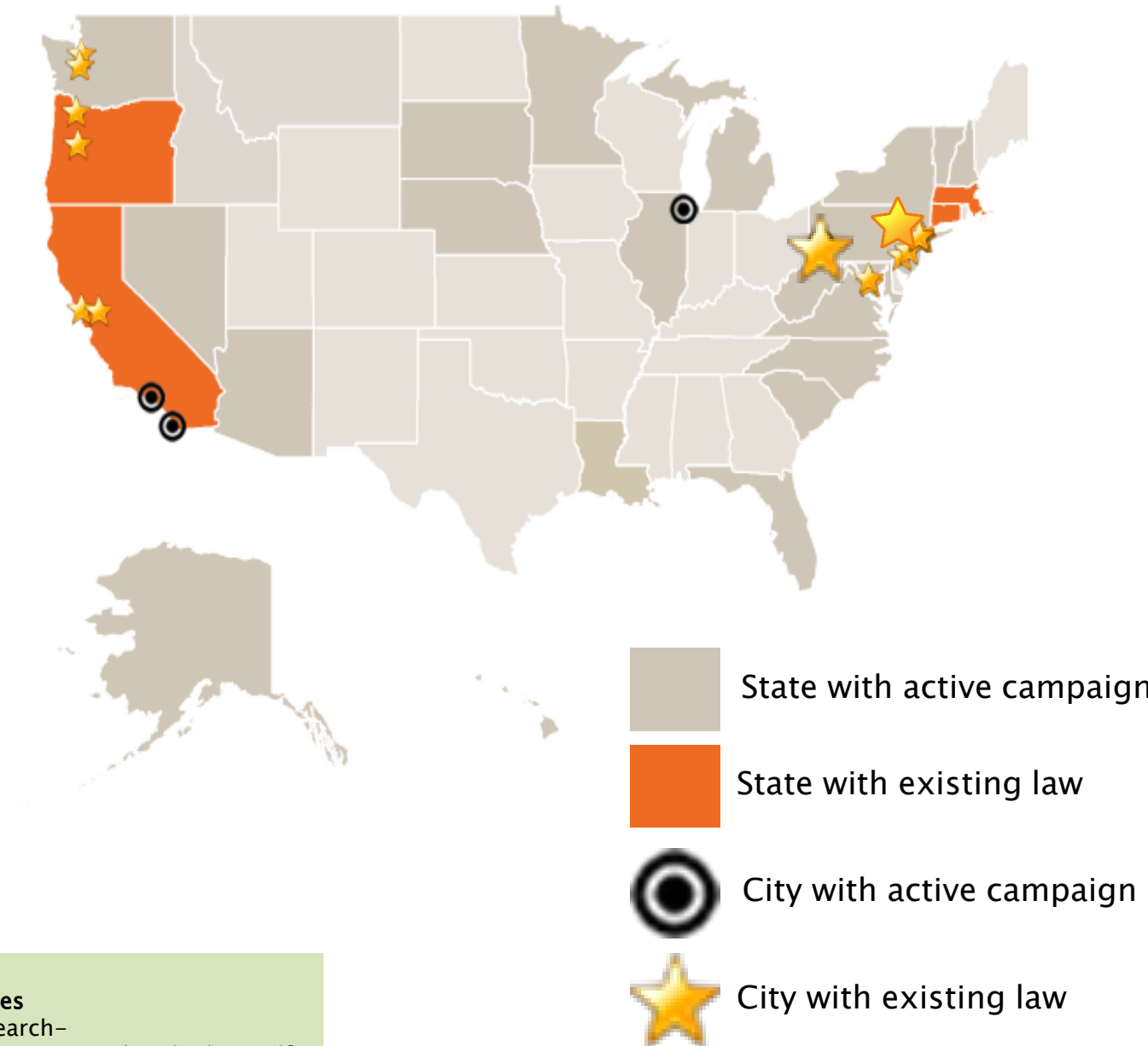


9/7/15 – Obama signed Executive Order requiring contractors to provide paid sick days starting in 2017



As of 8/31/15:

- California
- Connecticut
- Oregon
- Massachusetts
- Oakland, CA
- San Francisco, CA
- Emeryville, CA
- Montgomery Cnty, MD
- Bloomsfield, NJ
- E. Orange, NJ
- Irvington, NJ
- Jersey City, NJ
- Newark, NJ
- Passaic, NJ
- Patterson, NJ
- Montclair, NJ
- Trenton, NJ
- NYC, NY
- Eugene, OR
- Portland, OR
- Philadelphia, PA
- Pittsburgh, PA
- Seattle, WA
- Tacoma, WA
- Washington DC



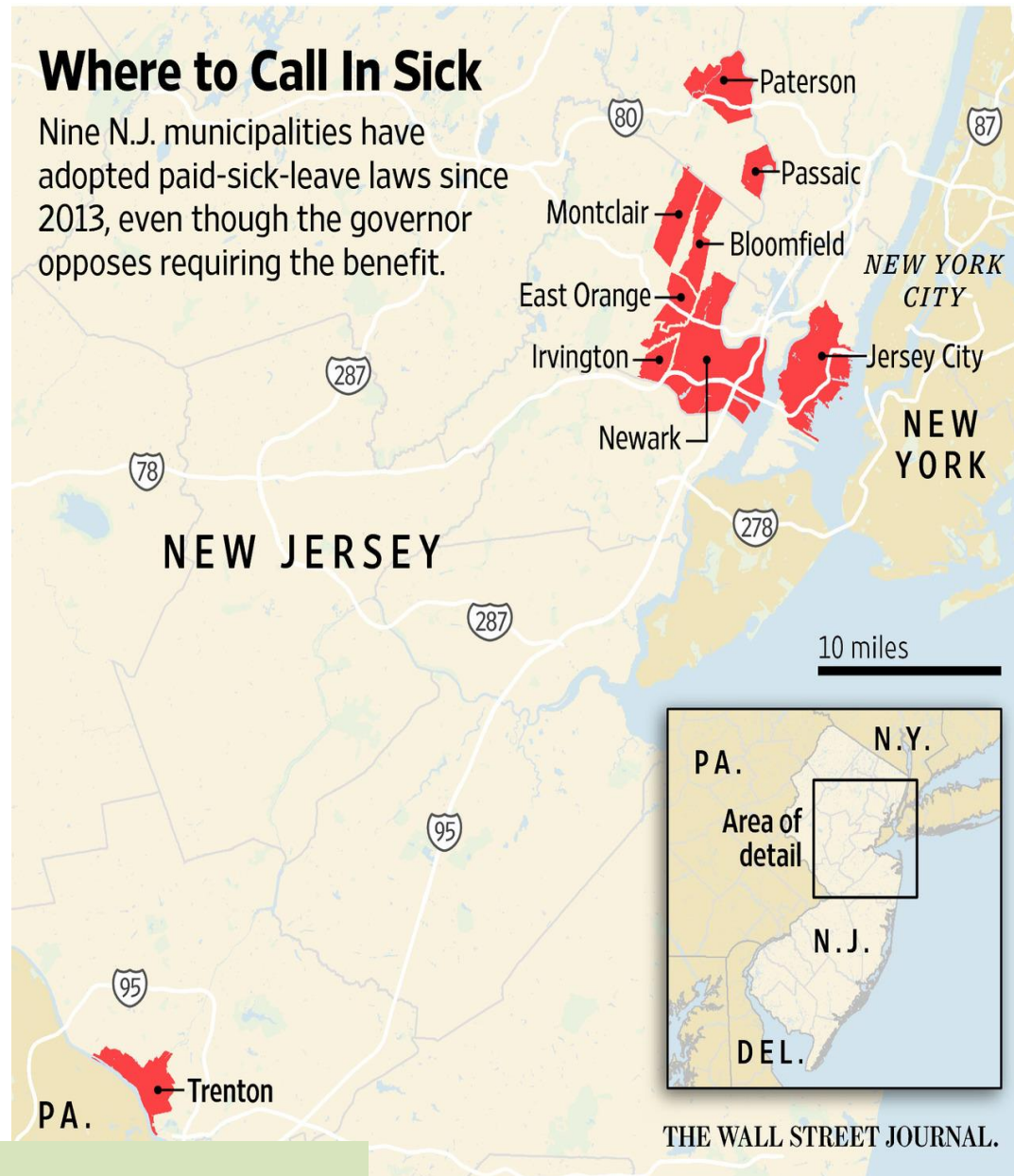
Map Source:

National Partnership for Women & Families

<http://www.nationalpartnership.org/research-library/campaigns/psd/state-and-local-action-paid-sick-days.pdf>

Where to Call In Sick

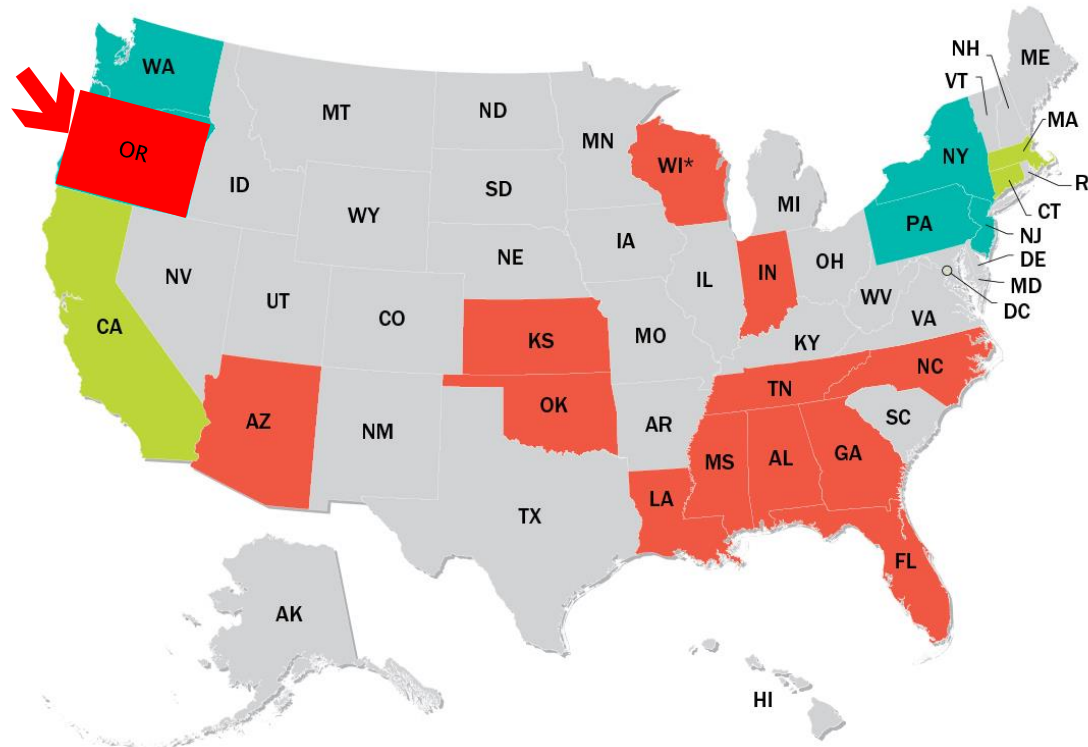
Nine N.J. municipalities have adopted paid-sick-leave laws since 2013, even though the governor opposes requiring the benefit.



Map Source:
GovDocs

<http://www.govdocs.com/new-jersey-cities-paid-sick-leave-cheat-sheet/>

Seeing Red– States that prohibit local sick leave laws as of April 10, 2015



- States mandating paid sick leave
- States with one or more cities that mandate paid sick leave
- States that prohibit local governments from passing paid sick leave legislation

* Wisconsin's preemption law, enacted in 2011, effectively negated Milwaukee's paid sick leave ordinance that was passed by City of Milwaukee voters in November 2008.

** The legality of the Trenton ordinance has been challenged in New Jersey state court.

States/cities mandating paid sick leave (effective date)

California (Jan. 2015)
Connecticut (2012)
Massachusetts (July 2015)
Washington, D.C. (2008)
Oakland, CA (March 2015)
San Diego, CA (on hold)
San Francisco, CA (2007)
Bloomfield, NJ (June 2015)
East Orange, NJ (Jan. 2015)
Irvington, NJ (Jan. 2015)
Jersey City, NJ (2014)
Montclair, NJ (March 2015)
Newark, NJ (2014)
Passaic, NJ (Jan. 2015)
Paterson, NJ (Jan. 2015)
Trenton, NJ** (March 2015)
New York City, NY (2014)
Philadelphia, PA (May 2015)
Eugene, OR (July 2015)
Portland, OR (Jan. 2014)
Seattle, WA (2012)
Tacoma, WA (Feb. 2016)

States with bans against paid sick leave laws


Alabama	Louisiana
Arizona	Mississippi
Florida	N. Carolina
Georgia	Oklahoma
Indiana	Tennessee
Kansas	Wisconsin*

Map Source:

Towers Watson

<http://www.towerswatson.com/en/Insights/Newsletters/Americas/Insider/2015/04/paid-sick-leave-laws-gain-momentum>

The States

Jurisdiction	Effective Date	New Hire Waiting Period for Use	Accrual Rate	Yearly Accrued Time Cap ¹
California	7/1/2015	30 days from 1/1/15	1 hr / 30 worked	48 hours accrual (or 24 upfront)
Connecticut	1/1/2012	680 working hours	1 hr / 30 worked	40 hours
Massachusetts	1/1/2015	90 days	1 hr / 30 worked	40 hours
 Oregon	1/1/2016	90 days	1 hr / 30 worked	40 usage / 80 cap Unpaid if less than 10 EEs

The Cities

NOTES

¹ Methodologies differ

² 55 or fewer, 56+ EEs - ADDS TO CA LAW

³ 24 or fewer, 25 to 99, 100+ EEs

⁴ 5 or fewer on 32 hours paid, 24 unpaid

⁵ Pre-empted by OR state law

⁶ Partially pre-empted by OR state law

⁷ Fewer than 15, 15+ EEs

Jurisdiction		Effective Date	New Hire Waiting Period for Use	Accrual Rate	Yearly Accrued Time Cap ¹
Oakland	CA	3/2/2015	90 days	1 hr / 30 worked	72 Hours
San Francisco	CA	2/5/2007	90 days	1 hr / 30 worked	72 hours
Emeryville ²	CA	7/1/2015	90 days	1 hr / 30 worked	48 hrs / 72 hours
Washington ³	DC	11/13/2008	90 days	1 hr / 37 / 43 / 87 worked	24 / 40 / 56 hours
Montgomery County ⁴	MD	10/1/2016	90 days	1 hr / 30 worked	56 hours
New York City	NY	4/1/2014	120 days	1 hr / 30 worked	40 hours
Eugene ⁵	OR	7/1/2015	90 days	1 hr / 30 worked	40 hours
Portland ⁶	OR	1/1/2014	90 days	1 hr / 30 worked	40 hours
Philadelphia	PA	5/13/2015	90 days	1 hr / 30 worked	40 hours
Pittsburgh ⁷	PA	90 days after regs	90 days	1 hr / 35 worked	24 / 40 hours
Tacoma	WA	2/1/2016	180 days	1 hr / 30 worked	24 hours
Seattle	WA	9/1/2012	180 days	1 hr / 30 worked	72 hours

And then there's New Jersey

Jurisdiction		Effective Date	New Hire Waiting Period for Use	Accrual Rate	Yearly Accrued Time Cap ¹
Bloomfield	NJ	Jun-15	90 days	1 hr / 30 worked	24 / 40 hours ⁸
Jersey City	NJ	Jan-14	90 days	1 hr / 30 worked	40 hours ⁹
Montclair	NJ	Mar-15	90 days	1 hr / 30 worked	24 / 40 hours ⁸
Newark	NJ	May-14	90 days	1 hr / 30 worked	24 / 40 hours ⁸
Trenton	NJ	Jul-15	90 days	1 hr / 30 worked	24 / 40 hours ⁸
East Orange	NJ	Jan-15	90 days	1 hr / 30 worked	24 / 40 hours ⁸
Irvington	NJ	Jan-15	90 days	1 hr / 30 worked	24 / 40 hours ⁸
Passaic	NJ	Jan-15	90 days	1 hr / 30 worked	24 / 40 hours ⁸
Patterson	NJ	Jan-15	90 days	1 hr / 30 worked	24 / 40 hours ⁸



Appear quite similar; beware of nuances!

NOTES

⁸ 9 or fewer, 10+ EEs

⁹ 9 or fewer, unpaid

And a new Federal Executive Order

- ▶ Effective 1/1/17
- ▶ All EEs on federal contracts
- ▶ 1 hr / 30 worked
- ▶ Cannot cap accrual at less than 56 hours, must carry over
- ▶ Not payable upon termination
- ▶ Reinstated for EEs rehired w/in 1 year
- ▶ Can use for physical/mental illness, injury, medical condition; care from healthcare provider; caring for child, parent, spouse, domestic partner *or any other individual related by blood or affinity whose association with the employee is the equivalent of a relationship*
- ▶ Also for absences due to domestic violence, sexual assault, stalking
- ▶ ER allowed to obtain certification for absences that > 3 consec. days
- ▶ Regs by Sept. 2016
- ▶ Does NOT preempt but adds to state or local laws.



Pending Legislation in Tri-State Area

▶ Connecticut

- HB 6784
- Would have expanded mandate to 56 hrs, businesses with 10+ EEs, all hourly workers
- Died

▶ New Jersey

- Governor opposes
- A.2354 / S.785 state-wide mandate

▶ New York

- A.735 / S.1208 state-wide mandate



Compliance Challenges

- Many laws convoluted, poorly worded, ambiguous
- Most (not all) require offering to FT, PT, even Temp, and Seasonal
- Some excluded EEs and industries
- Many have different levels of rules based on headcount – Washington DC
- Some of the laws require total headcount even if out of jurisdiction – Massachusetts



Methodology Disparity

- Some locations require accrual of unpaid time
- Most accruals typically begin upon hire – **not all – SF at 90 days**
- Most require accrual based on 1 hr/30 or 1 hr/40
- Time becomes available – varies by statute
 - **Most – 90 days**
 - **NYC – 120 days**
 - **CT – 680th hour of hire, provided average of 10 hrs/wk worked in prior quarter**

How do you define “Accrual Caps?”

▶ 2 distinct types

1. Accrual “bank” has a maximum balance
 - How vacation/PTO is normally handled
 - EE stops accruing more time when cap is reached
 - After using some time, accrual begins again
2. Annual accrual is limited to a certain # of hours
 - EE cannot earn more than a fixed amount in any given year
3. Does it make a difference?



San Francisco (small ER) - bank caps at 40 hours				
Sick Leave Hours	Year 1	Year 2	Year 3	Year 4
Carryover from previous year	n/a	40	40	40
Amount accrued	40			
Used				
Bank	40	40	40	40

- Balance never exceeds cap
- No stacking of leave
- Amount accrued in year can exceed amt. of cap
- Usage only limited by bank balance
- Amt. taken in year can exceed cap amt.

NYC - Amount accrued & taken limited to 40 hrs/yr.				
Sick Leave Hours	Year 1	Year 2	Year 3	Year 4
Carryover from previous year	n/a	40	40	40
Amount accrued	40	40	40	40
Used				
Bank	40	80	80	80

- Balance can exceed cap
- Allows for stacking of leave
- Amount accrued in year cannot exceed maximum.
- Usage is limited to annual accrual
- Amount taken in year cannot exceed maximum accrued

Other Methodologies

- ▶ Lump Sum
 - An option under most statutes
 - Some laws silent – San Francisco, CT
 - Oregon requires cash out at anniversary!
- ▶ Grandfather Option
 - California
 - Massachusetts



Reasons for Use

- ▶ Reasons for Use:
 - All provide usage for EE and Family:
 - Family defined differently in each statute
 - Most provide usage for Domestic violence:
 - Defined differently
 - Some EE only, others EE and family
 - Other reasons
 - NYC provides for childcare emergencies
 - Oregon – adds bereavement, babybonding
 - Emeryville, CA – to care for service dog



Other Important Elements

- Carryover
- Minimum use
- Increments allowed
- Calculation of pay
 - Salary, PT, piece rate, commission
 - “regular” hourly rate
- Payout upon termination
- Donation plans
- Reinstatement upon rehire



Can you substitute PTO/Vacation?



- Most statutes allow
- Challenges:
 - PTO/Vacation typically accrue as flat amt. per pay period/month/year.
 - Often need to ensure that accrual alternative methodology will meet the mandated min. accrual.
 - PTO/Vacation often does not commence upon hire – required by most sick days laws.
 - PTO/Vacation often does not apply to PT, temp OR is pro-rated for PT and could be at too low a level.

Documentation/Notification



- All locations require posters
- Many require other form of notice to EE – written document, handbook
- Info on paystub – **CA required, MA suggests, NYC/Oregon encouraged**
- EE notice – if foreseeable advanced written/verbal. If not foreseeable as soon as practicable. Some laws spell out certain # days/hours.

Payroll Check Stub	
Jane's Business 123 Main Street Sacramento, CA 95814	Week of April 2-6, 2001 Joe Employee 123-45-6789
Salary	\$500.00
Taxes	
1. Federal Withholding	68.00
2. Social Security (6.2%)	31.00
3. Medicare (1.45%)	7.25
4. State Disability Insurance (.9%)	4.50
5. State Withholding	13.47
Net	\$375.78

The Protections



- › Wage replacement or a protected leave?
- › Discrimination/Harassment/Retaliation
- › Rebuttable presumption of unlawful retaliation
- Watch out for fines & penalties



Management Issues

- Some laws spell out Dr.'s notes/documentation OK after X number of days
- Some give explicit OK to discipline for misuse or abuse
- Some state explicitly not OK to count against attendance policies
- Attendance bonuses?
- What to do when law silent in these areas?



A Challenge for Multi-Location Employers:



	CA	CT	NYC
Effective Date	1-Jul-15	1-Jan-12	1-Apr-14
Amended	13-Jul-15	1-Jan-15	
ER Coverage	All ERs in CA, regardless of size	EEs with 50+ EEs	For ERs with under 5 EEs time off is unpaid
EE Coverage	EEs who work 30 days in year for this ER	Service workers (non- exempt) only	EEs who have worked in NYC for 80 hrs in year
Headcount rules		All EEs in CT	All EE's who work (not live) in NYC
Type of EEs covered	FT, PT, Temp, Seasonal	FT, PT	FT, PT, Temp, Per Diem, On Call
EEs not covered		Per Diem and Temp	
Use of time for family	Yes	Yes	Yes
Domestic violence	EE only - Dom violence, Sex. Assault, Stalking	EE only - Family Violence, Sex. Assault.	Silent

	CA	CT	NYC
Accrual rate	1 hr / 30 worked	1 hr / 40 worked Must accrue in minimum 1 hr. increments	1 hr / 30 worked
Annual accrual limit	None	40 hrs. per year	40 hrs. per year
Maximum accrual balance (cap) "the bank"	48 hrs	Silent	Silent
Maximum annual usage	24 hrs. or 3 days	40 hrs.	40 hrs
Carryover	Up to 48 hrs.	Up to 40 hrs.	Up to 40 hrs
Other methodology allowed	24 hours or 3 days as lump sum; accrual that gets to 24 hours by 120th day, i.e. 72 hrs / yr.	Silent	40 hrs as lump sum for FT, calculated for PT based on 1 hr / 30
Substitute PTO instead	Yes	Yes	Yes
Grandfather option	Yes		
Accrual Starts	Upon hire	Upon hire	Upon hire

	CA	CT	NYC
Available	90 days	680th hour of employment provided EE has worked at least 10 hrs/wk in prior qtr. After break in service, prior portion of 680 hrs. credited.	120 days, immediately if term'd and rehired
Increments	2 hours	1 hour	Minimum usage can be 4 hours. After that, smallest increment allowed by payroll
Payment of sick time	Exempt - per method used for other PTO	n/a	
	Non-Exempt - regular hourly rate	Non-Exempt - regular hourly rate or min. wage whichever greater (i.e. EEs paid w/ tip credit)	
	Multiple rates - avg. hourly rate prior 90 days	Multiple rates - avg. hourly rate prior pay period	Multiple rates - rate in place at time of use of sick days
	Piece rate/Commission - 90 day average	Commission - not counted in regular hourly rate	Piece rate - last 7 workdays average; Commission - greater of base wage on min. wage

	CA	CT	NYC
Count against attendance	Problematic		
Discipline allowed	Silent	Can discipline for misuse	Can discipline for misuse
Pay out upon termination	No, but balance must be reinstated if rehired w/in 1 yr	No pay out, no reinstatement if rehired	No, but balance must be reinstated if rehired w/in 6 months
Donation plan	Problematic	Permitted	Permitted
Attendance Bonus / Cash out at year end	Problematic	Allowed in lieu of carryover by mutual consent	Allowed if full balance is reinstated to EE at beginning of next year

	CA	CT	NYC
Poster	Yes	Yes	Encouraged
ER Notice requirments	NTEs to non-exempts	Written notification to EEs upon hire - can be met by poster	Written policy can be distributed to EEs or posted
EE Notice requirements	If foreseeable, advance written or oral notice; if not foreseeable as soon as practicable	No more than 7 days if foreseeable; if not foreseeable as soon as practicable	No more than 7 days if foreseeable; if not foreseeable as soon as practicable
Paystub Info	Yes		Encouraged
Med Cert/ Documentation	Inadvisable to request unless leave exceeds 24 hours provided by law.	OK if out (even if partial day) for 3 consecutive work days	OK if EE uses sick days for 3 consecutive work days; EE must provide w/in 7 days of return

	CA	CT	NYC
Legal highlights	Rebuttable presumption of retaliation if adverse action w/in 30 days		
Other	AWS gets more hours		Can use for childcare emergency
	Cannot require EE to find replacement worker		Cannot require EE to find replacement worker

Checklist for Employers

- ✓ Perform a detailed analysis for your location(s)
- ✓ Review current sick, vacation, or PTO policies
- ✓ Determine if current policies will be amended and/or new policy implemented
- ✓ Draft and implement policy
- ✓ Determine effective date of amended/new policies
- ✓ Post notices
- ✓ Other notification to employees
- ✓ CALL YOUR PAYROLL PROVIDER!!!!
- ✓ Figure out how to comply with pay calculations
- ✓ Update employee handbooks – remember other policies impacted
- ✓ Watch out for new laws!!!!
- ✓ **Take 2 aspirin and call attend a good APA meeting!**



Questions?

VantaggioHR
the employer's advantage



Questions
are
guaranteed in
life;
Answers
aren't.

Thank you!

Please visit our website www.VantaggioHR.com.

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