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EXECUTIVE SERIES:
LABOR & EMPLOYMENT



Timely Updates for Your Employee Handbooks and Policies

Presented by: Lisa Koblin, Partner, Mark Nehme, Associate, Kayla Kienzle, Associate, Krystina Garda, Associate

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Mark Nehme

PAID SICK LEAVE

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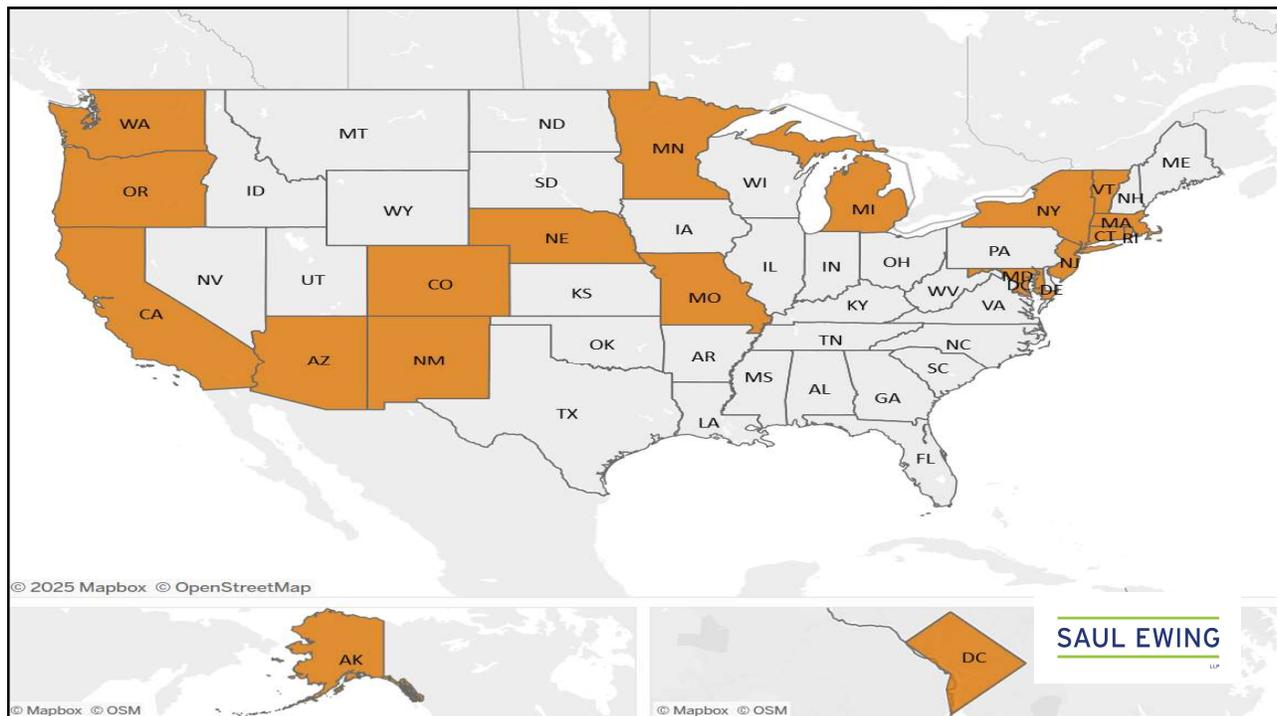
State Safe & Sick Leave Policies – What are they?

- Some states have laws that require private employers to provide paid sick leave to employees.
- Typically safe & sick leave laws require providing a certain amount of time off to employees for certain reasons, including:
 - To care for or treat employee’s mental or physical illness, injury or condition.
 - To care for a family member with a mental or physical illness, injury or condition.
 - Absence due to domestic violence, sexual assault, or stalking of the employee or a family member.

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States with Paid Sick Leave Laws

- Connecticut (2012)
- **California (2014)**
- District of Columbia (2014)
- Massachusetts (2015)
- Oregon (2016)
- Vermont (2017)
- Arizona (2017)
- Maryland (2018)
- New Jersey (2018)
- Rhode Island (2018)
- **Washington (2018)**
- **Michigan (2019)***
- New York (2021)
- Colorado (2021)
- New Mexico (2022)
- Minnesota (2024)
- **Nebraska (2025)**
- **Missouri (2025)****
- **Alaska (2025)**

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States with General Leave Laws

- In addition to paid sick leave legislation, certain states have “paid time off” laws that are similar in length to state paid sick leave laws but permit eligible individuals to take leave for any reason, not just limited to sick leave.
- These states include Nevada (2020), Maine (2021), and Illinois (2024).

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Localities with Paid Sick Leave Laws

- Certain local jurisdictions can also impose additional requirements on employer.
- As an example, Pennsylvania does not have a statewide mandatory paid sick leave requirement for private employers. However, it does have:
 - Pittsburgh Paid Sick Days Act (increased paid sick leave hours effective January 1, 2026).
 - Philadelphia “Promoting Healthy Families and Workplaces” law.
- Businesses must make sure to verify the law in the municipalities and counties in which they operate.

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Michigan Earned Sick Time Act (“MI ESTA”)

- Michigan voters passed a ballot initiative in 2018 calling for a statewide paid sick leave law, which the Michigan legislature adopted but then subsequently amended.
- Following a 2024 Michigan Supreme Court decision striking down the legislature’s “adopt-and-amend” approach as unconstitutional, the revised (original) MI ESTA went into effect on February 21, 2025.

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MI ESTA Cont.

- Effective February 21, 2025, the MI ESTA has been changed in a variety of ways, including:
 - Now applicable to Michigan employers of **one** or more employees.
 - Now applicable to **all** Michigan employees, including **exempt employees**.
 - One hour of paid sick leave for every **30** hours worked, up to **72** hours a year for employers with more than 10 employees.
 - One hour of paid sick leave for every **30** hours worked, up to **40** hours per year for employers with 10 or fewer employees.
 - Recordkeeping requirement extended to **three** years.

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Missouri Paid Sick & Safe Leave

- Missouri was one of three states to adopt a sick leave obligation for private employers, adopted through ballot measures during the 2024 election.
- That sick leave obligation has been repealed by the Missouri legislature effective August 28, 2025.
- Missouri no longer has a sick leave law.
- It's unclear whether the Missouri Department of Labor expects employers to honor already accrued leave beyond August 28, 2025.

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Alaska Paid Sick Leave Law

- Effective July 1, 2025.
- Alaska Statutes 23.10.066-23.10.069.
- Up to 56 hours per year (employers of 15+ employees).
- Up to 40 hours per year (employees with fewer than 15 employees).

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Alaska Paid Sick Leave Law Cont.

- Sick leave to be used for employee and family members for:
 - Diagnosis, treatment or recovery from a mental or physical illness, injury or other health condition.
 - To receive preventative medical care.
 - For safe leave from work following an incident of violence.

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Nebraska Healthy Families and Workplaces Act (“HFWA”)

- Effective October 1, 2025.
- Up to 56 hours per year (employers of 20+ employees).
- Up to forty 40 hours per year (employees with fewer than 20 employees).
- Both exempt and non-exempt employees must be allowed to take accrued sick leave in (at minimum) hourly increments under HFWA.

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HFWA Cont.

- Sick leave to be used for employee and family members for:
 - Diagnosis, treatment or recovery from a mental or physical illness, injury or other health condition.
 - To receive preventative medical care.
 - Closure of employee’s place of work or the employee’s child’s school or childcare facility due to a public health emergency, or a public health order, or self-isolation after exposure to a communicable illness that would be a threat to the community.
 - To attend a meeting at child’s school or place of care, related to child’s mental or physical illness, injury or health condition.

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Expanded Sick Leave Laws in 2025

- Existing sick leave laws continue to be expanded in 2025. As examples:
 - Effective January 1, 2025, California's paid sick leave was expanded to allow employees to use paid sick leave if they or a family member is a victim of a qualifying violent act, needing time off for legal proceedings or treatment.
 - Effective July 27, 2025, Washington's paid sick leave law was expanded to allow employees to use paid sick leave to prepare for, or participate in, a judicial or administrative immigration proceeding involving the employee or their family member.

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OTHER PAID LEAVE

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Paid Family and Medical Leave and the FMLA

- FMLA allows eligible employees to take up to 12 weeks of unpaid leave per year.
- No federal law requires private employers to provide paid leave.
- Several states have passed laws requiring private employers to provide paid family and medical leave to employees.

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State Paid Leave Laws – The Basics

- PFML laws typically cover a greater number of employees.
- Maximum duration could be more than required under other leave laws.
- Payments and funding.
- Job protections.
- Permissible reasons for leave.
- Enforcement and penalties.

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States With PFML

- | | |
|----------------|------------------|
| 1. California | 8. Massachusetts |
| 2. Colorado | 9. Minnesota |
| 3. Connecticut | 10. New Jersey |
| 4. Delaware | 11. New York |
| 5. D.C. | 12. Oregon |
| 6. Maine | 13. Rhode Island |
| 7. Maryland | 14. Washington |

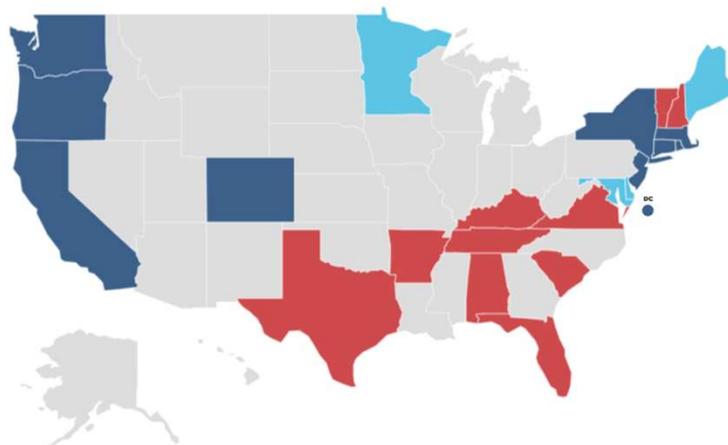
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Status of PFL Laws

● Voluntary system ● Mandatory system (active) ● Mandatory system (not yet active)



Source: <https://bipartisanpolicy.org/explainer/state-paid-family-leave-laws-across-the-u-s/>

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PFML and Other State Leave Laws

- States that require unpaid leave (i.e., MN, prior to Jan. 1, 2026).
- Some states have separately enacted paid sick leave laws.
- Sick leave and other leaves (like FMLA) may run concurrent with state PFML laws.

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PFML and Employer Paid Leave Policies

- Navigating application of PFML under comparable employer policies.
- Notice & posting requirements.
- Leave policy language.

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ARTIFICIAL INTELLIGENCE

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AI Use in Employment Practices

- Common uses of AI in employment practices.
 - Applicant credential/resume screener.
 - Applicant background checks.
 - GenAI used to write performance reviews.
 - Interview software.
 - Employee activity monitoring software.
 - Facial and voice recognition technology.
 - Keystroke and employee movement monitoring.
 - Computer-based skills testing.

GenAI has created new wave of AI-related laws and litigation concerning workplace discrimination:

- Examples: *Harper v. Sirius XM Radio*; *Mobley v. Workday, Inc.*

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AI and Algorithmic Discrimination

- **NYC Local Law 144 (2023) – Using AI in hiring and job promotion decisions.**
 - Prohibits employers and employment agencies from using an automated employment decision tool (AEDT) in NYC unless a bias audit was performed.
 - Employers must give notice that AI tools will be used and provide a summary of the audit on its website.
- **Illinois HB 3773 – 1/1/26 Effective Date.**
 - Amends Human Rights Act and prohibits using AI that “has the effect of subjecting employees to discrimination on the basis of protected classes under Illinois HRA”
 - Requires employers to provide notice that the employer is using AI for purposes identified in the law.
 - Extended protection to recruitment and hiring so applicants appear to be covered.
 - Potential remedies include back pay, lost benefits, clearing of personnel file, emotional damages, hiring, promotion, reinstatement, front pay where reinstatement is not possible, and attorneys’ fees.

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AI and Privacy Concerns

- **Brewer v. Otter.ai (N.D. Cal. Aug. 2025).**
 - Alleged that *Otter* secretly records private conversations through its AI meeting assistant, *Otter Notetaker*.
 - Alleged that *Otter Notetaker* records without notice or consent of meeting participants.
 - Alleged that *Otter* uses meeting transcripts for training its tool.
- **Organizational and HR Implications.**
 - Privacy-based claims in the lawsuit, but a concern when employees are discussing confidential and sensitive business information.
 - Vet your vendors.
 - Train employees on when and when not to use AI notetakers.
 - Obtain consent, have a prepared script.

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AI Policy Considerations

- Discuss scope of AI use (particularly GenAI use) with business leaders, legal, IT, HR and other relevant stakeholders:
 - Do you want to prohibit use of ChatGPT or other public-facing tools?
 - Are you going to impose restrictions as to when and how use of these tools are permitted?
- Provide examples of permissible tools and who is approved to use those AI tools for work purposes.
- Mitigate risk by ensuring that AI use policy complies with other relevant policies, including but not limited to:
 - Code of conduct.
 - Anti-discrimination.
 - Confidentiality/trade secret protection.
 - Information security.
- Confirm if and when employees must seek prior approval before using AI tools.
 - Who is responsible for approval? Are managers trained on what tools/systems employees are permitted to use for work purposes?

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AI Policy Considerations

- Provide guidance on when and how employees may use Copilot, Zoom AI Companion and similar programs: Determine when and how employees may use this tool, and provide guidance on usage of Zoom when AI Companion is present.
- Notify employees about monitoring use of AI tools on employer-provided devices, systems, servers, etc.
- Instruct that all AI tools must be approved by the employer based on business needs, and after vetting for security and legal compliance.
 - Has the AI tool been reviewed for potential bias and inaccuracies?
 - Any special licensing requirements?
- Provide instructions for reporting questions or concerns regarding the policy, including reporting any potential policy violations.
- Prohibit retaliation against anyone who makes a report of a violation or concern under the AI use policy.

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Krystina Garda

OVERTIME AND TIP POLICIES

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Time and Money



- Generally, employees are paid for the amount of time actually worked.
- Overtime and timekeeping policies should reflect compensation standards for **exempt** and **non-exempt** employees;
 - All non-exempt employees must track and report hours worked each **week**.
 - Straight time (standard work hours at the employee's regular rate, up to 40 hours).
 - Overtime (1.5x regular rate for hours over 40), special OT rules in some states.
 - OT calculated based on hours worked each workweek.
- Check policies for compliance with federal (FLSA) and state wage payment laws.

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Overtime Policies: Exempt vs. Non-Exempt Employees

- **Exempt**
 - Employees who meet one of the FLSA exemption tests (duties test).
 - Paid on a salary basis (currently \$684/week or \$35,568/year) (salary test), not hourly
 - Not entitled to overtime (OT).
 - **FLSA Exemptions:** Executive, Administrative, Professional, Computer, Outside Sales, Highly Compensated.
 - *Note: Check state law for exemption criteria, not always consistent with FLSA.*
- **Non-Exempt**
 - Employees who do not meet any of the FLSA exemption tests.
 - Paid on an hourly basis, or salary basis (depending on salary rate and job duties).
 - Entitled to overtime pay for all hours worked over 40, regardless of their regular work schedule.

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Overtime Policies Continued

- Handbooks should address overtime and employment categories.
 - Full-time/part-time definitions.
 - Exempt/non-exempt definitions.
 - Overtime pay is based on actual hours worked.
 - Non-exempt employees are responsible for accurately reporting their own hours.
 - Overtime should be authorized in advance.
 - Prohibit off-the-clock work.
 - Disciplinary consequences for violations.
 - Pay for all time worked and address violations with counseling or discipline.

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Overtime in the News- OBBBA

- One Big Beautiful Bill Act (OBBBA): Creates a limited deduction for employees entitled to overtime pay premiums required by the FLSA.
- Examples of pay premiums not required by the FLSA.
 - Employees may not deduct additional overtime earned under state law requirements (e.g., daily overtime).
 - Overtime paid to exempt employees (which is voluntary and not required under FLSA) is NOT deductible.

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Tips



- *Tip Credit*: a mechanism, allowed by federal and some state laws, where employers can count a portion of an employee's tips towards meeting the minimum wage obligation for tipped workers.
- *Tip Pooling*: a system in which all tips collected by employees are combined into a shared pool and then divided among eligible staff members based on an agreed sharing formula or policy. The goal of tip pooling is to create a fairer distribution of tips and reward teamwork.

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Tips in the News - OBBBA

- The OBBBA creates a separate deduction for tipped workers, allowing them to deduct up to \$25,000 of qualified tips earned.
- The allowable deduction for tipped earnings is reduced when worker's gross income exceeds \$150,000 (or \$300,000, in the case of a joint return).
- To be a "qualified" tip, the tip must be paid voluntarily by the customer or client, not subject to negotiation. Therefore, earnings from mandatory service charges assessed automatically to customers are not deductible. Tips received under tip-sharing arrangements count as qualified tips.
- To qualify for the deduction, the tips must also be received by an individual engaged in an occupation that "customarily and regularly received tips" on or before December 31, 2024.

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Tips for Tip Policies and Notice

- Provide clear, written policies, track tips and payroll accurately, and ensure compliance with all federal and state laws on tips.
- Follow state guidelines on tip credits.
 - provide written tip credit notices to employees, explaining how the tip credit works and their rights.
- Some states require notice of tip-pooling policies in writing.
- Some states (like NY) distinguish tips and mandatory service charges.
 - Disclosure requirement: If a service charge is not a tip, restaurants must inform customers in writing that it does not go to employees.

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