

Littler Lightbulb: Paid Leave Policies & Practices



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With the number, type, and scope of paid leave laws constantly expanding, employers may struggle to adapt successfully and quickly to the changing legal landscape. As members of Littler's Paid Sick & Safe Time Subgroup, employers often ask for our bright ideas.

- **Paid Leave Is Changing:** For years, paid leave was a discretionary benefit. Later, kin care laws required that, *if* an employer provided benefits, employees could use paid leave *for specific purposes or family members*. Eventually, paid sick leave laws obligated employers to provide paid leave *for covered absences* (an expanding list). More states are adopting paid family or medical leave wage replacement benefit programs. And the newest trend, as recently seen in Nevada and Maine, is mandatory paid leave that employees can use *for any purpose*.
- **Don't Miss the Forest for the Trees:** A common pitfall is not considering the broader employment law picture. Absences may involve – at least – one or more of the following laws: paid sick; federal FMLA and ADA and their state or local counterparts; kin care; and paid family-medical. After identifying which laws may apply, employers must determine which law controls. To ensure compliance, employers must reconcile federal, state, and local requirements in daily practice and policy development.
- **Obstacles to a Universal Policy:** One universally compliant policy has appeal, but comes at a cost. Employers may sacrifice tools to curb abuse, like documentation to support an absence. If a company uses catchall phrases, e.g., employees can use leave for “any other reason permitted by applicable law,” staff must look outside the policy to understand requirements. Some paid sick leave laws do not allow caps on annual accrual, use, or carryover; without these limitations, employees could amass and access a large paid leave bank to use with or without advance notice, consecutively or intermittently, with few restrictions.
- **It Takes a Village:** Employers may find challenging the development, coordination, and administration of leave benefits, policies, and practices. To develop the right solution, they need the right team. HR, legal, and benefits are obvious, but IT and payroll – even managers – may be essential partners because they understand what must be done and – critically – what can be done, including practical impediments to achieving goals. Involving necessary partners from the outset can help employers develop the right tools to solve legal and administrative challenges.
- **Implementing & Executing Policies:** Developing a policy to comply with a specific law is step one. Next, employers must review directly related policies to ensure conformity. For example, if a new paid sick leave policy says the company will not count protected absences under an attendance policy, the separate attendance policy should include comparable terms. Then, employers must review additional, secondarily related policies, such as compensation policies on bonuses or holiday pay, to ensure they do not affect negatively the employees' protected leave rights. After employers identify and reconcile inconsistencies, they should train staff on how to execute these policies properly, legally, and consistently. Supporting materials, like a manager's guide, can provide a roadmap to front-line staff on how they should handle situations and when they should escalate issues to another department.