

New Developments in State and Local Paid Leave Laws

Connecticut and San Francisco are paving the way in requiring all employers to give paid sick leave

Douglas J. Farmer

Before 2007, laws requiring employers to provide paid time off for workers were limited to a few dozen states mandating paid time off to vote. A handful of states also required paid leave for employees taking time off to donate blood or bone marrow. In 2007, Connecticut enacted the first state law requiring employers to provide paid sick leave for employees. At least 10 other states have considered such legislation in the past year or are now doing so.

This chapter first reviews paid sick leave legislation state governments have considered or recently enacted, including coverage of employers and employees, rates of accrual for paid sick leave, permissible use of paid sick leave, and the effect of such legislation on existing employer paid leave policies. It then reviews San Francisco's 2007 paid sick leave ordinance, and the issues it creates that employers can anticipate with the enactment of paid sick leave laws at the state level. Finally, this chapter covers remaining paid leave laws, including paid voting and donor leave laws.

This chapter does not address *unpaid* leave legislation (e.g., the Family and Medical Leave Act (FMLA) or equivalent state laws) or *unpaid* leave state and federal anti-discrimination laws require (e.g., time off as a form of reasonable accommodation under the Americans With Disabilities Act or equivalent state disability or pregnancy disability leave laws, etc.). It also does not cover state or private insurance-based wage replacement programs (e.g., wage reimbursement under state workers' compensation laws, state disability insurance laws, unemployment insurance benefit programs or short/long-term disability private insurance programs).

Employers should identify all paid leave legislation in the states in which they do business, and consider modifying their existing personnel policies to address these requirements. It behooves all employers – whether their states have a paid leave law on the books or are merely considering one – to review their current policies and make any necessary adjustments. The nation's paid leave laws are complex, and often require

Douglas J. Farmer is a partner in the San Francisco office of Sheppard Mullin Richter & Hampton, LLP, where he represents businesses in employment law matters. He can be contacted at dfarmer@sheppard-mullin.com. Mr. Farmer wishes to thank Summer Associate Kristy Young for her research assistance on this chapter, and preparation of the sections on paid voting and donor leaves.

integration with existing employer leave policies. Employers should consult experienced employment law counsel before implementing or revising paid leave policies.

State Paid Sick Leave Legislation

Connecticut was the first state to pass paid sick leave legislation, but other states may soon join it, as the following discussion illustrates.

Employee Coverage

Connecticut's paid leave statute became effective Oct. 1, 2007. The statute is unique among paid sick leave law in that it does not provide for expansive coverage of all employees, but limits coverage to only hourly or non-exempt employees.

Recently proposed measures in Florida, Maine, Massachusetts, Missouri, North Carolina, New Jersey and Vermont include express provisions extending coverage to all employees, regardless of exempt status, time in service, hours worked per week or anticipated length of assignment.

Thus the Connecticut law, and recently proposed legislation in other states, would extend paid sick leave to those employees most frequently excluded from existing company paid sick leave and paid time off (PTO) policies. These include part time, temporary, seasonal and on-call employees, as well as others outside the regular, full-time work force.

Employer Coverage

Connecticut's new law extends coverage to employers of 25 or more employees. The law defines "employer" to include "any person, business, educational institution, nonprofit agency, corporation, limited liability company or other entity" employing the requisite number of employees.

Recently proposed legislation in Maryland, Massachusetts, Missouri, South Carolina, New Jersey and Vermont would apply to *all* employers, regardless of size. All proposed legislation has broad lists of covered entities and individuals similar to the Connecticut law; however, several limit coverage based on number of employees (e.g., 10 or more in Florida and Minnesota, 25 or more in Maine).

The Connecticut law, and proposed legislation in other states, define employer to include "any individual," "any person" or similarly broad language. This raises the question of whether business executives who exercise control over wages, hours and working conditions may be subject to individual liability for violations of the legislation. Massachusetts and Missouri further propose extending coverage to any "agent" of the employer who engages the services of an employee, thereby extending coverage to placement firms.

States Enacting or Considering Paid Sick Leave Legislation

- Connecticut (effective Oct. 1, 2007)
- Florida
- Maine
- Maryland
- Massachusetts
- Michigan
- Missouri
- New Jersey
- North Carolina
- Vermont

Commencement of Accrual of Paid Sick Leave

Employees covered under the Connecticut law begin to accrue paid sick leave from their date of hire; this also would be permitted under recently proposed legislation in Florida, Maryland, Minnesota, Missouri, New Jersey, South Carolina and Vermont. However, as explained below, the Connecticut law and proposed legislation in some states prohibit use of paid sick leave for a defined period.

Rate of Accrual of Paid Sick Leave

Under the Connecticut law, covered employees accrue paid sick leave at the rate of one hour of paid sick leave for every 40 hours worked. Paid sick leave accrues in minimum one-hour increments.

Proposed paid sick leave legislation in Maine, Massachusetts and South Carolina would require accrual at the rate of one hour for every 30 hours worked.

Proposed legislation in Florida, like Connecticut, would mandate leave accrual at the rate of one hour for every 40 hours worked, but authorize small employers under 10 employees to provide one hour of paid sick leave for every 80 hours worked. Maryland would require accrual at the rate of one hour for every 37 hours worked, and Minnesota one hour for every 40 worked, both with the same small-employer exception.

Accrual rates for paid sick leave in Missouri, New Jersey and Vermont would be based on annual or semiannual time in service, presumably based on full-time employment, rather than on a per-hour-worked formula, as follows:

- New Jersey – “paid time off” (which includes sick leave, family leave, bereavement leave and personal holiday leave) would accrue at the rate of 48 hours every six months, with accruals prorated when the employee works less than full time.
- Vermont – during any 12-month period employees who work 30 or more hours per week receive seven paid sick leave days (which must accrue at least monthly, and can be prorated for employees working fewer than 30 hours per week).
- Missouri – employees would accrue seven paid sick leave days per year, which can be prorated for employees working less than 30 hours per week or 1,500 per year. The employer determines leave accrual but it must be at least quarterly.

Employer Caps on Leave Accrual

Under laws proposed in Massachusetts, Missouri, Vermont and South Carolina, employers could cap paid sick leave accrual at seven days. In Maine, an employer would not have to provide more than 72 hours or nine days of paid sick leave annually to employees.

In Maryland, an employer could cap employee accrual at 56 hours annually; but for small employers with under 10 employees, the cap would be 26 hours annually. In Minnesota, employers could cap paid sick leave accrual at 52 hours per calendar year; 26 hours per year for small employers with under 10 employees.

Waiting Periods: When Paid Sick Leave Can Be Used

Under Connecticut’s law, employees may not use accrued paid sick leave until the 90th day after the employee’s first day of employment, even though accrual begins on the employee’s date of hire. Florida, Maine and Minnesota could apply the same 90-day waiting

period as Connecticut. In New Jersey, hours earned in a six-month accrual period could not be used until the expiration of that accrual period.

In Massachusetts and Vermont, employees could use paid sick leave once it is accrued without a waiting period.

Permitted Use of Paid Sick Leave

There is perhaps no greater divergence among recently enacted and proposed state legislation than in permitted use of paid sick leave. Use of paid sick leave for the employee's own illness, injury, or medical condition, or that of a parent, spouse, or child, is typical, as is time off for legal and medical events related to domestic violence.

Some states authorize time off for preventive treatment and medical appointments of the employee. Others expand the definition of "family members" to include parents of a spouse, grandparents and other relatives.

Connecticut

Covered employees can use paid sick leave for:

- 1) the employee's own physical or mental illness, injury or health condition;
- 2) the medical diagnosis, care or treatment of an employee's injury, illness or health condition;
- 3) preventive care for the employee; and
- 4) certain medical, relocation or legal events when the employee is a victim of family violence, sexual assault or stalking.

Florida

Pending legislation would authorize time off for the employee's illness, injury or health condition, and the employee's need for medical diagnosis, care or treatment, as well as time off for "preventive care." Time off could be taken for the same reasons for certain family members, including a parent, spouse, child, grandparent or "extended family member," defined as "any individual related by blood or affinity whose relationship is the equivalent of a family relationship." Employee time off for certain medical, legal and relocation events due to domestic violence would also be authorized.

Maine

Paid sick leave would be available for the illness of the employee, or illness of an immediate family member defined as a parent, spouse or child.

Maryland

A bill would authorize paid sick leave for:

- 1) illness or disability of employee;
- 2) death, illness or disability of an employee's immediate family member;
- 3) the birth of or placement for adoption of the employee's child; and
- 4) absence for certain medical, legal or relocation events related to domestic violence.

Massachusetts

Paid sick days could be used for:

- 1) care for the employee's parent, spouse, child or parent of spouse "suffering" from illness, injury or medical condition that requires a diagnosis, home care or preventive medical care or that the FMLA covers;
- 2) care for the employee's own illness, injury or medical condition that requires a diagnosis, home care or preventive medical care the FMLA covers;
- 3) routine medical appointments for the employee, or for the employee's child, spouse, parent or parent of a spouse in need of care; and
- 4) addressing certain medical, legal and relocation events related to domestic violence.

Vermont

Paid time off would be expressly allowed for obtaining diagnostic, preventive, routine or therapeutic health care for the employee. Beyond a parent, spouse and child, family member care would include a parent-in-law, grandparent, stepchild, foster child or ward of the employee. That would include helping the family member to obtain diagnostic, preventive, routine or therapeutic health treatment.

New Jersey

Recently proposed legislation would provide paid sick leave, family care leave, bereavement leave, vacation or personal holiday leave, as follows:

- "Sick leave" is leave an employee takes to obtain an examination, diagnosis or treatment for an illness, injury or medical condition (including pregnancy), or because the employee could not perform duties of employment.
- "Family care leave" is leave taken for the illness, injury, disability or medical condition of a parent, spouse, child, or grandparent of the employee.
- "Bereavement leave" is leave taken due to the death of a parent, spouse, child or grandparent of the employee.
- "Personal holiday leave" means holiday leave taken on a day other than a public holiday.

Proposed legislation in Minnesota, Missouri and South Carolina provides for similar uses of paid leave. Missouri legislation would not recognize time off for events related to domestic violence.

Increments of Time in Which Leave Can Be Used

Recently proposed legislation in some states permits employers to limit the minimum amount of time in which employees can use paid sick leave as follows.

- Minnesota – one hour.
- Massachusetts, South Carolina and Vermont – partial-day absences, leave counted on an hourly basis, or the smallest increment of time that the employer's payroll system uses to account for leaves of absence.

- New Jersey – minimum increments of half a workday.
- Missouri – no minimum, but paid sick leave may be used “intermittently” and on a “reduced work schedule basis.”

Employee Notice to Employer

Connecticut’s law provides that if a need for leave is foreseeable, an employer may require advance notice not to exceed seven days before the date leave begins. If leave is not foreseeable, an employer may require notice as soon as practicable.

Florida, Maryland, Minnesota and South Carolina would apply seven-day notice provisions comparable to Connecticut. The notice requirements under legislation pending in New Jersey are as follows:

- if paid time off would be for “sick leave” or “family care leave” and is foreseeable, the employer may require not less than 14 days’ notice;
- less notice would be permitted if the need for leave is not foreseeable; and
- if leave is for vacation or a personal holiday, employers would be able to require at least 30 days’ notice.

Here are the notice requirements that Vermont is considering:

- Employees need only provide notice to the employer when leave is foreseeable, and as soon as practicable when need is not foreseeable.
- Employees should attempt to schedule preventive or routine health care outside work hours, and schedule absences to minimize disruption to workplace.

Documentation From Health Care Provider

Connecticut’s law provides that when the employee uses paid sick leave for three or more consecutive days, an employer may require “reasonable documentation” that such leave is being taken for a permissible purpose. A signed statement from the health care provider treating the employee indicating the need for the number of days of such leave is considered reasonable.

Bills under consideration in Florida, Maryland, Massachusetts, Minnesota, Missouri, South Carolina and Vermont have three consecutive day absence rules comparable to Connecticut. Maine has a five consecutive day absence rule. Vermont would allow the employee 30 days to submit a medical documentation, and would require the employer to pay for any medical costs the employee incurred to obtain it.

New Jersey’s proposal would determine medical documentation based on the type of leave. If leave is for sickness or family needs, and leave continues longer than three consecutive days, the employer may require medical documentation verifying the need for leave. If leave is for bereavement, employers may require documentation regarding the bereavement.

Effect of Paid Sick Leave Laws on More Generous Leave Policies

Under Connecticut’s law, employers with paid leave policies (other than vacation leave policies) that provide for leave that may be used for the same purposes, and under the same conditions as paid sick leave, are deemed in compliance with the law. The same

would be true if recently proposed legislation in Florida, Maine, Maryland, Massachusetts, Minnesota, Missouri, South Carolina and Vermont is enacted.

Under the bill pending in Massachusetts, employers with PTO policies providing paid leave in excess of 20 days annually would not be required to modify their PTO policies, as long as the policy permits employees to take paid sick leave days equivalent to the statute.

Limits on Paid Sick Leave “Carryover” and Use

The new Connecticut law permits employees to carry over unused sick leave to subsequent years. However, it also permits employers to limit employee use of paid sick leave to a maximum of 52 hours per year.

Carryover of accrued, unused sick leave from year to year would be allowed under proposed legislation in most other states, but many states impose a limit on the amount of leave that can be carried over unless the employer permits more. The lineup is as follows:

- Florida (72 hours)
- Maine (nine days)
- Maryland (40 hours)
- Minnesota (40 hours)
- Missouri, South Carolina and Vermont (no limit)

Effect of Paid Leave Legislation on Collective Bargaining Agreements

All states discussed here that are considering paid sick leave laws would leave alone collective bargaining agreements that offer more generous benefits and bar the law’s use as a basis to negotiate or otherwise reduce paid sick leave benefits under existing collective bargaining agreements.

Retaliation

The Connecticut law prohibits both retaliatory personnel actions and discrimination against employees who request or use paid sick leave, or who file complaints with the state’s labor commissioner alleging employer violations of the statute.

Similar anti-retaliation provisions are found in recently proposed legislation in Florida, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, South Carolina and Vermont. In South Carolina, counting the use of paid sick leave as an occurrence under a no-fault attendance policy is considered retaliatory.

Confidentiality of Employee’s Health Information

Connecticut’s law provides that health information pertaining to an employee, or information pertaining to family violence must be kept confidential and not be disclosed – except to, or with the permission of, the affected employee.

Similar confidentiality provisions are found in recently proposed paid sick leave legislation in Florida, Maryland, Minnesota and Vermont.

Notice to Employees

Connecticut's law provides that at the time of hire, employers must provide notice to each employee that: (1) he or she is entitled to paid sick leave, the amount of leave and the conditions under which leave can be used; (2) the employer cannot retaliate against employees for requesting or using sick leave; and (3) the employee has the right to file a claim with the labor commissioner for violations.

An employer can satisfy the requirement by displaying a poster in a conspicuous location, and which includes the required information in English and Spanish.

Recently proposed legislation in other states have comparable notice or posting requirements, as follows:

- Florida (posting or distribution of notice in English and Spanish).
- Maryland (posting or distribution of legislation in English and Spanish).
- Massachusetts (posting of poster the attorney general creates in required languages).
- Minnesota (posting in Spanish and English).
- Missouri (posting of attorney general notice).
- South Carolina (posting or distribution of notice in English and Spanish).
- New Jersey (distribution of notice in language a majority of employees speak).
- Vermont (posting of notice the commissioner of labor prepares).

Enforcement

Employees alleging violations of Connecticut's paid sick leave statute may file complaints with the state labor commissioner, who is responsible for the law's enforcement. The labor commissioner can: (1) hold employers liable for violations of the law's leave and retaliation provisions; and (2) award civil penalties of up to \$600 per violation, including injunctive relief such as back pay and reinstatement.

Comparable enforcement mechanisms providing for private civil actions, state actions, and/or procedures for state labor agencies investigations would be made available if recently proposed legislation in Maine, Maryland, Massachusetts, Minnesota, Missouri and New Jersey is enacted. Florida goes a bit further and subjects willful violations to fines of \$1,000 per violation, payable to the state.

Recordkeeping

Recently proposed legislation in a few states requires employers to make, keep and preserve records pertaining to paid sick leave (e.g., Massachusetts and New Jersey). New Jersey would additionally give employees or their authorized representatives the right to inspect records at any reasonable time.

San Francisco's Paid Sick Leave Ordinance

San Francisco's 2007 paid sick leave ordinance illustrates the issues employers can anticipate with the passage of such legislation. The ordinance, which San Francisco voters approved in November 2006 and which covers all employers within the city and county of San Francisco, regardless of size, became effective on Feb. 5, 2007.

Requirements

Under the ordinance, the first major paid sick leave legislation of its kind:

- 1) paid sick leave accrues at a minimum rate of one hour for every 30 hours worked;
- 2) all employees are covered, including part-time, temporary and staffing agency employees;
- 3) leave may be taken to care for a broad range of individuals that employer sick leave policies do not typically cover (e.g., grandparents and siblings);
- 4) certain unmarried employees may identify a “designated other person” for whose care they can use leave;
- 5) executives who control wages may be held individually liable for violations;
- 6) records must be kept for four years; and
- 7) employees can sue for civil damages, including attorney’s fees.

Employees working for a covered employer on or before Feb. 5, 2007 began to accrue paid sick leave as of that date. Employees hired after that date began to accrue paid sick leave 90 days after commencement of their employment.

Employer Liability for Failure to Cover Part-Time, Temporary, Staffing Agency and Other Employees

Under the San Francisco ordinance, *all* persons employed within the geographic boundaries of the city and county of San Francisco are ordinarily covered, regardless of hours worked per week or duration of the employment term. Thus, *part-time, temporary and staffing agency* employees are covered.

Application of Paid Sick Leave Laws Outside Employer’s Jurisdiction

Employers located in states without paid leave legislation should also anticipate coverage issues arising from employees performing work in other states with paid leave legislation, even temporarily. Under the San Francisco ordinance, employees who work for an employer located outside of San Francisco may be entitled to paid sick leave under the ordinance if the employee performs work in the city.

Example. The employee of a Silicon Valley business with no office in San Francisco, but who lives in San Francisco and telecommutes from home one day a week may be entitled to the benefits of the ordinance. An employee of an Oakland, Calif., business who travels to San Francisco, conducts business there, and returns to Oakland may also be entitled to paid sick leave benefits under the ordinance. (According to a May 31, 2007 memo from the San Francisco Office of Labor Standards Enforcement, “[e]mployees who perform work in San Francisco on an occasional basis are covered by the Ordinance only if they perform 56 or more hours of work in San Francisco within a calendar year.”)

Employer Liability for Less Generous Paid Sick Leave and PTO Policies

Under the San Francisco ordinance, existing employer paid sick leave and PTO policies may or may not offer accrual rates as generous as the ordinance, further exposing employers to liability. Covered employees accrue one hour of paid sick leave for every 30 hours worked. Paid sick leave accrues in one hour increments. Employers with paid sick leave or PTO policies that do not provide for equivalent rates of accrual violate the ordinance.

The employee can use paid sick leave for reasons not authorized in many existing employer paid sick leave policies. These include paid sick leave to provide care or assistance for the following persons when they are ill, injured or receiving medical care or treatment:

- 1) child;
- 2) parent;
- 3) legal guardian or ward;
- 4) sibling;
- 5) grandparent;
- 6) grandchild;
- 7) spouse;
- 8) registered domestic partner; and
- 9) for unmarried employees or employees with no domestic partner, a “designated person” who is ill, injured or receiving medical care or treatment.

Step and foster care relationships are covered. “Child” is broadly defined to include the child of a domestic partner (not necessarily a “registered” domestic partner). Strict deadlines are imposed when identifying a “designated person.” (Employers must extend the opportunity to make such a designation to employees no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue under the ordinance. The employee is entitled to a window of 10 work days to make this designation. Thereafter, employers must extend to employees an opportunity to designate, or change an existing designation, on an annual basis. The annual election opportunity must include a 10 work day decisionmaking window for the employee.)

Employer Liability Due to “Caps” and Annual “Carryover” Limits

After passage of the San Francisco ordinance, some employers were surprised to find that their existing caps on paid sick leave accrual were lower than those the ordinance permitted, thereby creating legal exposure. For example, under the ordinance, employees can accrue up to a cap of 72 hours of paid sick leave. For “small businesses” (fewer than 10 persons), the accrual cap for employees is 40 hours. Employees are permitted to carry over paid sick leave from year to year up to these caps.

Liability for Calculating Exempt Employee Leave Entitlements

Under the San Francisco ordinance, calculating the rate of accrual for non-exempt, hourly workers is based on a relatively simple accrual rate of one hour for every 30 hours worked. However, for exempt (salaried) workers, determining the rate of accrual proved not to be so straightforward. Only after the city issued guidance permitting accrual based on a 40-hour workweek (or a shorter workweek if the exempt employee is regularly scheduled to work less) were these issues put to rest.

Anticipated Legal Compliance Issues

To summarize, employers monitoring or anticipating coverage under pending state paid leave legislation should anticipate the following potential compliance issues, which have become apparent since the adoption of the San Francisco ordinance:

- employer coverage outside the paid sick leave jurisdiction, where employees travel or do business in the covered jurisdiction, or telecommute from the jurisdiction;
- paid sick leave benefits for employees not covered under existing employer paid sick leave policies, such as part-time employees;
- paid sick leave benefits for workers employed through temporary services or staffing agencies;
- paid sick leave benefits for temporary and seasonal workers;
- paid sick leave benefits to care for individuals not covered under existing employer-paid sick leave policies, such as grandchildren, siblings and “designated persons” for unmarried employees;
- mandatory carryover of paid sick leave from year to year, which may be inconsistent with existing employer caps on accrual of paid sick leave;
- mandatory recordkeeping showing hours worked and leave used, including for exempt employees;
- individual liability for executives who control wages, hours and working conditions of employees; and
- civil actions for damages, including attorney’s fees and costs.

Steps Employers Can Take to Prepare for Paid Sick Leave Legislation

Employers anticipating coverage under pending paid leave legislation may wish to consider the following proactive steps to prepare for this development:

- Ensure that all officers and executives who control wages, hours and working conditions are aware of and comply with the requirements of the new legislation.
- Obtain and post all required notices.
- If your current policy does not comply with the new legislation, determine whether and how to revise your paid sick leave or PTO policies.
- Evaluate whether your current paid sick leave policy applies to employees the legislation covers (e.g., part-time, temporary, staffing agency employees).
- Evaluate whether your current policy permits employees to accrue paid sick leave in the amount, at the rate, and by the method in the new legislation.
- Evaluate whether your current policy allows paid sick leave to be used for the authorized reasons (e.g., to care for grandchildren, “designated” others, siblings, etc.).
- Evaluate whether your current policy restricts the use of paid sick leave in ways the new legislation does not (e.g., prohibitions on year-to-year carryovers, lower accrual caps, etc.).
- If you do not track hours worked for exempt employees, determine how you are going to ensure compliance with the accrual requirement if not addressed in the new legislation.
- Implement mandatory recordkeeping practices.
- Work with your payroll department to establish procedures for tracking and determining the value of paid sick leave hours for any employees not previously covered under your paid sick leave policies.
- If the law covers temporary workers, contact your temporary staffing agencies and confirm responsibility for compliance.

Laws Requiring Paid Time Off to Vote

One area in which many states already require employers to provide paid time off is to vote. Currently 23 states mandate paid time off to vote. Each of these states have paid time off legislation that varies in significant ways, including the number of hours of paid leave that must be provided, threshold number of nonworking hours that triggers paid leave, the type of election that triggers paid leave, and employee notice or application requirements. Following is a brief summary of the applicable paid-leave-to-vote laws; however, employers should review their specific state's requirements to ensure they are in compliance.

State Paid Voting Time Off Laws	
• Alaska	• Nevada
• Arizona	• New Mexico
• California	• New York
• Colorado	• Oklahoma
• Hawaii	• South Dakota
• Illinois	• Tennessee
• Iowa	• Texas
• Kansas	• Utah
• Maryland	• Washington
• Minnesota	• West Virginia
• Missouri	• Wyoming
• Nebraska	

Number of Hours of Leave

The number of hours for paid time off to vote generally varies from one to three hours. One hour: Wyoming. Up to two hours: California, Colorado, Hawaii, Kansas, Illinois, Maryland, New Mexico, New York, Oklahoma, South Dakota, Utah and Washington. Three hours: Missouri, Tennessee and West Virginia. California further requires that the paid leave must be scheduled at the beginning or end of the employee's work day.

Total Available Time to Vote

Other states offer no fixed amount of paid time off, but instead calculate the available amount of paid leave based on the total available time to vote between the beginning and end of the employee's work schedule, and the time the polls open or close. For example, in Arizona an employer must provide up to three hours paid time off for an employee to vote, but only if he or she has less than three hours to vote at the beginning or end of the workday based on when the polls open or close, and when the work starts or ends.

Distance From Workplace to Voting Booth

Other states base the amount of paid time off to vote on the distance from the workplace to the voting location. For example, in Nevada if the polling location is: (1) two miles or less from the workplace, the employee may receive an hour of paid leave; (2) 10 miles or less from the workplace, the employee has two hours of paid leave; and (3) more than 10 miles away from the workplace, the employee has three hours of paid leave in which to vote.

Calculation of Nonworking Time

State paid election leave laws also vary based on the amount of time between when polls are open to vote, and when the employee starts or ends work. For example,

Alaska, Hawaii, Illinois, Maryland, Nebraska, South Dakota, Texas and Washington provide paid-leave-to-vote only if the period between the time the polls open or close, and when the employee starts or ends work, is less than two hours on election day. In these states, an employee is considered to have sufficient time if the employee has two consecutive hours either between the opening of the polls and the beginning of the employee's regular working shift, or between the end of the regular working shift and the closing of the polls. Arizona, Colorado, Missouri, Oklahoma, Tennessee, Utah, West Virginia and Wyoming require paid leave to vote if nonworking time is less than three hours. New York's provisions are triggered at four hours and New Mexico requires paid leave to vote if an employee has less than two hours after the opening of the polls or three hours before the closing of the polls. Furthermore, Washington, Wyoming and Hawaii do not allow meals and rest periods to be included into the calculation of non-working time.

Types of Elections

Several states specify the type of election that must take place in order for paid leave benefits to apply. For example, Alaska and California's provisions are restricted to statewide elections. Kansas requires paid leave for county-conducted elections, thereby excluding the use of paid time off in exclusively municipal elections. New Mexico extends paid time off for American Indian nation, tribe, or pueblo elections for voters who are enrolled as members of the applicable American Indian group.

Other Significant Conditions

There are several other significant conditions under which states make paid leave available. In Arizona, Colorado, Georgia, Illinois, Iowa, Kansas, Missouri, Nebraska, New Mexico, New York, Oklahoma, South Dakota, Tennessee, Utah and Wyoming, the employer retains the right to choose when the employee takes paid leave to vote. In Arizona, California, Colorado, Illinois, Iowa, Missouri, Nebraska, New York, Nevada, Oklahoma, Tennessee and West Virginia, the employee is required to provide notice to the employer before election day as a condition to taking leave.

It should be noted that:

- California requires notice to the employer two working days before the election.
- Missouri requires a request to be submitted to the employer.
- Nebraska allows for notification the day of the election.
- New York requires notification between two and 10 working days before the election.
- Oklahoma requires notification a day before the election.
- Tennessee requires notice before noon on the day before the election.
- West Virginia requires written notice three days before the election.

Other states, including Hawaii, Maryland, and Oklahoma, permit employers to require proof of the employee's right to vote in order for the employee to receive paid leave.

Blood and Bone Marrow Paid Time Off Laws

Several states provide paid leave for employees who are blood or bone marrow donors.

In Illinois, employees are eligible for one hour of paid leave to donate blood for every 56 days of employment, upon approval from their employer. Paid bone marrow leave has been enacted in Louisiana and Minnesota.

Both state's laws apply to employers with more than 20 employees, and employees who work at least 20 hours per week for a single employer. Both of these states provide up to 40 hours of paid leave; however, the employer may request physician verification for the length and purpose of each leave requested.

States With Paid Time Off Laws for Blood and Marrow Donations

- Illinois
- Louisiana
- Minnesota