

CLASP

Policy solutions that work for low-income people



RUTGERS
School of Management and Labor Relations
Center for Innovation in Worker Organization

Labor Standards Enforcement Webinar

2019 Paid Sick Days Roundup

December 2019

Participants in Today's Webinar

Government Agencies

Advocacy Groups, Funders, Research Orgs

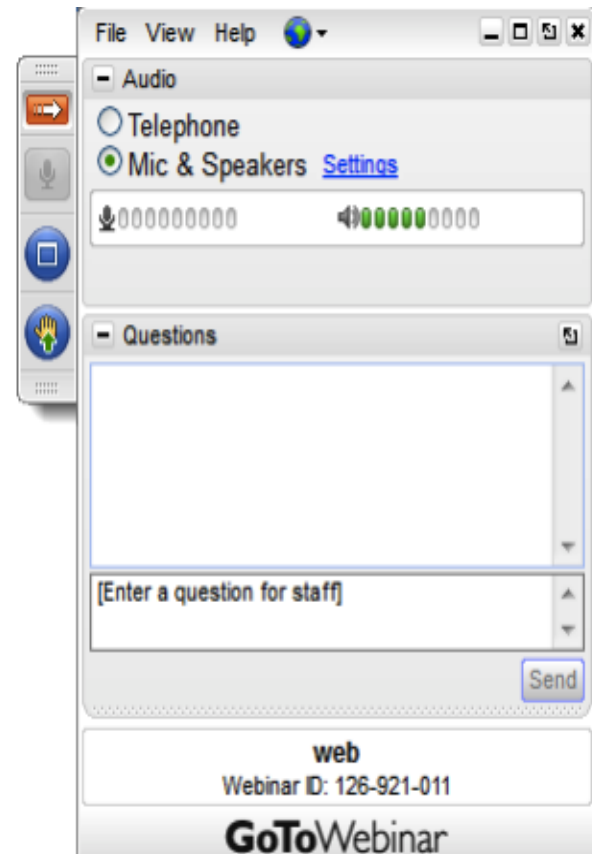
Ask Us Questions!



Please submit your questions using the GoToWebinar 'Chat' feature.

Please specify who you would like to address your question.

We will ask them during the Q&A period at the end.



Presenters

- **Alex Baptiste**, Policy Counsel, National Partnership for Women & Families
- **Greg Asay**, Deputy Director, San Francisco Office of Labor Standards Enforcement; and
- **Benjamin Holt**, Deputy Commissioner, Office of Labor Policy Standards, NYC Department of Consumer & Worker Protection

Moderators

- **Tanya Goldman**, Senior Policy Attorney, CLASP
- **Jenn Round**, Senior Fellow, CIWO



**PSD Trends in 2019
and
What We Can Anticipate in 2020**

Overview

▶ **Litigation**

- ▶ Wins through Litigation
 - Pittsburgh, PA
 - Massachusetts & Washington (Airline lawsuits)
- ▶ Preemption
 - New York City
 - Austin and San Antonio, TX

▶ **2019 Trends**

- ▶ PTO
 - Maine
 - Nevada
 - Bernalillo County, New Mexico
 - New York City, NY

▶ **Anticipated Trends in 2020**

- ▶ New uses for Accrued Paid Sick Time

Litigation: Wins

Pittsburgh, PA:

- ▶ City passed ordinance in 2015 requiring private employers to provide paid sick days
 - ▶ Pennsylvania Restaurant and Lodging Association filed suit
 - ▶ Law overturned in Dec. 2015; ruling affirmed in May 2017
 - ▶ Pennsylvania Supreme Court upheld law in July 2019

Washington & Massachusetts

- ▶ Airline challenges to paid sick days laws
 - ▶ Washington federal district court rejected claims brought by Air Transport Association of America
 - ▶ Challenged the constitutionality of Washington State Paid Sick Leave Act and Massachusetts Earned Sick Time Law
 - ▶ Argued PSD laws were preempted by federal Airline Deregulation Act

Litigation: Preemption

▶ **New York City (Airline lawsuit)**

- ▶ American Airlines sued NYC Department of Consumer Affairs alleging similar arguments made in Washington and Massachusetts lawsuits

▶ **Austin, Dallas and San Antonio, Texas**

- ▶ Austin:
 - ▶ November 2018: Texas appellate court ruled Austin Earned Sick Time Ordinance Unconstitutional and preempted by Texas Minimum Wage Act
 - ▶ Implementation enjoined; city has appealed to Texas Supreme Court
- ▶ Dallas:
 - ▶ July 2019: Texas Public Policy Foundation sued to enjoin paid sick days law implementation
 - ▶ Lawsuit is currently pending; Dallas will not enforce ordinance until April 2020
- ▶ San Antonio:
 - ▶ July 2019: businesses filed lawsuit to enjoin implementation of ordinance
 - ▶ Lawsuit raised similar claims to those made in Austin lawsuit
 - ▶ Amendments made to ordinance in October 2019, scheduled to go into effect on Dec. 1 2019;
 - ▶ District judge blocked implementation of the ordinance



2019 Trends: PTO Laws

“...allows employees to take time off for any reason”

▶ **Maine**

- ▶ Bill introduced in February 2019 originally as paid sick leave
- ▶ Governor involvement and amendments resulted in “country’s first mandatory paid time off” law
 - ▶ Goes into effect Jan. 1, 2021

▶ **Nevada**

- ▶ Bill introduced in March 2019 originally as paid sick leave
- ▶ Would have been the most progressive law in country if passed in original form
- ▶ Despite trifecta, a lot of pushback from business lobby and “shakey Dems”, end result was PTO law
 - ▶ Goes into effect Jan. 1 2020

▶ **Bernalillo County, New Mexico**

- ▶ Originally introduced as paid sick time
- ▶ Last minute amendments resulted in changing from “paid health” to “paid time off”
 - ▶ Goes into effect July 1, 2020

▶ **New York City, NY**

- ▶ January 2019: Mayor de Blasio proposed legislation to require private employers with 5 or more employees to offer 10 days of paid personal time.

▶ **PTO Laws**

- ▶ With 3 PTO laws passing this year – two of them in states – it’s likely we’ll keep seeing this alternative to PSD
 - ▶ Easier to get business and bipartisan support for these laws than PSD laws

▶ **Expanded reasons for taking PSD**

- ▶ Continued broad family definition
 - ▶ “blood and affinity” language has become something of an “industry standard”
- ▶ New uses for accrued sick time
 - ▶ Court appearances (Illinois)
 - ▶ Public Health Emergencies
 - ▶ Parent-Teacher conferences

Contact Us

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▶ **Website:**

▶ www.nationalpartnership.org;

▶ <http://paysickdays.org/>

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San Francisco Paid Sick Leave Ordinance

Greg Asay, San Francisco OLSE

SF Paid Sick Leave Ordinance – Timeline

Date	Action
November 2006	San Francisco voters adopt Paid Sick Leave Ordinance
February 2007	Paid Sick Leave Ordinance takes effect
July 2015	California Healthy Workplaces, Healthy Families Act takes effect
June 2016	San Francisco voters adopt amendments to Paid Sick Leave Ordinance to parallel broader state law provisions
January 2017	Paid Sick Leave Ordinance amendments take effect



SF Paid Sick Leave Ordinance – Cases

Fiscal Year	Cases Opened	Hotline Calls
FY 10-11	45	672
FY 11-12	42	783
FY 12-13	39	970
FY 13-14	35	1030
FY 14-15	33	1006
FY 15-16	23	838
FY 16-17	20	664
FY 17-18	17	649
FY 18-19	19	718

Restitution to Workers (PSLO + MWO) = \$12,389,242



SF Paid Sick Leave Ordinance – What’s Working

- Coordination with CA Division of Labor Standards Enforcement
- Community partnerships
- “CDC Rule”



SF Paid Sick Leave Ordinance – Notable Recent Case

San Francisco Restaurant: Orenchi Beyond

- Denial of sick leave, even when presented with doctor's note
- Retaliation – employee fired for asserting her rights
- OLSE investigation – worker interviews, employer records
- Remedy:
 - Restitution for all workers (CDC rule plus penalties)
 - Reinstatement of sick leave hours for current employees
 - Worked with contracted legal services provider to negotiate settlement for victim of retaliation



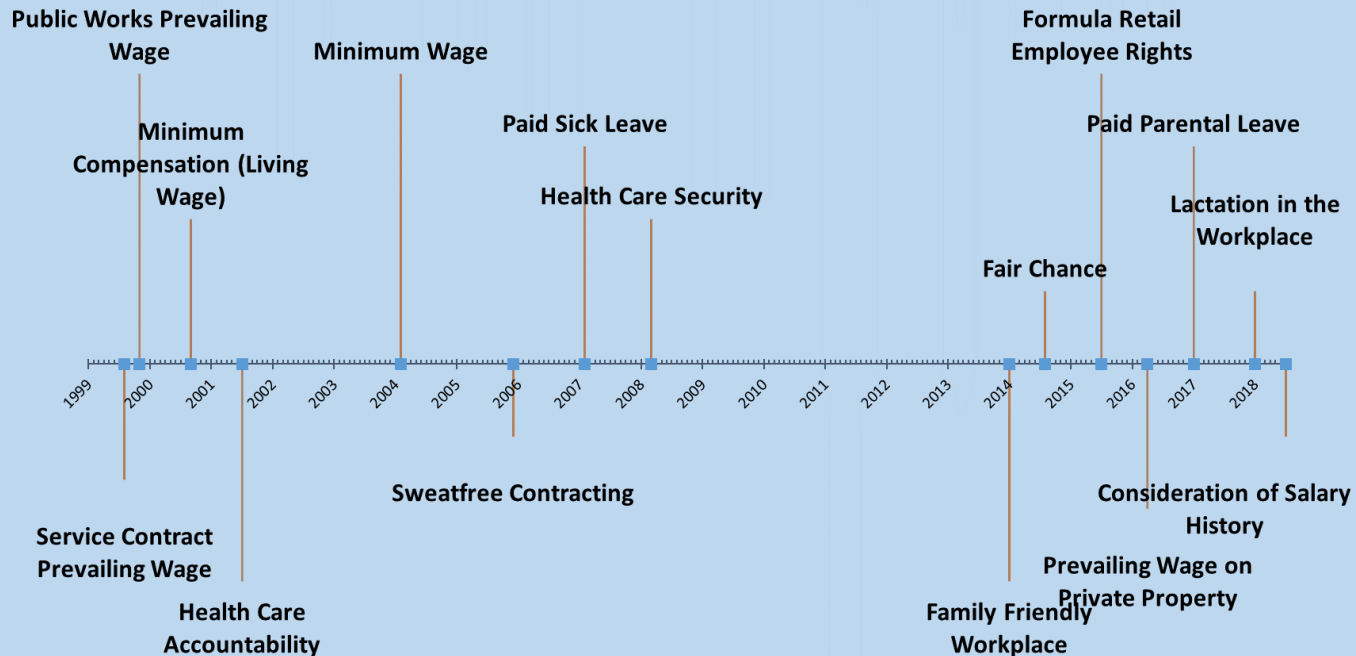
SF Paid Sick Leave Ordinance – Challenges

- Employers believe that State law overrides San Francisco law
- Discrepancies between State and local laws
- Increase of San Francisco labor laws



SF Paid Sick Leave Ordinance – Challenges

San Francisco Office of Labor Standards Enforcement Timeline



SF Office of Labor Standards Enforcement

- www.sfgov.org/olse
- www.sfgov.org/olse/paid-sick-leave-ordinance-pslo
- Greg Asay
 - (415) 554-7485
 - gregasay@outlook.com





- NYC Department of Consumer and Worker Protection and the Office of Labor Policy Standards
- 2019 PSSL enforcement docket and outcomes

Retaliation Protections

- **Fundamental protection that builds trust and confidence in enforcement**
- **OLPS' fast track model and cases**
- **Factual disputes and mixed motives**

Strategic Enforcement

- **Proactive investigative authority & directed enforcement**
- **OLPS' HHA initiative**
- **Creating resources for other kinds of enforcement**

The Department of Consumer and Worker Protection protects and enhances the daily economic lives of New Yorkers to create thriving communities.

How to reach us:

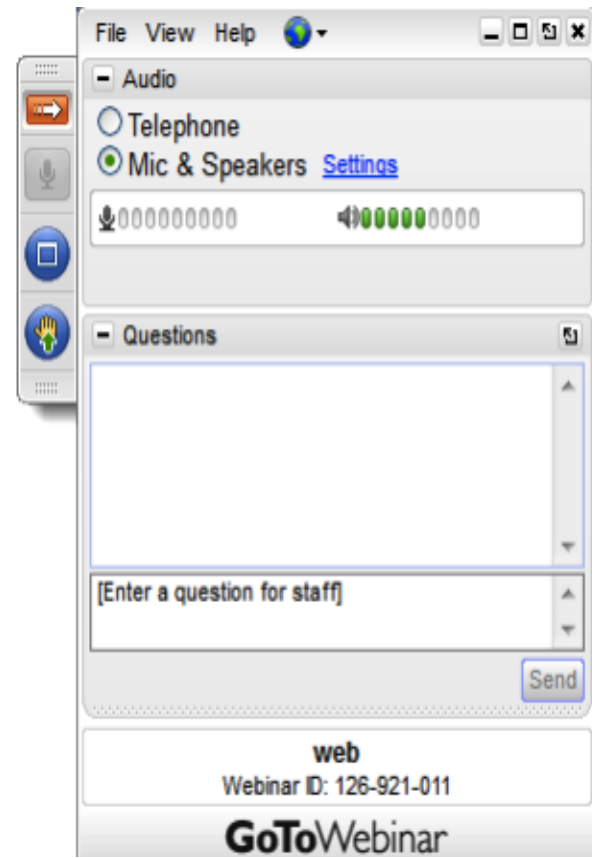
- Call **311** (212-NEW-YORK outside NYC). Ask for OLPS, Workers, Paid Sick Leave, Safe Leave.
- Email **OLPS@dca.nyc.gov**
- Visit **[42 Broadway, 9th Floor, in Lower Manhattan.](#)**
- Visit **nyc.gov/workers**



**Consumer and
Worker Protection**

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- Tanya Goldman, tgoldman@clasp.org
- Jenn Round, jenn.round@gmail.com



Resources

- enforcingsickdays.org
- Labor Standards Enforcement Toolbox:
 - <https://www.clasp.org/tags/labor-standards-enforcement-series>
 - <https://smlr.rutgers.edu/content/labor-standards-enforcement-toolbox>