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.
Speakers

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
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
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
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/

- Follow us:
  - www.facebook.com/nationalpartnership
  - www.twitter.com/npwf
  - www.Instagram.com/npwf
San Francisco Paid Sick Leave Ordinance

Greg Asay, San Francisco OLSE
## SF Paid Sick Leave Ordinance – Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 2006</td>
<td>San Francisco voters adopt Paid Sick Leave Ordinance</td>
</tr>
<tr>
<td>February 2007</td>
<td>Paid Sick Leave Ordinance takes effect</td>
</tr>
<tr>
<td>July 2015</td>
<td>California Healthy Workplaces, Healthy Families Act takes effect</td>
</tr>
<tr>
<td>June 2016</td>
<td>San Francisco voters adopt amendments to Paid Sick Leave Ordinance to parallel broader state law provisions</td>
</tr>
<tr>
<td>January 2017</td>
<td>Paid Sick Leave Ordinance amendments take effect</td>
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</tbody>
</table>
SF Paid Sick Leave Ordinance – Cases

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Cases Opened</th>
<th>Hotline Calls</th>
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<tbody>
<tr>
<td>FY 10-11</td>
<td>45</td>
<td>672</td>
</tr>
<tr>
<td>FY 11-12</td>
<td>42</td>
<td>783</td>
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<tr>
<td>FY 12-13</td>
<td>39</td>
<td>970</td>
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<td>FY 13-14</td>
<td>35</td>
<td>1030</td>
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<td>FY 14-15</td>
<td>33</td>
<td>1006</td>
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<tr>
<td>FY 15-16</td>
<td>23</td>
<td>838</td>
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<td>FY 16-17</td>
<td>20</td>
<td>664</td>
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<td>FY 17-18</td>
<td>17</td>
<td>649</td>
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<tr>
<td>FY 18-19</td>
<td>19</td>
<td>718</td>
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</tbody>
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Restitution to Workers (PSLO + MWO) = $12,389,242

Office of Labor Standards Enforcement
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

- Public Works Prevailing Wage
- Minimum Compensation (Living Wage)
- Minimum Wage
- Paid Sick Leave
- Health Care Security
- Sweatfree Contracting
- Formula Retail Employee Rights
- Paid Parental Leave
- Lactation in the Workplace
- Fair Chance
- Consideration of Salary History
- Prevailing Wage on Private Property
- Family Friendly Workplace
- Health Care Accountability
- Service Contract Prevailing Wage
- 1999
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- 2016
- 2017
- 2018
SF Office of Labor Standards Enforcement

- www.sfgov.org/olse
- 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:

- Email OLPS@dca.nyc.gov
- Visit 42 Broadway, 9th Floor, in Lower Manhattan.
- Visit nyc.gov/workers
Please submit your questions using the GoToWebinar chat feature.

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Thank you for joining!

Contacts

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- Ben Holt, BHolt@dca.nyc.gov; OLPS@dca.nyc.gov
- 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