

Paid Leave in the Workplace

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International Foundation
OF EMPLOYEE BENEFIT PLANS 

Program Overview

- State Scorecard
- Paid Leave Survey Report
- Managing the Intersection of Paid Leave Requirements
 - I. General considerations to get started
 - II. Determine whether various paid leave laws can run concurrently
 - III. Draft a policy
 - IV. Concurrent leaves: A Closer Look
 - V. ADA reasonable accommodation requirements
 - VI. Collective Bargaining Considerations
 - VII. Who should manage leave requirements

FMLA: The Reference Point for State Paid Leave Laws

- Federal Family and Medical Leave Act; 29 USC § 2601 et seq.
- Max 12 weeks of *unpaid* leave (except 26 weeks to care for servicemember) for:
 - Birth and care of child
 - Placement of child for adoption or foster care
 - Serious health condition of family member
 - Employee's own serious health condition
 - Qualifying exigency arising out of active duty or call to active duty of family member
 - Serious injury or illness of family member servicemember (26 weeks)

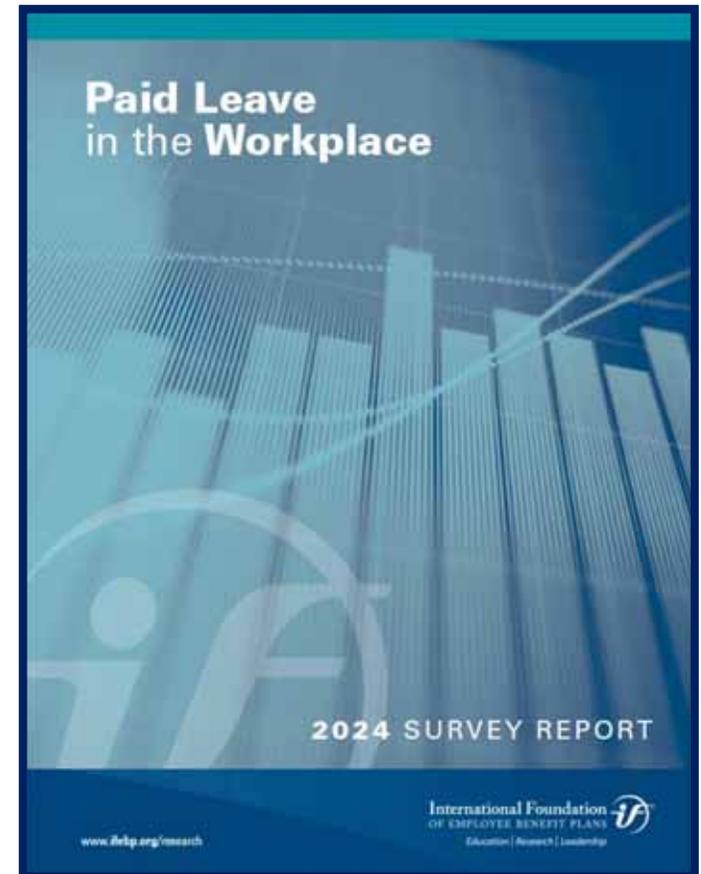
States With Paid Family and Medical Leave and/or Paid Sick Leave

- Arizona
- California
- Colorado
- Connecticut
- Delaware
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota*
- Nevada
- New Jersey
- New Mexico
- New York
- Oregon
- Rhode Island
- Vermont
- Washington
- District of Columbia

*Family and Medical Leave will be effective on January 1, 2026.

Survey Background

- Paid Leave in the Workplace: 2024 Survey Report
 - Deployed in October 2023
 - 301 completed responses from corporations and public employers
 - 20+ industries
 - Employers with <50 to >10,000 employees
 - Reports available at: ifebp.org/Research



State Paid Leave Summary

- **Massachusetts**

- PFML and Sick Leave
- Mass, Gen. Laws c. 151A; Mass, Gen. Laws c. 175M (paid family and medical leave); M.G.L. c. 149, s 148C (sick leave)
- PFML: Family leave for up to 12 weeks per year; extended to 26 weeks to care for family member who is a servicemember; medical leave for up to 20 weeks; combined benefits for up to 26 weeks | Employee Threshold: 1+ employees
- Sick Leave: Employers are required to allow eligible employees to accrue at least 1 hour of earned paid sick time for each 30 hours worked | Employee Threshold: 1+ employees

State Paid Leave Summary

- **California**

- Family and Sick Leave
- Cal. Unemp. Ins. Code § 3301 (paid family leave); Cal. Gov't Code § 12945.2 (unpaid family leave); Cal. Lab. Code § 246 (sick leave)
- Family Leave: Benefits payable for up to 8 weeks per year | Employee Threshold: 1+ employees; unpaid family care and medical leave up to 12 weeks per year (effective Jan. 1, 2021); Disability Insurance (“DI”): Benefits payable for 52 weeks
- Sick Leave: Employers are required to allow eligible employees to accrue at least 1 hour of earned paid sick time for each 30 hours worked | Employee Threshold: 1+ employees

State Paid Leave Summary

- **New York**

- Paid Family Leave and Sick Leave
- N.Y. Workers' comp. Law App 380-2.1 (family leave); N.Y. Lab. Law § 196-b (sick leave)
- Family Leave: Benefits payable for up to 12 weeks in a year for family member's serious health condition; to bond with newborn or newly-adopted or newly-placed foster child; for qualifying exigencies (effective 2021; used to be 10 weeks in 2020) | Employee Threshold: 1+ employees; Disability Benefits Law: Benefits payable for 26 weeks, except total family leave and disability benefits cannot exceed 26 weeks
- Sick Leave: For employers with between 5-99 employees, each employee shall be provided with up to 40 hours of paid sick leave; and for employers with 100+ employees, each employee shall be provided with up to 56 hours of paid sick leave.

State Paid Leave Summary

- **New Jersey**

- Family Leave and Sick Leave
- N.J. Stat. Ann. § 34:11B-1 – 34:11B-16(family leave);
N.J. Stat. Ann. § 34:11d (sick leave)
- Family Leave: Benefits payable for up to 12 weeks of paid leave per year to care for a new child, or to care for a sick family member, crime victim leave |
Employee Threshold: 30+ employees; Temporary Disability Insurance (“TDI”):
Benefits payable for 26 weeks
- Sick Leave: Employers are required to provide employees with up to 40 hours of earned sick leave per year

State Paid Leave Summary

- **Michigan**

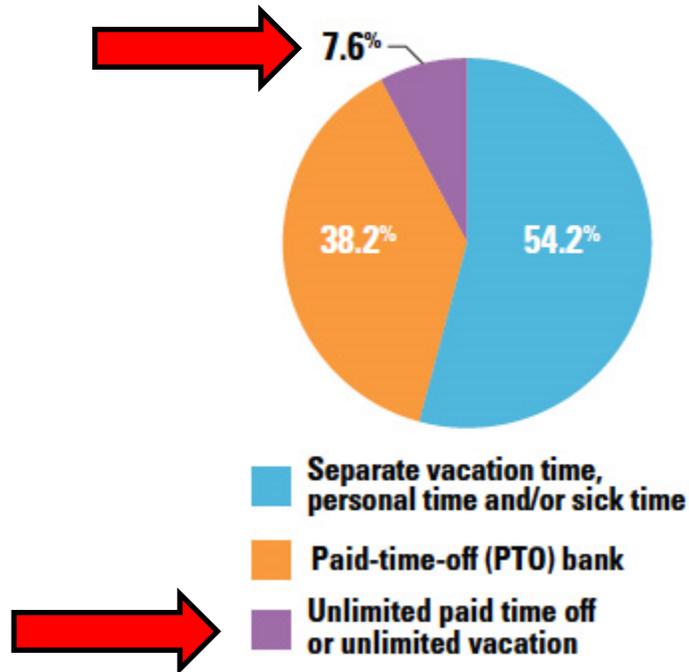
- Sick Leave
- Mich. Comp. Laws Ann. § 408.962
- Sick Leave: Employers are required to allow eligible employees to accrue at least one hour of earned paid sick time for each 35 hours worked
- Employee Threshold: 50+ employees; starting on February 21, 2025,
Employee Threshold: 1+ employees

State Paid Leave Summary

- **Nevada**
 - Sick Leave
 - Nev. Rev. Stat. (NRS) § 608
 - Sick Leave: Employers are required to allow eligible employees to accrue at least 0.01923 hours of paid leave for each hour of work performed
 - Employee Threshold: 50+ employees

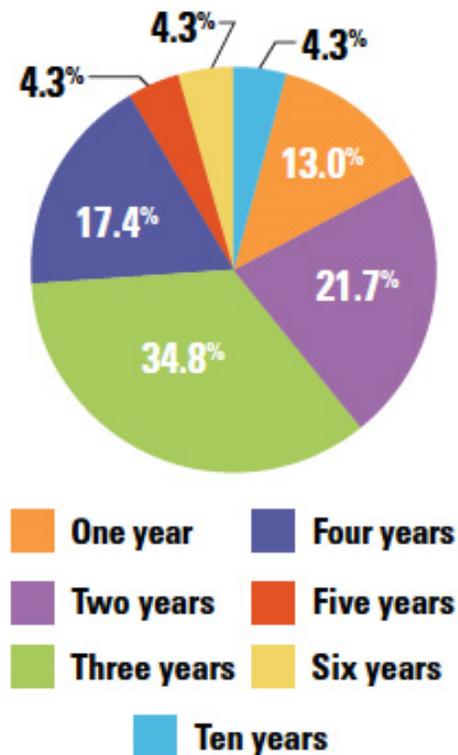
Survey Data—Current Paid Leave System

Paid Leave System Offered to Employees



Survey Data—Unlimited Paid Time Off

Years Offering Unlimited PTO



Survey Data—Unlimited Paid Time Off

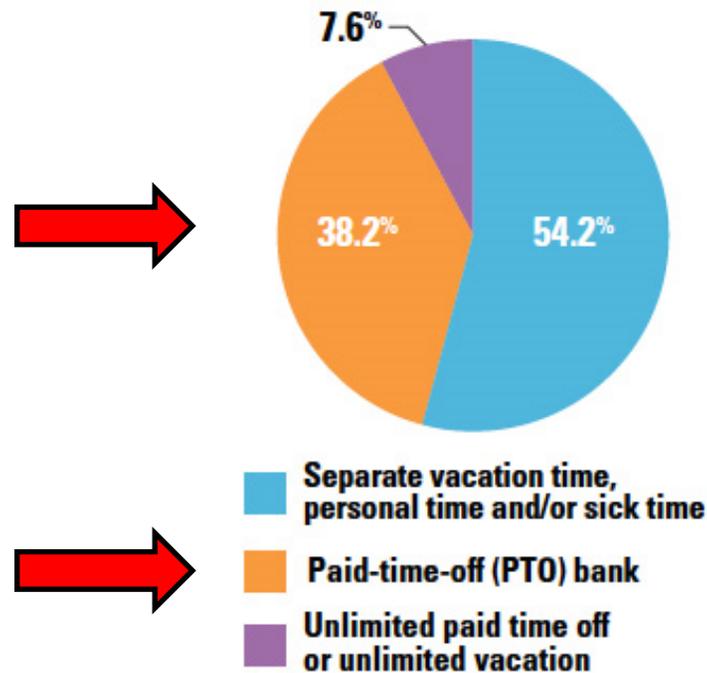
Reasons Workers Do Not Use Unlimited PTO***



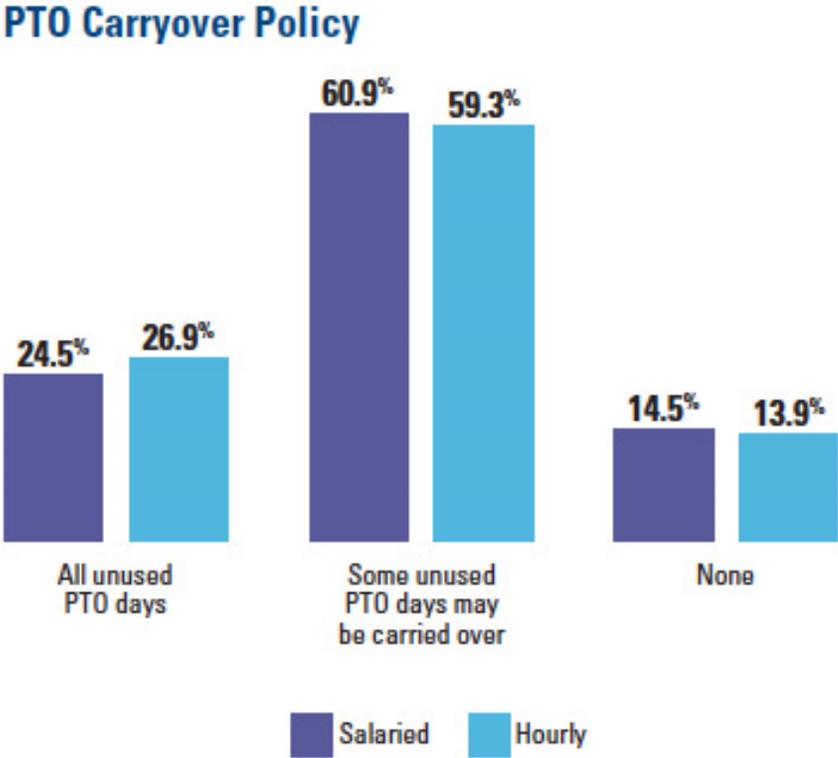
***Respondents were asked to select up to two responses.

Survey Data— Current Paid Leave System Revisited

Paid Leave System Offered to Employees

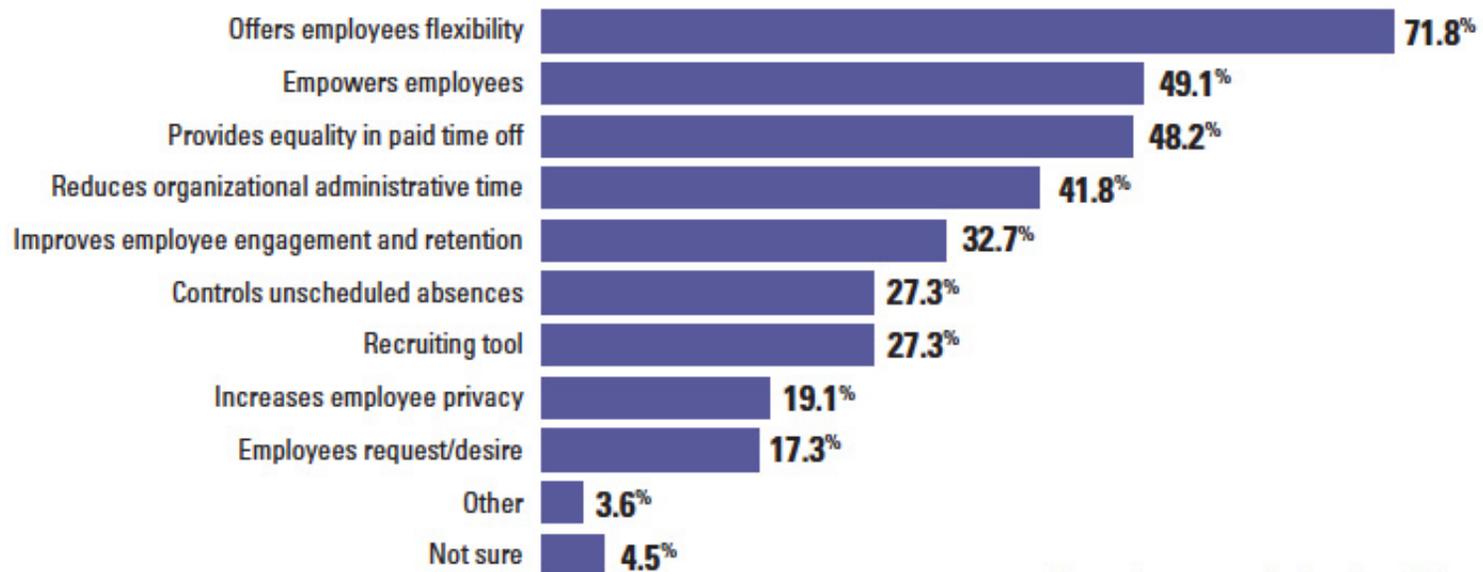


Survey Data—Paid-Time-Off (PTO) Banks



Survey Data—Paid-Time-Off (PTO) Banks

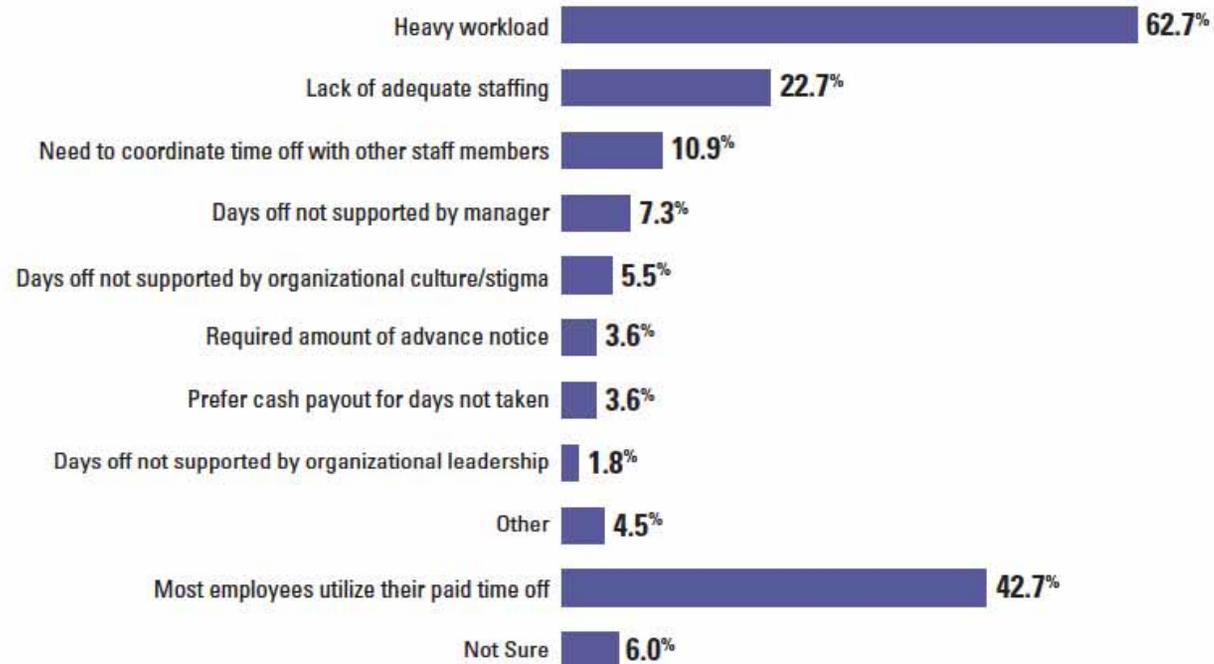
Reasons for Offering Paid-Time-Off (PTO) Plan*



*Respondents were asked to select all that apply.

Survey Data—Paid-Time-Off (PTO) Banks

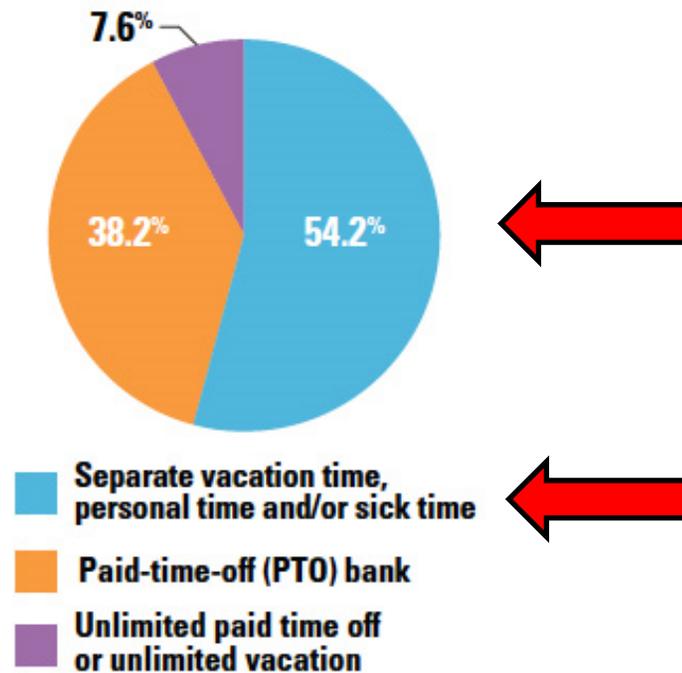
Reasons Workers Do Not Use PTO**



**Respondents were asked to select up to two responses

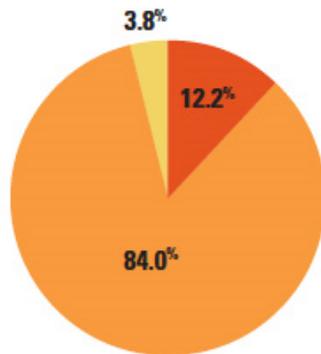
Survey Data— Current Paid Leave System Revisited

Paid Leave System Offered to Employees



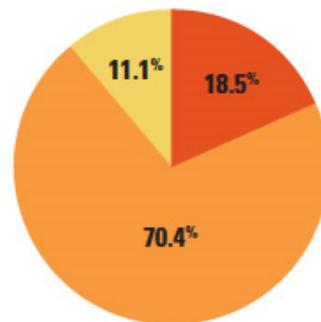
Survey Data—Paid Vacation

Offer Paid Vacation Plan (Salaried)

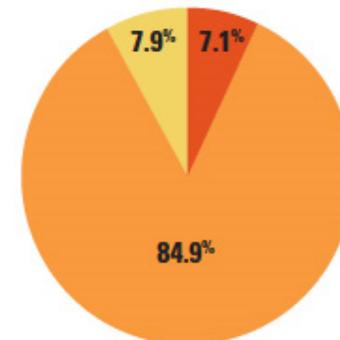


Corporate

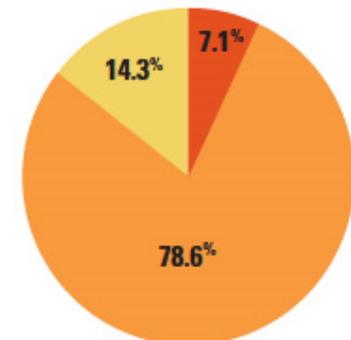
Offer Paid Vacation Plan (Hourly)



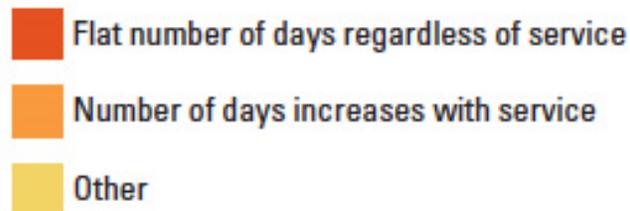
Public Employer



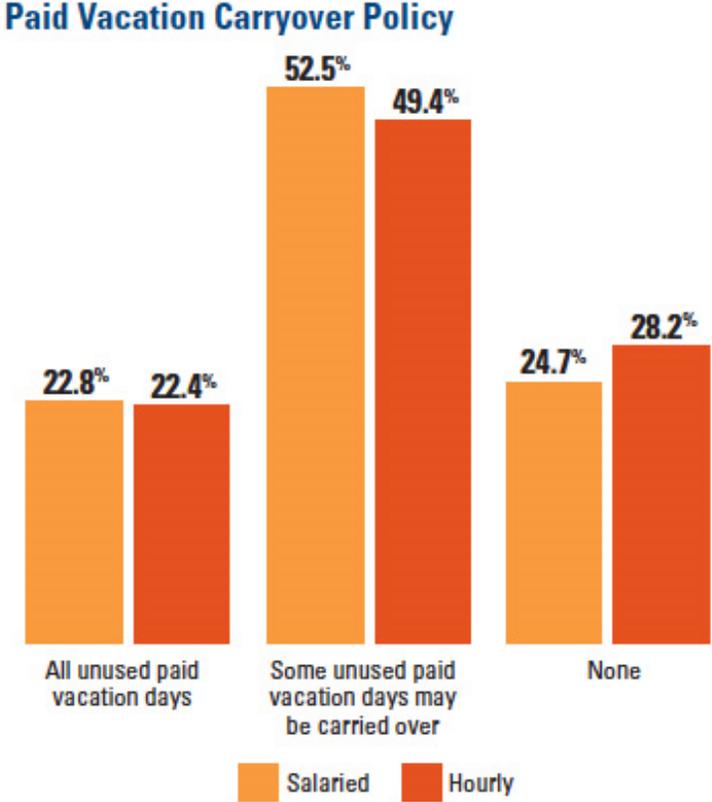
Corporate



Public Employer

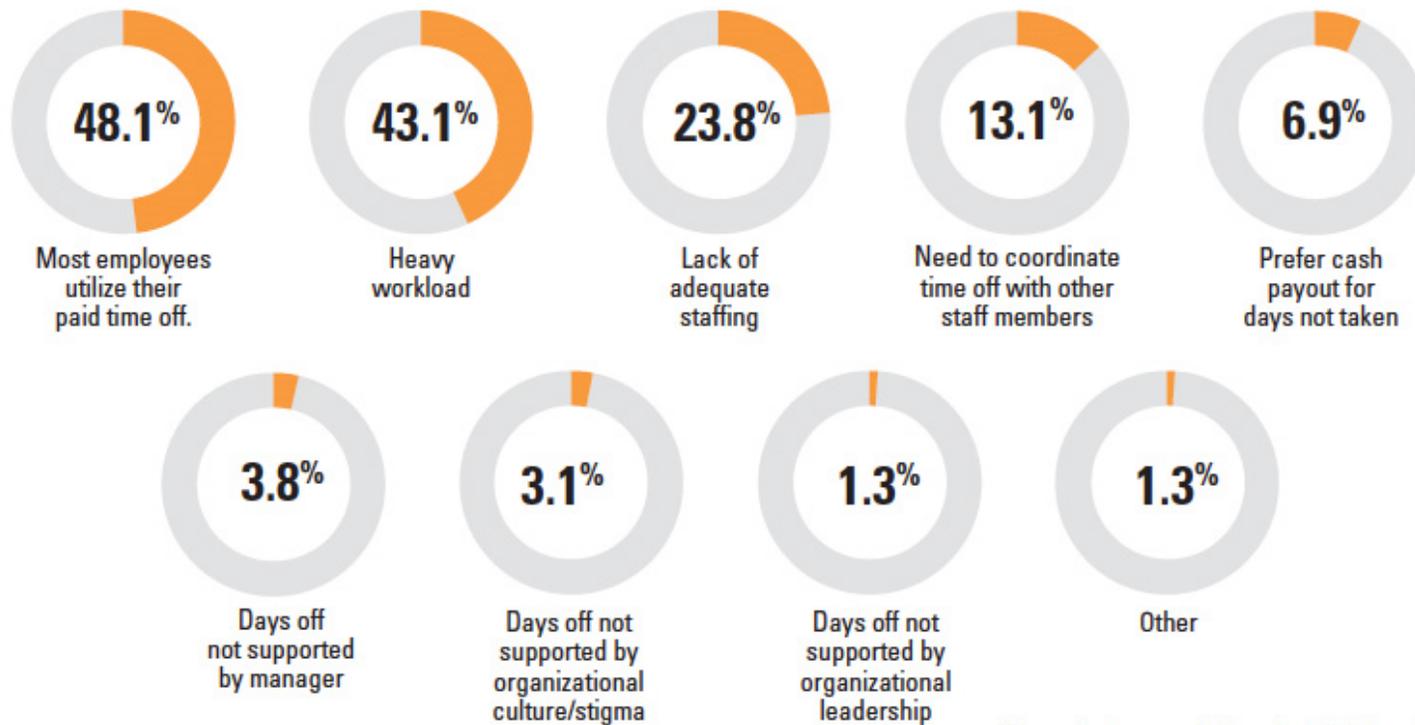


Survey Data—Paid Vacation



Survey Data—Paid Vacation

Reasons Workers Do Not Use Paid Vacation*



*Respondents were asked to select all that apply.

Survey Data—Average Offerings Per Years of Service

Average PTO Days Per Years of Service

	Date of Hire	Six Months	One Year	Five Years	Ten Years	15 Years	20 Years
Corporate (Salaried)	10.7	14.6	17.3	21.7	24.8	27.0	28.4
Corporate (Hourly)	9.7	13.8	16.6	21.2	24.4	26.2	27.6

Average Vacation Days Per Years of Service

	Date of Hire	Six Months	One Year	Five Years	Ten Years	15 Years	20 Years
Overall (Salaried)	8.7	9.7	12.4	15.9	18.8	20.2	21.8
Corporate (Salaried)	8.7	9.6	12.3	16.1	19.0	20.3	22.0
Public (Salaried)	8.4	10.4	12.5	15.2	17.9	19.5	20.8

Managing the Intersection of Paid Leave Requirements

- I. Start with Considering Seven Categories
 1. Is the employer required to provide the leave, usually determined by an employee threshold, e.g., FMLA = 50 or more employees
 2. Who is eligible for the paid leave: Employees and/or covered individuals?
 - Length of service
 - Hours worked
 - Financial eligibility

Managing the Intersection of Paid Leave Requirements

3. What are the reasons for the leave?
 - Does an employer have an existing policy that already provides paid leave for some or all of the reasons?
 - Family and medical leave policy
 - Collective bargaining agreement
 - STD/LTD
4. What notice are employers required to give, e.g., posting, policy, individual notice?
5. What notice are employees required to give, e.g., FMLA = 30 days or as soon as practicable when unforeseeable?

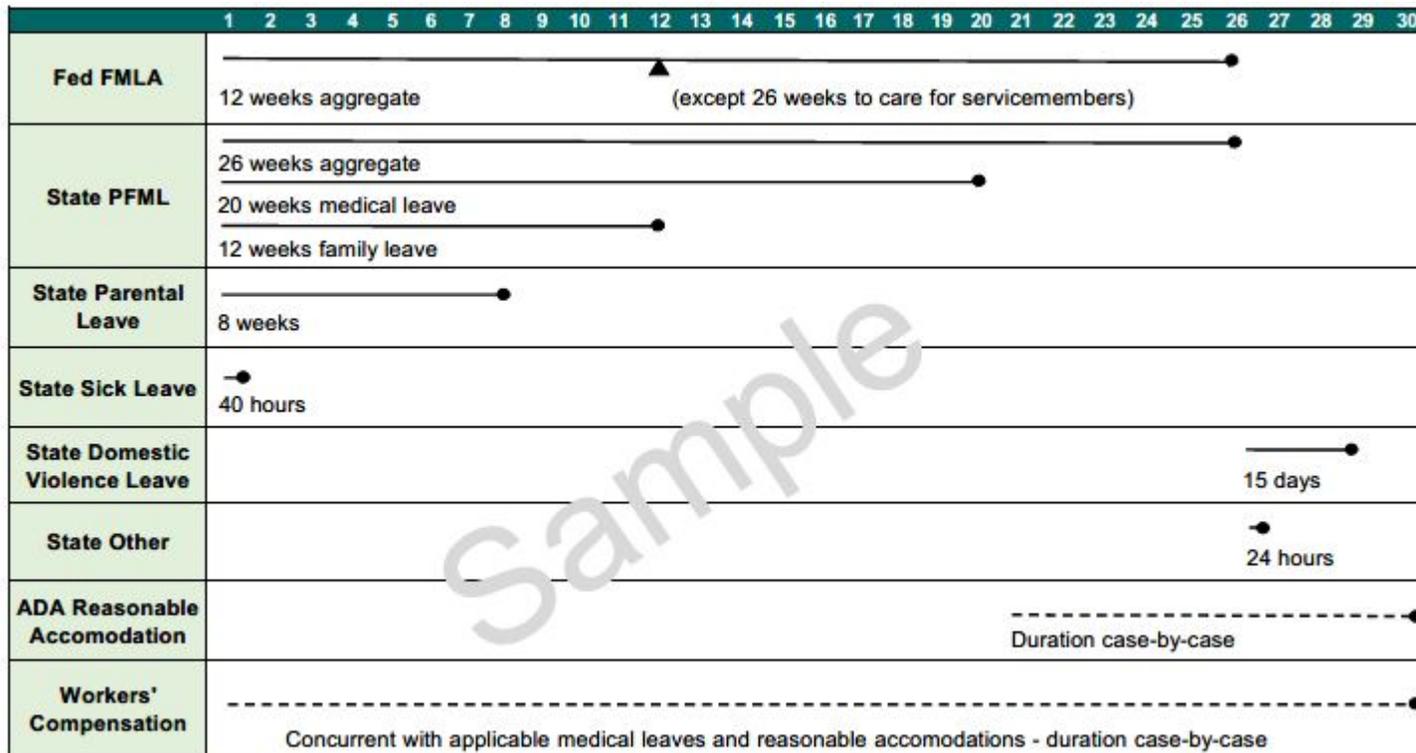
Managing the Intersection of Paid Leave Requirements

6. What documentation/certification can be required?
 - Can the same documentation/certification satisfy the requirements of 2 or more laws?
 - Certification generally provided by health care provider
 - Documentation generally completed by employee
7. Which leave laws run concurrently?

Managing the Intersection of Paid Leave Requirements: Map It Out

- II. Concurrent
 - Determine whether various paid leave laws can run concurrently...

Managing the Intersection of Paid Leave Requirements: Map It Out



Managing the Intersection of Paid Leave Requirements: Draft a Policy

- III. Draft a Policy: Components
 1. Eligibility requirements for employees
 2. Types of leave
 - Medical
 - Family—Bonding
 - Family—Serious Health Condition
 - Family—Service Member Serious Illness or Injury
 - Family—Qualifying Exigency
 3. Amount of Leave

Managing the Intersection of Paid Leave Requirements: Draft a Policy

- III. Components of a Policy *(continued)*
 4. Amount of pay during leave
 - Any initial waiting periods with no pay?
 - “Top off” paid leave benefit with PTO?
 - *What if PTO is “unlimited”?*
 5. Concurrent leaves

Managing the Intersection of Paid Leave Requirements: Draft a Policy

- III. Components of a Policy *(continued)*
 6. Other benefit/income sources that will reduce the paid leave benefit, e.g.,
 - Unemployment benefits
 - Certain workers' compensation benefits
 - Other state or federal permanent disability benefits
 - Long-term disability policy

Managing the Intersection of Paid Leave Requirements: Draft a Policy

- III. Components of a Policy *(continued)*
 7. Intermittent leave and reduced leave schedules
 8. Employee notice of leave and applying for leave

Managing the Intersection of Paid Leave Requirements: Draft a Policy

- III. Components of a Policy *(continued)*
 9. Benefits during leave
 10. Return to work
 11. No retaliation

Managing the Intersection of Paid Leave Requirements: Concurrent Leaves

- IV. Concurrent Leaves: A Closer Look
 - Some sample policy language addressing concurrent leaves...

Managing the Intersection of Paid Leave Requirements: Concurrent Leaves

Sample:

Leave under Employer's short-term disability policy runs concurrently with your PFML medical leave entitlement, and your PFML may be reduced if the aggregate amount you receive from the short-term disability policy and the PFML benefit exceeds your average weekly wage. In that case, the PFML benefit will be reduced by the excess over your average weekly wage.

Managing the Intersection of Paid Leave Requirements: Concurrent Leaves

Sample:

Leave taken in connection with a worker's compensation injury or illness runs concurrently with your PFML medical leave entitlement, and your PFML benefit may be reduced by the amount of worker's compensation payments.

Managing the Intersection of Paid Leave Requirements: Concurrent Leaves

Sample:

Leave taken under Employer's Paid Parental Leave policy runs concurrently with your PFML family leave entitlement.

Leave taken under Employer's [sick leave/critical illness injury leave] runs concurrently with your PFML leave entitlement.

Managing the Intersection of Paid Leave Requirements: Concurrent Leaves

- **Practice tip:** Review all employer policies to determine which ones can permissibly run concurrently with statutory entitlements and then specifically identify such policies in the PFML policy.

Managing the Intersection of Paid Leave Requirements: Concurrent Leaves

Sample:

You may choose to use PTO rather than receive a paid benefit through PFML for a PFML-qualifying reason. Should you choose to use PTO, the PTO runs concurrently with your PFML leave entitlement.

Managing the Intersection of Paid Leave Requirements: Concurrent Leaves

Sample:

PFML as provided in this policy runs concurrently with [insert any state laws] and the federal Family and Medical Leave Act. When PFML leave also qualifies for leave under one or more of those Acts, the PFML leave will count against the leave entitlement provided in those Acts.

Managing the Intersection of Paid Leave Requirements: After the Paid Leave Has Been Exhausted

- V. After the paid leave has been exhausted, employers still have ADA reasonable accommodation requirements
- **Review:** Employers must provide reasonable accommodation to applicants or employees with disabilities and/or who are pregnant, to allow them to perform the essential functions of the job, unless doing so would result in undue hardship.

Managing the Intersection of Paid Leave Requirements: After the Paid Leave Has Been Exhausted

- **Definition:** In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities and complete the essential functions of their position.

Managing the Intersection of Paid Leave Requirements: After the Paid Leave Has Been Exhausted

- **Factoring ADA principles into employee leaves:**
 - Permitting the use of accrued paid leave, or unpaid leave, is a form of reasonable accommodation.
 - While employers do not need to provide paid leave beyond that which is statutorily mandated and/or provided in employer policies, “employers should allow an employee with a disability to exhaust accrued paid leave first and then provide unpaid leave,” subject to undue hardship.*

*EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA.

Managing the Intersection of Paid Leave Requirements: After the Paid Leave Has Been Exhausted

ADA principles and leave

Test your knowledge

1. Under a state PFML policy, an employee is entitled to 20 weeks of medical leave. An employee with a disability requires 24 weeks of medical leave.
 - Is the employer required to provide 24 weeks of leave?
 - Paid or unpaid?
 - Change the facts: what if the employee required 28 weeks of leave?

Managing the Intersection of Paid Leave Requirements: After the Paid Leave Has Been Exhausted

ADA principles and leave

Test your knowledge

2. May an employer apply a “no-fault” leave policy, under which employees are automatically terminated after they have been on leave for a certain period of time, to an employee with a disability who needs leave beyond the set period?
 - Undue hardship analysis
 - Individualized assessment showing disruption to operations if additional leave granted
 - How much additional leave needed
 - Is there another effective accommodation as an alternative to extended leave?

Managing the Intersection of Paid Leave Requirements: After the Paid Leave Has Been Exhausted

ADA principles and leave

Test your knowledge

3. If the paid leave is extended as a reasonable accommodation, is an employer required to hold the employee's position open?
 - Would holding the position open create undue hardship?
 - Is there a vacant, equivalent position to which the employee can be reassigned?
 - Is there a vacant position at a lower level?

Practice tip: When granting leave extensions, clearly specify whether an employee's position will be held open

Managing the Intersection of Paid Leave Requirements: After the Paid Leave Has Been Exhausted

ADA principles and leave

Test your knowledge

4. When an employee requests leave, or an extension of leave, as a reasonable accommodation, may an employer provide an alternative accommodation that requires them to remain on the job instead?
 - Is the employee entitled to leave under a state PFML or the federal FMLA?
 - Does the alternative accommodation interfere with the employee's ability to address their medical needs?

Managing the Intersection of Paid Leave Requirements: Collective Bargaining Considerations

- VI. Collective Bargaining Considerations
 - Is bargaining required?
 - Is there a so-called “zipper” clause?
 - How do the statutory mandates interact with pre-existing contractual leave entitlements?
 - Run concurrently?
 - Additional leave?

Managing the Intersection of Paid Leave Requirements: Collective Bargaining Considerations

- VI. Collective Bargaining Considerations *(continued)*
 - What, if anything, do the statutory mandates say about the coordination of benefits between the state law and a collective bargaining agreement?
- **Practice tip:** Need to carefully review the language of the cba and any stated/federal leave mandate

Managing the Intersection of Paid Leave Requirements: Who?

VII. Who is going to manage all the various leave requirements for an employer?

- HR
- Designated leave administrator
- Third party

Practice tip: Centralization of management of paid leave prudent practice. Some state PFMLs require designation of contact person.

Key Takeaways

- Various paid leave laws cannot be considered in a vacuum
 - Other paid leave laws
 - Employer policies
 - Collective bargaining agreements
 - Past practices
 - Reasonable accommodations
- Employer policies should balance providing paid leave with minimum disruption to operations

Key Takeaways

- Consolidate/centralize leave management
 - Train managers and supervisors regarding their roles
 - Educate employees regarding their leave entitlements, including:
 - Process for requesting leave
 - Documentation/information they may be required to provide

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Session Evaluation

