



State Preemption of Local Paid Sick Days Ordinances

Lessons from a Pandemic

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The need for paid sick leave has gained attention during the COVID-19 pandemic. Paid sick leave is seen as a policy tool to reduce the spread of the virus—by incentivizing sick workers to stay at home—and as an income support, especially for workers with low wages whose employers are less likely to provide this benefit. Before the pandemic, 11 states, the District of Columbia, and 23 cities or counties had paid sick days (PSD) policies in place. At the same time, 23 states had preempted localities from enacting their own laws, reducing the policy tools available for slowing the spread of infectious disease. Since the COVID-19 outbreak, 32 states or localities have acted to protect workers by passing new PSD laws or expanding existing benefits or eligibility.¹

These facts motivate the questions we address in this brief:

- How has state preemption of local paid sick days (PSD) policies affected states' ability to respond to the COVID-19 crisis?
- How have localities in states with PSD preemption been able to respond to the COVID-19 crisis?
- Have localities in states without PSD preemption adopted new policies or innovations to respond to the COVID-19 crisis?

We use a case study approach to investigate these issues, identifying three locations with different experiences related to passing PSD legislation and preemption. Our first case is Orange County, Florida. In 2012, Orange County voters' efforts to place a PSD measure on the ballot were prevented by the

county commissioners. In 2014, after a court ruled that the earlier attempt to keep the measure off the ballot was illegal, the PSD measure passed, but it could not be implemented because of a state preemption that became law in 2013. Our second case, Duluth, Minnesota, passed a local PSD law in 2018 that went into effect in January 2020, just before the pandemic. Finally, our third case, Denver, Colorado, did not have a PSD law before the pandemic. At the beginning of the pandemic, the governor of Colorado issued an executive order mandating that certain employers provide COVID-19-related paid sick leave for workers, and then the Colorado state legislature passed a sweeping, permanent PSD law a few months later. In each place, we interviewed proponents of the PSD policies, representatives from the business sector, and legislators involved in developing paid sick leave policies.

These contrasting case studies provide illustrative examples of responses under different environments related to preemption, PSD policies, and the pandemic. Most directly, if a PSD law was in place and was not preempted (as in Duluth), workers with access to paid sick leave had clear benefits if they were directly affected by COVID-19. In addition, an operational PSD law provided an existing platform to build on when expanding or modifying benefits to respond to the unique challenges of COVID-19, and these jurisdictions could more easily incorporate and publicize the temporary, emergency federal COVID-19 PSD support included in the Families First Coronavirus Response Act (FFCRA). It was also clear that the balance of political power in each state interacted with the pandemic to affect the passage of PSD laws, whether the state preempted the laws, and how states and localities could respond to the crisis.

Background

The City of San Francisco implemented the country's first PSD law in 2007. As of July 2020, 33 local and state jurisdictions have active PSD laws.² These jurisdictions represent nearly all regions of the country, including New England, the Pacific Northwest, Southwest, Mid-Atlantic, and Midwest. These laws provide economic security to workers and their families and seek to slow the spread of contagious illnesses (Marotta and Greene 2019). PSD laws require employers to allow workers to accrue paid sick time at a specified rate, which can be used for various reasons, including recovering from their own illness, accessing care (including preventative care), providing care to a sick family member, and, in many cases, seeking care or safety when they or a member of their family is the victim of domestic violence or sexual assault.

Before the COVID-19 pandemic, 23 states had passed preemption laws preventing localities from requiring employers to provide paid sick time. These include four states that concurrently passed statewide PSD laws and prohibited localities from establishing requirements that differ from enacted state standards, as well as one state that passed a statewide paid sick time law after previously preempting local paid leave measures.³ Thus, in 17 states, workers have no right to paid sick time and can only access it if their employer chooses to offer it as a benefit. According to the US Bureau of Labor Statistics, 25 percent of private industry workers lack access to paid sick leave, and access varies widely by industry, wages, full-time or part-time status, and region.⁴ For instance, only 7 percent of workers in the financial activities and information industry lack access to paid sick leave, while 48 percent of

workers in leisure and hospitality do not have access. Sixty-seven percent of workers in the lowest wage decile lack access to paid sick leave, while that figure is only 5 percent for workers in the highest wage decile. A large differential also exists by full-time status, with only 12 percent of full-time workers lacking access to paid sick leave compared with 55 percent of part-time workers. Finally, while only 7 percent of workers in the Pacific West lack access to paid sick leave, likely because of statewide paid sick time laws in California, Oregon, and Washington, that figure is 32 percent in the East South Central region. Adelstein and Peters (2019) also estimate large differences in access to paid sick leave by individual characteristics such as race/ethnicity and education.

Arguments advanced to preempt PSD laws mirror those made in other employment-related policies such as minimum wage or predictive scheduling, with a key issue being the direct costs of compliance to businesses. Another argument made by those who support state preemption is that inconsistent local regulations cause confusion across a state, both for employers and employees, and hinder economic growth, but very little evidence regarding these claims exists.⁵ Although the marginal costs of policy variability are often invoked, state preemption proponents typically cite the overall costs of compliance rather than the marginal costs of complying with varying requirements (Treskon et al. forthcoming). Opponents of state preemption argue it prevents localities from acting as policy laboratories, where the effectiveness of new policies like paid sick leave can be tested.⁶ Paid leave advocates who oppose state preemption also highlight research suggesting that employer implementation and compliance are not overly burdensome. In addition, access to paid sick time can lead to savings by lowering the rates at which employees go to work sick (Marotta and Greene 2019) and reducing the incidence of infectious disease such as influenza (Pichler et al. 2020). Further, the literature illuminates numerous links between access to paid sick time and positive health benefits, including less emergency department use (Miller et al. 2011; Bhuyan et al. 2016) and greater use of preventive care (Peipins et al. 2012; DeRigne et al. 2017). In terms of local democracy, elected officials have argued that their constituents' voices are silenced when the representatives they have elected are prohibited from enacting laws they support and that directly impact their lives.

Since the COVID-19 pandemic swept across the country, state and local governments have taken myriad actions related to PSD in response to the dual public health and economic crises. These actions have sought to minimize economic instability and slow the spread of the virus. State and local actions can be classified into three general categories: (1) new paid sick leave legislation; (2) statutory or regulatory changes, including those that fill paid sick leave gaps created by the Families First Coronavirus Response Act (FFCRA);⁷ and (3) clarifying guidance for existing paid sick leave mandates as a result of COVID-19-related disruptions to work, school, and social interactions (Marshall and Stamm 2020).⁸

One category 1 jurisdiction is the state of New York, which passed a permanent PSD law in April 2020 through the fiscal year 2021 state budget.⁹ The law allows covered workers to begin accruing leave on September 30, 2020, and to use their accrued time beginning January 2021. As we describe later, the state of Colorado also enacted PSD legislation in July 2020.

A category 2 jurisdiction filling a gap left by FFCRA is Sacramento (CA), whose city council enacted emergency supplemental paid sick leave as part of the Sacramento Worker Protection, Health, and Safety Act.¹⁰ The measure requires employers with 500 or more employees nationwide to provide 80 hours of supplemental paid sick time to every full-time employee working in the city, with proportional time for part-time employees. Sacramento is one of eleven localities in California that has passed a PSD ordinance explicitly to cover certain employees excluded by the FFCRA.¹¹ In a related example, the City of Philadelphia issued supplementary regulations pertaining to its existing PSD ordinance, allowing for expanded uses of accrued paid sick time. These regulations stipulate that the definition of preventive care shall include undergoing an evaluation for COVID-19 and a two-week self-quarantine period after exhibiting symptoms of COVID-19, returning from travel to a high-risk country, or coming into contact with someone who has been diagnosed with COVID-19.¹² Following these regulatory actions, the mayor of Philadelphia signed into law a new ordinance extending supplemental COVID-19 paid sick leave to workers excluded from the federal FFCRA.

Numerous jurisdictions have developed and disseminated clarifying guidance on relevant PSD laws in light of the COVID-19 crises (category 3). For instance, Duluth and the twin cities of Minneapolis and St. Paul implemented local PSD ordinances in 2020 and 2017, respectively, and each city released a frequently asked questions (FAQ) document describing how the ordinances apply to COVID-19 related absences. Among other clarifications, Duluth's FAQ explains that employees can use paid sick time for testing or quarantine following close personal contact with someone who has tested positive for COVID-19 or who is symptomatic.¹³ Minneapolis's FAQ clarifies that employees can use paid sick time when their work hours have been reduced because of a public official's order to close the employer's facility.¹⁴ St. Paul's FAQ clarifies that employees at greater risk of severe COVID-19 complications can use paid sick time to seek preventive care for an underlying medical condition.¹⁵

Using overlapping lenses for different state and local actions taken in response to COVID-19, as well as whether or not a state has preempted localities from enacting PSD laws, informed our selection of the three sites included in the following case studies.

Case Studies

Orange County, Florida

Home to Walt Disney World and Universal studios, Orange County has a tourism-based economy, and the majority of workers with low wages employed in the county work in the hospitality and entertainment industries. In 2012, local advocates and Democratic party leaders identified a need for county-level PSD legislation, because 45 percent of Orange County workers did not have access to paid sick leave benefits through their employers. For Latinx workers, this number was 56 percent, and for those working in the accommodation and food services industries, 73 percent lacked access to paid sick days (IWPR 2014). The Urban Institute team spoke with the leader of a local advocacy organization, a staff member at a national advocacy group, and a member of the state legislature. The team also contacted several different business intermediaries but was not able to secure an interview.

Advocates understood it would be difficult to enact PSD legislation in the county through traditional lawmaking because of the Orange County's commissioners' political makeup at the time and the powerful business interests of large employers in the area. Given this environment, advocates, led by the coalition Citizens for a Greater Orange County, collected the required number of signatures to place the proposed PSD ordinance¹⁶ on the 2012 ballot for Orange County voters.¹⁷ Despite the organizing team's successful collection of the requisite signatures, county commissioners voted 4 to 3 to keep the sick leave measure off the 2012 ballot. A panel of judges later ruled that the county commissioners' failure to place the referendum on the ballot was in direct violation of the county charter.¹⁸ Corporate lobbyists also contributed to the county commissioners' decision to reject the ballot measure. Investigators revealed that county commissioners had been receiving text messages from lobbyists with organizations including Disney and Darden Restaurants before and during the public hearing.¹⁹ County commissioners who received the texts later deleted these messages, and Citizens for Greater Orange County filed a civil suit for violation of open government, resulting in a \$90,000 settlement.²⁰

With the ballot measure postponed, the Florida state legislature passed a bill in 2013 that prevented local jurisdictions in Florida from requiring employers to provide certain employment benefits such as paid sick leave.²¹ As a result, this preemption law prevented the Orange County paid sick leave ordinance from being implemented after an overwhelming majority of voters—64 percent—approved the PSD ordinance when it appeared on the ballot in 2014.²²

The COVID-19 pandemic has underscored frontline workers' need for paid sick leave to allow those experiencing symptoms or caring for a family member to stay home from work and not sacrifice earnings. One state representative emphasized the importance of this benefit for workers in Orange County in particular, citing the compounding vulnerabilities many frontline workers in the county face. The representative pointed to both the specific industry mix in Orange County and the demographic makeup of Orange County compared with the surrounding counties. The largest industry in Orange County is leisure and hospitality (25 percent), and workers in this industry may already be economically vulnerable, with lower wages and less access to paid sick day benefits.²³ Additionally, Orange County is home to greater numbers of Black and Latinx workers than surrounding counties, and studies have revealed these people are less likely to have paid sick leave benefits through their employers and more likely to be hospitalized for COVID-19, because of factors such as comorbidities or lack of access to health care.²⁴

While many state legislatures across the country convened emergency or remote legislative sessions to respond to the COVID-19 crisis, the Florida state legislature ended its session in March 2020, and the legislators will not return to Tallahassee until the next regularly scheduled session starting in March 2021.²⁵ To date, there has been no state legislation passed in Florida in response to the crisis. Without local or state-level paid sick legislation, employees working for Orange County have two options to access paid sick days during the COVID-19 crisis.

The first is through federal protections in the FFCRA, in effect until December 31, 2020, that grant employees to up to 80 hours of paid leave for COVID-19-related health and care needs, such as contracting the disease, mandatory quarantine, or needing to care for a loved one.²⁶ However, provisions in the FFCRA exempt large corporations with 500 or more employees and allow employers of emergency responders and health care providers to exempt their employees from the law. In Florida, more than 50 percent of workers are excluded from the law under the employer size exemption, and an additional 30 percent of employees work for employers that can choose to exclude their workers.²⁷ One advocate and one state representative who spoke with the research team noted they did not think many workers were aware of the FFCRA benefit and were not sure if workers in the county were taking advantage of the paid sick days. Although the county issued an FAQ document on FFCRA, these stakeholders speculated that lacking a more comprehensive public education effort from the county, state, or federal government, employers and employees are not consistently aware of these temporary benefits and protections. In addition, a staff member from a national advocacy organization suggested that local and state enforcement agencies may be reluctant to promote public education campaigns because they do not have jurisdiction over FFCRA—only the federal government can enforce that law.

Another way workers can gain access to paid sick leave is through benefits provided by private firms. In March 2020, Darden Restaurants announced they would provide paid sick leave benefits for all their employees, allowing workers to accrue one hour of paid leave for every 30 hours worked.²⁸ Darden Restaurants, a group of restaurants that includes Olive Garden and Longhorn Steakhouse, among others, is the eleventh largest employer in the Orlando metropolitan area.²⁹ Two stakeholders who spoke with the research team expressed support for this change, especially in light of Darden's prior position against mandating paid sick leave, as well as hope that other large hospitality and food service companies would follow suit. Another advocate we spoke to speculated that state-level paid sick days may have influenced the details of Darden's paid sick leave policy. Darden restaurants operate in several states with PSD legislation that mandates paid sick days at a rate of one hour for every 30 hours worked, suggesting these state levels may serve to set a baseline expectation for employers' paid sick leave policies.

The COVID-19 pandemic remains a threat, and a strong need exists for paid sick laws to increase public safety and improve public health. However, having witnessed the state legislature preempt local employer mandates in the past, the stakeholders who spoke with Urban researchers remained doubtful that the state political climate would allow for a revocation of preemption laws or the passing of statewide PSD mandates. In particular, large businesses continue to oppose state and local employer mandates, considering it a burden to business operations and profits.³⁰

Duluth, Minnesota

In May 2018, the Duluth City Council passed its Earned Sick and Safe Time (ESST) ordinance by a vote of 7 to 1.³¹ The measure passed after several years of observing and learning from the experiences of Minneapolis and St. Paul, which enacted PSD laws in 2016 and implemented them in 2017. Urban's research team spoke with a worker rights advocate, a City of Duluth government official, and a local

elected official about the process for passing ESST in Duluth, how the policy was implemented, and how its existence has impacted the city's ability to respond to the COVID-19 pandemic.

In 2016, the Duluth City Council created an ESST Task Force to gather information about existing PSD policies, obtain public input, develop various options for a potential ordinance, and make recommendations for a viable path forward. After roughly a year of activity, which included administering a survey and facilitating community listening sessions with citizens, workers, and employers, the task force submitted its findings and recommendations to the city council.³² The recommendations included two primary options: a full policy that was more prescriptive and would apply uniformly across employers in the city and a basic policy that offered employers more discretion in implementing the law.³³ The city council ultimately opted to enact the full policy version of the task force's recommendations. There was widespread consensus among task force members that a PSD ordinance would be a sensible employee protection that would result in safer and healthier workplaces and communities. Opponents of the proposed ordinance argued that a one-size-fits-all mandate would harm firm profitability and lead to business closures and relocations.

After Duluth's ESST ordinance was enacted in 2018, and before it took effect in January 2020, the city engaged in a sweeping public education campaign to ensure businesses would be prepared to comply with the law and workers and families would be knowledgeable about the benefits available to them. On account of these sessions held with employers, industry intermediaries, community-based organizations, and members of the public, general awareness of the law was high before the COVID-19 pandemic caused significant disruptions across society. Perhaps for this reason, several people the research team spoke with reported that their organizations have not heard much feedback from citizens expressing confusion or submitting complaints related to the city's ESST policy. One municipal official noted that public perceptions of the law have grown slightly more favorable in light of the pandemic, as community members especially appreciate having the paid sick leave benefit during this time, and many businesses are glad they had to implement an internal PSD policy before the onset of the pandemic. A city government official noted that they met with numerous payroll processing companies before implementation to discuss mechanisms for tracking accrued and used paid sick time. As a result, by the time the pandemic impacted the city, businesses were well prepared to administer paid sick leave benefits. To minimize potential confusion about the city's ESST ordinance in light of the pandemic, Duluth released an FAQ document covering topics that included which types of employers must comply, acceptable reasons for using sick time, the definition of a family member, and specific decisions an employer may or may not make.³⁴

Regarding how well Duluth has performed in protecting workers from sickness during the pandemic, interviewees expressed that it was difficult to disentangle the effects of paid sick time from all the other factors influencing the spread of the virus. Research has found that, in the US, influenza-like disease rates decrease at the population level after employees gain access to paid sick leave (Pichler and Ziebarth, 2019; Pichler et al. 2020). In examining the 2009 H1N1 pandemic, a team of researchers estimated that a lack of workplace policies, most notably paid sick leave, was associated with 5 million additional cases of flu-like illness in the US (Kumar et al. 2012). Moreover, an advocate suggested that

places with PSD laws may have less stigma for employees who stay home from work when they or a family member is sick. A city government official told the research team there are no known cases of noncompliance with the ESST ordinance among employers. Despite an acknowledgement that both awareness of and compliance with the law is high, several interviewees speculated that workers in jobs paid low wages are still less likely to take advantage of paid sick time. Although the city deliberately focused some of its pre-implementation outreach on this population, stakeholders suggested there remain structural and individual reasons why workers earning lower wages are still reluctant to take time off from work, especially during a period of economic decline.

Local stakeholders also highlighted several other risk factors that influence the spread of the virus or harm the economic security of workers during the pandemic, including layoffs, furloughs, and lack of adequate health insurance. For example, if someone does not have access to quality, affordable health care, then paid sick time alone may not be enough to protect or treat them in the case of illness, especially illnesses that necessitate medical care. Job protection and access to health care and paid sick time are policy levers that can work together to reduce the likelihood of transmitting viruses such as COVID-19.

The research team was also interested in whether states without PSD preemption experienced a greater degree of local innovation and action in response to the COVID-19 pandemic. This link was raised through repeated references to the mask mandate the City of Duluth instituted. Local government officials shared that the ESST ordinance had been the most publicly controversial mandate in recent history until the city imposed a mask requirement.³⁵ Given the city's experience with enacting the PSD policy, the city council showed a willingness to take on contentious issues in an open, transparent manner and make decisions to protect public health and worker safety. Local government officials shared with us that the mask requirement likely helped significantly reduce the spread of COVID-19 and inspire confidence among workers and consumers.

In most other local PSD policies across the US, workers accrue sick time at a rate of one hour for every 30 to 40 hours worked. However, in Duluth, sick time is earned at a rate of one hour for every 50 hours worked, regardless of business size.³⁶ Duluth's ESST law also exempts seasonal workers, which largely impacts students and those working in the vital tourism industry. Pertinent to the COVID-19 pandemic, the Duluth ordinance does not grant additional paid sick time benefits during a public health emergency. People who spoke to the Urban research team from Duluth noted these shortcomings as potential provisions of the ESST ordinance that could be strengthened to better protect public health and preserve economic stability for workers and their families. These changes could come from local government action, or they could be enacted through state government legislation. As the research team observed in Florida and Colorado, these decisions are often dictated by the balance of political power in state capitals.

Denver, Colorado

Before the pandemic, neither Denver nor the state of Colorado had enacted a PSD policy. In response to the pandemic, on March 10, 2020, eight days before the Federal FFCRA became law, Colorado's

governor, Jared Polis, issued a temporary emergency executive order, Health Emergency Leave with Pay (HELP), mandating paid sick leave for workers in certain industries.³⁷ A few months later, the Colorado Healthy Families and Workplaces Act (HFWA) was enacted into law. The Urban team spoke with a member of the Colorado state legislature, a staff member from a local chamber of commerce, and a staff member from a national advocacy organization operating in Colorado about the HELP executive order and the HFWA legislation and how these have impacted the ability to respond to the COVID-19 pandemic.

Initially, the HELP executive order required covered employers to provide four days of sick leave at full pay for workers experiencing flu-like symptoms or being tested for COVID-19. On March 26, eligibility to receive paid sick leave was expanded to those required to quarantine because they might have COVID-19, and on April 27 the amount of leave increased from four to fourteen days, but the replacement rate fell from 100 percent to two-thirds of pay. In contrast with the FFCRA, which excluded large employers (those with 500 or more employees), the Colorado Executive Order covered all workers in certain industries regardless of the employer's size. Thus, many workers who were excluded by the FFCRA were able to receive paid sick leave through HELP.

After adjourning in late March because of the pandemic, the Colorado General Assembly came back in May to work on issues related to the pandemic. One legislator described the process:

We were on a 10-week break and legislators were having the discussion, "What are we going to do?" It became clear that we would have to do something on paid sick leave.

A working group compared PSD policies in different states, and the legislator said, "We tried to be on the higher end, if not surpassing states on most of the pieces." The general assembly then passed the Colorado Healthy Families and Workplaces Act (HFWA), S.B. 205. The Governor signed the bill and it was enacted into law on July 14, 2020. This law does three things:³⁸

- Through December 31, 2020, it requires employers—regardless of size—to provide COVID-19 paid sick leave in the amount and for the purposes required in the FFCRA to employees excluded by the federal law (replacing the HELP order previously issued by the governor).
- It requires that all employers with 16 or more employees provide paid sick leave for a worker's own illness, for preventative care, to care for a sick family member, and for personal or family needs related to domestic abuse and sexual assault, beginning January 1, 2021, and extends this requirement to all employers regardless of size beginning January 1, 2022. Workers can earn one hour of paid sick leave for every 30 hours the employee works, up to 48 hours of paid sick leave a year.
- It entitles employees—regardless of their employer's size—to receive up to 80 hours of paid sick time during declared public health emergencies after January 1, 2021.

When it is fully implemented, HFWA will be one of the most generous PSD laws in the US.

Several features make the law unique. First, most other states require workers to wait until they have been with an employer for 90 days to use paid sick leave, but workers in Colorado will be able to access it immediately. This feature can be particularly helpful during a pandemic.³⁹ Second, it covers all workers regardless of employer size and covers full-time, part-time, temporary, and seasonal workers.⁴⁰ Third, like a growing number of city and state paid sick leave laws, it has an inclusive definition of family member: those related by “blood, marriage, civil union, or adoption; a child to whom the worker stands in loco parentis or a person for whom the employee is responsible for providing or arranging health-or-safety-related care” (A Better Balance 2020).⁴¹ Finally, additional sick day benefits are available in case a public health emergency is declared.

Before passage of HFWA, there had been several unsuccessful attempts to pass PSD legislation in Colorado in the past decade. As early as 2011, a Denver ballot measure to provide mandatory paid sick leave to employees failed to pass, in part because of—according to one stakeholder’s perspective—public opposition from local and state elected officials at a time when only a few cities in the US had passed paid sick time laws. In 2016, a statewide bill, S.B. 16-114, The Healthy Families and Workplaces Act, was postponed indefinitely.

Two factors were central to the passage of HFWA in July 2020: the impacts of the COVID-19 pandemic and the fact that both chambers of the Colorado General Assembly and the governorship were controlled by the Democratic party. As one legislator put it, “We had the trifecta.” Another stakeholder said, “It became more politically difficult to oppose PSD legislation during a pandemic.” Although businesses generally did not support sick leave mandates, they viewed passage of the bill as inevitable, and proponents of the bill obtained buy-in from the business community by soliciting their input. Several compromises were made, including delaying implementation of permanent paid sick leave for smaller businesses by one year and providing enough flexibility that the bill’s requirements would generally fit with systems and procedures that employers who offered paid sick leave benefits already had in place.

According to the state legislator who spoke with the Urban team, another important factor in the debate was media attention on the disparate impacts of COVID-19 on workers paid low wages and workers of color. Because these workers were also less likely to already have paid sick leave from their employers, that media coverage helped legislators understand the importance of this legislation for these workers.

Implementation of the main part of the bill—general paid sick leave for purposes that can be used beyond the pandemic—begins in January 2021, and the Colorado Department of Labor and Employment has already released several pages of information and posters about the law. In addition, Governor Polis has been sharing information on Facebook. A spokesperson from a business intermediary organization said they had not received many emails from their members about paid sick leave and speculated that was perhaps because many employers were already providing some sort of leave. She contrasted that with the many emails her organization had received about the mandatory mask executive order.

The Colorado General Assembly also tried to pass a statewide paid family and medical leave insurance fund that would have given workers 12 weeks of job-protected leave to care for a new child, deal with a serious personal illness, care for a loved one with a serious health condition, respond to certain military family needs, and address issues related to domestic abuse and sexual assault. Ultimately, this bill did not pass, but proponents of the bill are taking the issue directly to the voters in the form of a ballot initiative in November 2020. One stakeholder suggested that paid sick leave was easier to pass than paid family and medical leave in part because the former was seen as a more modest proposal by many in the legislature and business community.

Similar to Duluth and Orange County, the political balance of power in the state government was central to the success of passing PSD legislation in Colorado. Unlike the other two locations, however, the debate in Colorado took place during the pandemic, which played a huge role in setting legislative priorities and reducing business opposition.

Key Lessons and Conclusions

The situations and experiences of our three cases were different in many ways, but some common themes arose.

One common theme was the importance of the political balance of power at the state level in affecting PSD policies, preemption, and other responses to the pandemic. This was especially true in Orange County, Florida, and Denver, Colorado. With the exception of one year, the Florida governorship, state house, and senate have been controlled by Republicans since 1999. This political control enabled Florida to pass legislation preempting any local PSD laws, and the state kept that preemption in place during the pandemic. In contrast, in Colorado, the governorship, state house and senate have been controlled by Democrats since 2018, but it took the pandemic to make PSD a legislative priority. Duluth was in between the Orange County and Colorado experiences. The state government of Minnesota was split, with the governor's office and the house controlled by Democrats and the senate controlled by Republicans. Democratic control of the local Duluth government facilitated the passage of a PSD law in 2018, and the state's split control prevented the law's preemption.

The pandemic was also a factor in increasing the acceptability of paid leave. In Duluth, one government official reported that the public's favorability of the law increased after the pandemic. In Colorado, the case for PSD legislation was framed largely in terms of a response to the pandemic, which increased the acceptability among businesses and the public. In Orange County, where preemption kept a PSD law from being implemented, one major local employer, Darden Restaurants, began to offer paid sick leave to its employees despite earlier opposition to local paid sick leave requirements.⁴² One advocate speculated that the growing number of PSD laws Darden had to comply with in states and localities across the country may have affected their behavior. In 2012, when their opposition to the Orange County initiative was clear, only one state had passed PSD or general paid time off legislation compared with 15 states in 2020.

Another lesson relates to the importance of institutional infrastructure—both at the agency level (i.e., the agency that was in charge of implementing the policy) and business level—in helping the law achieve its purpose. Duluth was the best example of this issue, because that city was the only one of our three cases to have already implemented a PSD law before the pandemic. At the agency level, it is important to have public education and messaging that ensures both employers and workers understand the purpose of and eligibility for the law. Infrastructure at the government and business levels, including data systems (e.g., mechanisms for tracking accrued and used paid sick time), policies, and procedures, is essential to ensure the law can be implemented transparently and efficiently. Having these systems in place also helped businesses in Duluth implement the Federal FFCRA sick leave provisions more effectively.

In Orange County, both an advocate and a state representative suggested the FFCRA may have been less effective there, because of a lack of awareness and public education. Colorado's PSD policy will not be implemented until January 2021, so it is likely that businesses not currently offering paid sick leave have less existing infrastructure in place to implement the FFCRA. However, public awareness of paid sick leave in Colorado is high because of the governor's emergency executive order and the publicity surrounding passage of the permanent law.

In general, responses to the pandemic and policy reactions to mitigate the spread of the virus have been highly political. One example is a mask mandate. Both Colorado and Minnesota have a mask mandate in place. Having a PSD law did not, in and of itself, lead to the mask mandate, but it is likely that the same environmental and political forces that enabled the PSD law to pass also enabled the mask mandate. In contrast, Florida has no mask mandate. However, a stakeholder from Duluth who spoke to the Urban team suggested one potential direct link between passage of PSD legislation and mask mandates. Specifically, this stakeholder suggested that addressing a controversial public health measure like paid sick leave may have prepared local legislators to enact even more politically fraught public health measures like a mask requirement.

In summary, evidence shows that PSD mandates can reduce influenza-like illness by as much as 11 percent (Pichler and Ziebarth 2020). If PSD mandates have similar effects on COVID-19, then this policy can be an important tool in fighting the pandemic, and preemption laws would limit effective local responses to the pandemic. Even if PSD mandates are shown to be less effective against limiting the spread of COVID-19, they can provide job protection and income support for those workers who contract COVID-19. Most PSD laws are more focused on shorter-term illness and do not include coverage for the length of time often needed to quarantine or recover from COVID-19. However, the FFCRA, which was passed in response to the pandemic, does include coverage for up to 80 hours, and the Colorado PSD law includes a component that would cover up to 80 hours in case a public health emergency is declared. In addition, having PSD laws already in place helped build public awareness and business infrastructure that helped workers and businesses to take advantage of federal emergency COVID-19 PSD laws.

Notes

- ¹ “Emergency Paid Sick Leave Tracker: State, City, and County Developments,” A Better Balance, updated October 2, 2020, <https://www.abetterbalance.org/resources/emergencysickleavetracker/>.
- ² In addition, three jurisdictions in Texas—Austin, San Antonio, and Dallas—passed local PSD ordinances but have been unable to fully implement and enforce them because of ongoing litigation. “Interactive Overview of Paid Sick Time Laws in the United States,” A Better Balance, updated July 16, 2020, <https://www.abetterbalance.org/paid-sick-time-laws/>.
- ³ The states that passed concurrent statewide laws and preemption are New Jersey, Maryland, Rhode Island, and Oregon. Oregon’s PSD law was designed to take into account Portland’s prior protections, which were relatively strong along several dimensions. In addition, Maryland’s PSD law included a local exemption for Montgomery County, grandfathering in their law that had previously been in place: “Overview of Paid Sick Time Laws in the United States,” A Better Balance, updated July 16, 2020, <https://www.abetterbalance.org/paid-sick-time-laws/?export>; “Worker Rights Preemption in the US: A Map of the Campaign to Suppress Worker Rights in the States,” Economic Policy Institute, updated November 2018, <https://www.epi.org/preemption-map/>.
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