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## How Local Paid Sick Time Innovations –And the COVID-19 Pandemic –Have Shaped a Growing Paid Leave Movement across the United States

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# HOW LOCAL PAID SICK TIME INNOVATIONS — AND THE COVID-19 PANDEMIC — HAVE SHAPED A GROWING PAID LEAVE MOVEMENT ACROSS THE UNITED STATES

*Sherry Leiwant, Jared Make, and Elena Rodriguez Anderson\**

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### INTRODUCTION

The United States is the only wealthy country in the world that does not guarantee its workers a right to paid sick time.<sup>1</sup> Without access to paid sick time, workers are forced to choose between their job and caring for their health and the health of their family members. In fact, 28 million Americans do not have access to even a single day of paid sick time each year, and therefore must risk their economic security every time they — or a family member for whom they care — experience an illness or health crisis.<sup>2</sup> Among those working individuals who *do* receive paid sick time from their employers, many often face significant restrictions imposed by their employers. Many employers have policies with rules and requirements that, in practice, prevent workers from taking time off when they are sick, while many others have policies that actually penalize workers for using sick days to which they are entitled.<sup>3</sup> Fortunately, there has been an increasing effort in the United States to legally guarantee paid sick time to workers.

Research shows that there is a critical need for universal, guaranteed paid sick time in the United States. Data on the U.S. labor market demonstrates that this benefit is not offered uniformly. The U.S. Department of Labor’s Bureau of Labor Statistics estimates that as of March 2023, more than one in every five workers lacks access to paid sick time.<sup>4</sup> Moreover, lower-income workers are much less likely to have sick days than higher-income workers: though 96% of workers in the highest income decile have at least some paid sick days, only 39% of workers in the lowest income decile have any access to this benefit.<sup>5</sup> Furthermore, only 61% of service workers have any paid

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1. See HYE JIN RHO ET AL., CTR. FOR ECON. POL’Y RSCH., *CONTAGION NATION 2020: UNITED STATES STILL THE ONLY WEALTHY NATION WITHOUT PAID SICK LEAVE* 3 (2020), <https://cepr.net/report/contagion-nation-2020-united-states-still-the-only-wealthy-nation-without-paid-sick-leave/> [<https://perma.cc/BKX6-32XW>].

2. See U.S. BUREAU OF LAB. STAT., *EMPLOYEE BENEFITS IN THE UNITED STATES, MARCH 2023* (2023), <https://www.bls.gov/ebs/publications/employee-benefits-in-the-united-states-march-2023.htm> [<https://perma.cc/V7X5-PCLE>] (download “2023 Excel Tables,” select page titled “Leave”).

3. See DINA BAKST ET AL., *A BETTER BALANCE, MISLED AND MISINFORMED: HOW SOME U.S. EMPLOYERS USE “NO-FAULT” ATTENDANCE POLICIES TO TRAMPLE ON WORKERS’ RIGHTS* 30–34 (2020), <https://www.abetterbalance.org/misled-misinformed/> [<https://perma.cc/FA9K-UVLD>].

4. See U.S. BUREAU OF LAB. STAT., *supra* note 2.

5. See U.S. BUREAU OF LAB. STAT., *supra* note 2.

sick days — a slight decrease from 2022, when 62% of service workers had access to some paid sick days.<sup>6</sup>

The existing disparities in access to paid sick time exacerbate long-standing racial, ethnic, and gender disparities as well. Since the country's lowest-income workers are least likely to have paid sick days, it is important to specify which workers are most likely to fall into that category. BIPOC (Black, Indigenous, and People of Color) individuals are more likely to be lower-income.<sup>7</sup> In fact, only 49% of Latine people and 60% of Black, non-Latine Americans have access to any sick days.<sup>8</sup> Women are similarly overrepresented among the low-wage workforce in the United States.<sup>9</sup> This disparity is partially because women are more likely to work part-time; in fact, 27.9% of all working women work part-time, compared to 17.2% of all working men.<sup>10</sup> Many women are forced to work part time due to caregiving responsibilities, as two-thirds of all family caregivers in the United States are women.<sup>11</sup> Part-time workers are much less likely to have paid sick time than full-time workers: only 51% of part-time workers have paid sick time, compared to 86% of full-time workers.<sup>12</sup> Meanwhile, over half (54%) of working mothers lack paid sick days that can be used to care for a sick child, and they have no access to pay if they take such time.<sup>13</sup> Access to paid sick time is therefore an issue of economic, racial, and gender equity.

The lack of federal action on paid sick time is especially concerning given the wealth of data showing the benefits of paid sick time for workers and

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6. See U.S. BUREAU OF LAB. STAT., *supra* note 2.

7. See Valerie Wilson, *Racial Disparities in Income and Poverty Remain Largely Unchanged Amid Strong Income Growth in 2019*, ECON. POL'Y INST.: WORKING ECON. BLOG, (Sept. 16, 2020), <https://www.epi.org/blog/racial-disparities-in-income-and-poverty-remain-largely-unchanged-amid-strong-income-growth-in-2019/> [<https://perma.cc/ZR8J-HQRR>].

8. See RACHEL O'CONNOR ET AL., INST. FOR WOMEN'S POL'Y RSCH., PAID SICK DAYS ACCESS VARIES BY RACE/ETHNICITY, SEXUAL ORIENTATION, AND JOB CHARACTERISTICS (2014), <https://iwpr.org/wp-content/uploads/2021/01/B337.pdf> [<https://perma.cc/48W8-LD4R>]. While this source uses the term "Hispanic," we use the term "Latine" to reflect more inclusive and precise terminology.

9. See Lauren Hoffman & Isabela Salas-Betsch, *Including All Women Workers in Wage Gap Calculations*, CTR. FOR AM. PROGRESS (May 24, 2022), <https://www.americanprogress.org/article/including-all-women-workers-in-wage-gap-calculations/> [<https://perma.cc/VW5G-Y7NK>].

10. See NAT'L WOMEN'S LAW CTR., PART-TIME WORKERS ARE FACING HEIGHTENED UNCERTAINTY DURING COVID — AND MOST ARE WOMEN 1 (2022), <https://nwlc.org/resource/part-time-workers-factsheet/> [<https://perma.cc/D6B3-FYT3>].

11. See NAT'L P'SHIP FOR WOMEN AND FAMS., WORKING WOMEN NEED PAID SICK DAYS (2013), <https://nationalpartnership.org/wp-content/uploads/2023/02/working-women-need-paid-sick-days.pdf> [<https://perma.cc/5FU9-EA45>].

12. See U.S. BUREAU OF LAB. STAT., EMPLOYEE BENEFITS IN THE UNITED STATES, MARCH 2022 (2022), <https://www.bls.gov/ebs/publications/september-2022-landing-page-employee-benefits-in-the-united-states-march-2022.htm>.

13. See NAT'L P'SHIP FOR WOMEN AND FAMS., *supra* note 11.

families, business owners, and overall public health. A thriving business community requires a healthy workforce, and caring for public health requires caring for all members of the community. Therefore, both workers and business owners benefit from improvements to public health.

For instance, paid sick time allows workers to access medical care when they need it, increasing access to necessary care and reducing the time needed to recover from illness.<sup>14</sup> Access to paid sick time increases workers' use of preventive care, making them more likely to visit a doctor, undergo cancer screenings, and get recommended procedures such as mammograms.<sup>15</sup> In fact, it has been estimated that national access to paid sick days would result in approximately \$1.1 billion in savings in hospital emergency department costs each year, as workers would no longer rely as heavily on emergency room visits (since working individuals could better address health concerns before they become emergencies, and regular medical care could be sought more easily during the workday).<sup>16</sup> Of those savings, \$500 million would go to publicly funded health insurance programs such as Medicare, Medicaid, and SCHIP.<sup>17</sup>

Workers' economic security suffers when they cannot utilize paid sick time. Workers without this critical workplace right are more likely to struggle to afford monthly bills like groceries, rent, and utilities,<sup>18</sup> more likely to have difficulty paying off long-term expenses like debt and medical

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14. See NAT'L P'SHIP FOR WOMEN AND FAMS., PAID SICK DAYS IMPROVE PUBLIC HEALTH BY REDUCING THE SPREAD OF DISEASE (2022), <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-improve-our-public-health.pdf> [<https://perma.cc/W9KU-8JP6>]; see also TOM SMITH & JIBUM KIM, PAID SICK DAYS: ATTITUDES AND EXPERIENCES 6 (2010), <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-attitudes-and-experiences.pdf> [<https://perma.cc/X2MN-HMNT>] (finding that without paid sick leave, workers are twice as likely to go to the emergency room, and twice as likely to send their sick child to school or daycare, because they are unable to take time off of work to care for them).

15. See Lucy A. Peipins et al., *The Lack of Paid Sick Leave as a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, 12 BMC PUB. HEALTH, July 2012, at 8, <http://www.biomedcentral.com/content/pdf/1471-2458-12-520.pdf> [<https://perma.cc/BHX5-F6C8>].

16. See KEVIN MILLER ET AL., INST. FOR WOMEN'S POL'Y RSCH, PAID SICK DAYS AND HEALTH: COST SAVINGS FROM REDUCED EMERGENCY DEPARTMENT VISITS, iii, 14–15 (2011), <http://www.iwpr.org/publications/pubs/paid-sick-days-and-health-cost-savings-from-reduced-emergency-department-visits> [<https://perma.cc/6U9P-Z5F2>].

17. *Id.*

18. See ELISE GOULD & JESSICA SCHIEDER, ECON. POL'Y INST., WORK SICK OR LOSE PAY? THE HIGH COST OF BEING SICK WHEN YOU DON'T GET PAID, tbl.1 (2017), <https://www.epi.org/publication/work-sick-or-lose-pay-the-high-cost-of-being-sick-when-you-dont-get-paid-sick-days/> [<https://perma.cc/6TYW-8UXN>].

bills,<sup>19</sup> and 25% more likely to experience job loss.<sup>20</sup> Economic instability incurred by a lack of paid sick time also has clear harms to individuals' health: lost income "worsens mental health, aggravates chronic health conditions, and results in academic disruption for children."<sup>21</sup> The data is clear that workers suffer when they cannot take the time off they need from work to care for their health and the health of their families.

Furthermore, the benefits of paid sick time that businesses realize outweigh the associated costs. On average, paid sick time is estimated to cost employers an additional gross 2.7 cents per hour per employee.<sup>22</sup> However, a twenty year meta-analysis published by the American Journal of Industrial Medicine in 2022 found that paid sick time also benefits employers in many ways, primarily through reduced "presenteeism" (lost employee productive time due to health issues), improved employee job satisfaction, improved employee retention and ease of hiring, and improved employee health and safety.<sup>23</sup> In fact, the Journal of Occupational and Environmental Medicine found that just one of these benefits, reduced presenteeism, can outweigh the employer costs of employee absences from paid sick time.<sup>24</sup>

Comprehensive paid sick time also has community-level public health benefits. Without paid sick time, people are 1.5 times more likely to go to

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19. See generally LeaAnne DeRigne et al., *Working U.S. Adults without Paid Sick Leave Report More Worries about Finances*, 45 J. SOC. SERV. RSCH. 570 (2019), <https://www.tandfonline.com/doi/abs/10.1080/01488376.2018.1481176> [<https://web.archive.org/web/20240213202622/https://www.tandfonline.com/doi/abs/10.1080/01488376.2018.1481176>]; see also Ann Huff Stevens, *The Human Downsides of Job Loss in Good Times and Bad*, SCHOLARS STRATEGY NETWORK (June 5, 2018), <https://scholars.org/contribution/human-downsides-job-loss-good-times-and-bad> [<https://perma.cc/XWW6-PR6D>].

20. See Heather D. Hill, *Paid Sick Leave and Job Stability*, 40 WORK & OCCUPATIONS 143, 166 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3825168/> [<https://perma.cc/JM67-T95Q>].

21. See *Sick Without a Safety Net*, A BETTER BALANCE (May 2023), <https://www.abetterbalance.org/sick-without-a-safety-net/> [<https://perma.cc/Z42X-FZGV>] (citing Ann Huff Stevens, *The Human Downsides of Job Loss in Good Times and Bad*, SCHOLARS STRATEGY NETWORK (June 5, 2018), <https://scholars.org/contribution/human-downsides-job-loss-good-times-and-bad> [<https://perma.cc/XWW6-PR6D>]).

22. See Catherine Maclean et al., *Mandated Sick Pay: Coverage, Utilization, and Welfare Effects* 18 (Washington Ctr. for Equitable Growth, Working Paper, 2021), <https://equitablegrowth.org/working-papers/mandated-sick-pay-coverage-utilization-and-welfare-effects/> [<https://perma.cc/CJ38-GL99>].

23. See Candice Vander Weerd et al., *Is Paid Sick Leave Bad for Business? A Systematic Review*, 66 AM. J. INDUS. MED. 429, 438 (2023).

24. See NAT'L P'SHIP FOR WOMEN & FAMS., *PAID SICK DAYS ARE GOOD FOR BUSINESS* (2023), <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-good-for-business-and-workers.pdf> [<https://perma.cc/S45B-QKZG>].

work with a contagious illness like the flu.<sup>25</sup> In contrast, access to paid sick time reduces the spread of contagion, and workers are more likely to get vaccinated for diseases like the flu when they can utilize paid sick time to do so.<sup>26</sup> The benefits are particularly stark for essential service-sector workers; while workers in these industries are among the least likely to have access to sick time, they have some of the highest rates of contact with the public. Only 45% of retail and fast-food workers have paid sick time,<sup>27</sup> and only 28% of restaurant workers report having access to paid sick time.<sup>28</sup> Lastly, paid sick time reduces on-the-job injuries by 28%, further improving the public health.<sup>29</sup>

The above data shows that the urgent case for paid sick time is not theoretical, yet the federal government has failed to guarantee this critical benefit to all workers. The dearth of action at the federal level has spurred many local and state governments to fill this gap for workers.<sup>30</sup> Over the past two decades, 34 jurisdictions have passed paid sick time laws that remain on the books today.<sup>31</sup> Though the COVID-19 pandemic finally pushed the federal government to act by passing the Families First Coronavirus Response Act, this legislation was temporary.<sup>32</sup>

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25. See TOM SMITH & JIBUM KIM, PAID SICK DAYS: ATTITUDES AND EXPERIENCES 22 (2010), <https://nationalpartnership.org/wp-content/uploads/2023/02/paid-sick-days-attitudes-and-experiences.pdf> [<https://perma.cc/X2MN-HMNT>]; see also Supriya Kumar et al., *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-like Illness during the 2009 H1N1 Pandemic*, 102 AM. J. PUB. HEALTH 134, 139 (2012) (finding that widespread access to paid sick leave would have prevented up to 5 million cases of influenza during the H1N1 pandemic).

26. See Yusheng Zhai et al., *Paid Sick Leave Benefits, Influenza Vaccination, and Taking Sick Days Due to Influenza-like Illness among U.S. Workers*, 36 VACCINE 7316, 7320 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0264410X18314051?via%3Dihub> [<https://perma.cc/Y8Y2-TW8L>].

27. See DANIEL SCHNEIDER & KRISTEN HARKNETT, THE SHIFT PROJECT, ESSENTIAL AND VULNERABLE: SERVICE-SECTOR WORKERS AND PAID SICK LEAVE (2020), [https://shift.hks.harvard.edu/files/2020/04/Essential\\_and\\_Vulnerable\\_Service\\_Sector\\_Workers\\_and\\_Paid\\_Sick\\_Leave.pdf](https://shift.hks.harvard.edu/files/2020/04/Essential_and_Vulnerable_Service_Sector_Workers_and_Paid_Sick_Leave.pdf) [<https://perma.cc/4T5D-JN97>].

28. See THE IMPACT OF COVID-19 ON RESTAURANT WORKERS ACROSS AMERICA, NAT'L RESTAURANT ASS'N. 2 (2022), <https://restaurant.org/NRA/media/Downloads/PDFs/advocacy/2022/COVID-19-Restaurant-Impact-Survey-January-2022.pdf> [<https://perma.cc/M4ZW-NE87>] (finding that 72% of surveyed restaurant workers reported having no access to paid sick leave).

29. See Abay Asfaw et al., *Paid Sick Leave and Nonfatal Occupational Injuries*, 102 AM. J. OF PUB. HEALTH e59, e62 (2012).

30. See generally *infra* Part I.

31. See generally *infra* Part I; see also *Interactive Overview of Paid Sick Time Laws in the United States*, A BETTER BALANCE, <https://www.abetterbalance.org/paid-sick-time-laws/> [<https://perma.cc/WB7J-BGBU>] (last visited Apr. 2, 2024).

32. See *Temporary Rule: Paid Leave under the Families First Coronavirus Response Act*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/ffcr> [<https://perma.cc/R28Z-AG33>] (last visited Apr. 11, 2024).

It is at the state and local level that progress has continued to grow and serve American workers and their families, with local government innovations leading the way. Part I of this Article explores the history of the paid sick time movement in the United States, highlighting the important role of local governments whose innovative solutions have become the basis for policy-making elsewhere. Part II outlines one of the major drawbacks and oppositional responses to local paid sick time policies: state-level preemption. Lastly, Part III describes the federal and local response to COVID-19 in the context of paid sick time, with a focus on how the temporary federal response was bolstered by both new and pre-existing local laws. The COVID-19 pandemic clearly demonstrated this country's desperate need for a nationwide right to guaranteed paid sick time. In the absence of such federal action, the pandemic underscored the continued importance of local action to support workers' need for guaranteed paid sick time, while also showing how the limitations of local and state victories highlight the need for more robust federal protections.

## **I. THE MOVEMENT FOR PAID SICK TIME HAS BEEN GROUNDED IN LOCAL INNOVATION AND PROGRESS**

### **A. History of the Paid Sick Time Movement and Its Rapid Growth**

The first paid sick time law in the United States was passed by ballot initiative in San Francisco in November 2006.<sup>33</sup> Until then, paid sick time had been considered a supplemental benefit offered to workers by their employers, rather than a right that benefitted workers, their families, and public health. A robust, diverse coalition developed in San Francisco to go to the ballot and challenge this gap in the law.<sup>34</sup> In addition to arguing to voters that every worker in the city deserves paid sick time, the ballot campaign also emphasized that paid sick time to care for oneself or one's family would benefit the public by reducing communicable disease and contagion in both workplaces and schools.<sup>35</sup> San Francisco's police power — the locality's authority to regulate on a matter that protects the health, safety and welfare of the population — enabled passage of the paid sick time

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33. See *Paid Sick Leave Ordinance*, CITY & CNTY. OF S.F., <https://sf.gov/information/paid-sick-leave-ordinance> [<https://perma.cc/2SRC-ELAX>] (last updated Oct. 30, 2023).

34. See Christian Zappone, *Paid Sick Leave May Be Next Big Cause*, CNN MONEY (Nov. 17, 2006, 3:24 PM), [https://money.cnn.com/2006/11/17/news/economy/prop\\_f/index.html](https://money.cnn.com/2006/11/17/news/economy/prop_f/index.html) [<https://perma.cc/9QFY-NCSL>].

35. See *id.*; see also Rachel Dornhelm, *Sick Days for All*, MARKETPLACE (Oct. 5, 2006), <https://www.marketplace.org/2006/10/05/sick-days-all/> [<https://perma.cc/YM45-EJRY>].



law.<sup>36</sup> The initiative passed by more than 20 percentage points, with nearly 61% of voters supporting the paid sick time proposal.<sup>37</sup> Under the paid sick time ordinance, workers in the city have the right to accrue one hour of paid sick time for every 30 hours worked, up to a maximum of 40 hours per year in businesses with fewer than ten employees and up to 72 hours per year in businesses with ten or more employees.<sup>38</sup> As a result, workers in San Francisco have been legally entitled to earn paid sick time for more than 15 years.

The success of the San Francisco ballot initiative sparked a national movement, with worker advocates, researchers, and funders coming together to seed a nationwide coalition to pass paid sick time legislation by ballot or legislation in cities throughout the country. A ballot initiative was soon launched in Milwaukee, led by the membership organization 9to5.<sup>39</sup> Following the success of San Francisco's ballot measure, Milwaukee voters approved the city's paid sick time ordinance in November 2008 by an even greater margin than in San Francisco: nearly 69% of voters approved the paid sick time initiative, while only 31% opposed the measure.<sup>40</sup> After the law passed, however, the Metropolitan Milwaukee Association of Commerce challenged the ballot initiative in state court. One of the key issues in the case was whether or not the ballot language provided a "concise statement of [its] nature," required under Wisconsin law, since the paid sick time initiative required the provision of time off for domestic violence needs (such as relocation or participation in legal proceedings) in addition to health needs.<sup>41</sup> Litigation at every level of the Wisconsin judicial system ultimately resulted in the State Supreme Court remanding the case to the Wisconsin Court of Appeals, which upheld the legality of the initiative and determined

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36. See, e.g., CAL. CONST. art. XI, § 7 ("A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."); Sick Leave Ordinance, S.F., CAL., ADMIN. CODE § 12W.14 ("In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to promote the general welfare."); 56 AM. JUR. 2D *Municipal Corporations, Etc.* § 375 (2024) ("Cities and other local government bodies have broad police powers to enact ordinances to regulate and restrict the activities of its citizens in the interest of their health, safety, and welfare.").

37. *November 7, 2006 Final Election Results*, CITY & CNTY. OF S.F., <https://sfelections.org/results/20061107w/index.html> [https://perma.cc/37G8-65TB] ("Measure F" under "Election Summary" tab) (last visited Nov. 20, 2023).

38. See Sick Leave Ordinance, S.F., CAL., ADMIN. CODE § 12W.3.

39. See Georgia Pabst, *Paid Sick Leave Referendum Wins Big*, MILWAUKEE J. SENTINEL (Nov. 4, 2008), <https://archive.jsonline.com/news/statepolitics/33874059.html> [https://perma.cc/S3L9-LNJ5].

40. *City of Milwaukee Fall General Election Results*, CITY OF MILWAUKEE (Nov. 10, 2008), <https://city.milwaukee.gov/200824877/November42008.htm> [https://perma.cc/5EBF-QKAA] ("Municipal Referendum" results).

41. *Metro. Milwaukee Ass'n of Com., Inc. v. City of Milwaukee*, 798 N.W.2d 287, 295 (Wis. Ct. App. 2011).

that the paid sick time ballot question was proper.<sup>42</sup> Nearly three years after being approved by Milwaukee voters, the ballot initiative was finally set to take effect. However, the Wisconsin Legislature and the State's Governor at the time, Scott Walker, quickly responded to nullify the Milwaukee sick time law. The Governor signed a law preempting localities from enacting paid sick time legislation.<sup>43</sup> The Milwaukee sick time law, supported by nearly 69% of the city's voters, therefore never went into effect.

In March 2008, during the lead up to the Milwaukee vote, Washington, D.C. passed its own paid sick time law through the D.C. Council.<sup>44</sup> The District's law took effect in November of that year.<sup>45</sup> Following these three local advances in San Francisco, Washington, D.C., and Milwaukee, the Great Recession of 2008 temporarily halted the early progress on this issue. As the United States began to recover from the recession, however, a large number of local laws were passed between 2011 and 2016: Seattle (Washington) in 2011;<sup>46</sup> Portland and Eugene (Oregon) and New York City in 2013;<sup>47</sup> Oakland (California) in 2014;<sup>48</sup> Emeryville (California), Montgomery County (Maryland), Philadelphia and Pittsburgh (Pennsylvania), and Tacoma (Washington) in 2015;<sup>49</sup> Chicago and Cook County (Illinois), Minneapolis and Saint Paul (Minnesota), and four additional cities in California in 2016.<sup>50</sup> Between 2013 and 2016, 13 New Jersey municipalities also passed local paid sick time ordinances.<sup>51</sup> In the

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42. *Id.*

43. WIS. STAT. ANN. § 103.10(1m) (West 2016).

44. D.C. CODE ANN. § 32-531.01 (West 2022).

45. *Id.*

46. SEATTLE, WASH., MUN. CODE §§ 14.16.010 *et seq.* (2020).

47. PORTLAND, OR., CODE §§ 9.01.010 *et seq.* (2014) (now preempted); EUGENE, OR., CODE §§ 4.570 *et seq.* (2014) (now preempted); N.Y.C. ADMIN. CODE §§ 20-911 *et seq.* (2014).

48. OAKLAND, CAL., CODE §§ 5.92.010 *et seq.* (2014).

49. EMERYVILLE, CAL., CODE §§ 5-37.01 *et seq.* (2015); MONTGOMERY, ALA., CNTY. CODE ch. 27, art. XIII (2015); PHILA., PA., CODE §§ 9-4101 *et seq.* (2015); PITTSBURGH, PA., CODE §§ 626 *et seq.* (2015); TACOMA, WASH., MUN. CODE §§ 18.10.010 *et seq.* (2015).

50. L.A., CAL., CODE §§ 187.00 *et seq.* and §§ 188.00 *et seq.* (2016); SAN DIEGO, CAL., MUN. CODE §§ 39.0101 *et seq.* (2016); SANTA MONICA, CAL., CODE §§ 4.62 *et seq.* (2016); BERKELEY, CAL., MUN. CODE §§ 13.100.010 *et seq.* (2016); CHI., ILL., MUN. CODE §§ 1-24-010 *et seq.* (2016); MINNEAPOLIS, MINN., CODE §§ 40.200 *et seq.* (2016); SAINT PAUL, MINN., LEG. CODE §§ 233.01 *et seq.* (2016); COOK COUNTY, ILL., CODE §§ 42-1 *et seq.* (2017). In late 2023, Cook County, IL converted its paid sick time law to a paid time off law to mirror the statewide paid time off law, also passed in late 2023. *Cook County Passed Paid Leave Ordinance, Replaces Earned Sick Leave*, COOK CNTY. GOV'T (Dec. 14, 2023, 12:00 PM), <https://www.cookcountyil.gov/news/cook-county-passes-paid-leave-ordinance-replaces-earned-sick-leave> [https://perma.cc/K87L-HFDL].

51. *See Local Paid Sick Time Laws That Are No Longer in Effect, A BETTER BALANCE* (Nov. 5, 2018), <https://www.abetterbalance.org/resources/new-jersey-local-paid-sick-time-laws-now-preempted/> [https://perma.cc/U52W-RYFF].

years since, two more localities in Minnesota have passed paid sick time laws — Duluth in 2018 and Bloomington in 2022.<sup>52</sup> Allegheny County (Pennsylvania) also joined Philadelphia and Pittsburgh by passing a paid sick time requirement that took effect in 2022.<sup>53</sup> In 2018 and 2019, three Texas cities — Austin, Dallas, and San Antonio — passed paid sick time laws that, as discussed in the next section, were ultimately struck down.<sup>54</sup>

With the local movement for paid sick time gaining rapid momentum, paid leave advocates also began to win victories at the state level. In 2011, Connecticut became the first state in the country to pass a paid sick time law, which applied to certain service workers.<sup>55</sup> In the decade that followed passage of Connecticut's limited statewide law, more universal and comprehensive paid sick time laws were passed in other states. Massachusetts voters approved a paid sick time ballot initiative in 2014,<sup>56</sup> with California passing statewide legislation that same year and Oregon a year later.<sup>57</sup> In 2016, Vermont passed a statewide paid sick time law while voters in Washington State and Arizona approved statewide ballot initiatives.<sup>58</sup> Rhode Island passed its paid sick time law in 2017, and additional state laws were passed in Maryland, New Jersey, and Michigan in 2018.<sup>59</sup> As the COVID-19 pandemic gripped the nation and highlighted the lack of federal paid sick time, several more states rapidly joined the list of jurisdictions with paid sick time: New York and Colorado in 2020,<sup>60</sup> New Mexico in 2021,<sup>61</sup> and Minnesota in 2023.<sup>62</sup> Three states have also passed

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52. BLOOMINGTON, MINN., CODE OF ORDINANCES §§ 23.01 *et seq.* (2022); DULUTH, MINN., CITY CODE §§ 29E-1 *et seq.* (2018). Duluth has since repealed its ordinance in late 2023, after Minnesota passed a state-wide paid sick time law. *About Earned Sick and Safe Time*, CITY OF DULUTH, MINN., <https://duluthmn.gov/city-clerk/earned-sick-safe-time/about-earned-sick-safe-time/> [<https://perma.cc/J4PU-LC39>] (last visited Mar. 9, 2024).

53. ALLEGHENY, PA., CNTY. HEALTH DEP'T RULES & REGULS., art. XXIV, §§ 2401 *et seq.* (2022).

54. *See infra* notes 121–31; AUSTIN, TEX., CODE §§ 4-19-1 *et seq.* (2018) (now preempted); DALL., TEX., CODE ch. 19A §§ 20-1 *et seq.* (2019) (now preempted); SAN ANTONIO, TEX., CODE §§ 15-269 *et seq.* (2018) (now preempted).

55. CONN. GEN. STAT. §§ 31-57r *et seq.* (2020).

56. MASS. GEN. LAWS ch. 149, §§ 148C, 148D (2023).

57. CAL. LAB. CODE §§ 246 *et seq.* (2014); OR. REV. STAT. §§ 653.601 *et seq.*, 659A.885 (2015).

58. VT. STAT. ANN. tit. 21, §§ 481 *et seq.* (2016); WASH. REV. CODE §§ 49.46.005 *et seq.* (2016); ARIZ. REV. STAT. §§ 23-364, 23-371 *et seq.* (2016).

59. 28 R.I. GEN. LAWS §§ 28-57-2 *et seq.* (2017); MD. CODE LAB. & EMPL. §§ 3-1301 *et seq.* (2018); N.J. STAT. ANN. §§ 34:11D-1 *et seq.* (West 2018); MICH. COMP. LAWS §§ 408.961 *et seq.* (2018).

60. N.Y. LAB. LAW §§ 196-b (2021); COLO. REV. STAT. ANN. §§ 8-13.3-401 *et seq.* (West 2019).

61. N.M. STAT. ANN. §§ 50-17-1 *et seq.* (2019).

62. MINN. STAT. §§ 181.9445 *et seq.* (2023).

paid time off laws that allow paid leave for any purpose, including health needs: Nevada<sup>63</sup> and Maine<sup>64</sup> in 2019, and Illinois in 2023.<sup>65</sup>

### **B. Local Lawmaking as a Strategy to Build Towards Statewide Rights**

Before achieving a statewide paid sick time law, advocates often began by strategically passing laws at the local level first, usually in the relevant state's major population centers.<sup>66</sup> This strategy was successful around the country for several reasons. First, the successful implementation of local laws, without harming business or the local economy, helped to boost the case for a statewide law and demonstrate the positive benefits of the policy. Second, in states with multiple local laws, state legislatures experienced pressure to establish a uniform, minimum, statewide right to paid sick time to better support businesses operating in different parts of the state. Third, local governments typically have more limited enforcement resources — and may not even have a labor department or agency familiar with employment issues — which gave advocates further grounds to call for a statewide floor that could be enforced more rigorously.

Seven states — California, Maryland, Minnesota, New Jersey, New York, Oregon, and Washington State — passed a statewide right to paid sick time after local governments in that state had already acted on the issue.<sup>67</sup> With 13 local governments having first passed paid sick time laws, New Jersey is an especially prominent example of this strategy; the local ordinances were successfully implemented prior to passage of the statewide statute and gave weight to calls for statewide consistency. This strategy was also recently successful in Minnesota, where four local laws had passed prior to achieving statewide protections.<sup>68</sup>

In states where local paid sick time ordinances were passed before a statewide statute, advocates have faced questions from the Legislature about whether to preempt or maintain the local laws. For example, the New Jersey Legislature preempted the 13 local ordinances as part of the statewide statute.<sup>69</sup> Several other states preempted local paid sick time but accounted for the pre-existing local laws, either by grandfathering them in and allowing them to stay in effect, or by providing special rules in the state law that

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63. NEV. REV. STAT. § 608.0197 (2019).

64. ME. REV. STAT. ANN. tit. 26 § 637 (2019).

65. 820 ILL. COMP. STAT. 192/20 (2023).

66. *See supra* Section I.A.

67. *See supra* Section I.A.

68. *See supra* Section I.A.

69. N.J. STAT. ANN. § 34:11D-8 (2018).

applied to the local government.<sup>70</sup> To illustrate: Oregon's paid sick time law preempts local laws but includes special provisions that effectively only apply to employers in Portland, since Portland's earlier law was more comprehensive than the state law for employees located at small employers.<sup>71</sup> Maryland's paid sick time law also preempted local laws but grandfathered in Montgomery County's ordinance, which remains in effect.<sup>72</sup> Similarly, New York State's paid sick time law preempts local ordinances, except in cities with a population of one million or more; this provision effectively grandfathered in New York City's earlier law.<sup>73</sup>

However, not all states with paid sick time laws have preempted local ordinances. For example, California's statewide law<sup>74</sup> coexists with seven local ordinances and Washington State's law<sup>75</sup> coexists with two local laws. Most recently, Minnesota established a statewide right to paid sick time but did not preempt the local laws in Minneapolis, Saint Paul, Duluth, and Bloomington; and other localities can build on the state law in the future.<sup>76</sup>

### C. Local Paid Sick Time Laws as a Source of Innovation for the Movement

Since the first paid sick time law was adopted in San Francisco in 2006, local ordinances have become prime sources of innovation that shape the field and create momentum and pressure for subsequent statewide laws. For example, Los Angeles' 2016 paid sick time law became the first sick leave law in the country to define family in a manner that includes extended relatives and loved ones who may not be related to the worker by blood or marriage (for example, a fiancé or significant other, or a best friend who is like a sibling).<sup>77</sup> Los Angeles' law entitled workers to use their sick time to care for specific family members and "any individual related by blood or affinity whose close association with the employee is the equivalent of a

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70. Compare MD. CODE ANN., LAB. & EMPL. § 3-1302(d) (2018) (grandfathering in Montgomery County's ordinance under the state law's requirement), with OR. REV. STAT. § 653.606(13) (2015) (providing special rules regarding cities with a population exceeding 500,000, which only applies to Portland under current local government populations).

71. OR. REV. STAT. § 653.606(13) (2015). As noted in the prior footnote, Portland is the only local government with a population of more than 500,000 in the state.

72. MD. CODE ANN., LAB. & EMPL. § 3-1302(d) (2018).

73. N.Y. LAB. LAW § 196-b(1) (2021).

74. See *supra* Section I.A.

75. See *supra* Section I.A.

76. *Id.* Following passage of Minnesota's state-wide paid sick time law, Duluth repealed their local ordinance; the other local paid sick time laws in Minnesota remain in effect. See *supra* note 52 and accompanying text.

77. L.A., CAL., CODE § 187.04(G) (2016).

family relationship.”<sup>78</sup> Later that year, Chicago and Cook County (Illinois) followed suit by covering similar relationships, as did Saint Paul (Minnesota).<sup>79</sup> Arizona’s successful statewide paid sick time ballot initiative also included this family definition,<sup>80</sup> and together with local legislative action, helped to propel the movement for legislatures to embrace more inclusive family member definitions. Since passage of Los Angeles’ paid sick time law, more than a dozen state and local laws across the country have included similar family definitions that recognize extended relatives and other loved ones who may lack a legal or biological relationship.<sup>81</sup> In fact, three of the most recent states to enact statewide paid sick time laws — Colorado, Minnesota, and New Mexico — have used a similar family member definition to include extended relatives and other loved ones.<sup>82</sup> The local advances on this topic have even expanded beyond paid sick time, as seven state paid family and medical leave laws now use a similarly inclusive family definition to ensure workers can take extended paid leave to care for a seriously ill loved one.<sup>83</sup>

Local paid sick time laws have also expanded the acceptable reasons for using sick time. For example, bereavement leave was first included as a covered purpose for taking paid sick time in the local paid sick leave law in Tacoma (Washington) in 2015.<sup>84</sup> At the state level, Oregon’s paid sick time

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78. *Id.*

79. CHI., ILL., CODE §1-24-010 (2016); COOK COUNTY, ILL., CODE § 42-2 (2016) (since converted into a general paid time off law for any purposes); SAINT PAUL, MINN., CODE § 233.02 (2016).

80. ARIZ. REV. STAT. § 23-371(H)(5) (2016).

81. N.Y.C. ADMIN. CODE § 20-912 (2015); L.A., CAL. CODE § 187.04(G) (2016); CHI., ILL., CODE §1-24-010 (2016); COOK COUNTY, ILL., CODE § 42-2 (2016) (since converted into a general paid time off law for any purposes); ARIZ. REV. STAT. § 23-371(H)(5) (2016), N.J. STAT. ANN. § 34:11D-1 (2018); SAINT PAUL, MINN., CODE § 233.02 (2016), DULUTH, MINN., CITY CODE § 29E-2 (2018); MINN. STAT. § 181.9445(7) (2023); N.M. STAT. ANN. § 50-17-2(G) (2021); COLO. REV. STAT. ANN. § 8-13.3-402(5)–(6); R.I. GEN. LAWS § 28-57-3(1), (9).

82. N.M. STAT. ANN. § 50-17-2(G) (2021); COLO. REV. STAT. ANN. § 8-13.3-402(6)(C) (2020); MINN. STAT. § 181.9445(7) (2023); BLOOMINGTON, MINN., CODE OF ORDINANCES § 23.05, *amended by* Ordinance No. 2023-24 (2023). Note as well that California’s statewide paid sick time law and numerous local laws allow workers to designate one additional individual, beyond enumerated family relationships, for whom the worker can use sick leave. CAL. LAB. CODE § 245.5(c) (2016); S.F., CAL., CODE § 12W.4(a); OAKLAND, CAL., CODE § 5.92.030(B)(1) (2015); EMERYVILLE, CAL., CODE § 5-37.03(c)(1) (2015); BERKELEY, CAL., CODE § 13.100.040(B)(2)–(3) (2016).

83. *The Importance of an Inclusive, Realistic Family Definition In Paid Family and Medical Leave and Paid Sick Time Policies*, A BETTER BALANCE (Oct. 5, 2023), <https://www.abetterbalance.org/resources/fact-sheet-importance-of-broad-family-definitions-for-paid-leave/> [<https://perma.cc/5CWE-2RYB>] (the states that employ the inclusive “family” definition are Connecticut, Colorado, Maine, Minnesota, New Jersey, Oregon, and Washington State).

84. TACOMA, WASH., CODE § 18.10.030(C)(8) (2015). Bloomington, Minnesota also included bereavement leave in their local ordinance in 2022, though they removed it as a

law was the only statewide law to include bereavement leave until 2023,<sup>85</sup> when an expansion of Colorado’s paid sick time law brought it in line with Oregon’s protections following a family member’s death.<sup>86</sup> Additionally, local paid sick time laws in the Minnesota cities of Bloomington, Minneapolis, and Saint Paul entitle workers to use their sick time to care for a loved one whose school or place of care is “closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.”<sup>87</sup> Following these local ordinances, Minnesota’s subsequent statewide law, passed in 2023, allows workers to use their sick time if their place of business or a family member’s school or place of care is closed due to weather.<sup>88</sup> Buoyed by local examples, Colorado’s 2023 expansion of its statewide law also allows time off to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, heating, or water, or other unexpected occurrences or events.<sup>89</sup> Colorado even went a step further, allowing use of paid sick time to evacuate one’s place of residence for those same reasons.<sup>90</sup>

Another covered purpose that originated with local innovation is the coverage of so-called “safe leave” purposes. While any illness or injury related to domestic violence or sexual assault would be covered automatically under general paid sick time definitions, there are other needs connected to domestic violence and sexual assault that may not be covered without explicit, additional language. Recognizing this gap, many paid sick time laws explicitly cover “safe leave” purposes, such as time off to obtain a protective order, relocate or secure safe housing, or seek related social services.<sup>91</sup> The country’s first paid sick time law in San Francisco did not include such safe time purposes, but was amended a decade later to cover domestic violence purposes.<sup>92</sup> However, the subsequent two paid sick time

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covered purpose to conform with the statewide law in 2023. BLOOMINGTON, MINN., CODE OF ORDINANCES § 23.07(b)(2) (2022); *Chapter 23: Earned Sick and Safe Leave*, BLOOMINGTON, MINN. GOV’T (May 31, 2023, 10:08 AM), <https://www.bloomingtonmn.gov/sites/default/files/2022-12/ESSL-ordinance.pdf> [<https://perma.cc/B3RX-WHFU>] (showing previous version of amendment).

85. OR. REV. STAT. § 653.616(3) (citing to OR. REV. STAT. § 659A.159) (2023).

86. COLO. REV. STAT. ANN. § 8-13.3-404(1)(b) (2021).

87. MINNEAPOLIS, MINN., CODE § 40.220(b)(6) (2018); SAINT PAUL, MINN., CODE § 233.04(b)(6) (2022); BLOOMINGTON, MINN., CODE OF ORDINANCES § 23.07(b)(4) (2022).

88. MINN. STAT. § 181.9447(4) (2023).

89. COLO. REV. STAT. ANN. § 8-13.3-404(1)(e) (2021).

90. *Id.* at § 8-13.3-404(1)(c).

91. *See Paid Safe Leave, A BETTER BALANCE* (Oct. 13, 2023), <https://www.abetterbalance.org/resources/paid-safe-time-factsheet/> [<https://perma.cc/M7QM-C27Y>].

92. In 2016, San Francisco voters added domestic violence as a covered purpose for using paid sick time under local law through Proposition E. S.F., CAL., ADMIN. CODE § 12W.

laws, Milwaukee's 2008 ballot initiative and Washington, D.C.'s 2008 legislation, both entitled workers to use paid sick time related to domestic or sexual violence.<sup>93</sup> The paid sick time law passed in 2011 in Seattle (Washington) also included domestic violence purposes,<sup>94</sup> as did the law in Portland (Oregon) in 2012.<sup>95</sup> As more state paid sick time laws were passed in jurisdictions like Washington State, Arizona, Oregon, Rhode Island, and New Jersey, they built on the local innovation of covered purposes and included domestic and sexual violence needs in the definition of covered paid sick time.<sup>96</sup> Because of these local-level expansions of the meaning of paid sick time, "safe leave" is now a norm in paid sick time laws; of the paid sick time laws in effect in the United States, 15 states, 14 cities, three counties, and Washington, D.C. have passed paid sick time laws that include paid safe leave.<sup>97</sup>

#### **D. Key Stakeholders and Players in the Paid Sick Time Movement and the Tools That Have Advanced the Cause**

Given the implications of paid sick time policies on workers' rights, gender equity, LGBTQ rights, racial justice, disability justice, economic justice, child and elder care, and public health, the paid sick time movement inspired an intersectional coalition of advocates. The country's first paid sick time initiative in San Francisco exemplified the cross-cutting nature of paid sick time, as the coalition included organized labor, youth immigrant worker advocates, workplace rights proponents, and child care advocates.<sup>98</sup>

Soon after the passage of San Francisco's initiative, a summit planned by A Better Balance, The Barnard Center for Research on Women, the Center for WorkLife Law at the University of California at Hastings, and the Barnard College Center for Toddler Development was held in New York City to discuss work-family issues.<sup>99</sup> Fifty participants representing labor rights advocates, business leaders, philanthropic leaders, and elected

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93. See *City of Milwaukee Fall General Election Results*, *supra* note 40; D.C. CODE § 32–531.02(b)(4) (2008).

94. SEATTLE, WASH., MUN. CODE § 14.16.030(A)(2)(d) (2011).

95. PORTLAND, OR., CODE § 9.01.040(B)(2) (2012) (now preempted).

96. WASH. REV. CODE § 49.46.210(1)(c) (2016); ARIZ. REV. STAT. § 23-373(A)(4) (2017); OR. REV. STAT. § 653.616(4) (citing to OR. REV. STAT. § 659A.272) (2023); R.I. GEN. LAWS § 28-57-6(a)(4) (2022); N.J. STAT. ANN. § 34:11D-3(a)(3) (2018).

97. See *supra* note 91 and accompanying text.

98. Christian Zappone, *Paid Sick Leave May Be Next Big Cause*, CNN MONEY (Nov. 17, 2006, 3:24 PM), [https://money.cnn.com/2006/11/17/news/economy/prop\\_f/index.htm](https://money.cnn.com/2006/11/17/news/economy/prop_f/index.htm) [<https://perma.cc/42XK-EP9E>].

99. See BARNARD CTR. FOR RSCH. ON WOMEN, THE WORK-FAMILY DILEMMA: POLICY SOLUTIONS FOR ALL NEW YORKERS 2 (2007), [https://bcrw.barnard.edu/wp-content/nfs/reports/NFS3-Work\\_Family\\_Dilemma.pdf](https://bcrw.barnard.edu/wp-content/nfs/reports/NFS3-Work_Family_Dilemma.pdf) [<https://perma.cc/J6WQ-LSAY>].



officials came together; the resulting report made the case for paid sick time, especially for women, parents, and low-income individuals, and helped to fuel the nascent movement.<sup>100</sup>

In the years that followed, advocates from racial, gender, disability, economic, and LGBTQ justice organizations became increasingly involved in the movement, recognizing the disproportionate impact on workers of color, women, low-income workers, disabled individuals, and LGBTQ families.<sup>101</sup> Although coalition structures have varied around the country, unions have also played a critical role in many state and local efforts and leveraged their memberships and political connections to help advance the issue.<sup>102</sup> It has been crucial, however, that membership-groups and working individuals themselves have played a lead role, especially those who are most affected by the lack of paid sick time in a particular city or state.<sup>103</sup>

As a movement that grew out of local organizing and lawmaking, it is important to recognize that the smaller scale of certain jurisdictions can play a critical role. Paid sick time campaigns were able to build on past workplace justice campaigns and preexisting relationships among a locality's stakeholders. In many local governments, there is also increased access to local lawmakers, which can sometimes reduce barriers for paid sick time advocates to make their case and present unique opportunities to reassure local lawmakers that the ordinances would be effective. Local governments tend to have the most public trust according to polls and surveys concerning local, state, and federal government, and can often be more physically

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100. *Id.*

101. *See, e.g.*, National Sign-On Letter in Support of the Healthy Families Act to Members of Congress (May 24, 2021), <https://nationalpartnership.org/wp-content/uploads/2023/02/hfa-coalition-sign-on-letter.pdf> [<https://perma.cc/K4DV-8QVW>] (last visited Feb. 19, 2024).

102. *See, e.g.*, *Paid Sick Days*, AFL-CIO, <https://aflcio.org/what-unions-do/empower-workers/paid-sick-days> [<https://perma.cc/4GVL-MUE7>] (last visited Feb. 19, 2024); Press Release, AFL-CIO, NYC CLC President Alvarez on Announced Push to Expand Earned Sick Time Law (Jan. 17, 2014), <https://www.nycclc.org/press-release/2014-01/nyc-clc-president-alvarez-announced-push-expand-earned-sick-time-law> [<https://perma.cc/2YSX-QB9G>]; David Grove, *Happy New Year: Washington State Gets Raise, Paid Sick Leave*, THE STAND (Jan. 2, 2018), <https://www.thestand.org/2018/01/washington-gets-a-raise-paid-sick-leave/> [<https://perma.cc/9ABZ-CNYL>].

103. *See, e.g.*, Kathryn Brown, '*Paid Sick Time Act*' Supporters March in NYC, MAKE THE ROAD N.Y. (Oct. 1, 2009), <https://maketheroadny.org/paid-sick-time-act-supporters-march-in-nyc/> [<https://perma.cc/YDE9-CYQT>]; A BETTER BALANCE, SAVE FAMILIES FIRST: WORKER VOICES & THE NEED FOR ACTION (2020), <https://www.abetterbalance.org/wp-content/uploads/2021/01/Save-Families-First.pdf> [<https://perma.cc/Z4ZN-AZ98>]; FAMILY VALUES @ WORK, SICK AND FIRED: WHY WE NEED EARNED SICK DAYS TO BOOST THE ECONOMY (2011), <https://familyvaluesatwork.org/docs/Sick-and-Fired-Online-Booklet.pdf> [<https://perma.cc/TJ2B-SF25>].

accessible to individuals who would like to advocate for a policy without having to travel to state or federal capitols for wider campaigns.<sup>104</sup>

In addition to the central and essential role of organizing, the paid sick time movement's success was built upon shared tools and learnings across jurisdictions. For example, A Better Balance and the National Partnership for Women and Families have maintained a model paid sick time ordinance shared with policymakers for more than 15 years; this model has repeatedly been updated to incorporate best practices and share lessons learned from implementation and enforcement of the laws already in effect.<sup>105</sup> State advocacy organizations and coalitions have also benefited from national networks, such as Family Values @ Work, to help share lessons and resources across state campaigns working on paid sick time.<sup>106</sup> Researchers and data experts have also played a critically important role by helping to break down the percentage of workers in a jurisdiction without access to paid sick time and the class, gender, industry, and racial disparities connected to those access rates. For example, the Institute for Women's Policy Research often established jurisdiction-specific fact sheets for campaigns regarding paid sick time access rates and disparities.<sup>107</sup> Following passage of paid sick time laws, studies that have analyzed the effects of the policy on workers,

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104. See, e.g., John O'Leary et al., *Improving Trust in State and Local Government: Insights from Data*, DELOITTE INSIGHTS (Sept. 22, 2021), <https://www2.deloitte.com/us/en/insights/industry/public-sector/trust-in-state-local-government.html> [<https://perma.cc/6JFQ-GGCT>].

105. See *Draft Model Legislation: Establishing a Permanent Right to Paid Sick and Safe Time that Includes Additional Leave for a Public Health Emergency*, A BETTER BALANCE (Feb. 16, 2022), <https://www.abetterbalance.org/resources/model-law-establishing-a-permanent-right-to-paid-sick-and-safe-time-that-includes-additional-leave-for-a-public-health-emergency/> [<https://perma.cc/U7KH-D5K9>]; see also A BETTER BALANCE, MODEL EARNED PAID SICK AND SAFE TIME ACT OF 2015 (2015), <https://nationalpartnership.org/wp-content/uploads/2023/02/model-paid-sick-and-safe-days-legislation.pdf> [<https://perma.cc/9Q7T-RZ3U>] (now outdated; additional earlier versions of the Model Earned Paid Sick and Safe Time Act are archived and available from the authors).

106. See *About Us: A Brief History of Family Values @ Work*, FAMILY VALUES @ WORK, <https://familyvaluesatwork.org/about-us/> [<https://perma.cc/L3FC-X3VE>] (last visited Nov. 20, 2023) (noting how Family Values @ Work's network of states has grown from eight to 27 states since being founded in 2003).

107. See, e.g., KEVIN MILLER & CLAUDIA WILLIAMS, INST. FOR WOMEN'S POL'Y RSCH., VALUING GOOD HEALTH IN CONNECTICUT: THE COSTS AND BENEFITS OF PAID SICK DAYS (2010), <https://iwpr.org/valuing-good-health-in-connecticut-the-costs-and-benefits-of-paid-sick-days-2/> [<https://perma.cc/6Q9D-D4NB>]; JESSICA MILLI & DARIA ULBINA, INST. FOR WOMEN'S POL'Y RSCH., ACCESS TO PAID SICK TIME IN LOS ANGELES, CALIFORNIA (2015), <https://iwpr.org/access-to-paid-sick-time-in-los-angeles-california/> [<https://perma.cc/SH83-R9UW>]; CLAUDIA WILLIAMS & BARBARA GAULT, INST. FOR WOMEN'S POL'Y RSCH., PAID SICK DAYS ACCESS IN THE U.S.: DIFFERENCES BY RACE/ETHNICITY, OCCUPATION, EARNINGS, AND WORK SCHEDULE (2014), <https://iwpr.org/wp-content/uploads/2020/11/B328-FINAL-1.pdf> [<https://perma.cc/E9TN-CQHM>].

businesses, and economies have similarly played a key role in reassuring lawmakers that paid sick time policies are successful.<sup>108</sup>

Finally, as reflected by this history, ballot initiatives played an important role in the growth of the paid sick time movement, including many of its earliest wins. Given the popularity of the policy, and as reflected in the outcomes in San Francisco and Milwaukee early in the movement, direct democracy via the ballot remains an important tool.<sup>109</sup> Statewide paid sick time laws were passed as ballot measures by large margins in Massachusetts, Washington, and Arizona, despite the opposition of the legislatures in those states to passing a statewide law.<sup>110</sup> Several states are currently considering paid sick time ballot initiatives.<sup>111</sup> However, ballot initiatives are often an

108. See, e.g., *Paid Sick Leave Is Good for Business*, A BETTER BALANCE (May 21, 2023), <https://www.abetterbalance.org/resources/sickleavebusinesscase/> [https://perma.cc/859T-9UAH]; KEVIN MILLER & SARAH TOWNE, INST. FOR WOMEN'S POL'Y RSCH., SAN FRANCISCO EMPLOYMENT GROWTH REMAINS STRONGER WITH PAID SICK DAYS LAW THAN SURROUNDING COUNTIES 1 (2011), <https://iwpr.org/wp-content/uploads/2021/01/C385.pdf> [https://perma.cc/XUT4-LSVC]; EILEEN APPELBAUM & RUTH MILKMAN, NO BIG DEAL: THE IMPACT OF NEW YORK CITY'S PAID SICK DAYS LAW ON EMPLOYERS 3 (2016), <https://cepr.net/images/stories/reports/nyc-paid-sick-days-2016-09.pdf> [https://perma.cc/SKF4-Y4J6]; YOLANDA BRANCHE, OFF. OF D.C. AUDITOR, AUDIT OF THE ACCRUED SICK AND SAFE LEAVE ACT OF 2008 19 (2013), <https://dcauditor.wpeenginepowered.com/wp-content/uploads/2023/08/DCA092013.pdf> [https://perma.cc/4J7D-MFFB]; THE MAIN STREET ALLIANCE OF WASHINGTON, PAID SICK DAYS AND THE SEATTLE ECONOMY: JOB GROWTH AND BUSINESS FORMATION AT THE 1-YEAR ANNIVERSARY OF SEATTLE'S PAID SICK AND SAFE LEAVE LAW 4 (2013), <https://www.opportunityinstitute.org/wp-content/uploads/PSD-1-Year-Report-Final.pdf> [https://perma.cc/B6TS-KAHW].

109. See *supra* notes 33 & 39 and accompanying text.

110. 2014 *Election Results*, SEC'Y OF THE COMMONWEALTH OF MASS., [https://electionstats.state.ma.us/ballot\\_questions/search/year\\_from:2014/year\\_to:2014/type:is\\_initiative\\_petition](https://electionstats.state.ma.us/ballot_questions/search/year_from:2014/year_to:2014/type:is_initiative_petition) [https://perma.cc/HM97-PSDG] (last visited Nov. 20, 2023) (Proposition 4 results: 59.4% in favor versus 40.6% opposed); 2016 *General Election*, ARIZ. SEC'Y OF STATE, <https://results.arizona.vote/2016/General/n1591/Results-State.html> [https://perma.cc/K2DA-P9B8] (last visited Nov. 20, 2023) (Proposition 206 results: 58.33% versus 41.67% opposed); *Washington Initiative 1433 — Increase Minimum Wage — Results: Approved*, N.Y. TIMES (Aug. 1, 2017, 11:27 AM), <https://www.nytimes.com/elections/2016/results/washington-ballot-measure-1433-increase-minimum-wage> [https://perma.cc/P669-PM9U] (noting that measure 1433 also required paid sick time; approved with 57.4% in favor versus 42.6% opposed).

111. Greg Jaffe, *A Boom of Ballot Initiatives Is Reshaping This State's Democracy*, WASH. POST (Nov. 15, 2023), <https://www.washingtonpost.com/politics/2023/11/15/nebraska-ballot-initiative-paid-sick-leave/> [https://perma.cc/3LLD-2459]; Yereth Rosen, *Alaska Minimum Wage Set to Increase in New Year; Additional Hikes Proposed in Ballot Initiative*, ALASKA BEACON (Nov. 17, 2023), <https://alaskabeacon.com/briefs/alaska-minimum-wage-set-to-increase-in-new-year-additional-hikes-proposed-in-ballot-initiative/> [https://perma.cc/P3NM-8477]; Ed Finkelstein, *Initiative Petition Campaign Launched to Require \$15 an Hour Minimum Wage, Paid Sick Leave for All Missouri Workers*, LAB. TRIB. (May 29, 2023), <https://labortribune.com/initiative-petition-campaign-launched-to-require-15-an-hour-minimum-wage-paid-sick-leave-for-all-missouri-workers/> [https://perma.cc/XWY3-X9NM].

expensive strategy<sup>112</sup> and are not an option in many jurisdictions due to state law requirements.<sup>113</sup> Both the expense and the variation in state law regarding local initiatives prevent ballot measures from being a universal strategy. Where available, however, the intersectional nature of paid sick time has provided ample opportunities for fundraising and coalition support.

## II. PREEMPTION AS A RESPONSE TO LOCAL INNOVATION

The success of the paid sick time movement can be traced back to local organizing and innovation.<sup>114</sup> Following voter approval of paid sick time ballot initiatives in San Francisco in 2006 and Milwaukee in 2008, active organizing soon began in other localities around the country, including the nation's most populous city, New York City.<sup>115</sup> Opponents of these measures quickly took note; paid leave and workplace-related preemption bills began to appear in states around the country, including many states lacking any active, local paid sick time efforts.

At the time of Milwaukee's successful 2008 paid sick time ballot initiative, only one state in the country, Georgia, explicitly preempted local paid sick time requirements.<sup>116</sup> In the decade that followed, the preemption landscape grew significantly. As of 2023, 18 states explicitly preempt local paid sick time requirements without having any affirmative statewide right to paid sick time.<sup>117</sup> An additional seven states have a statewide right to earn

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112. David Brancaccio et al., *The Cost of Getting Citizen-Led Initiatives on the Ballot Has Nearly Doubled Since 2020*, MARKETPLACE (Nov. 7, 2022), <https://www.marketplace.org/2022/11/07/the-cost-of-getting-citizen-led-initiatives-on-the-ballot-has-nearly-doubled-since-2020/> [<https://perma.cc/2499-UWVS>].

113. *Id.*

114. *See supra* Sections I.A–D.

115. *See supra* notes 30 & 39 and accompanying text; Frank Lombardi & Sindhu Sundar, *Paid Sick Leave Fever Catches on in Council as Bill Requiring Employers to Pay Gains Steam*, N.Y. DAILY NEWS, (Oct. 1, 2009), <https://www.nydailynews.com/2009/10/01/paid-sick-leave-fever-catches-on-in-council-as-bill-requiring-employers-to-pay-gains-steam/> [<https://perma.cc/CDQ2-GBAV>].

116. GA. CODE ANN. § 34-4-3.1 (2004); *see also* Jennifer Pomeranz et al., *State Paid Sick Leave and Paid Sick-Leave Preemption Laws across 50 U.S. States, 2009-2020*, AM. J. PREV. MED. (May 2022), <https://pubmed.ncbi.nlm.nih.gov/35459452/> [<https://perma.cc/AJ8A-HZPQ>].

117. ALA. CODE § 11-80-16 (1975); ARK. CODE § 11-4-221 (2017); FLA. STATE. § 218.77 (1989); GA. CODE ANN. § 34-4-3.1 (2004); IND. CODE § 22-2-16-3; IOWA CODE § 331.304(12) (2023); KAN. STAT. ANN. § 12-16, 130 (2013); KY. REV. STAT. ANN. § 65.016 (West 2017); LA. STATE. ANN. § 23:642 (2011); MISS. CODE ANN. § 17-1-51 (2013); MO. REV. STAT. § 290.528 (2018); OHIO REV. CODE ANN. § 4113.85 (West 2017) (upheld in *City of Bexley v. Ohio*, 149 N.E.3d 158 (Ohio Ct. App. 2019); *City of Cleveland v. Ohio*, No. 106688, 2019 WL 413783 (Ohio Ct. App. Jan. 31, 2019)); OKLA. STAT. tit. 40, § 160 (2014); S.C. CODE ANN. § 41-1-25 (2017); TENN. CODE ANN. § 7-51-1802 (2023); WIS. STAT. § 103.12 (2018). In addition to explicit statutory preemption, a Texas appellate court ruled that the State's minimum wage law preempted local paid sick time ordinances, and the Texas Supreme Court

paid sick time or paid time off for any purpose but preempt localities from building on this floor with their own paid sick leave ordinances.<sup>118</sup> This latter type of preemption — where a state establishes a statewide ceiling and preempts local efforts to build upon statewide rights — is more traditional; the rise of states that have preempted local paid sick time without providing any statewide requirements is part of a growing trend of abusive preemption.<sup>119</sup> Professor Richard Briffault has described this as “new preemption”:

Traditionally, preemption consisted of a judicial determination of whether a new local law conflicted with preexisting state law. Classic preemption analysis harmonized the efforts of different levels of government in areas in which both enjoy regulatory authority and determined the degree to which state policies could coexist with local additions or variations. Classic preemption disputes continue to arise, but the real action today is the *new preemption*: sweeping state laws that clearly, intentionally, extensively, and at times punitively bar local efforts to address a host of local problems . . . . New preemption measures frequently displace local action without replacing it with substantive state requirements. Often propelled by trade association and business lobbying, many preemptive laws are aimed not at

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declined to hear an appeal. *See* Tex. Ass’n of Bus. v. City of Austin, 565 S.W.3d 425, 430 (Tex. App. 2018). In 2023, Texas passed into law H.B. 2127, which included explicit preemption of benefits and terms of employment as part of a sweeping preemption law affecting multiple areas of state law. However, in August 2023, a district court judge granted a motion for summary judgment against the preemption law, in a case brought by the city of Houston against the State. *See* Dylan McGuinness, *Austin Judge Rules Texas Preemption Law Unconstitutional, Siding with Houston and Other Cities*, HOUS. CHRON. (Aug. 30, 2023), <https://www.houstonchronicle.com/politics/texas/article/judge-texas-preemption-law-unconstitutional-18338300.php> [<https://web.archive.org/web/20230831041230/https://www.houstonchronicle.com/politics/texas/article/judge-texas-preemption-law-unconstitutional-18338300.php>].

118. ME. REV. STAT. ANN. tit. 26 § 637 (West 2022) (Maine) (provides paid time off that can be used for any purpose, including but not limited to sick leave); *Earned Paid Leave*, STATE OF ME. DEP’T OF LAB., [https://www.maine.gov/labor/labor\\_laws/earnedpaidleave/](https://www.maine.gov/labor/labor_laws/earnedpaidleave/) [<https://perma.cc/KTN4-PHBE>] (last visited Mar. 1, 2024) (select drop down menu under Brief Points About the New Law) (“Employees can use their accrued Earned Paid Leave for any reason such as an emergency, illness, sudden necessity, planned vacation, etc.”); MD. CODE, LAB. & EMP. §3-1302 (West 2018) (Maryland) (grandfathering in existing local paid leave plans not otherwise violating the statute); MICH. COMP. LAWS ANN. §123.1388 (2015) (Michigan); N.J. STAT. ANN. §34:11D-8 (West 2018) (New Jersey); N.Y. LAB. LAW § 196-b(12) (McKinney 2020) (New York) (preempting local paid sick time ordinances except in cities with a population of at least one million people, which is effectively just New York City); OR. REV. STAT. § 653.661 (2023) (Oregon) (the statewide law accounted for a different employer size threshold in Portland to take into account the prior local law that was preempted); 28 R.I. GEN. LAWS, § 28-57-8 (2017) (Rhode Island).

119. *See* Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1996 (2018).

coordinating state and local regulation but at preventing any regulation at all.<sup>120</sup>

The opposition to paid sick time exemplifies the “new preemption” trend that Briffault identifies. As the movement to guarantee affirmative paid sick time took off, opponents have increasingly mobilized to pass new, deregulatory forms of preemption that block local progress on this issue, without including any statewide rights or requirements.

In Wisconsin, Florida, and Texas, state preemption has been used to overturn local paid sick time ordinances on the books and to stop active campaigns seeking to pass local protections. As described in detail above, Milwaukee was the second U.S. city to pass a paid sick time ballot initiative.<sup>121</sup> Despite the clear victory at the polls, Milwaukee’s paid sick time law was immediately challenged in court.<sup>122</sup> When the courts upheld the initiative, the State Legislature and Governor then stepped in to overturn the will of Milwaukee voters and prohibit any other localities from following Milwaukee’s example.<sup>123</sup> Following Wisconsin’s reactive preemption, several other state governments have stepped in to block or overturn successful local paid sick time campaigns.

In Florida, a local campaign to pass paid sick time in 2012 vividly demonstrated the level of corporate pushback on this topic and the use of preemption as a tool to prevent local paid leave protections. In 2012, voters in Orange County, Florida collected more than 50,000 signatures to qualify a paid sick time ballot initiative. By a 4-3 vote in September 2012, the County Commissioners refused to send the proposal to voters, even though the initiative met the County Charter’s required signature collection threshold.<sup>124</sup> As reported by the *Orlando Sentinel*, “text messages exchanged before and during the Orange County Commission meeting to decide the measure’s fate revealed that lobbyists for businesses including Walt Disney World and Olive Garden-parent Darden Restaurants, as well as GOP leadership, had been working to fight the measure behind the scenes, orchestrating much of what ultimately happened.”<sup>125</sup> The text messages from corporate lobbyists and local political figures were deleted by the Orange County Mayor and four County Commissioners, leading to civil

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120. *Id.* at 1997.

121. *See supra* Section I.A.

122. *See supra* Section I.A.

123. WIS. STAT. ANN. § 103.10 (West 2016).

124. *See* Caroline Glenn & Chabeli Carrazana, *When Coronavirus Hit, Sick Workers Were Told to Stay Home. But Years Ago, Florida Blocked Sick Leave Laws*, ORLANDO SENTINEL (Mar. 26, 2020, 5:30 AM), <https://www.orlandosentinel.com/2020/03/26/when-coronavirus-hit-sick-workers-were-told-to-stay-home-but-years-ago-florida-blocked-sick-leave-laws/> [<https://perma.cc/K3QV-EQS5>].

125. *Id.*

finer after the State Attorney found that they violated state open records laws. The County ultimately settled a civil lawsuit from the Citizens for a Greater Orange County, the organization that worked on the ballot initiative, for \$90,000.<sup>126</sup> Several months after the County Commissioners refused to advance the proposed initiative to voters, the State Legislature introduced and passed legislation to preempt local paid sick time measures. The Governor signed the bill into law on June 14, 2013.<sup>127</sup>

By refusing to send the qualified ballot initiative to voters, the County Commission succeeded in delaying local passage of a paid sick time measure until the State Legislature could preempt the issue.<sup>128</sup> Ultimately, a panel of three judges with the Ninth Judicial Circuit Court of Florida ruled that the County Commissioners violated the law, finding that the Orange County Charter required Orange County to itself adopt the ballot proposal or to place it on the next ballot.<sup>129</sup> Since the Board had failed to follow the County's charter with the paid sick time ballot initiative, the Court ordered a vote on the initiative.<sup>130</sup> On August 26, 2014, Orange County voters approved the paid sick time initiative by nearly two-thirds, with 63.94% in favor to 36.06% opposed.<sup>131</sup> The vote was symbolic, however, as the state had

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126. See, e.g., *Orange Leaders Face \$500 Fines in 'Textgate' Scandal*, ORLANDO SENTINEL (Aug. 28, 2013, 4:00 AM), <https://www.orlandosentinel.com/2013/08/28/orange-leaders-face-500-fines-in-textgate-scandal/> [https://perma.cc/D4HK-7UYB]; *Orange Leaders Settle 'Textgate' Pay \$90,000*, ORLANDO SENTINEL (Jan. 13, 2014, 5:00 AM), <https://www.orlandosentinel.com/2014/01/13/orange-leaders-settle-textgate-pay-90000/> [https://perma.cc/C3LU-B467]; *Orange County to Pay Group \$90K over 'Textgate' Scandal*, WFTV (Jan. 13, 2014, 04:59 PM), <https://www.wftv.com/news/local/orange-county-pay-group-90k-over-textgate-scandal/106904657/> [https://perma.cc/4TA4-2YHC].

127. H.R. 655, 168th Gen. Assemb., Reg. Sess. (Fla. 2013).

128. As reported by the Orlando Sentinel, "[o]n the eve of the Orange County Sept. 11 vote, local GOP leader Lew Oliver texted a commissioner that the board only needed to delay the proposal long enough for the Legislature to deliver a 'kill shot.'" *Scott Blocks Paid Sick-Time Vote in Orange, Statewide*, ORLANDO SENTINEL (June 14, 2013, 4:00 AM), <https://www.orlandosentinel.com/2013/06/14/scott-blocks-paid-sick-time-vote-in-orange-statewide/> [https://perma.cc/9AST-YQNP].

129. Note that this decision is unpublished. For a summary of the decision in multiple news outlets at the time, see for example *Judges Order Orange to Put Sick Time on Next Ballot*, ORLANDO SENTINEL (Aug. 6, 2013, 4:03 PM), <https://www.orlandosentinel.com/2013/02/15/judges-order-orange-to-put-sick-time-on-next-ballot/> [https://perma.cc/5MD9-6L8B]; *Panel of Judges Say Sick-Leave Initiative to Go on Next Ballot*, WFTV9 (Feb. 15, 2013, 6:00 PM) <https://www.wftv.com/news/local/panel-judges-say-sick-time-leave-initiative-go-fut/271253774/> [https://perma.cc/LJ9K-H7KE]; Joe Ruble, *Judges Order Sick Leave Initiative on 2014 Ballot*, WDBO (Feb. 15, 2013, 6:00 PM), <https://www.wdbo.com/news/local/judges-order-sick-leave-initiative-2014-ballot/loPiROsfGzEhx11EDREu8M/> [https://perma.cc/G8Z8-GVCR].

130. See sources cited *supra* note 129.

131. 2014 PRIMARY ELECTION, OFFICIAL SUMMARY RESULTS, ORANGE CNTY. SUPERVISOR OF ELECTIONS 7, <https://ocfelections.com/election-record/2014-primary-election-2014-08-26>

already preempted local paid sick time initiatives. Nearly a decade later, workers in Orange County, like private-sector workers throughout Florida, have no legal right to paid sick time for personal or family health needs, and local governments cannot pass any such private-sector requirements.

Local paid sick time laws in Texas cities have also been overturned and blocked. In February 2018, the City Council of Austin voted 9-2 to pass a paid sick time ordinance, the first city to do so in the South.<sup>132</sup> After the measure became law, two more cities in Texas followed its example. In San Antonio, paid sick time advocates collected a sufficient number of signatures to petition the City Council for a paid sick time ordinance. Following the petition's qualification, the San Antonio Council voted 9-2 to pass a paid sick time law.<sup>133</sup> In April 2019, the Dallas City Council voted 10-4 to pass a paid sick time law, becoming the third city in Texas to do so.<sup>134</sup>

Austin's and San Antonio's paid sick time laws were passed in between Texas' biennial legislative sessions. State legislators, however, threatened to preempt paid sick time as soon as the Legislature reconvened. Only hours after the Austin ordinance passed, a State Representative, Paul Workman, stated his intention to preempt the issue: "I will make good on my promise to file legislation on the first day possible to reverse this and the other liberal Austin policies they enacted."<sup>135</sup> In November 2018, another Texas representative filed legislation ahead of the 2019 legislative session to preempt local paid sick time ordinances and effectively overturn the local laws that had passed by strong margins.<sup>136</sup> Dallas passed its paid sick time ordinance while the State Legislature was debating this statewide sick time preemption bill.

Before the Texas Legislature could act to pass explicit preemption of paid sick time, the courts stepped in and overturned the local laws. All three laws were challenged by business groups, who claimed that Texas' statute preempting any local minimum wage higher than the State's minimum wage

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[<https://perma.cc/2Q4D-AFAU>] (follow "Official Summary Results (pdf)," then see "Special Referendum Votes" on Page 7, under special referendum votes).

132. Austin, Tex., Ordinance No. 20180215-049 (Feb. 15, 2018).

133. SAN ANTONIO, TEX., CODE ch. 15, art. XI (2018).

134. DALL., TEX., CODE OF ORDINANCES, ch. 20, art. II (2019).

135. Sydney Greene, *Austin Has Mandated Paid Sick Leave for Workers, But Texas Lawmakers Are Already Working To Reverse It*, THE TEX. TRIB. (Feb. 16, 2018, 3:00 PM), <https://www.texastribune.org/2018/02/16/legislators-challenge-new-austin-sick-leave-mandate/> [<https://perma.cc/F2KM-3286>].

136. H.R. 222, 2019 Leg., 86(R) (Tex. 2019); *see also supra* notes 132-34 and accompanying text (Austin's law passed 9-2, San Antonio's law passed 9-2, Dallas's law passed 10-4).



included paid sick time preemption.<sup>137</sup> While this argument has been rejected by courts around the country in other lawsuits attempting to conflate paid sick time benefits with minimum wage,<sup>138</sup> it ultimately succeeded in Texas. The first lawsuit among the three cities was in Austin; the District Court denied an application for a temporary injunction but dismissed the City's challenge to the court's jurisdiction.<sup>139</sup> On appeal, a Texas Court of Appeals ruled on November 16, 2018 that the District Court had jurisdiction and further found that the Texas Minimum Wage Act preempted Austin's paid sick time law. The Texas Supreme Court ultimately declined to hear the case.<sup>140</sup> Notably, two of the three judges on the Texas Court of Appeals panel lost their campaigns for reelection 10 days prior to issuing the decision in the paid sick time case.<sup>141</sup> Following the reasoning of the Texas Court of Appeals, a Bexar County judge blocked San Antonio's ordinance from taking effect in 2019, a decision later upheld by the Court of Appeals.<sup>142</sup> Meanwhile, a federal district court judge granted a preliminary injunction against the Dallas ordinance in 2020, followed by a permanent injunction one year later.<sup>143</sup> As a result, Dallas became the only city in the country where — several months after the widespread emergence of COVID-19 — workers were already earning paid sick time when the law was enjoined and the legal right was removed.

These examples from Wisconsin, Florida, and Texas illustrate the outsized role that corporations and their lobbyists play in efforts to preempt and overturn local paid sick time ordinances. Litigation in Wisconsin and Texas was led by the Metropolitan Milwaukee Association of Commerce

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137. *Tex. Ass'n of Bus. v. City of Austin*, 565 S.W.3d 425 (Tex. App. 2018); *City of San Antonio v. Associated Builders & Contractors of S. Tex., Inc.*, 621 S.W.3d 305 (Tex. App. 2021); *ESI/Emp. Sols. v. City of Dallas*, 531 F. Supp. 3d 1181 (E.D. Tex. 2021).

138. *See, e.g., Metro. Milwaukee Ass'n of Com. v. City of Milwaukee*, 798 N.W.2d 287, 310–11 (Wis. Ct. App. 2011) (“MMAC contends that the ordinance is preempted by three state statutes: the Minimum Wage Law, WIS. STAT. ch. 104; the Family/Medical Leave Act, § 103.10; and the Worker's Compensation Act, ch. 102. In the following subsections we set forth the law on preemption and then apply it to each of the three statutes. Like the circuit court, we conclude that the ordinance is not preempted by any of these statutes.”).

139. *See generally* *Texas Ass'n of Bus. v. City of Austin*, 565 S.W.3d 425 (Tex. App. 2018).

140. *See id.* at 430.

141. Justice David Puryear and Justice Scott Field lost reelection on November 6, 2018. *See* RACE SUMMARY REPORT UNOFFICIAL ELECTION TABULATION 2018 GENERAL ELECTION, TEX. SEC'Y OF STATE, <https://www.sos.state.tx.us/elections/forms/enrpts/2018-general.pdf> [<https://perma.cc/F66J-6VJG>] (last visited Feb. 27, 2024).

142. *See generally* *Washington v. Assoc. Builders & Contractors of S. Tex., Inc.*, 621 S.W.3d 305 (Tex. App. 2021).

143. *See generally* *ESI/Emp. Sols. v. City of Dallas*, 531 F. Supp. 3d 1181 (E.D. Tex. 2021).

and the Texas Association of Business, respectively.<sup>144</sup> In Florida, the public release of deleted text messages to Orange County Commissioners revealed the pivotal role of lobbyists for businesses, including Walt Disney World and Darden Restaurants (which includes the Olive Garden chain and more than 1,900 restaurants), in the County Commission's decision to violate the law and thwart a qualified paid sick time ballot initiative.<sup>145</sup> Beyond individual corporations, business associations, and chambers of commerce, state lawmakers have also received coordinated resources and bill models on labor preemption through the American Legislative Exchange Council (ALEC).

Self-described as a “membership organization of state legislators dedicated to the principles of limited government, free markets, and federalism,” ALEC states that its membership includes “nearly one-quarter of the country’s state legislators . . . [.]”<sup>146</sup> It has been widely reported that ALEC includes active involvement from major corporate representatives and lobbyists.<sup>147</sup> As the paid sick time movement grew, ALEC distributed model legislation that would preempt local paid sick time and other workplace matters.<sup>148</sup> The online magazine Slate reported that Wisconsin’s 2011 preemption legislation was distributed months later at ALEC’s annual meeting.<sup>149</sup> In the decade since, ALEC has remained a central player in the growth of statewide preemption designed to block local paid sick time and labor ordinances.<sup>150</sup> As summarized by Professor Richard Schragger:

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144. See *supra* notes 41 & 141 and accompanying text; Metro. Milwaukee Ass’n of Com. v. City of Milwaukee, 798 N.W.2d 287, 293–94 (Wis. Ct. App. 2011); *Washington*, 621 S.W.3d at 313.

145. See DARDEN, <https://www.darden.com/> [<https://perma.cc/UM5G-A6UC>] (last visited Oct. 25, 2023) (“We are proud to employ 190,000 team members in more than 1,900 restaurants.”).

146. *About ALEC*, ALEC, <https://alec.org/about/> [<https://perma.cc/48JE-EG68>] (last visited Oct. 25, 2023).

147. See, e.g., Mike McIntire, *Conservative Nonprofit Acts as a Stealth Business Lobbyist*, N.Y. TIMES (Apr. 21, 2012), <https://www.nytimes.com/2012/04/22/us/alec-a-tax-exempt-group-mixes-legislators-and-lobbyists.html> [<https://perma.cc/8H2P-2FFN>]; Molly Jackman, *ALEC’s Influence over Lawmaking in State Legislatures*, BROOKINGS (Dec. 6, 2013), <https://www.brookings.edu/articles/alecs-influence-over-lawmaking-in-state-legislatures/> [<https://perma.cc/G5NR-T8CW>].

148. See, e.g., *Protecting Business and Workers Act*, ALEC, <https://alec.org/model-policy/protecting-businesses-and-workers-act/> [<https://perma.cc/6WP7-WB4P>] (last visited Feb. 27, 2024); *Employment Mandate Preemption Act*, ALEC, <https://alec.org/model-policy/employment-mandate-preemption/> [<https://perma.cc/GRS8-HWXZ>] (last visited Feb. 27, 2024).

149. Henry Grabar, *The Shackling of the American City*, SLATE (Sept. 9, 2016, 5:53 AM), <https://slate.com/business/2016/09/how-alec-acce-and-pre-emptions-laws-are-gutting-the-powers-of-american-cities.html> [<https://perma.cc/RZ4T-V9VL>].

150. Henry Farrell, *Conservatives Remade American State Politics. Here’s How They Did It*, WASH. POST (Aug. 29, 2019, 7:00 AM), <https://www.washingtonpost.com/politics/2019/08/29/conservatives-remade-american-state->

In many cases, there appears to be a partnership between the private interests that seek to avoid local regulation and legislators at the state level, exemplified by organizations such as the American Legislative Exchange Council (ALEC). ALEC is a pro-business lobbying organization. It seeks to facilitate relationships and efforts between state legislative branches and private industries by providing model legislation, networking opportunities, and lobbying services on behalf of its members.<sup>151</sup>

The number of paid leave preemption laws has increased significantly since San Francisco's first-in-the-nation paid sick time initiative, and although preemption has blunted momentum in many conservative states, preemption as a tool has not stopped the movement for paid sick time. In fact, enacted paid sick time laws have resulted in a major increase in the number of workers across the country who are entitled to paid sick time under state or local law. Paid leave preemption is, however, an important lesson for any movement seeking to expand policies at the local level.

### **III. COVID-19: THE PANDEMIC FORCED FEDERAL ACTION AND HIGHLIGHTED THE NEED FOR NATIONWIDE PAID SICK TIME, BUT IT IS STATE AND LOCAL GOVERNMENTS THAT HAVE RESPONDED MOST ROBUSTLY**

The onset of the COVID-19 pandemic demonstrated glaring gaps in the American government's ability to respond to a public health crisis. One major challenge for the government's response was the lack of nationwide paid sick time. As a result, workers across the country faced a dire need for job-protected paid sick time to stay home from work if they or their family members were sick with COVID-19 or exposed to the virus. At the start of the COVID-19 pandemic, 33 million Americans lacked a single paid sick day, with significant risks to public health and the financial security of those individuals.<sup>152</sup>

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politics-heres-how-they-did-it/ [https://perma.cc/4GDX-77K8] (“[ALEC] has also helped to popularize the strategy of state legislative preemption, in which conservative state governments can block liberal cities from passing measures that exceed state policy on the minimum wage, environmental standards and paid sick and family leave, for instance.”).

151. Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1170 (2018).

152. See *Federal Emergency Coronavirus Paid Leave Law: The Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief and Economic Security (CARES) Act*, A BETTER BALANCE (Jan. 8, 2021), <https://www.abetterbalance.org/resources/federal-coronavirus-proposal-the-families-first-coronavirus-response-act-h-r-6201/> [https://perma.cc/5QST-THNC].

### A. The Temporary Families First Coronavirus Response Act

In response to COVID-19, Congress passed — and the President signed — the Families First Coronavirus Response Act (FFCRA) on March 18, 2020. The law took effect on April 1, 2020.<sup>153</sup> Although the FFCRA included several significant exclusions, it constituted the nation's first federal paid sick time law. Unfortunately, however, the FFCRA was allowed to expire on December 31, 2020, despite the dramatic loss of life at that time due to COVID-19.<sup>154</sup>

The FFCRA provided paid sick time related to COVID-19 to all public-sector workers and to private-sector workers at businesses with fewer than 500 employees.<sup>155</sup> The law also provided that certain health care providers and first responders could be excluded by their employers, and limited covered purposes related to child care for those working for an employer with fewer than 50 employees.<sup>156</sup> The FFCRA provided eighty hours to full-time workers and provided part-time workers with an amount of COVID-19 sick time equal to the number of hours they worked in a two-week period.<sup>157</sup> Perhaps most importantly, the law included job protection: workers who took leave were protected from retaliation, including job loss, disciplinary action, and/or discrimination by their employer.<sup>158</sup>

Government stay-at-home orders and recommendations rely on workers' ability to comply. When workers do not have paid sick time, they are often forced to ignore such orders, leading to the spread of contagion among co-workers and community members.<sup>159</sup> The data shows that the FFCRA — even with its exemptions — was incredibly effective in allowing many workers to stay home when sick, therefore reducing contagion and protecting the public health for the short time it was in effect.<sup>160</sup> Following implementation of the FFCRA, for example, states that had previously lacked universal paid sick time before the pandemic experienced an average

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153. *Id.*

154. *Id.*

155. Families First Coronavirus Response Act, Pub. L. No. 116-127, §5102(b), 134 Stat. 196 (2020).

156. *See id.* § 5111.

157. *See id.* §5102(b).

158. *See id.* §5104.

159. *See OSHA Fact Sheet: What Employers Can Do to Protect Workers from Pandemic Influenza*, OSHA, <https://www.osha.gov/sites/default/files/publications/employers-protect-workers-flu-factsheet.pdf> [<https://perma.cc/JW94-LMPQ>] (last visited Sept. 20, 2023).

160. *See Stefan Pichler et al., COVID-19 Emergency Sick Leave Has Helped Flatten the Curve in the United States*, HEALTH AFFS. (Oct. 15, 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00863> [<https://perma.cc/SYX8-F4WM>].

of 400 fewer COVID-19 cases per day.<sup>161</sup> During the period the FFCRA was in effect, viral transmission was reduced and there were fewer workplace outbreaks, mitigating economic instability and wage loss among workers.<sup>162</sup>

### B. State & Local Paid Sick Time Advances in Response to COVID-19

Dozens of state and local governments also passed or amended laws in response to COVID-19. Many of the governments with pre-existing sick time laws — which, at the start of the pandemic, constituted 13 states including Washington, D.C., plus 18 municipalities — amended their paid sick time laws or updated regulations and/or guidance to address needs relating to COVID-19, though they ranged in how far they chose to extend those protections.<sup>163</sup> Certain states and municipalities, for example, such as Arizona, Oregon, and the cities of Minneapolis and St. Paul (Minnesota), issued guidance regarding their existing paid sick time laws to clarify coverage for absences related to COVID-19, including exposure, care related to COVID-19 symptoms, and/or quarantine periods.<sup>164</sup> Others, like Chicago (Illinois), made long-term changes to their law, such as excusing work absences related to vaccination for COVID-19, that sunset depending on determinations by public health officials.<sup>165</sup> Still others made permanent

161. *Id.*

162. See ALISON THOMPSON ET AL., SCIENCE TABLE: COVID-19 ADVISORY FOR ONT., BENEFITS OF PAID SICK LEAVE DURING THE COVID-19 PANDEMIC (2021), <https://covid19-sciencetable.ca/sciencebrief/benefits-of-paid-sick-leave-during-the-covid-19-pandemic/> [<https://perma.cc/AY9Y-P7ZD>]; see also DAVID NAIMARK ET AL., HEALTH AND ECONOMIC CONSEQUENCES OF UNIVERSAL PAID SICK LEAVE POLICIES DURING THE COVID-19 PANDEMIC (2022), <https://www.medrxiv.org/content/10.1101/2022.01.13.21268270v1.full.pdf> [<https://perma.cc/UHC3-SDH2>].

163. See generally *Emergency Paid Sick Leave Tracker: State, City, and County Developments*, A BETTER BALANCE (Aug. 10, 2023), <https://www.abetterbalance.org/resources/emergencysickleavetracker/> [<https://perma.cc/SX2X-RD54>]. These states and municipalities include: California, Colorado, Idaho, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Oregon, Washington DC, Washington State, Daly City (California), Fairfax (California), Long Beach (California), Los Angeles (California), Los Angeles County (California), Marin County (California), Millbrae (California), Sacramento (California), Sacramento County (California), San Anselmo (California), San Diego (California), San Francisco (California), San Jose (California), San Mateo (California), San Mateo County (California), Santa Rosa (California), Sonoma County (California), Flemington (New Jersey), Wilmington (North Carolina), New York (New York), Philadelphia (Pennsylvania), Pittsburgh (Pennsylvania), Shelby County (Tennessee), Burlington (Vermont), Seattle (Washington). See *id.*

164. *Id.* at 1–4. Specifically, these municipalities and states are: Arizona, California, Illinois, Massachusetts, New Jersey, New York (New York), Oregon, Washington State, Emeryville (California), Oakland (California), San Francisco (California), Duluth (Minnesota) (since repealed following passage of Minnesota’s statewide paid sick time law), Minneapolis (Minnesota), St. Paul (Minnesota), Seattle (Washington). *Id.*

165. *Id.* at 1, 3, 4. These municipalities and states include: Nevada, Chicago (Illinois), and Philadelphia (Pennsylvania).

amendments to their laws that would cover absences due to public health emergency declarations, non-specific to COVID-19.<sup>166</sup>

In future years, it is possible that the experience of COVID-19 could make paid sick time laws more politically feasible in jurisdictions that have not yet passed protections. The data clearly shows, after all, that such laws greatly benefited the public health; for example, cities with paid sick time laws, even temporary ones, had a roughly 17% higher vaccination rate than those cities without such laws.<sup>167</sup> Among workers in 2021 who planned to get vaccinated but had not yet been able to do so, lack of paid time off from work was the most cited reason for their delay.<sup>168</sup> Moreover, Black and Latine workers were more likely than white workers to express concern about needing to take time off work due to vaccine side effects.<sup>169</sup>

Local laws were critical during the COVID-19 pandemic, even when the FFCRA was in effect, because they closed gaps in coverage left by the federal law. The FFCRA failed to cover employers with more than 500 employees, and included certain exceptions for employers with fewer than 50 employees.<sup>170</sup> Many local laws that provided paid sick time related to COVID-19 helped to fill these gaps and cover many of the employees excluded from the FFCRA, such as those of Philadelphia (Pennsylvania) and Oakland (California), among many others.<sup>171</sup> Like many other jurisdictions, Philadelphia also passed a temporary ordinance expanding its existing paid sick time law to account for public health emergencies.<sup>172</sup> This amendment, in effect until December 31, 2023, was tied to the Declaration of Disaster

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166. *Id.* at 3, 7, 16. These municipalities and states are: Goshen (Illinois), Colorado, and Philadelphia (Pennsylvania).

167. See generally Alina S. Schnake-Mahl et al., *Higher COVID-19 Vaccination and Narrower Disparities in U.S. Cities with Paid Sick Leave Compared to Those Without*, 41 HEALTH AFFS. 1565 (2022), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2022.00779> [<https://perma.cc/ASM7-79QJ>].

168. See *Workers Are More Likely to Get a COVID-19 Vaccine When Their Employers Encourage It and Provide Paid Sick Leave, Though Most Workers Don't Want Their Employers to Require It*, KAISER FAM. FOUND. (June 30, 2021), <https://www.kff.org/coronavirus-covid-19/press-release/workers-are-more-likely-to-get-a-covid-19-vaccine-when-their-employers-encourage-it-and-provide-paid-sick-leave-though-most-workers-dont-want-their-employers-to-require-it/> [<https://perma.cc/U6SF-ZTND>]; Liz Hamel et al., *COVID-19 Vaccine Monitor: April 2021*, KAISER FAM. FOUND. (May 6, 2021), <https://www.kff.org/coronavirus-covid-19/poll-finding/kff-covid-19-vaccine-monitor-april-2021/> [<https://perma.cc/CV4P-K5MB>].

169. Hamel et al., *supra* note 168.

170. Family First Coronavirus Response Act, Pub. L. No. 116-127, § 5110(2)(B), § 5111(2) 134 Stat. 198, 201 (2020).

171. See *Emergency Paid Sick Leave Tracker: State, City, and County Developments*, *supra* note 163, at 2, 16.

172. See *Emergency Paid Sick Leave Tracker: State, City, and County Developments*, *supra* note 163, at 16.

Emergency of the Governor of Pennsylvania.<sup>173</sup> Jurisdictions often took this approach of tying their COVID-19 sick time law to the declaration of a disaster or public health emergency by officials in their municipality or state.<sup>174</sup> As a result, dozens of local laws provided worker protections regarding COVID-19 long after the FFCRA itself expired, some for years afterwards.<sup>175</sup> Lastly, many addressed subsequent stages of the pandemic that the temporary FFCRA did not, such as providing paid sick time for obtaining a COVID-19 vaccination.<sup>176</sup>

Seattle is one example of a municipality where, following temporary changes to the law during COVID-19, the city has made longer-lasting changes due to the pandemic. From July 13, 2020 to April 30, 2023, drivers for transportation network companies (TNCs) such as Uber and Lyft, and drivers for food delivery network companies, could earn paid sick time if they worked in Seattle.<sup>177</sup> In addition to challenges with misclassification, many gig economy workers are excluded from paid sick time protections as independent contractors. However, once the temporary Seattle law was in effect and provided paid sick time to certain drivers for TNCs, its success allowed for the passage of more permanent paid sick time protections for app-based workers working in the gig economy. On March 29, 2023, the Mayor of Seattle signed a law ensuring that all app-based workers who work for an app network with more than 250 workers worldwide can accrue sick time at a rate of one day for every 30 days worked.<sup>178</sup>

Within California, more than a dozen municipalities responded to the need for temporary paid sick time in response to COVID-19.<sup>179</sup> This was perhaps partially due to the limited amount of paid sick time provided under California's law: while the state recently increased the amount of time available to employees, during the COVID-19 pandemic, workers were only entitled to use three days of sick time per year.<sup>180</sup> In San Francisco, home

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173. Phila., Pa., Bill No. 220051-A (2022) (amending PHILA. CODE § 9-4116).

174. *See, e.g., id.*; L.A., Cal., Ordinance 2021-0002U (Jan. 26, 2021); Pittsburgh, Pa., Ordinance 297-2020 (Dec. 8, 2020) (amending PITTSBURGH, PA., CODE ch. 626B) (later renewed for an additional year on July 7, 2021).

175. *See* Phila., Pa., Bill No. 220051-A (2022); L.A., Cal., Ordinance 2021-0002U (Jan. 26, 2021).

176. *See generally* *Emergency Paid Sick Leave Tracker: State, City, and County Developments*, *supra* note 163.

177. *See* *Gig Worker Paid Sick and Safe Time Ordinance*, SEATTLE: OFF. LAB. STANDARDS, <https://www.seattle.gov/laborstandards/ordinances/covid-19-gig-worker-protections-/gig-worker-paid-sick-and-safe-time-ordinance> [<https://perma.cc/LX5S-5B9P>] (last visited Mar. 19, 2024) (linking to Ordinance 126091).

178. SEATTLE, WASH., MUN. CODE §§ 8.39.010 *et seq.* (2023).

179. *See* *Emergency Paid Sick Leave Tracker: State, City, and County Developments*, *supra* note 163.

180. *See* S. 616, 2023 Leg., Reg. Sess. (Cal. 2023) (enacted).

of the original ballot initiative to implement paid sick time, the city passed several temporary COVID-19 emergency paid sick time measures that provided additional time off for public health emergencies.<sup>181</sup> The pandemic also led to a permanent San Francisco ballot initiative to provide leave during a public health emergency to workers at larger employers. The resulting law, which took effect on October 1, 2022, provides 80 hours of paid sick time to workers at employers with over 100 employees worldwide during a public health emergency.<sup>182</sup> The law's covered purposes include complying with a stay-at-home order by a public health official, caring for a family member who needs to isolate or quarantine, and, notably given recent wildfires, staying home during an air quality emergency.<sup>183</sup>

Lastly, Chicago is an example of a jurisdiction that attempted to accommodate workers seeking the COVID-19 vaccine, a response to the evolving needs of workers during the pandemic. Given the polarized political discussions around the COVID-19 vaccination, the city of Chicago passed the Vaccine Anti-Retaliation Ordinance to protect workers who needed to take time off to obtain the COVID-19 vaccine.<sup>184</sup> Chicago, which had a preexisting paid sick time ordinance, passed this legislation to ensure that obtaining the vaccine was covered as paid sick time.<sup>185</sup> The city also passed the Anti-Retaliation Ordinance to ensure that employers could not penalize employees for utilizing this right, and to require that employers allow and respect use of paid sick time to obtain the vaccination.<sup>186</sup>

Many states have failed to pass statewide paid sick time protections, however, and have simultaneously prohibited local governments from passing ordinances on the topic.<sup>187</sup> The sudden emergence of COVID-19 put a spotlight on the harmful effects of state preemption, since local

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181. See *Emergency Paid Sick Leave Tracker: State, City, and County Developments*, *supra* note 163; S.F., Cal., Ordinance No. 58-20 (Apr. 17, 2020) (emergency ordinance to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19); S.F., Cal., Ordinance No. 59-20 (Feb. 19, 2021) (Ordinance No. 59-20 as reenacted by Ordinance Nos. 90-20, 136-20, 217-20, and 270-20 to temporarily require private employers with 500 or more employees to provide public health emergency leave during the public health emergency related to COVID-19, with amendments to prospectively exempt certain non-profit organizations from the emergency ordinance and to strike a provision allowing leave to be taken without regard to employees' work schedules).

182. S.F., CAL., MUN. CODE art. 33P §§ 3300P.2 *et seq.* (2022) (as passed by San Francisco Proposition G, June 2022); see also *Public Health Emergency Leave Ordinance*, S.F. OFF. OF LAB. STANDARDS ENF'T, <https://sfgov.org/olse/public-health-emergency-leave-ordinance> [<https://perma.cc/53LY-UYCV>] (last visited Mar. 19, 2024).

183. See *Public Health Emergency Leave Ordinance*, *supra* note 182.

184. Chi., Ill., Ordinance SO2021-1219 (Apr. 21, 2021).

185. See *id.*

186. See *id.*

187. See *supra* Part II.



governments in many states were blocked from taking steps to require employers to provide paid sick time to their employees.<sup>188</sup> In addition to harming the health, well-being, and financial security of working individuals and their loved ones, COVID-19 illustrated the racial disparities perpetuated by preemption. According to Professor Courtnee Melton-Fant, localities in states with paid sick time preemption “were at a disadvantage when trying to contain the pandemic in their communities. Some local governments were unable to pass emergency paid sick leave laws that would have protected frontline workers who are disproportionately people of color, particularly women of color.”<sup>189</sup> Professor Melton-Fant has further noted that “[p]reemption of paid sick leave laws is a colorblind policy. These policies do not explicitly deny Black and Latinx people access to paid leave or force them to work jobs that do not offer them. Yet, these policies are disproportionately harmful to Black and Latinx communities . . . . Low-wage workers, who are disproportionately Black and Latinx have less access to benefits such as health insurance and paid leave.”<sup>190</sup>

In addition to highlighting the negative consequences of paid sick time preemption, the COVID-19 pandemic has sparked a wider understanding of the need for paid sick time laws. Progress is still stalled at the federal level, despite annual reintroduction of the federal Healthy Families Act<sup>191</sup> that would provide nationwide paid sick time. Meanwhile, states are becoming increasingly willing to pass these laws.<sup>192</sup> For example, New York passed an emergency COVID-19 paid sick time law in March 2020, which was followed by a more comprehensive statewide law later that Spring (previously, only New York City and Westchester County had such laws).<sup>193</sup> Colorado passed a comprehensive paid sick time law in the summer of 2020 to fill the gaps in the FFCRA, establish permanent, universal paid sick time for general health needs, and ensure supplemental paid sick time for COVID-19 and future public health emergencies.<sup>194</sup> In 2021, New Mexico passed a strong paid sick time law that established a new state-level benchmark of 64 hours of earned paid sick time.<sup>195</sup> And in 2023, Minnesota followed

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188. See, e.g., JARED MAKE & LAURA HUIZAR, 1 THE LOC. POWER & POLS. REV. 50–51 (2020).

189. Courtnee Melton-Fant, *New Preemption as A Tool of Structural Racism: Implications for Racial Health Inequities*, 50 J. L. MED. & ETHICS 15, 19 (2022).

190. *Id.*

191. S. 1664, 118th Cong. (2023).

192. See, e.g., *id.*; see also *At a Glance: The Healthy Families Act*, A BETTER BALANCE (May 12, 2023), <https://www.abetterbalance.org/resources/healthy-families-act-factsheet/> [<https://perma.cc/4CAU-VLWJ>].

193. N.Y. LAB. LAW § 196-b (2020).

194. COLO. REV. STAT. §§ 8-13.3-401 *et seq.* (2023).

195. N.M. STAT. ANN. §§ 50-17-1 *et seq.* (2022).

Colorado and New Mexico by establishing a comprehensive paid sick time law, while Illinois passed a statewide paid time off law that allowed workers to use leave for any purpose, including sick time.<sup>196</sup> Localities like Allegheny County (Pennsylvania), and Bloomington (Minnesota) also passed new permanent paid sick time laws in response to COVID-19.<sup>197</sup> Moreover, there are filed ballot initiatives in three different states that, if pursued in November 2024, would enact a paid sick time law: Alaska, Missouri, and Nebraska.<sup>198</sup>

These new paid sick time laws, which build on decades of advocacy and new learnings from COVID-19, offer improvements on previous laws. For example, New Mexico passed a law requiring 64 hours of sick time per year, more than any state had previously required.<sup>199</sup> Similarly, Colorado entitled workers to 48 hours of paid sick time, which is supplemented up to 80 hours during a public health emergency.<sup>200</sup> Another lesson learned from COVID-19 is that to improve public health, workers need to be able to use their sick time right away. The result is that many states have removed waiting periods — an amount of time one must first work for an employer — to be eligible for paid sick time.<sup>201</sup> Not surprisingly, public health emergency purposes have become standard where they were not before. And more inclusive family definitions that allow workers to care for their loved ones, even absent a legal or biological relationship, have been adopted across the board: both Colorado and Minnesota, for example, have broad definitions of family that may include aunts, uncles, grandparents, and grandchildren. In Colorado, any person related by blood, marriage, civil union, or adoption “and a person for whom the employee is responsible for providing or arranging health- or safety-related care” is also covered.<sup>202</sup> In Minnesota, the definition includes “any . . . individual related by blood or whose close association with the employee is the equivalent of a family relationship[.]”<sup>203</sup> These inclusive family definitions have become more common in part because the COVID-19 pandemic further underscored the diversity of caregiving relationships — especially when one does not have a relationship with biological relatives,

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196. MINN. STAT. §§ 181.9445 *et seq.* (2023); 820 ILL. COMP. STAT. 192/15 (2024).

197. *Paid Sick Leave Regulation*, ALLEGHENY, PA., CNTY. HEALTH DEP’T RULES & REGULS., art. XXIV, §§ 2401 *et seq.* (2022); BLOOMINGTON, MINN., ORDINANCE 2022-31 (June 6, 2022).

198. *See supra* note 111 and accompanying text.

199. N.M. STAT. ANN. § 50-17-3(A) (2022).

200. COLO. REV. STAT. §§ 8-13.3-403(2), 8-13.3-405 (2023).

201. COLO. REV. STAT. § 8-13.3-403(3) (2023), N.M. STAT. ANN. § 50-17-3(B)(1) (2022); MINN. STAT. § 181.9446(d)–(e) (2023); N.Y. LAB. LAW § 196-b (2020).

202. COLO. REV. STAT. § 8-13.3-402(6) (2023) (citing COLO. REV. STAT. § 2-4-401(3.7) (2021)).

203. MINN. STAT. § 181.9445 subdiv. 7(3).

or are separated from immediate family geographically.<sup>204</sup> New laws such as these reflect the decades of work done by advocates to bring all workers within paid sick time protections at the local level and the increasing understanding by the public of the need for these laws, fueled by the universal experience of COVID-19.

### CONCLUSION

The national movement for paid sick time is a clear example of how advocates at the state and local level can enact real change when federal progress stalls. Beginning with San Francisco, the passage of local paid sick time laws paved the way for statewide laws to provide this protection to workers. Local wins allowed advocates to pressure statewide lawmakers to act, and provided the blueprint for what a successful law can look like. They also showed the power of local, intersectional coalitions that showcased the voices of workers, particularly from marginalized communities.

However, opposition has been a key part of the paid sick time movement's trajectory, from nearly the beginning, in the form of preemption. From Milwaukee (Wisconsin) to Orange County (Florida) and Austin (Texas), corporate lobbyists have sought to block these hard-fought wins by advocates through legislative or judicial avenues. These preemption measures reveal some of the limits of local government action, while the movement's growth despite these challenges shows that progress is still possible in the face of such coordinated opposition.

It is clear that, as the only wealthy country in the world without a national right to paid sick time, the United States is long overdue for a federal paid sick time law. The Healthy Families Act, reintroduced in Congress this year, would provide this right. This proposed legislation is backed up by a growing number of state and local examples due to the rich history of innovations that began at the municipal and county level — for more comprehensive covered purposes and for a more inclusive family definition, among others. Until federal action occurs, advocates will continue to build on existing local wins and fight at the state level to bring much-needed paid sick time to as many workers as possible.

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204. See *supra* Section I.C; see also A Better Balance, *COVID-19 Shows Why Our Paid Leave Laws Must Include All Kinds of Families*, MEDIUM (Apr. 9, 2020), <https://medium.com/a-better-balance/covid-19-shows-why-our-paid-leave-laws-must-include-all-kinds-of-families-cb03d908516a> [<https://perma.cc/9FDM-KCNQ>].