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PREVENTIVE CARE FOR EMPLOYERS: STATE AND MUNICIPAL PAID SICK AND SAFE LEAVE LAWS

A fever of Paid Sick Leave laws are spreading coast to coast. States and municipalities have been sewing a patchwork of paid sick leave laws together over the past decade. Since San Francisco broke ground in 2007 as the first municipality to provide paid sick days to employees,¹ many cities have followed, largely in Oregon² and New Jersey.³ In 2008, the District of Columbia spearheaded the trend for “safe” days by adding time off for victims of domestic violence, sexual assault, and stalking.⁴ In 2011, Connecticut became the first state to legislate paid sick days.⁵ In 2014, Massachusetts⁶ and California⁷ became the second and third states to provide leave for illness and/or safety reasons for victims, commonly referred to as “Sick and Safe” leave.

Employers must be prepared for the current trend in leave of absence legislation: paid sick and safe leave. Some have opted to get ahead of the curve and offer such leave voluntarily; others are waiting for the final shoe to drop before changing current leave policies. Do the workplace benefits outweigh the costs? This paper explores the trend, where it is headed, and what employers should do to avoid getting caught out of compliance in a place where they do business. This paper also concludes with a current chart comparing each state and major city’s paid sick and safe leave laws so that you have a tool for assessing your workforce and policies.

THE FEVER SPREADS

Here is why the trend toward paid sick and safe leave is on the rise: More than 40 million private sector workers – 40 percent of the workforce – don’t have access to earned paid sick days.⁸ This causes workers to choose between going to work ill or missing work and pay – and possibly facing discipline or termination.



According to the June 2014 White House Report *The Economics of Unpaid Leave*,⁹ only 53% of workers report being able to take paid leave for their own illness¹⁰ and only 39% may take paid family leave for the birth of a child.¹¹ Another factor leading to the impetus for more paid sick leave is a shift in workforce demographics. In 1970, only half of women aged 25 to 54 were in the workforce.¹² By the 1990's that number had increased to 75%.¹³ The number of dual-income couples increased and as a result, 63% of children live in a family where all parents work.¹⁴ In single family households, the increase in women entering the workforce factors prominently: In 2013, 56% of single mothers with children younger than 3, and 65% of all single mothers, work outside the home.¹⁵

Adding to the equation is the increased likelihood that an employee will be tasked with some form of eldercare.¹⁶ The percentage of the population age 65 and older is greater today than it was at any point during the 20th century.¹⁷ For our older population, unpaid family care is the most common source of long-term care.¹⁸ Forty-five percent of individuals who provided eldercare are part of the “sandwich generation,” caring for both elderly parents and young children.¹⁹ Seventy-eight percent of this generation is employed, with 62% working full-time.²⁰

While providing paid sick leave may sound altruistic on the part of the employer, there may be some sound business decisions behind the trend. In proposing or enacting paid sick leave laws, legislators and city councils have relied upon research indicating nearly every worker will need some time off to take care of their own health needs. Providing the right to earned sick time may have a positive impact on public health and lessen the spread of and exposure to diseases. Often, the move for paid sick leave starts in industries with a high degree of public contact, such as restaurants. Additionally, legislators often offer that supporting a healthy workforce may foster greater employee retention and productivity. According to the Minnesota Department of Health's March 2015 Whitepaper on Paid Leave and Health, paid sick days are associated with lower rates of working while sick and faster recoveries.²¹ Paid sick days are also associated with lower rates of occupational injuries.²²

MERCURY RISING—2014 & 2015

2014 saw paid sick leave programs go into effect in New York City, NY, Portland, OR and the New Jersey cities of Jersey City, Passaic, and Newark. Already, a bevy of additional cities have paid sick leave programs launching in 2015 -Oakland, CA, Eugene, OR, Philadelphia, PA, and the New Jersey cities of Trenton, Montclair, East Orange, Irvington, Bloomfield, and Paterson.²³ A couple of additional cities have already enacted laws that go into effect in 2016 – San Diego, CA and Tacoma, WA. Despite these successes, not all campaigns have prevailed.

Cities such as Denver, CO and Orange County, FL have tried to pass paid sick leave laws, but have failed. The Spokane, WA City Council announced in late February 2015 that it would introduce a resolution supporting citywide paid sick leave, vowing to vote on it by the summer.²⁴



With some of the new laws now a year old, enforcement measures are ramping up. In early 2015, six employers were assessed fines under New York City's law, including two large multi-national corporations. Penalties were imposed primarily for the employers' refusal to grant sufficient sick leave and failure to notify employees of the new law. The city received 472 complaints from employees since April 2014 but the majority of cases were resolved through mediation.²⁵

A federal counterpart, entitled the "Healthy Families Act" has been proposed in every federal congress since 2004.²⁶ On January 15 and in his state of the union address, President Obama indicated that he would make paid sick days a priority in the next session.²⁷ In addition to supporting the federal legislation, he has also indicated that his next budget will include \$2.2 billion in mandatory funding to reimburse up to five states for three years of administrative costs of paid sick leave policies, and roughly half of the cost of benefits associated with implementing a program.²⁸ The President has also supported allocating more than \$35 million in federal grants to develop sick leave policies at the state level and to conduct feasibility studies. The likelihood of passage of federal legislation remains uncertain, but it's clear that sick and safe leaves are continuing to gain attention on a municipal, state, and federal level.

POSSIBLE CURE: CAN CITIES LEGALLY PASS THEIR OWN SICK LEAVE LAWS?



In 2008, Milwaukee's voters approved a paid sick leave ordinance. Little did they know that they would be sparking a nationwide debate over whether it's the right of a state or municipality to provide, or decide not to provide, paid sick leave to its citizens. Since then, the battle has waged on in states across the country over the right of a state to regulate and preempt the field of leave laws, versus the right of a town or city to enact its own laws to provide employment protections.

After Milwaukee's voters approved their ordinance with 70% of voters supporting the measure, in 2011 Governor Scott Walker signed the nation's second bill prohibiting the enforcement of local paid leave laws by declaring the right of the state to preempt any attempts of towns or cities to provide greater or different rights than that provided by the state.

Since Wisconsin's preemption legislation, many states have followed suit. To date, 12 states have enacted similar bills, with most passing within the last year (only Georgia's statute pre-dates Wisconsin's). 2012 saw the passage of a bill in Louisiana, while 2013 followed with Arizona, Florida, Indiana, Kansas, Mississippi, North Carolina, Tennessee, and Alabama. Oklahoma passed a preemption bill on April 14, 2014. In the current legislative session, preemption bills are already pending in New Mexico and Pennsylvania, with more sure to come.²⁹

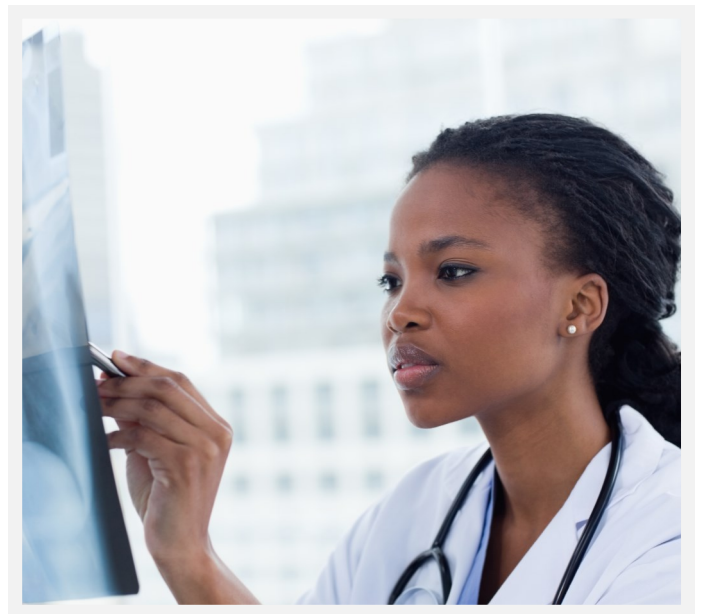
By focusing on preemption legislation, legislators are focusing on what seems to be a more fertile ground for change, the local towns and cities that are moving at a faster rate toward requiring employers to offer paid sick leave.

Aside from preemption bills, objectors to paid sick leave laws are also engaging the litigation process. A coalition of New Jersey business groups filed a lawsuit shortly after the city of Trenton passed their paid sick leave law by referendum. The fate of Trenton's paid sick leave law remains uncertain; while the parties make their case in court, the law's effective date is on hold.

DIAGNOSTICS: WHAT SHOULD MULTI-STATE EMPLOYERS DO?

Employers should be familiar with the laws in the places they do business and be prepared to offer paid sick leave to their workforce. It is difficult to adhere to a piecemeal assortment of state and municipal requirements (and soon, maybe federal). Moreover, paid sick leave may overlap with other leave of absence laws, such as the federal FMLA or state equivalents. To date, however, most paid sick leave laws offer a safe harbor exception to employers who already offer paid sick time to employees that cover absences for the same reasons and in at least the same amount as the law or ordinance. Existing and proposed paid sick leave laws typically have the following features:

- A required number of hours or months worked before an employee is eligible to take paid sick leave
- Paid sick leave accrual tied to hours worked, with a cap on total accrual and/or annual carryover
- Defined reasons for leave use, including:
 - Sick leave: the employee's or a family member's illness and to attend preventative and illness medical appointments;
 - Safe leave: time off if the employee or a family member is a victim of crimes such as domestic violence, sexual assault, stalking, or harassment.



Rather than try to guess the reasons for which a local government may require employers to offer paid sick leave, an employer policy can list the reasons it deems appropriate (e.g., employee's or family member's illness or injury; preventive and well child checkups, etc.) and then include a catchall: "any other reasons for paid time off required by applicable law."

Get ahead of the wave and ease into this benefit at your company's own pace. Start with the following action items:

- Get professional assistance to help you comply with the patchwork of laws. Many of the new laws are lengthy and complex, for example, Seattle's ordinance is 29 pages long!
- Determine whether to institute a separate leave program for each state or city or if your existing paid sick leave program meets the requirements of each law. Whether you turn to Reed Group, your outside benefits advisor or legal counsel, or an internal stakeholder group, you will need to make some decisions.
- Be aware of this growing trend toward mandated paid sick and safe leave. Keep an eye out for legislation that may impact your organization. Reed Group's blog (www.reedgroup.com/blog/) and LeaveAdvisor™ (www.leaveadvisor.com) product offers pending legislation tracking to keep employers current on paid sick leave developments.
- Begin thinking about how you would manage and administer a similar requirement in multiple jurisdictions for your organization. Is your organization ready to start tracking and reporting on accrued and available PTO with each pay cycle for every employee in each worksite?
- Develop your own paid leave programs. If you don't provide paid sick time or broad PTO time now, it may be wise to gradually expand or redesign your program. It is highly likely that more jurisdictions will follow and organizations are starting to see PTO as a necessary benefit.

PREVENTION: WHAT THE FUTURE HOLDS



With 94 paid sick leave laws proposed in the last federal and state legislature sessions and 67 already proposed in 2015 (covering 27 states, DC and the Federal congress), this issue is poised to pick up steam. Add to those figures more than 46 paid family leave laws proposed in 18 states. Top it off with the bills to prohibit municipalities from enacting paid sick leave laws and employers heads are spinning...or shaking.

One thing we can be sure of: the issue of who gets to decide about paid sick leave isn't going away. Continue to follow Reed Group's blog at www.reedgroup.com/blog/ for the latest in paid sick leave, potential updates to this Whitepaper, and leave of absence industry news.

WELLNESS CHECK: COMPARISON OF CURRENT PAID SICK LEAVE LAWS

The following pages contain a comprehensive comparative summary of the current paid sick leave laws for states and major cities, as of March of 2015.

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
California							
Long Beach	Hotel employers with 100 or more rooms	Hotel workers	Sick Leave	5 paid sick days a year	no	no	no
Citations: Long Beach Muni. Code § 5.48.020 Link: http://longbeach-ca.eregulations.us/code/muco_voli_title5_ch5.48_sec5.48.020							
Los Angeles	Hotel employers with 150 or more rooms	Certain non-managerial/non-supervisory employees	Sick leave, vacation, or personal necessity use	96 hours of paid time off per year; subsequent to that use, up to 80 hours of additional unpaid sick time for personal or immediate family health needs	no	no	no
Citation: Los Angeles Ord. 183241 Link: http://cikrep.lacity.org/online/docs/2014/14-0223_ord_183241.pdf							
San Diego	All	Full-time employees	Employee's or family member's illness, injury, or a medical condition; obtaining professional diagnosis or treatment for employee's or family member's medical condition; "safe time"; closure of business, school or child care provider due to public health closure or emergency.	1 hour of paid sick leave for every 30 hours of work performed, up to a maximum of 40 hours (5 calendar days)	yes	yes	yes
Citation: Resolution No. 309039 Link: http://www.disablemyleavelaw.com/wp-content/uploads/sites/173/2014/08/081814-San-Diego-ordinance.pdf							

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
San Francisco	All	All	Employee's, family member's, or designated person's illness, injury, medical condition, need for medical care, diagnosis, or treatment.	1 hour of paid sick leave for every 30 hours of work performed, up to a maximum of 40 hours for small businesses (less than 10 employees), and 72 hours for all others.	Employer may only take reasonable measures to verify or document that an employee's use of paid sick leave is lawful.	yes	yes
Citation: SF Admin. Code, Ch. §§ 12W, 12Z.10.1(a) Link: http://www.amlegal.com/nxt/gateway.dll/California/administrative/chapter12wsickleave*f=templates\$fn=default.htm\$3.0\$vid=amlegal:sanfrancisco_ca							
Oakland	All	Employees who perform at least two hours of work within Oakland.	Employee's or family member's illness, injury, medical condition, need for medical care, diagnosis, or treatment.	1 hour of paid sick leave for every 30 hours of work performed, up to a maximum of 40 hours for small businesses (less than 10 employees), and 72 hours for all others.	Employer may only take reasonable measures to verify or document that an employee's use of Paid Sick Leave is lawful	yes	yes
Citation: Oakland Measure FF Link: http://www2.oaklandnet.com/Government/o/CityAdministration/d/MinimumWage/OAK051451 http://www.acgov.org/rov/elections/20141104/documents/MeasureFF-V3.pdf							

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
New Jersey							
Jersey City	All	All employees who works in Jersey City for at least 80 hours/year.	Employee's or family member's illness, injury, or a health condition; obtaining diagnosis, care, or treatment for employee's or family member's medical condition; closure of business, school or child care provider due to public health closure or emergency.	1 hour of sick leave for every 30 hours of work performed, up to a maximum of 40 hours unpaid for small businesses (less than 10 employees), and 40 hours paid for all others.	yes	yes	yes
Citation: City Ordinance 13.097. Link: http://www.cityofjerseycity.com/uploadedFiles/For_Residents/Earned%20Sick%20Leave%20Ordinance.pdf							
Newark, Passaic, East Orange, Paterson, Irvington, Trenton, Montclair, Bloomfield	Employers with 10 or more employees working in the applicable city	Employees who work in the city for at least 80 hours in a calendar year.	Employee's or family member's illness, injury or a health condition; obtaining diagnosis, care, or treatment for employee's or family member's medical condition; closure of business, school or child care provider due to public health closure or emergency.	1 hour of sick leave for every 30 hours of work performed, up to a maximum of 40 hours paid for employers with 10 or more employees. Employers with 9 or less employees must provide a maximum of 24 hours of paid sick time.	yes	yes	yes
Citation: Newark: Sick Leave for Private Employees Ordinance, 6PSF-A Link: http://www.ci.newark.nj.us/wp-content/uploads/2014/09/bus_Ordinance_Sick_Leave.pdf							

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
Washington							
Seattle	Employers with 5 or more employees	Employees employed by a business with 5 or more employees, if they perform more than 240 hours of work in Seattle within a calendar year	Employee's or family member's illness, injury, or health condition; obtaining diagnosis, care, or treatment for employee's or family member medical conditions; certain absences related to domestic violence, sexual assault, or stalking; closure of business, school or child care provider due to public health closure or emergency.	<p>Accruals: Employers with 250 or more employees: employees accrue one hour for every 30 worked. Employers with 5-249 employees: 1 hour for every 40 worked. Maximum accrual/use: Employers with 5-49 employees: maximum of 40 hours per year. Employers with 50-249 employees: maximum of 56 hours per year. Employers with 250 or more employees: maximum of 72 hours per year, or 108 if employer has a universal paid time off policy.</p>	yes	yes	yes
Citation: SMC Chapter 14.6 Link: https://www.municode.com/library/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14_16PASITIPASATI							

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
Tacoma	All	Employees perform work in Tacoma for more than 80 hours within a calendar year	Employee's or family member's illness, injury, or health condition; obtaining diagnosis, care, or treatment for employee's or family member medical condition; certain absences related to domestic violence, sexual assault, or stalking; closure of business, school or child care provider due to public health closure or emergency; bereavement time.	Employees accrue 1 hour for every 30 hours worked, up to 24 hours paid per year.	no	yes	yes
Citation: Ordinance No. 28275; Tacoma Code, Ch. 18.10, et. seq. Link: http://cms.cityoftacoma.org/cityclerk/files/amended-ordinance-28275.pdf							
SeaTac	Employers with 100 or more guest rooms and 30 or more employees operating an institutional foodservice or retail operation employing 10 or more non-managerial, non-supervisory employees	Certain hospitality and transportation workers	Employee or family's member's illness, injury, or health condition; obtaining diagnosis, care, or treatment.	Employees accrue 1 hour for every 40 hours worked	No	no	no
Link: http://www.ci.seatac.wa.us/Modules/ShowDocument.aspx?documentid=8233							

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
Oregon							
Portland	All	Employees who have worked with in Portland for at least 240 hours in a calendar year	Diagnosis, care, or treatment of employee's or family member's illness, injury, or health condition; certain absences related to domestic violence, harassment, sexual assault, or stalking; closure of business, school or child care provider due to public health closure or emergency; care for family member with a condition that threatens community, as determined by public health authority.	Employees accrue 1 hour for every 30 hours worked. Employers with 6 or more employees: 40 hours paid per year. Employers with 5 or less employees: 40 hours unpaid per year	yes	yes	yes
Citation: Portland Code Ch. 9.01 Link: http://www.portlandoregon.gov/sicktime/article/472206							

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
Eugene	All	All	Diagnosis, care or treatment of the employee or the employee's family member's mental or physical illness, injury, or health condition, including preventive medical care; Certain absences related to domestic violence, harassment, sexual assault, or stalking; closure of business, school or child care provider due to public health closure or emergency.	Employees accrue 1 hour for every 30 hours worked, up to 40 hours paid per year.	yes	yes	yes
Citation: Council Ordinance No. 20537 Link: http://www.eugene-or.gov/sickleave							
New York							
New York City	All	Employees who have worked within NYC for more than 80 hours in a calendar year are covered	Employee or family member's illness, injury, or health condition; Need for diagnosis, care, or treatment; closure of business, school or child care provider due to public health closure or emergency	Employees accrue 1 hour for every 30 hours worked. Employers with 5 or more employees: 40 hours paid per year. Employers with 4 or less employees: 40 hours unpaid per year	yes	yes	yes
Citation: NYC Code, Title 20, Ch. 8 Link: http://www.nyc.gov/html/dca/html/law/PaidSickLeave_EmployersEnglish.shtml							

City	Covered Employers	Eligible Employees	Leave Reasons	Amount of Leave	Certification	Employee notice	Employer Posting/ Notice
Pennsylvania							
Philadelphia	Employers with 10 or more employees	Employees employed in Philadelphia for at least 40 hours in a calendar year are covered	Employee or family member's illness, injury, or health condition; Need for diagnosis, care, or treatment; certain absences related to domestic violence, sexual assault, or stalking.	Employees accrue 1 hour for every 40 hours worked. Employers with 10 or more employees: 40 hours paid per year. Employers with 9 or less employees: 40 hours unpaid per year	yes	yes	yes
Citation: Phila. Code Ch. 9-4100 Link: https://phila.legistar.com/LegislationDetail.aspx?ID=2101250&GUID=5D12D54D-B1A7-4446-B646-95BE528F771C							
Disclaimers: Each law has various exceptions and qualifications; this list is a summary and not meant to be exhaustive. This chart only reflect major municipalities' laws as of the date of this paper; smaller cities and towns may not be reflected ** Trenton's law's enforcement is delayed until at least April 9, pending litigation							

- ¹San Francisco Admin Code, § 12W.1, et. seq.
- ²Portland City Code, Chapter 9.01; Eugene Code, § 4.570, et. seq.
- ³Jersey City Code § 3-350 et seq.; Newark Legislation File # 13-2010, Version 6; Montclair Paid Sick Leave Ordinance.
- ⁴Washington D.C. Accrued Sick and Safe Leave Act of 2008, D.C. Official Code § 32-131.01, et. seq.
- ⁵Conn. Gen. Stat. § 31-57r, et. seq.
- ⁶Mass. Gen. Laws ch. 149, § 148C
- ⁷Cal. Lab. Code §245.5
- ⁸U.S. Bureau of Labor Statistics, March 2011.
- ⁹The Council of Economic Advisors, 2014. "The Economics of Paid and Unpaid Leave," http://www.whitehouse.gov/sites/default/files/docs/leave_report_final.pdf [hereinafter The Economics of Paid ad Unpaid Leave].
- ¹⁰The Economics of Paid and Unpaid Leave, *supra* note 9, p. 9.
- ¹¹The Economics of Paid and Unpaid Leave, *supra* note 9, p. 10.
- ¹²The Economics of Paid and Unpaid Leave, *supra* note 9, p. 5.
- ¹³The Economics of Paid and Unpaid Leave, *supra* note 9, p. 5.
- ¹⁴The Economics of Paid and Unpaid Leave, *supra* note 9, p. 5.
- ¹⁵The Economics of Paid and Unpaid Leave, *supra* note 9, p. 5.
- ¹⁶The Economics of Paid and Unpaid Leave, *supra* note 9, p. 6.
- ¹⁷The Economics of Paid and Unpaid Leave, *supra* note 9, p. 6.
- ¹⁸The Economics of Paid and Unpaid Leave, *supra* note 9, p. 6.
- ¹⁹The Economics of Paid and Unpaid Leave, *supra* note 9, p. 6.
- ²⁰The Economics of Paid and Unpaid Leave, *supra* note 9, p. 6.
- ²¹Minnesota Department of Health, March 2015 "Whitepaper on Paid Leave and Health," <http://www.health.state.mn.us/news/2015paidleave.pdf>, hereinafter "Whitepaper on Paid Leave and Health.", p. 17.
- ²²Whitepaper on Paid Leave and Health, *supra* note 21, p. 17.
- ²³The fate of Trenton's ordinance remains uncertain as it is current subject to a preliminary injunction pending litigation.
- ²⁴"City Leaders Search for Balance in Paid Sick Leave Debate." KREM, Apr. 1, 2015, <http://www.krem.com/story/news/local/spokane-county/2015/04/01/city-leaders-business-owners-sick-leave/70764064/>; City of Spokane Official Gazette, February 11, 2015, <https://static.spokanecity.org/documents/official-gazettes/2015/02/official-gazette-2015-02-11.pdf>
- ²⁵Best Buy, FedEx Fined for No Paid Sick Leave." *NY Daily News*. Apr. 1, 2015. <http://www.nydailynews.com/new-york/best-buy-fedex-fined-no-paid-sick-leave-article-1.2169079>; New York City Consumer Affairs, Paid Sick Leave Department, <http://www1.nyc.gov/site/dca/about/paid-sick-leave-law.page> (last accessed April 1, 2015); "NYC Consumer Affairs Complaints Summary" *NYC Consumer Affairs*. http://www1.nyc.gov/assets/dca/downloads/pdf/about/PSL Facts_YTD2015.pdf (last accessed April 1, 2015).
- ²⁶2013 HR 1286, 2015 HR 932, 2011 HR 1876, 2009 HR 2460, 2007 HR 1542, 2005 HR 1902, 2003 HR 4575
- ²⁷January 20, 2015 State of the Union Address, <http://www.whitehouse.gov/the-press-office/2015/01/20/remarks-president-state-union-address-january-20-2015>
- ²⁸White House Fact Sheet, January 14, 2015, <http://www.whitehouse.gov/the-press-office/2015/01/14/fact-sheet-white-house-unveils-new-steps-strengthen-working-families-acr>
- ²⁹NM H 498; PA S. 333.