

New Year, New Policies



Presented By



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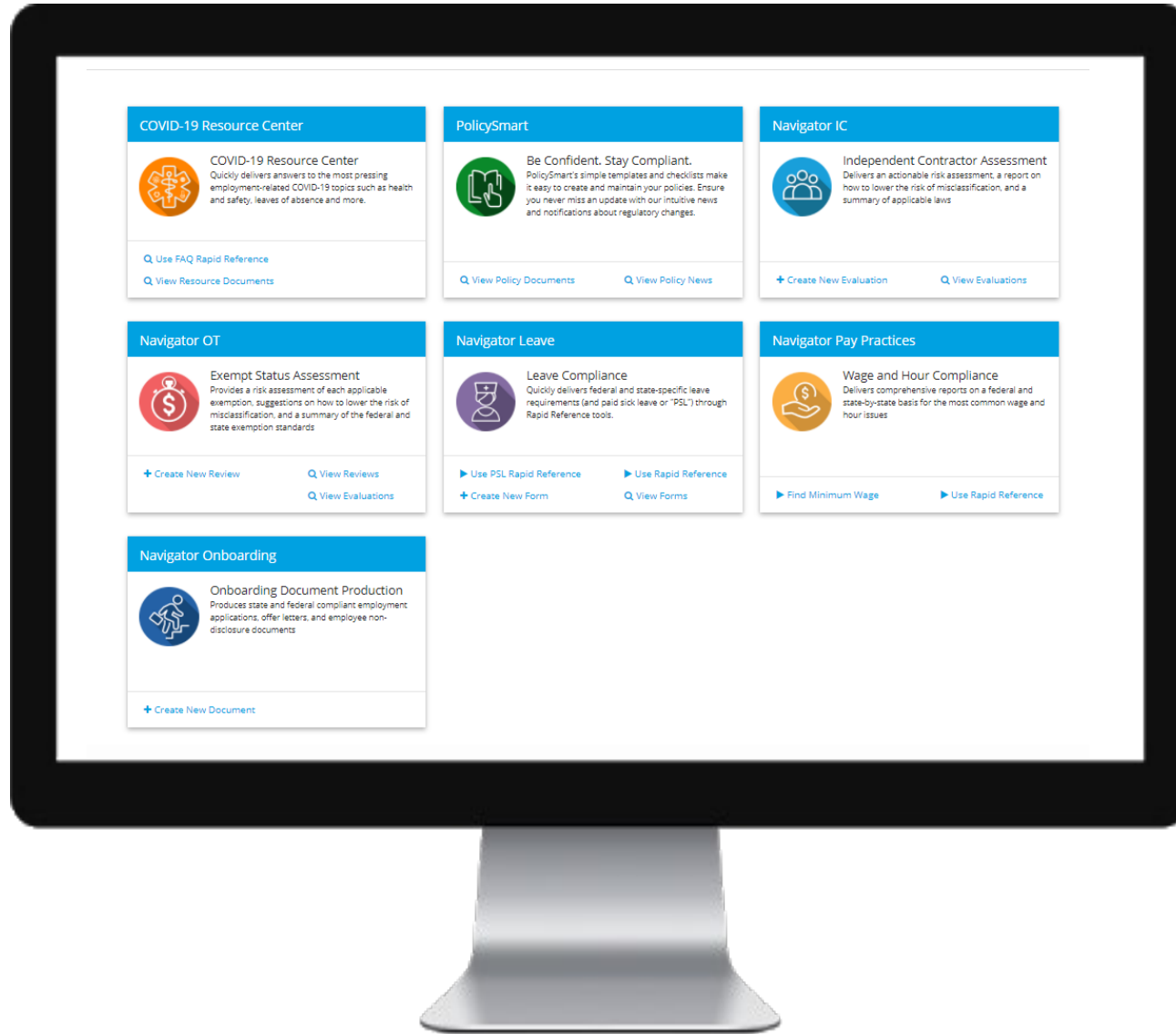
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Meet the Navigator Suite



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- Comprehensive library of customizable federal and state specific model policies
- Innovative compliance timeline of important legal changes soon to take effect
- Access to jurisdiction-specific checklists
- Monthly automated emails with a summary and analysis of relevant legal documents

Effective Date Timeline

Jurisdiction	Effective Date
California	09/01/2020
Colorado	09/01/2020
	01/01/2021

Filter Timeline

Effective Within

- One Month 2
- Six Months 4
- One Year 4

Filter News

Select Jurisdiction: - Select All -

Requires Policy Update: - Select All -

PolicySmart

This application provides you with the tools of documents:

- A National Template
- State Supplements
- Policy Checklists
- State Guides

The **National Template** includes a number of traditional policies (e.g., EEO, Harassment, FMLA, Meal Breaks, Standards of Conduct), along with optional sample policies you can customize and provide to employees if they are relevant for your workforce and operations (e.g., Workplace Bullying, Holidays, Personal Appearance and Grooming).

There is a **State Supplement** to that National Template for every state and the District of Columbia. In the State Supplements you will find policies that carefully track state and locality-specific distinctions from those general, national policies. In the state materials, you will find addenda that identify the protected categories under state EEO laws, state-specific meal break, predictive scheduling, lactation accommodation and leaves of absence policies. We also provide policies tracking sick leave, lactation accommodation and predictive scheduling requirements for major municipalities, which are localities with 100,000 or more residents.

The State Supplement policies are drafted to comprehensively track statutory requirements, while also identifying places for customization. Throughout the templates, you will see comments intended for the policy drafter. These comments may explain why specific language appears, signal updates made within the last year or provide context or background information to help you customize the policy.



PolicySmart™ - Why Is It Important?

- Each of the states on this map had employment and labor law changes in 2021 between July and November.
- To receive a demo and free trial of the Navigator Suite, email freetrial@compliancehr.com or go to compliancehr.com/demo.





PolicySmart Annual Updates

New Year Handbook Checklist: All of the Handbook Template Updates We Made in 2021

Print News 

- National - Policy Guidance

Posted January 3, 2022 - The PolicySmart document library now features the "2022" versions of the handbook templates, though we make updates to the templates in response to developments throughout the year. Below is a list (with links to summaries and new or revised policy templates) of all of the handbook template updates we made in response to legal developments in 2021.

National

[USERRA Amended to Cover Certain State Active Duty Performed by National Guard Members--Update to Military Leave Policy](#)

Arkansas

[Arkansas Amends Law on Firearms in the Employer's Parking Lot--Update to Weapons in the Workplace Policy](#)

California

[California Family Rights Act Expanded to Cover Leave to Care for Parents-in-Law--Update to CFRA Policy](#)

Colorado

[Colorado Adopts COMPS Order 38--Updated COMPS Order Poster and Acknowledgement](#)

[Colorado Prohibits Discrimination Based on Gender Expression and Gender Identity--Update to EEO Policy](#)

[Colorado Clarifies the Obligation to Provide Public Health Emergency Leave to New Hires and Part-Time Employees--Update to Paid Sick and Safe Leave and Public Health Emergency Leave Policy](#)

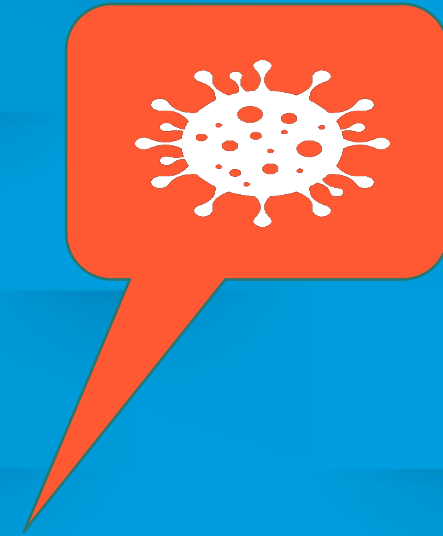
Connecticut

[Connecticut Amends FMLA and Creates New Paid Leave Benefits--New Paid Leave Benefits Policy, Updated CT FMLA Policy and Updated Family Violence](#)



Agenda

- Status Update on Masks, Vaccination Mandates and OSHA
- Wage and Hour
- Anti-Harassment Policies
- Protected Categories
- Lactation and Pregnancy Accommodation
- FMLA
- Parental Leave
- Mandatory Paid Leave
- Unlimited PTO
- USERRA and Other Military Leaves
- Leave of Absence Laws
- Mandatory Policies



Status Update: Vaccine, Mask Mandates and OSHA



100+ Employer Mandate



**Federal Contractor
Mandate**



Healthcare Mandate

The Courts Have Blocked Two of Three Vaccine Mandates

- ~~1. Mandatory vaccinations for employees who work at workplaces where 100 or more employees work.~~
2. Mandatory vaccinations for employees who work at workplaces which receive federal Medicare/Medicaid funding.
- ~~3. Mandatory vaccinations for employees who work for federal contractors.~~





- Applies to certain Medicare and Medicaid providers and suppliers
- By January 27, 2022 (February 14 in previously enjoined states): Require that 100% of covered staff receive their first dose of the COVID-19 vaccine, except those with a pending exemption request. If by that date, more than 80% vaccination rate and a plan to achieve 100% vaccination within 60 days – no enforcement action.
- Enact policies and procedures to comply with the CMS Rule.
- By February 28 (March 15 in previously enjoined state): Ensure that 100% of covered staff are fully vaccinated, except those with a granted exemption request and those having a temporary delay in receiving the vaccination. If by that date, more than 90% vaccination rate and a plan to achieve a 100% staff vaccination rate within 30 days – no enforcement action.



- CMS's express position is that the CMS Rule preempts any state laws.
- And, more than 30 states have their own versions of mandates applying to healthcare providers.
- But, exercise caution -- state laws may impose additional or potentially conflicting requirements.



Does that mean that OSHA is out of the picture? NO.

OSHA can still enforce the General Duty Clause .

Employers should conduct and document job hazard assessments to determine how to eliminate workplace exposure and transmission to COVID-19. Measures can include maximizing ventilation, masking, and social distancing.





Are we
out of the
woods?



Wage and Hour

State Minimum Wage Increases

State	New Minimum Wage
Arizona*	\$12.80
California*	\$15.00 (>25 employees) \$14.00 (<26 employees)
Colorado*	\$12.56
Delaware	\$10.50
Illinois*	\$12.00
Maine	\$12.75
Maryland	\$12.20
Massachusetts	\$14.25
Michigan	TBD
Minnesota	\$10.33 (>\$499k gross sales) \$8.42 (<\$500k gross sales)
Missouri	\$11.15
Montana	\$9.20

State	New Minimum Wage
New Jersey	\$11.05-\$16.00 (varies by industry)
New Mexico*	\$11.50
New York*	It's complicated
Ohio	\$9.30
Rhode Island	\$12.25
South Dakota	\$12.25
Vermont	\$12.55
Virginia	\$11.00
Washington*	\$14.49

* States with local jurisdictions that have implemented minimum wage increases

Salary Increases to Maintain Exempt Status



- **California**

- White Collar exemptions - \$1,200 (>25 employees) or \$1,120 (<26 employees) per week
- Computer software exemption
 - \$50 per hour, or monthly salary of \$8,679.16 and annual salary of \$104,149.81

- **Colorado**

- White Collar exemption - \$865.38 per week

- **Maine**

- White Collar exemption - \$735.59 per week

- **New York**

- White Collar Exemptions - \$1,125 (Nassau, Suffolk & Westchester) and \$990 elsewhere per week

- **Washington –**

- White Collar exemptions - \$1,014.30 per week
- Computer professional - \$50.72 per hour

Department of Labor

- Tip credits – limits eligibility for tip credits against the minimum wage
- Joint employment – broadens joint employment standards

Beware . . .In CA, Wage Theft Is “Grand Theft”

- AB 1003 amends the California Penal Code
- “Grand theft” includes intentional theft of wage, including gratuities, in excess of \$950 from one employee or \$2,350 from a group of employees.

Independent Contractor Restrictions



Dynamex v. Superior Court radically changed the standard for classifying persons independent contractors.

GIG ECONOMY



Potentially gigantic impact on the gig economy.

Independent Contractor Restrictions – 2021 Changes

- **New York** expanded “whistleblower” protections to independent contractors
- **New Jersey** increases penalties for misclassification
- **California** recently implemented the strictest limits in the United States

....but significantly backpedaled by providing numerous exemptions in 2021.

January 1, 2022 adds extensions to sunset dates and more exceptions subject to the *Borello* test.

- Remember the DOL and NLRB have implemented policy changes disfavoring findings of independent contractor status & increasing joint employment standards

Employment Contract Trends

States are increasingly restricting employment agreements including:

- Non-disclosure language (California)
- Non-disparagement (Alabama, California)
- Non-competes (Oregon, Washington)
 - Biden executive order authorized the Federal Trade Commission to implement rules banning or limiting non-competes
- Arbitration prohibitions (California)



Anti- Harassment Policies

Outline of National Harassment Policy

- Federally Protected Categories
- Includes conduct that does not rise to the level of “Unlawful”
- Examples of Sexual Harassment

Outline of National Harassment Policy

- Examples of “Other” types of Harassment
- No Retaliation
- Complaint Procedure
 - **STATE NUANCES:** NY, CA and Other States that require address/phone/email of contact



Outline of National Harassment Policy

- Investigation
 - **STATE NUANCES:** NY, CA
- Discipline
 - **STATE NUANCES:** NY
- Good Faith Complaints



Outline of National Harassment Policy

**States that require additional language for state agencies/
other special language**

CALIFORNIA	D.C. (IF TIPPED EMPLOYEES)
CONNECTICUT	ILLINOIS
MAINE	MASSACHUSETTS
NEW YORK	OREGON
RHODE ISLAND	TENNESSEE (ABUSIVE CONDUCT)
VERMONT	WASHINGTON (IF EMPLOYEES WORKING IN HOTEL, RETAIL, SECURITY GUARD ENTITY, OR PROPERTY SERVICES)

Acknowledgment of *Sexual and Other Unlawful Harassment Policy*
(Revised _____)

- I acknowledge that I have reviewed, understand and agree to comply with the **[Company Name]** *Sexual and Other Unlawful Harassment Policy*.

- I fully understand my responsibility as an employee is to comply with this Policy and that failure to follow this Policy is cause for disciplinary action, up to and including, termination.

- I further acknowledge that I have reviewed and understand the Complaint Procedure for reporting complaints or concerns under this Policy.

Employee or Intern

Sign Name

Print Name

Date

Maintain a signed copy of this policy for yourself and return a signed copy to Human Resources

Protected Categories

Protected Categories – Race and Hairstyle Discrimination

- **Connecticut** – race defined to include traits historically associated with race, such as hair texture and protective hairstyles, such as wigs, head wraps, braids, cornrows, locs, twists, Bantu knots, afros and afro puffs
- **Delaware** – race defined to include traits historically associated with race, such as hair texture and a protective hairstyle
- **Nebraska** – race defined to include skin color, hair texture and protective hairstyles
- **Nevada** – race defined to include including traits associated with race such as hair texture and protective hairstyles
- **New Mexico** – race defined to include traits historically associated with race, such as hair texture and length, protective hairstyles and cultural or religious headdresses
- **Oregon** – race defined to include physical characteristics that are historically associated with race, such as natural hair, hair texture, hair type and protective hairstyles

Protected Categories – Military Service

- **Pennsylvania** – prohibits discrimination based on military status, membership in the National Guard or other reserve components of the armed forces (including being called to active duty)
- **Virginia** – prohibits certain dependents of service members, veterans, and members of the uniformed forces of the United States and armed forces reserves

Other Protected Category Developments

- **Colorado** – expanded discrimination law to prohibit discrimination based on gender identity and gender expression
- **Illinois** – work authorization added as protected category
- **Maine** – prohibits discrimination for seeking and receiving a protection from abuse order; prohibits discrimination on the basis of “familial status”

Lactation and Pregnancy Accommodation

New Since Last Year

- **Connecticut** – amendments impose additional requirements for lactation room or other location
- **Indiana** – new law allows employees to request pregnancy accommodation and requires employers to respond within a reasonable timeframe; protection from discrimination and retaliation
- **Louisiana** – law amended to clarify that "reasonable period of time" for pregnancy leave law means 6 weeks for a normal pregnancy/childbirth or the period of disability, up to four months
- **Minneapolis** – pregnancy and lactation accommodation law amended to require that lactation breaks be paid, apply pregnancy accommodation requirements to employers with 15 or more employees, and eliminate length of service and hours worked requirements for eligibility

Paid Family and Medical Leave



AK	
HI	PR

Paid Family and Medical Leave Programs

Covered Reasons

- All cover family member care **and** bonding with new child
- Some cover employee illness, although some states have a separate statutory disability program for self
- Some cover family military events under FMLA

States with Programs

- CA, NJ, NY, RI, WA, DC, MA
- CT Contributions began 1/1/21; Benefits effective on 1/1/22
- OR effective 9/3/23; contributions start 1/1/23
- CO effective 1/1/24; contributions start 1/1/23
- NH: Benefits effective 1/1/23: Mandatory for state employees; voluntary for private.

Plan Structure

- Statutory insurance programs that are administered by the state or an insurance company
- Some states added paid family leave to a statutory disability program
- Other states adopted paid family and medical leave programs and built them off of unemployment or workers' compensation programs

NH Family and Medical Leave Insurance (FMLI):

Benefits start 1/1/2023

- **Covered Employers**
 - Mandatory for state employees; voluntary for private
 - Over 50 employees must permit employees who have opted into the plan to use payroll deductions to pay for the plan and remit payments to the state.
- **Up to 6 weeks a year of paid leave at 60% of wages for:**
 - Bonding with newly born/adopted/foster child
 - Care for an employee's spouse, child, or parent with a serious health condition or who is in the military
 - A personal serious health condition not related to employment IF the employer does not offer STD insurance
- **Policy not required to appear in Handbook**

Oregon Paid Family And Medical Leave

Benefits Start 9/3/2023

- **Employer Coverage**
 - 25 or more employees in Oregon. If fewer than 25 employees in Oregon, may make payroll contributions to the fund. If so, may apply for a state-funded grant for reimbursement for some of their contribution.
- **Up to 12 weeks of leave (14 if disabled due to pregnancy) at 100% average weekly wage on sliding scale for:**
 - Bonding
 - Care for an employee's family member with a serious health condition
 - Employee's own serious health condition
 - Safe leave for victims of domestic violence, harassment, stalking or sexual assault
- **Not specifically required to appear in Handbook, but notice requirements apply**

Colorado Paid Family And Medical Leave

Benefits Start 1/1/2024

- **Employer Coverage**
 - One or more employees during each of 20 or more calendar workweeks in the current or immediately preceding calendar year. Self-employed and local gov't employees can opt in. Less than 10 employees do not pay employer portion of premium.
 - Excludes federal government; local government can opt out.
- **Up to 12 weeks (16 if employee disabled due to pregnancy) at 90% state average weekly wage for:**
 - Bonding
 - To care for an employee's family member with a serious health condition
 - Employee's own serious health condition
 - Safe leave for victims of domestic violence, stalking or sexual assault
 - Qualifying military events related to a family member on (or called to) active duty
- **Not specifically required to appear in Handbook**

States with Separate Disability Insurance Programs

- California
- Hawaii (no PFML)
- New Jersey
- New York
- Rhode Island (no PFML)



Parental Leave

Polling Question

Has your company implemented a Paid Parental Leave Policy in past 2 years, or currently have plans to do so?

1. Yes
2. No

What NOT to Do

- Background
 - EEOC position
- Primary v. Secondary Caregiver
 - **Risks**
- Bonding Leave where STD runs concurrent for birthing parents
 - **Risks**

Outline of Paid Parental Leave Policy (PPL)

- **Post-Partum Disability**
 - Provides paid medical leave to employees who give to recover from childbirth
 - Typically, 6-8 weeks paid leave at 100% pay
 - Coordination with STD
- **Bonding Leave**
 - Provides leave to all eligible employees under policy to bond with their newly born child or child placed with employee for adoption or foster care
 - Company can choose number of weeks at its option
 - Coordination with State PFML laws

Sample Paid Parental Policy (PPL)

- Time runs concurrently with FMLA, PFML laws and STD programs
- Require employees to apply for any State and Company benefits programs: PFML; STD
- Leave must be taken within 12 months after birth
 - If not requiring employees to apply for benefits; must adjust this period to avoid stacking

Sample Paid Parental Policy (PPL)

- May provide PPL leave cannot be taken intermittently, or in large increments, such as 2 weeks
- Notice to Company 30 days prior to
- Important Legal Disclaimer stuff! leave

Mandatory Leave

New Paid Leave Laws

- **West Hollywood, CA –**
 - 96 hours of paid leave/year and 80 hours of unpaid leave/year
 - Effective 1/1/2022 for hotel employers; 7/1/2022 for others
- **Allegheny County, PA (26+ employees)**
 - 1:35; 40 hour accrual/carryover/use caps; no waiting period for use
 - Effective date TBD
- **New Mexico**
 - 1:30; 64 hour accrual and use cap; no waiting period for use
 - Effective date 7/1/2022

Amended Paid Sick Leave Laws

- **Chicago, IL** – Revisions to covered uses, including obeying state-at-home or quarantine order
- **Duluth, MN** – Amended to provide for use when employees lose work hours when their place of employment closes for public health reasons; requires copy of policy in handbook and display of poster or provision of notice
- **Oregon** – Temporary expansion of covered uses during public health emergency; expires 1/17/2022

Unlimited PTO

Risks of Unlimited or Flex PTO/Vacation Policies

- Risk that Company may be required pay out at termination
- States that require pay out of accrued vacation/PTO:

ALASKA	CALIFORNIA
COLORADO	LOUISIANA
ILLINOIS	MONTANA
MASSACHUSETTS	NORTH DAKOTA*
NEBRASKA	RHODE ISLAND (EMPLOYED OVER 1 YEAR)
NEW MEXICO	

Risks of Unlimited or Flex PTO/Vacation Policies

- Risk employees will use it to be paid during FMLA, state family leave, or other leave laws that permit use of accrued vacation/PTO during unpaid leave
- Risk if mandatory Paid Sick and Safe Time Law applies and using to cover sick time

Risks of Unlimited PTO and USERRA

- **USERRA** - Up to 5 YEARS of protected leave to serve in the Uniformed Services
- **EXPRESSLY** permits employees to use their vacation/PTO time to receive pay during military leave

USERRA and Other Military Leaves

USERRA Amendment

- Effective 1/5/2021, “uniformed services” include:
 - state active duty for 14 or more days; and
 - state active duty in response to a national emergency or major disaster declared by the president.

Not New: USERRA's Comparable Leave Requirement

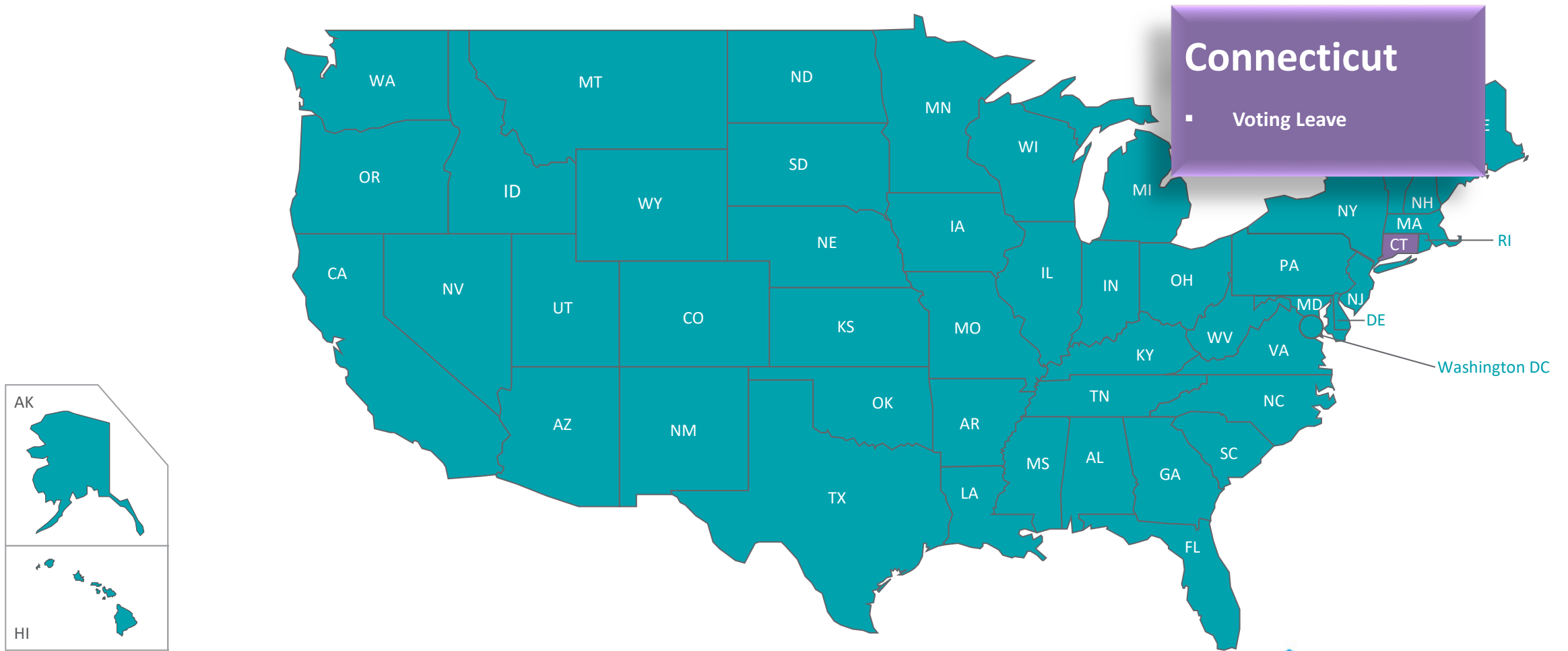
- Non-seniority-based benefits must be provided to employees on military leave if provided to employees with similar seniority, status, and pay on comparable nonmilitary leaves of absence
- Leaves are considered “comparable” by examining such factors as the duration of the leave, purpose of the leave, and the ability of the employee to choose when to take the leave

Other Military Leave Developments

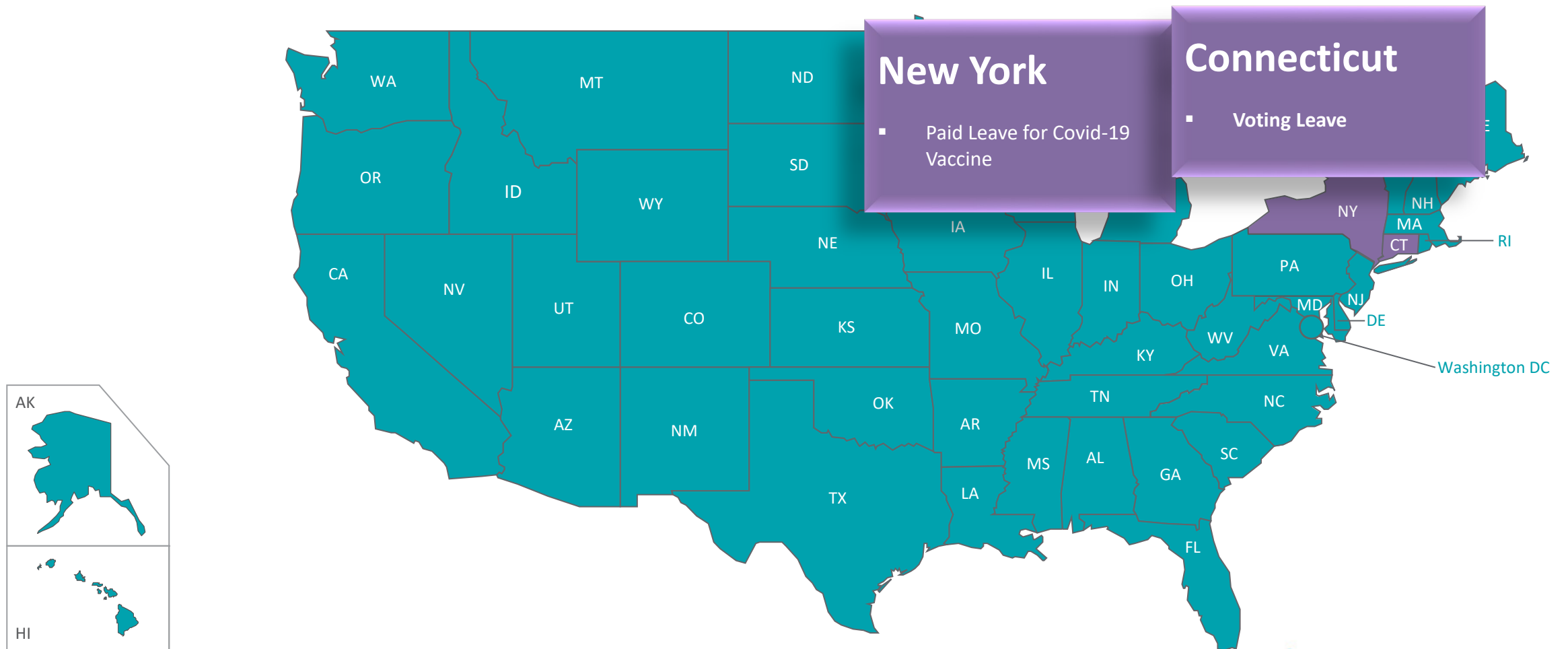
1. **Iowa** – expanded to cover regular, reserve, or auxiliary members of the United States Coast Guard
2. **Montana** – amended to clarify that protections apply whether service is voluntary or involuntary
3. **Oklahoma** – new military leave law
4. **Oregon** – amended to exempt certain voluntary service in uniformed service from the five-year limit
5. **Pennsylvania** – amended to clarify that the protections also apply to an individual who is a member of a National Guard or reserve component from another state
6. **Tennessee** – amended to provide protections equivalent to USERRA
7. **Vermont** – military leave law amended to no longer limit leave to 15 days

Leave of Absence Laws

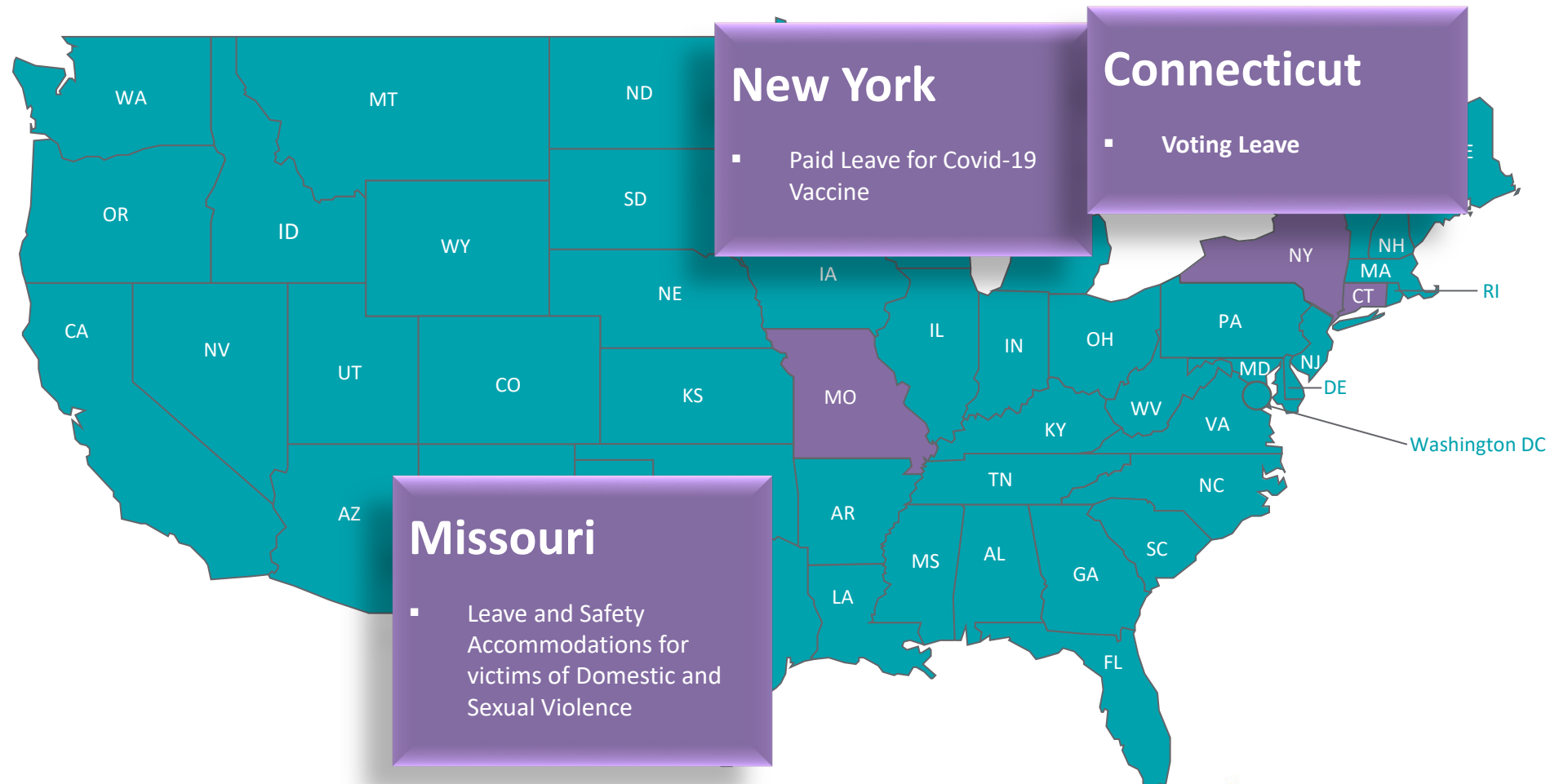
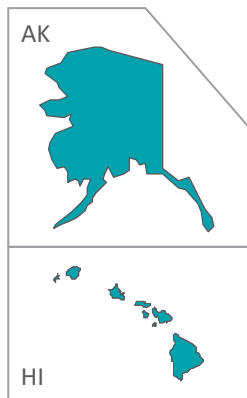
New Leave Laws We Haven't Covered



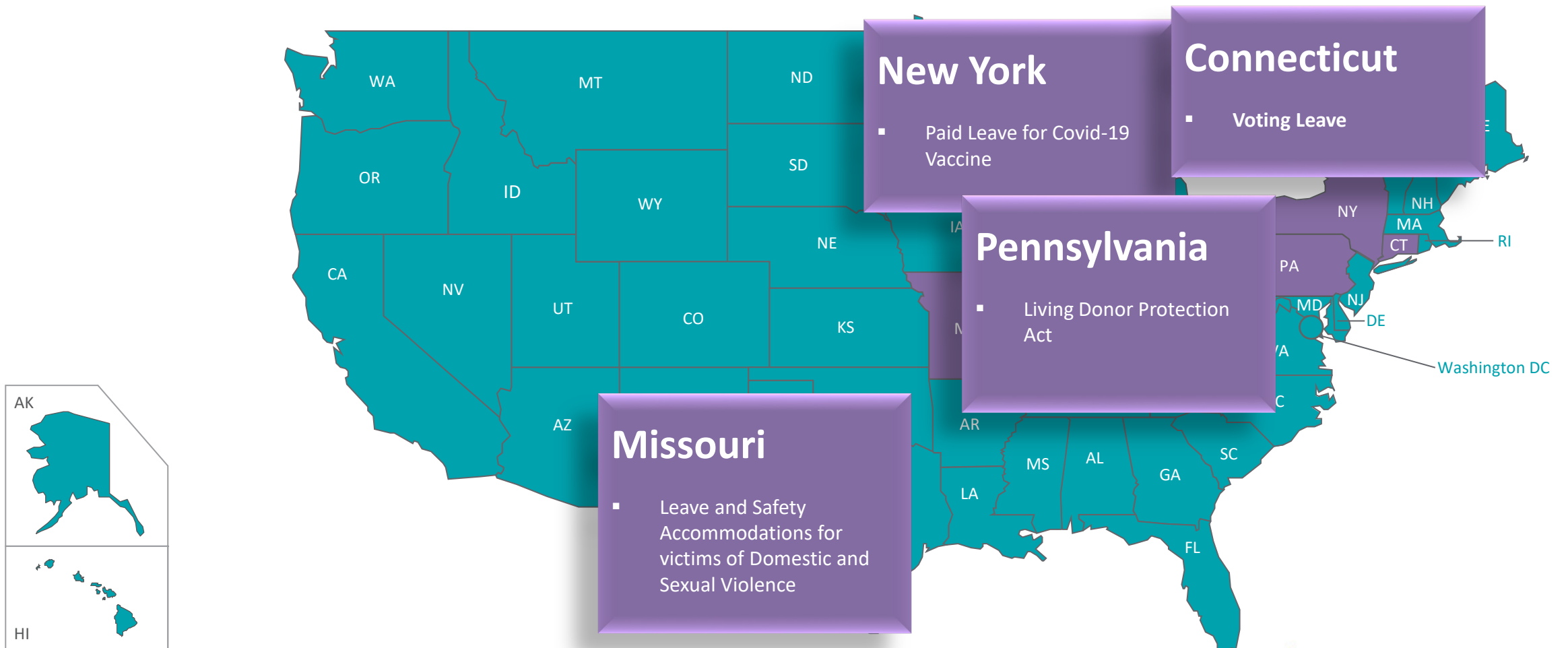
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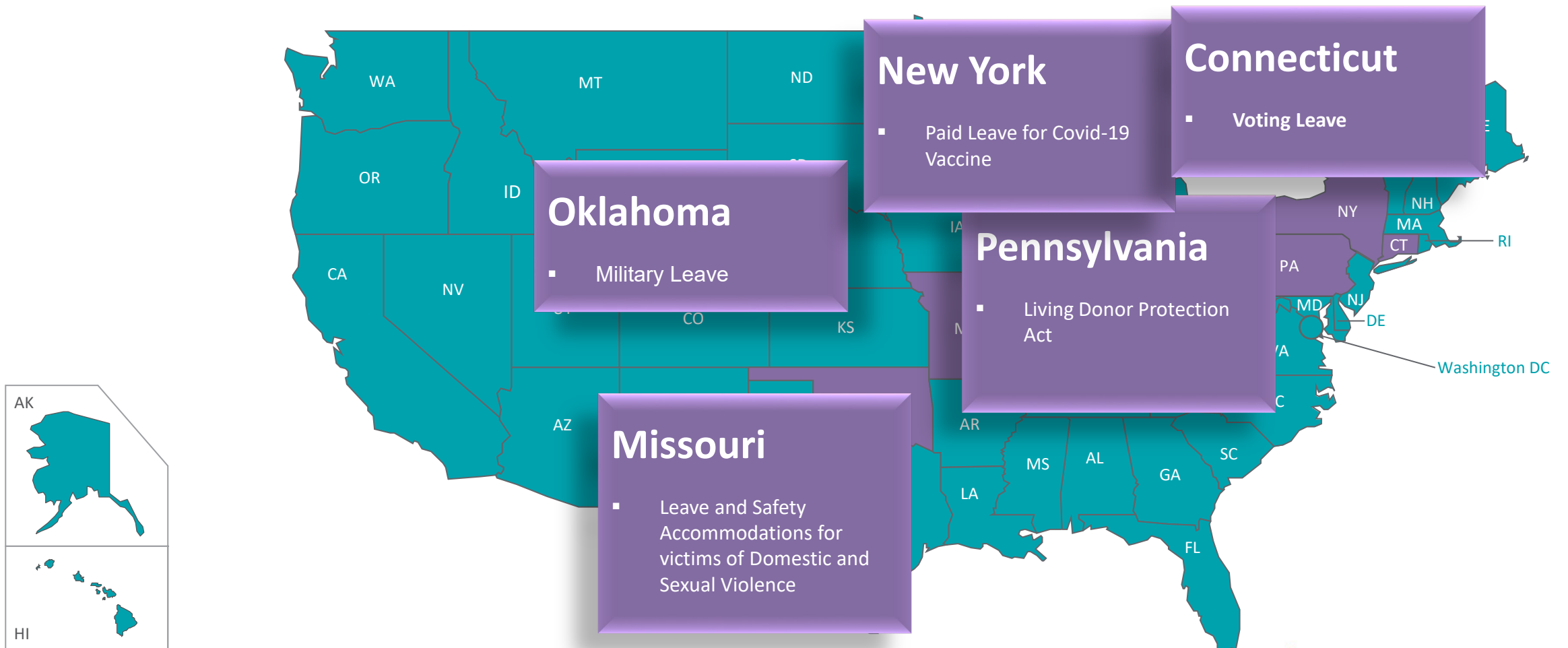
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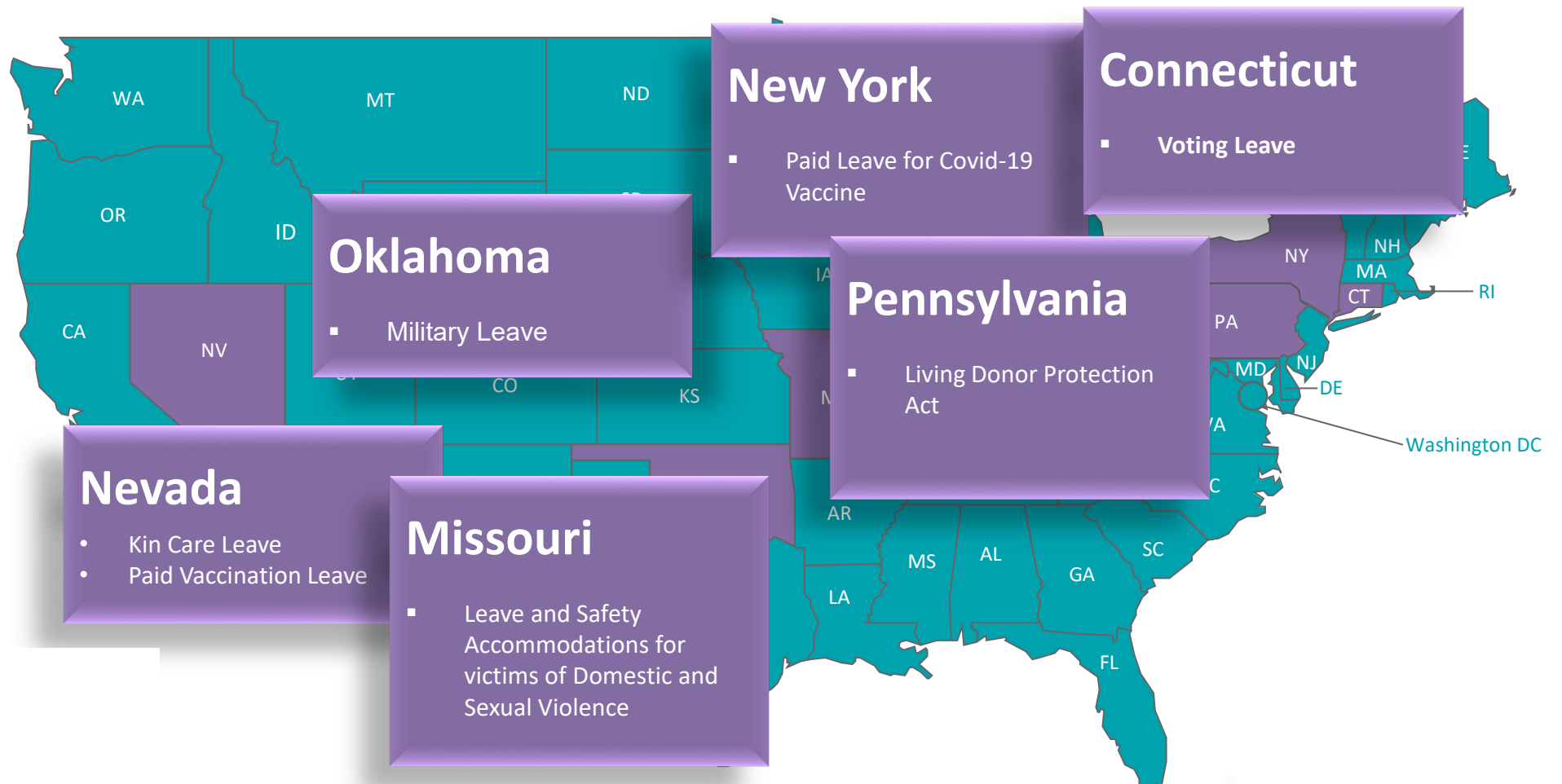
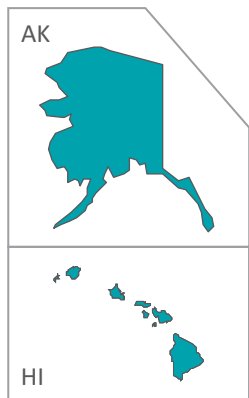
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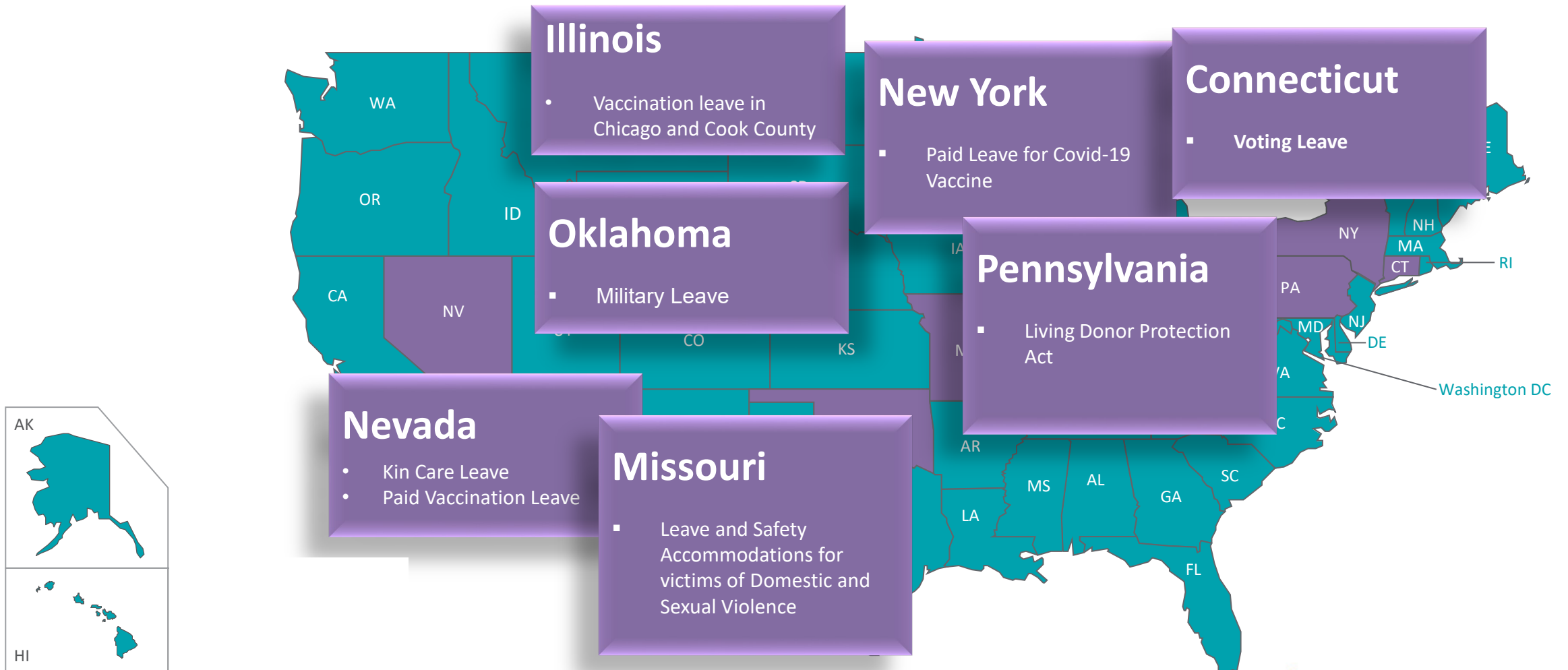
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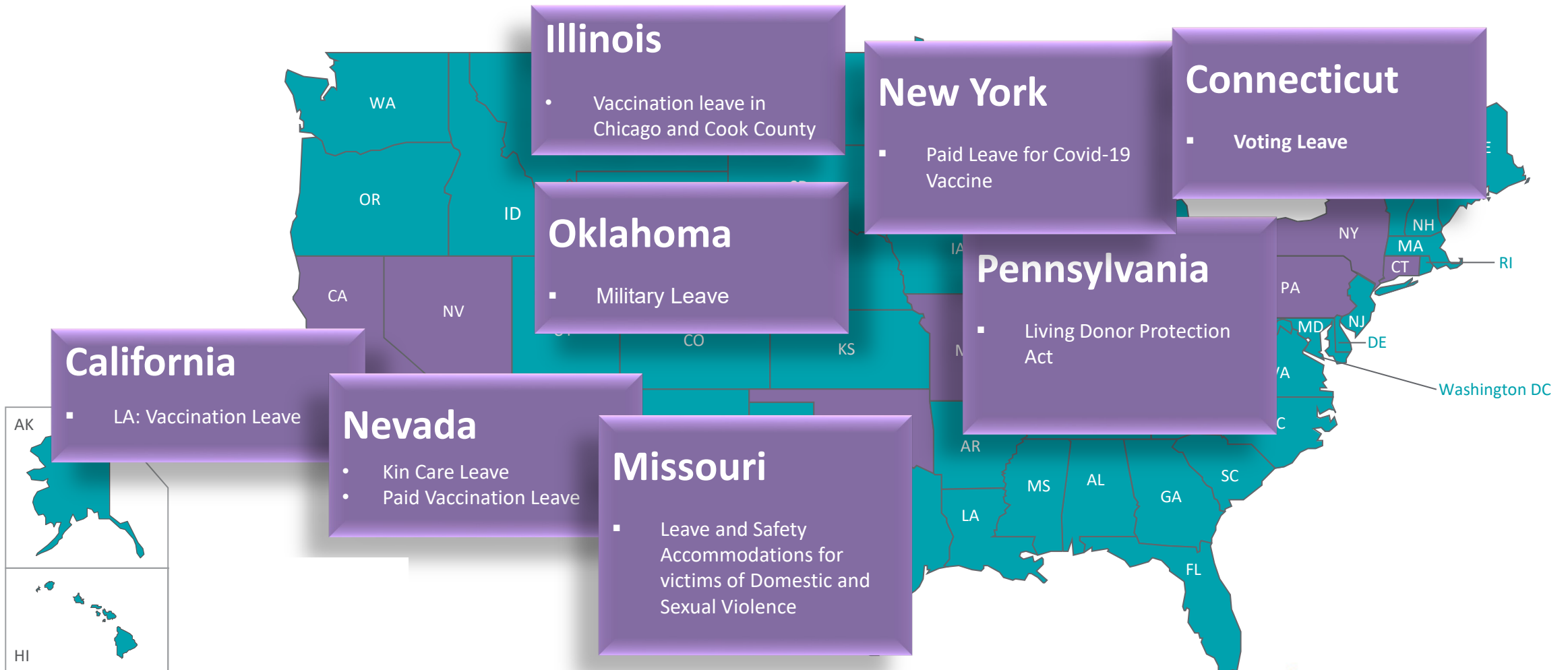
New Leave Laws We Haven't Covered



New Leave Laws We Haven't Covered



New Leave Laws We Haven't Covered



State Leave Amendments

- **California** – CFRA amended to cover care of parent-in-law
- **District of Columbia** – Universal Paid Leave Act amended to increase the amount of medical leave, cover “pre-natal leave,” eliminate waiting period for up to 1 year after COVID emergency, and prohibit reducing STD benefits to offset UPLA benefits; DC FMLA expanded eligibility for workers seeking leave related to the COVID-19 pandemic
- **Illinois** – Victims’ Economic Security and Safety Act amended to cover crimes of violence and expanded family members; kin care amendment allows leave for family member’s “personal care”
- **Kentucky** – adoption leave law amended to require that if company parental leave policy provides >6 weeks, must provide to adoptive parents too, and increase child’s age from 7 to 10 years

State Leave Amendments

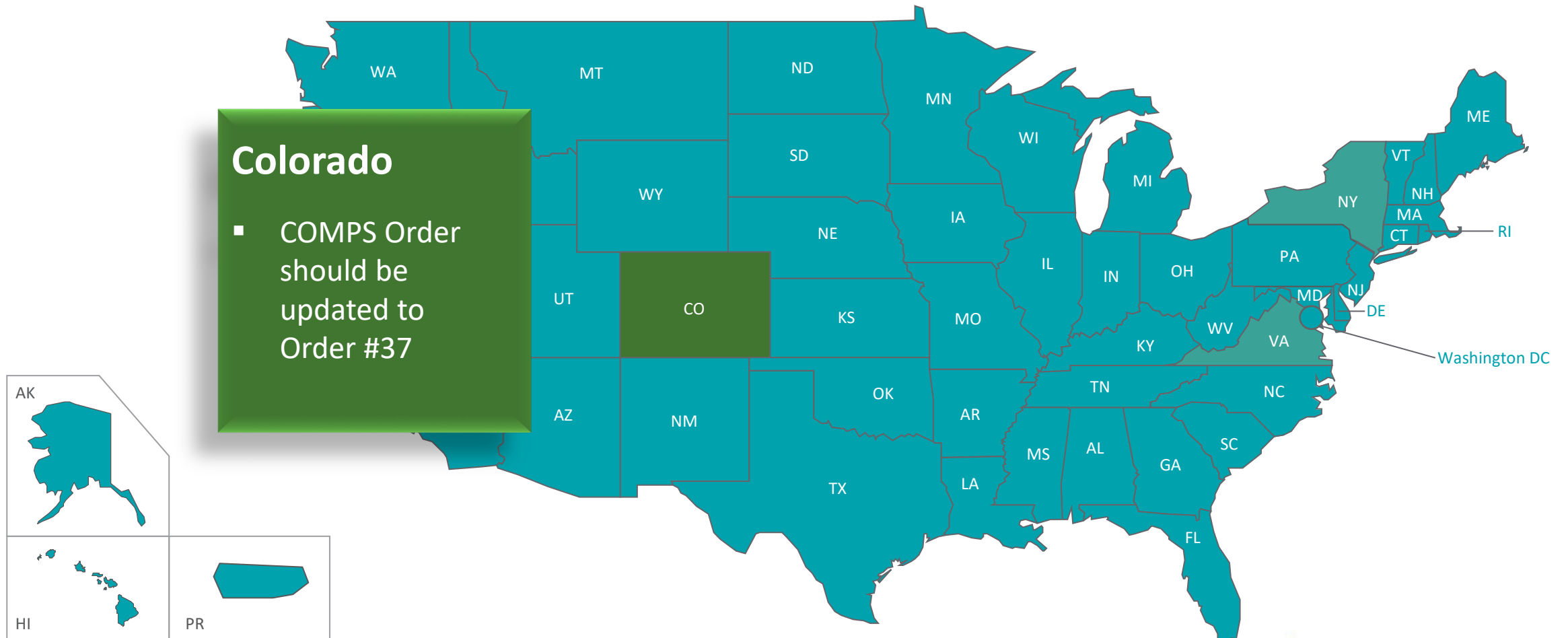
- **Maine** – ME FMLA amended to cover care of grandchild and domestic partner's grandchild
- **Maryland** – amended Flexible Leave Act allows eligible employees to use available paid leave for bereavement purposes
- **Oregon** – OFLA amended to expand eligibility for public health emergency leave and sick child leave and add restoration provision for employees rehired within 180 days
- **Rhode Island** – Incremental increases of temporary caregiver insurance benefits
- **Washington** – WA PFMLA amended to cover leave for care dependent and temporarily expand eligibility; volunteer emergency responder leave law amended definition of volunteer firefighter

Grab Bag

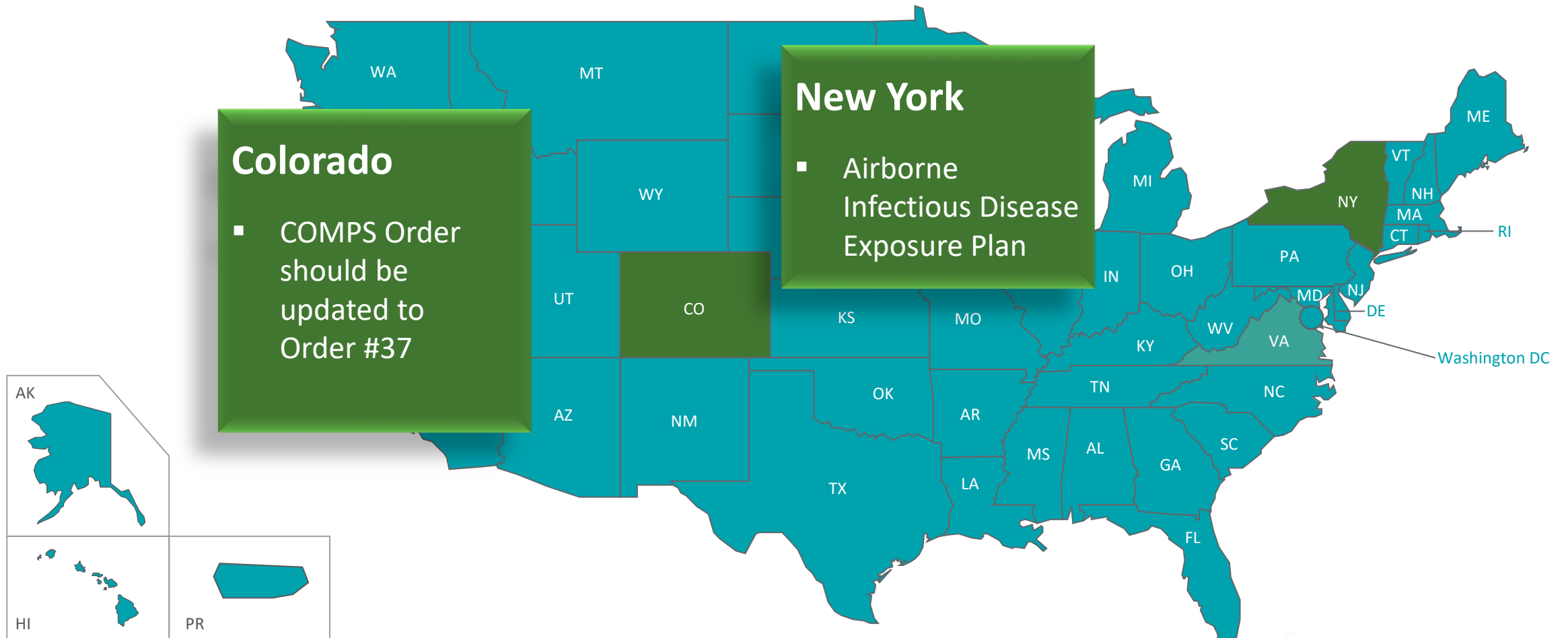
- **Arkansas** – amendment of weapons law
- **Connecticut** – employers with five or more employees must prohibit smoking, including cannabis or hemp in any area of any business facility under the employer's control
- **District of Columbia** – employers cannot have a workplace policy that prohibits an employee from being employed by another person, performing work or providing services for pay for another person, or operating the employee's own business.
- **Philadelphia, PA** – City has begun enforcing the predictability pay requirements

Mandatory Policies

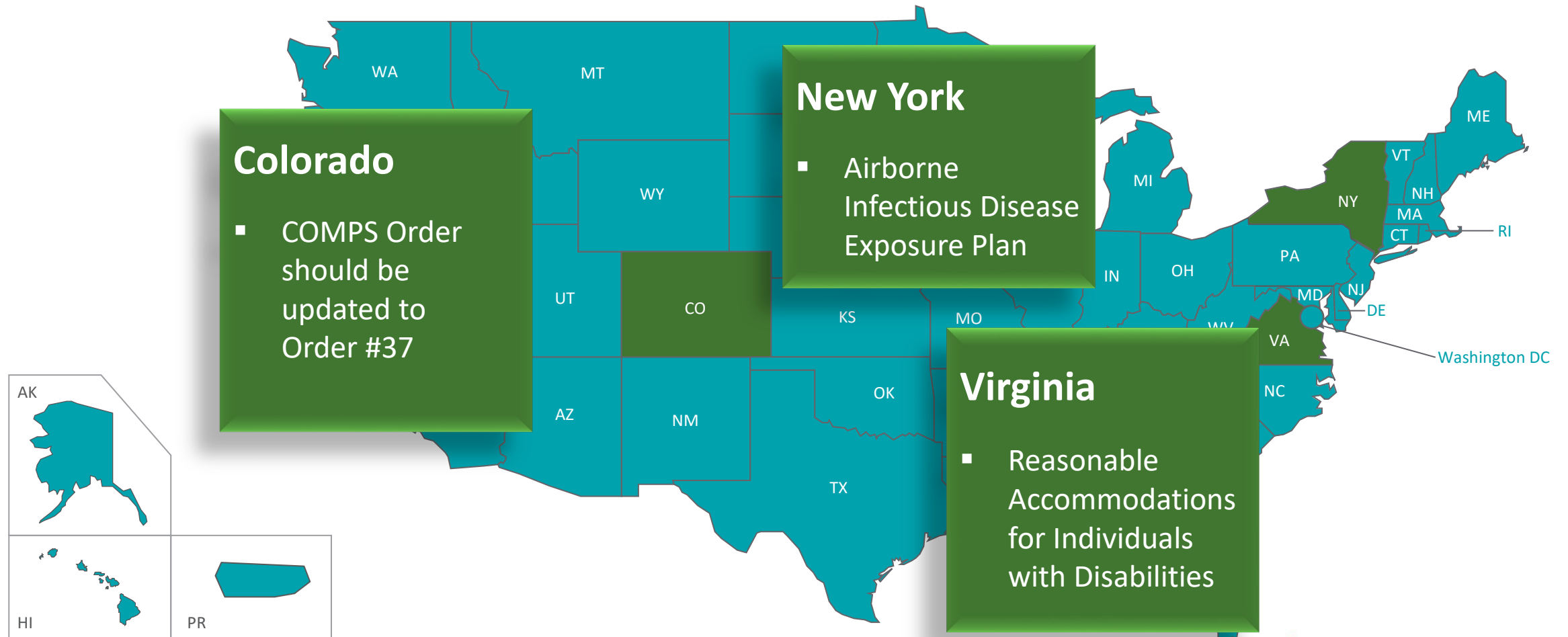
New Required Policies



New Required Policies



New Required Policies



Final Words

Industry Specific Policies

- Right To Recall – California, Several CA Cities, Nevada, Connecticut, Minneapolis, Philadelphia, Baltimore.
- Production Quotas (CA Warehouses).

Is acknowledgment of the policy required?

- Colorado COMPS order
- Delaware electronic monitoring
- Hawaii lie detector testing
- New Hampshire policies re vacation pay, sick leave, holidays, personal days, and other fringe benefits
- Wyoming policy requiring forfeiture of vacation at termination
- [California harassment policy]

Questions?

Thank you!