Statutory Update

August 31, 2023

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Federal

Resources and Guidance

Pregnant Workers Fairness Act (PWFA)

Updated Worksite Poster

Our February 27 Update included an overview of the Pregnant Workers Fairness Act (PWFA), which became effective on June 27, 2023. The U.S. Equal Employment Opportunity Commission (EEOC) has published an updated version of the "Know Your Rights" poster reflecting expanded protections provided by PWFA.

The new poster is available in English and multiple translations on the EEOC's website, and should be placed in a conspicuous location in the workplace where notices to applicants and employees are customarily posted. The website specifies that while there is no specific deadline employers must meet, employers should replace the old poster with the new one within a reasonable amount of time.

Proposed Regulations

On August 11 the EEOC released proposed regulations around PWFA's requirements, which provide guidelines to assist employers in navigating when and how protections for employees under the law may apply. The proposed regulations are open for public comment until October 10, 2023, following which final regulations will be published. In the interim, the EEOC has posted a Summary of Key Provisions of the EEOC's Proposed Rule to Implement the Pregnant Workers Fairness Act (PWFA).

For more information visit the EEOC's webpages Pregnancy Discrimination and Pregnancy-Related Disability Discrimination and What You Should Know About the Pregnant Workers Fairness Act.

Recent Guidance

Family and Medical Leave Act of 1993 (FMLA)

May 30 Opinion Letter from the U.S. Department of Labor's Wage and Hour Division:

Whether holidays count against an employee's FMLA leave entitlement and determination of the amount of leave taken

Americans with Disabilities Act (ADA)

July 26 guidance from the Equal Employment Opportunity Commission:

Visual Disabilities in the Workplace and the Americans with Disabilities Act

State and Local

Family and Medical Leave

Colorado Family and Medical Leave Insurance (CO FAMLI)

Reminder – Private Plan Applications

Employers wishing to comply with CO FAMLI requirements through a private plan beginning January 1, 2024 must submit their applications via the My FAMLI+ Employer portal on or before October 31, 2023.

- Employers are not exempt from remitting contributions to the state until they have received approval of their private plan from the Division of Family and Medical Leave Insurance.
- Employers with private plans approved for an effective date on or before January 1, 2024 will be able to request a refund for state program premiums paid in 2023. Employers who request and receive such reimbursement who also collected contributions from employees in 2023 must reimburse those employees for any amounts collected, *unless the terms of the approved private plan allow the employer to collect premiums from employees in 2023.*

More information and resources may be found on the Private Plans webpage, including:

Employer Guide to Private Plans
MyFAMLI+ User Guide for Private Plans (*v2.0, July 2023*)
State-Approved insurance Carriers
Self-Insured Private Plan Template
Surety Bond Guidance, Calculator and Form
Private Plan Regulations (7 CCR 1107-5)
FAQ

Regulations Updates

Below are highlights of CO FAMLI regulation updates adopted by the Colorado Department of Labor and Employment (CDLE) on May 25.

Coordination of Benefits (*7 CCR 1107-4, amended*)

The regulations in effect prior to May 25 stated that "an employer and an employee may *mutually agree* that the employee may use any accrued employer-provided leave as a supplement to family and medical leave insurance benefits in an amount not to exceed the difference between the individual's wage replacement benefits under the FAMLI Act and the individual's average weekly wage".

The updated regulations retain this section to address the use of vacation, sick or other paid time off to "top-up" CO FAMLI benefits (*4.5*), but make clarifications to differentiate between those benefits and how CO FAMLI coordinates with an employer's disability and leave of absence policies:

- Amended definitions (*4.2*):

  "Employer-provided paid leave" (*amended*) means vacation leave, paid sick leave, paid personal leave, paid parental leave, and any other employer-paid time off. Employer-provided paid leave does not include benefits under a short-term disability policy, long term disability policy, or a separate bank of time off solely for the purpose of paid family and medical leave (*as defined below*).

  "Separate bank of time off solely for the purpose of paid family and medical leave" (*new*) means time off provided by an employer which may only be used for a purpose covered under CO FAMLI, including but not limited to, paid parental leave, and paid leave under CO Domestic Abuse Leave, and is separate from employer-provided paid leave (*as defined above*).

- Amendment to section regarding coordination with company policies (*4.7, change is in italics*):

If family and medical leave is taken for a reason that also qualifies for benefits from a short-term disability policy, long-term disability policy, *or a separate bank of time off solely for the purpose of paid family and medical leave* offered by the employer, then so long as the employer satisfies the notice requirement of C.R.S. 8-13.3-510(1)(b)*, the **employer may count both the wage replacement amount and the duration of the family and medical leave against the benefit amounts and leave duration provided under such policy or bank of time**.

If the employer requires CO FAMLI benefits to run concurrently with its short-term or long-term disability benefits, then the terms of the short-term or long-term disability policy will govern whether the employer, the employee, or both must notify the policy's program administrator of concurrent CO FAMLI benefits received by the employee.

** This is the law text requiring written notice to employees if employer policies will run concurrently with CO FAMLI.*

Job Protection, Anti-Retaliation and Anti-Interference (*7 CCR 1107-7, new*)

The CO FAMLI law provides employment protections to employees who have worked for their employer for at least 180 days prior to taking leave. In addition, the law prohibits employers from interfering with an employee's ability to access CO FAMLI leave and benefits. The new regulations add some context to these protections:

- Eligibility for Job Reinstatement:
  - The 180 days of employment required for protections need not be consecutive. However, if a gap in employment exceeds 365 days, then the number of days employed resets to zero.
  - An individual is considered employed on any day they work, on their days off, and during any leave, paid or unpaid, where the employer reasonably believes the individual will return to work. Where employment is seasonal, an individual is not considered employed between seasons.
  - A change in the employee's status with their current employer does not reset or negate the number of days the employee was employed prior to the change in status (e.g., full-time to part-time, seasonal to full-time).
  - Leave taken under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) is considered employment.
  - The replacement of an employer by a "successor employer" (*as defined*), does not interrupt an employee's accumulation of days employed.

  Employers are *not* required to reinstate an employee when:
    - the employee had not been employed with the current employer for at least 180 days prior to the commencement of leave;
    - the employee's CO FAMLI leave extends beyond the maximum benefit duration;
    - the employee's return from leave coincides with an employer's scheduled cessation of operations for the season (e.g., ski resorts, waterparks) and the employer can show that the employee would not otherwise have been employed at the time of reinstatement;
    - the employee's written contract for employment with the employer has ended pursuant to its terms;
    - the employee's position is eliminated due to legitimate downsizing or reorganization;
    - the employee cannot perform the essential functions of their job any longer following the period of leave. An employee may be eligible to request reasonable accommodation under the Americans with Disabilities Act (ADA), Colorado Pregnant Workers Fairness Act, or other applicable state or federal law;

- the FAMLI Division or a private plan administrator has made a determination that the employee applied for or was approved for CO FAMLI benefits based on a fraudulent certification.

- "Retaliation" is defined as discrimination based on or for "protected activity", and encompasses any act (whether an affirmative act, an omission, or a statement) that is intended to, and could, deter a reasonable person from engaging in, or impose consequences for, protected activity.
  - "Protected activity" is as described in C.R.S. § 8-13.3-509(4) and includes an employee's right to request, apply for or use CO FAMLI benefits; communicate to their employer or any other person or entity an intent to file a claim, a complaint with the division or courts, or an appeal; testify or assist in any investigation, hearing or proceeding related to CO FAMLI leave and/or employment protections, at any time, including during the period in which the person receives benefits; or inform any person about his or her rights under, or an employer's alleged violation of, the law or its regulations.

  Examples of unlawful retaliation may include, but are not limited to:
  - failing to hire an individual because they engaged in protected activity;
  - subjecting an employee to intimidation, threat, reprisal, harassment, or discrimination, or engaging in conduct which would reasonably have the effect of discouraging a reasonable employee from accessing CO FAMLI benefits;
  - subjecting an employee to an adverse employment action, including discipline, discharge, suspension, transfer, or assignment to a lesser position in terms of job classification, job security, or another term or condition of employment;
  - enacting or enforcing an employer attendance policy that counts CO FAMLI leave as an absence that may lead to or result in discipline, demotion, or suspension;
  - reducing the pay or hours of work of an employee or denying an employee additional hours of work;
  - taking any effort to use a person's immigration status to negatively impact the rights, responsibilities, or proceedings of any person or entity under the FAMLI Act;
  - failing to reinstate an eligible employee following a return from leave.

- "Interference" is defined as any act or omission that, regardless of intent, interferes with any right or protected activity under the FAMLI Act or its implementing regulations. Interference includes but is not limited to:
  - intimidating or threatening conduct intended to discourage an employee from accessing CO FAMLI benefits or leave, or which has the effect of discouraging an employee from accessing such benefits or leave;
  - inducing or attempting to induce an individual to prospectively waive a right under the FAMLI Act or its regulations;
  - providing false or misleading information intended to interfere with an employee's ability to access family and medical leave insurance benefits or family and medical leave, or which has the effect of interfering with an employee's ability to access such benefits or leave;
  - failing to provide the required notice to employees;
  - requesting information from the CDLE's Division of Family and Medical Leave Insurance, or from the private plan administrator, that is not absolutely necessary for coordination of CO FAMLI and employer-provided benefits;
  - requiring the production of information defined as confidential under CO FAMLI regulations or other statutes, including but not limited to the Healthy Family and Workplaces Act (HFWA), the Family and Medical Leave Act of 1993 (FMLA), the Americans with Disabilities Act of 1990 (ADA), and the Genetic Information Nondiscrimination Act of 2008 (GINA);

- failing to cooperate with the FAMLI Division in processing a request for benefits, or during the processing of a complaint;
- taking any effort to use a person's immigration status to negatively impact the rights, responsibilities, or proceedings of any person or entity under the FAMLI Act.

Employers in violation of any of the above may be subject to civil action, the damages and equitable relief available to employees under the FMLA (29 USC §2617(a)(1)), and/or a fine of $500 per covered individual, per violation.

Massachusetts Parental Leave Act (MPLA)

Guidance and Updated Required Notice

Massachusetts Parental Leave Act (MPLA) provides eligible employees up to 8 weeks of unpaid, job-protected leave to welcome a new child upon the child's birth, adoption, or placement for adoption. The law applies to employers with six or more part-time or full-time employees. Employees are eligible for after completing three consecutive months of full-time employment.

The law was originally enacted in 1972 as the Massachusetts Maternity Leave Act and most recently amended (and renamed) in 2015 to extend leave rights and protections to men. Following that amendment the Massachusetts Commission Against Discrimination (MCAD) released some limited guidance, but no formal amendments to the official guidelines.

On June 2 MCAD posted two documents: Guidelines on the Massachusetts Parental Leave Act and Know Your Rights: A Brief Guide to the Massachusetts Parental Leave Act, providing context around the basic requirements of the law such as eligibility and job protection, as well as how the MPLA interacts with other laws under which an employee may also be covered. Below are a few highlights from the Guidelines:

- Parental leave may be taken in a continuous block of time or on an intermittent or reduced schedule basis. Employees may take parental leave on an intermittent or reduced schedule basis with the employer's agreement, *which shall not be unreasonably denied*. It is within the purpose of the MPLA to grant flexible leave to allow parents a chance to care for and bond with a new member of their family during a critical time.
- An employee is entitled to a parental leave only in a manner consistent with the language and purpose of the MPLA. Under the MPLA, employers must provide employees with parental leave "for the purpose of giving birth," or "for the placement of a child for adoption with the employee" who "is adopting" or "is intending to adopt." Accordingly, MPLA leave is not necessarily triggered at birth and can be started before birth or adoption.

  An individual may be found to "intend to adopt" even where the adoption process has not been completed. Evidence of an individual intending to adopt a child may include where the individual has taken steps reflecting a plan to adopt, such as making inquiries regarding adoption, receiving training to adopt, engaging in an evaluation process for adoption, submitting an application for adoption, and/or pre-placement for adoption.
- While MPLA leave does not have to be taken immediately upon the birth or adoption of a child, it must be taken within a reasonable timeframe consistent with the purpose of the Act, which is to allow parents time off of work to care for and bond with children being welcomed into their family. Accordingly, MCAD will generally consider one year from the date of the child's birth or adoption to be a reasonable timeframe in which to take the eight weeks of MPLA leave.
- If two employees who work for the same employer want parental leave for the birth or adoption of the same child, those two employees are only entitled to a combined eight weeks of leave in total for that particular child.
- An employee may voluntarily use any accrued vacation or personal time the employee has, concurrently with all or part of a MPLA leave. Moreover, employers cannot require an employee to use the accrued paid vacation or personal time concurrently with all or part of the parental leave, even if such requirement is imposed upon similarly situated persons who take leave for other reasons.

  The use of sick time during MPLA leave is the prerogative of the employee, with one exception: the regulations interpreting the Massachusetts Earned Sick Time (EST) law allow employees to choose to

use, *or employers to require employees to use*, concurrent earned paid sick time, as provided under the EST law, to receive pay when taking other statutory leave that would otherwise be unpaid. Therefore, the MCAD continues to prohibit employers from requiring the use of any paid time off during a leave taken pursuant to the MPLA, *except for the paid sick leave accrued pursuant to the EST law*.

- Interplay with Massachusetts Paid Family and Medical Leave (MA PFML):
  - Parental leave under the MPLA and MA PFML run concurrently. There are limited circumstances, however, where an employee uses all the MA PFML available in a benefit year and will be entitled to additional leave under the MPLA. For example, if an employee takes 26 weeks of MA PFML leave in a benefit year to care for a family member who was injured serving in the armed forces, and then seeks parental leave for the purpose of giving birth or for placement of a child, the employee is not entitled to any further paid leave under MA PFML. In this case, an employee who qualifies for MPLA leave would be entitled to an additional eight weeks of unpaid leave.
  - Under MA PFML, no more than 12 weeks of leave benefits are available in a benefit year in the case of multiple births. Thus, a parent of twins or triplets may receive partial wage replacement through MA PFML of up to 12 weeks. MPLA provides eight weeks of unpaid leave for *each* birth, and therefore may provide additional weeks of unpaid leave.
- Interplay with the Family and Medical Leave Act of 1993 (FMLA):
  - In some instances the MPLA may entitle an employee to leave in addition to the 12 weeks of leave taken under the FMLA. The FMLA provides that nothing in the law supersedes any provision of state law that provides greater family or medical leave rights. Thus, for example, if an employee takes 12 weeks of FMLA leave for a purpose other than birth or adoption of a child, the employee will still have the right to take eight weeks of parental leave under the MPLA.
  - The MPLA does not require an employer to specifically designate leave as MPLA leave. Thus, if an employee takes leave for an MPLA purpose, such as giving birth, that leave will count towards that employee's MPLA entitlement whether or not the employer designates it as such. FMLA leave, by contrast, must be specifically designated as such, in writing, in order for that leave to be counted toward that employee's 12-week entitlement.
  - Under the MPLA, an employee may take a parental leave each time the employee has a child through birth, adoption, or placement in the home for the purposes of adoption. Thus, for example, if an employee's child is born in January and they adopt a second child in March, the employee would be entitled to two separate eight-week parental leaves under the MPLA for a total of 16 weeks. By contrast, under the FMLA, leave is limited to a maximum of 12 weeks in a 12-month period.

MCAD has also posted updated Q&A and a new model notice on its website. The model notice must be displayed conspicuously in the workplace; it is recommended that it be provided in electronic format for employees who may not visit a physical work site.

Maine Paid Family and Medical Leave (ME PFML) – *NEW*

On July 11 the Maine Paid Family and Medical Leave program was approved by the governor as part of budget bill LD258 (*PFML begins on page 319*). Below is a summary of the new law; certain elements may be clarified during the rulemaking process.

Maine Paid Family and Medical Leave (ME PFML) **LD258** (*creates MRSA Tit. 26, Ch. 7, Sub Ch. 6-C*)	
Website	https://www.maine.gov/labor/pfml/
Effective Dates	Contributions: January 1, 2025 Benefits Entitlement: May 1, 2026 *Note: The law text indicates that, by February 1, 2026, the Paid Family and Medical Leave Benefits Authority will conduct an actuarial study to ensure the solvency of the Paid Family and Medical Leave Insurance Fund in order to begin processing claims on May 1. If additional contributions are required based on the results of the actuarial study, the Authority, through a majority vote, may require a one-time suspension of claims payments of no longer than three months.*
Applies to	All Employers, including the state, state and local agencies, and public employers • Excludes the federal government. All Employees • Excludes independent contractors. Tribal governments and self-employed individuals, including independent contractors and sole proprietors, may opt in to the program, with an initial period of not less than three years.
Eligibility for Leave	An employee is a "covered individual" if they: 1) earned at least six times the state average weekly wage (SAWW)* in wages subject to ME PFML contributions during their base period; *and* 2) meet the administrative requirements outlined in the ME PFML law and its regulations and file an application for ME PFML benefits. ** $1,103.71 effective 7/1/23* "Base period" means the first 4 calendar quarters immediately preceding the first day of an individual's benefit year. "Benefit year" means the 12-month period beginning on the first day of the calendar week immediately preceding the date on which ME PFML benefits commence.
Collective Bargaining Agreements	• The ME PFML law does not remove an employer's obligations to comply with any employer policy, law or collective bargaining agreement that provides for more generous rights to leave, nor does it lessen the rights, privileges, or remedies of any employee under any collective bargaining agreement or employment contract. • Public employers subject to a collective bargaining agreement in existence on this law's effective date* are not required to comply with the law's requirements until the existing collective bargaining agreement expires. * *It is unclear whether this refers to the bill's effective date of October 25, 2023, or the PFML program effective date.*

Maine Paid Family and Medical Leave (ME PFML)

LD258 (*creates MRSA Tit. 26, Ch. 7, Sub Ch. 6-C*)

Types of Plans

1) State Program

- The Maine Department of Labor (MDOL) may, through contract after a competitive bidding process, authorize a third party to conduct claims administration.
- The Paid Family and Medical Leave Benefits Authority will advise the administrator on the implementation and administration of the program.

2) Private Plan

- An employer may apply to MDOL for approval to meet its ME PFML obligations through a private plan.
- In order to be approved, a private plan must confer rights, protections, and benefits substantially equivalent to those provided to employees under the state program, including, but not limited to:
  - providing coverage for all employees of the employer throughout each employee's period of employment with that employer;
  - allowing leave to be taken for all purposes permitted under the state program;
  - providing PFML benefits for a maximum number of weeks substantially equivalent to the maximum number of weeks required by the state program in a benefit year;
  - providing a wage replacement rate and maximum weekly benefit that is substantially equivalent to the amount provided under the state program;
  - imposing no additional conditions or restrictions on PFML benefits or leave beyond those explicitly authorized by the ME PFML law and its regulations;
  - allowing any employee covered under the private plan who is eligible for ME PFML to receive benefits and take leave under the private plan;
  - allowing that PFML may be taken intermittently; and
  - providing that the cost to employees covered by the private plan is not greater than the cost charged to employees under the state program.
- An employer with an approved private plan will not be required to remit program contributions to the state.
- If the private plan provides for insurance, the policy must be issued by an insurer authorized to engage in the business of insurance in the state.
- If the private plan is in the form of self-insurance, the employer must furnish a bond to the state with a surety company authorized to transact business in the state, in a form, amount and manner to be determined by MDOL.
- Approval for a private plan may be withdrawn by MDOL if terms or conditions of the plan have been violated. Causes for plan termination include, but are not limited to, the following:
  - failure to pay family leave benefits or medical leave benefits;
  - failure to pay family leave benefits or medical leave benefits timely and in a manner consistent with the law's requirements;
  - failure to maintain an adequate surety bond;
  - misuse of private plan money;
  - failure to submit reports as required by regulations; or
  - failure to comply with the requirements of the ME PFML law or its adopted regulations.
- A contested determination or denial of PFML benefits by a private plan is subject to appeal before MDOL and a court of competent jurisdiction.

Maine Paid Family and Medical Leave (ME PFML)

LD258 (*creates MRSA Tit. 26, Ch. 7, Sub Ch. 6-C*)

- Employers offering private plans that violate requirements are subject to a fine of $100 per violation. MDOL will transfer any fines collected to the Fund. MDOL will establish by regulation a process for the assessment and appeal of fines.
- On an annual basis, MDOL will determine the total amount expended by MDOL for costs arising out of the administration of private plans. An employer offering a private plan will be required to reimburse MDOL for the costs arising out of its private plan in the amount, form and manner determined by MDOL by regulation. Such payments received will be transferred to the Fund.

Contributions

Employer- and Employee-Paid, beginning January 1, 2025

- Total contribution rate: not to exceed 1.0% of employees' wages
  - Wages include, but are not limited to, salary, wages, tips, commissions, and other compensation as determined by rule *(i.e., to be fully defined in regulations).*
- Employers may deduct up to 50% of the total contribution rate from employees' wages, and are responsible for contributing the remaining 50%.
  - Employers with fewer than 15 employees are not required to remit the employer portion of contributions. (*It is assumed that this threshold is based upon employee count nationwide; regulations may clarify.*)
- The maximum amount of earnings subject to ME PFML premium assessment is equal to the maximum earnings subject to the Social Security Old-Age, Survivors, and Disability Insurance tax in that year *($160,200 in 2023*).
- Beginning in 2027, by October 1 each year MDOL will set the premium for the coming calendar year at the rate necessary to maintain the solvency of the Fund.
- Premiums and contribution reports must be remitted to the state on a quarterly basis.

Private Plans:

- Employees covered by a private plan may not be charged at a higher rate than the state program rate.
- An employer with an approved private plan will not be required to remit contributions to the state.

Reasons for Leave

- The employee's inability to work due to a serious health condition
- To care for a covered family member with a serious health condition
- To bond with a new child during the first 12 months following birth or placement for adoption or foster care
- For "safe leave" to attend to the employee's or a family member's needs due to violence, assault, sexual assault, stalking, or any act that would support an order for protection from abuse
- For needs associated with a qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on covered active duty, or has been notified of an impending call or order to covered active duty in the United States Armed Forces (*determined in accordance with the Family and Medical Leave Act of 1993 (FMLA), 29 USC 2612(a)(1)(E)*)
- To care for a covered family member who is a current or former member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, with a serious injury or illness incurred or aggravated in the line of duty
- Any other reason covered under Maine Family Medical Leave, such as:

Maine Paid Family and Medical Leave (ME PFML)

LD258 (*creates MRSA Tit. 26, Ch. 7, Sub Ch. 6-C*)

	• for the employee's organ donation • if the employee's spouse, domestic partner, parent, sibling or child who is a member of the state military forces or the United States Armed Forces dies or incurs a serious health condition while on active duty
Covered Family Members	• Employee's spouse or domestic partner (*as defined here and here, respectively*) • Employee's, spouse's or domestic partner's child of any age, including a child whose parentage has been determined under the Maine Parentage Act, or any other biological child, adopted child, foster child or stepchild, child to whom the employee or the employee's spouse or domestic partner stands in loco parentis, child the employee or the employee's spouse or domestic partner has under legal guardianship, or any individual to whom the employee or the employee's spouse or domestic partner stood in any of these relationships when the individual was a minor child • Employee's, spouse's or domestic partner's parent, including a legal parent, biological parent, adoptive parent, foster parent, stepparent, de facto parent or legal guardian, or a person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor child • Employee's, spouse's or domestic partner's sibling, including a legal sibling, biological sibling, adoptive sibling, foster sibling, stepsibling or de facto sibling • Employee's, spouse's or domestic partner's grandparent, including a legal grandparent, biological grandparent, adoptive grandparent, foster grandparent, step-grandparent or de facto grandparent • Employee's, spouse's or domestic partner's grandchild, including a legal grandchild, biological grandchild, adoptive grandchild, foster grandchild, step-grandchild or de facto grandchild • An individual with whom the employee has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship
Leave Entitlement	12 weeks of medical leave and family leave combined per benefit year Intermittent Leave • Leave may be taken intermittently in increments of not less than 8 hours or on a reduced leave schedule otherwise agreed to by the employee and the employer. • The taking of leave intermittently or on a reduced leave schedule does not reduce the total amount of leave to which the employee is entitled under the law.
Waiting/ Elimination Period	• Medical leave benefits are not payable during the first 7 calendar days of the leave. • An employee may use accrued sick or vacation pay or other paid leave provided under a collective bargaining agreement or employer policy during the waiting period.
Notice to Employer	• Absent an emergency, illness, or other sudden necessity for taking leave, an employee must give reasonable notice to the employee's supervisor of the employee's intent to take leave under the PFML law. • Leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer. *Note: If an employer fails to provide an employee with required program notice (as described in 'Notice to Employees' below), the above do not apply.*

Maine Paid Family and Medical Leave (ME PFML)

LD258 (*creates MRSA Tit. 26, Ch. 7, Sub Ch. 6-C*)

Application for Benefits

- An employee may file an application for PFML benefits no more than 60 days before the anticipated start date leave and no more than 90 days after the start date of leave. 90-day filing deadline may be waived by the ME PFML administrator for good cause.
- The ME PFML administrator will notify the relevant employer within 5 business days of a claim being filed.

Weekly Benefits

- Benefit Formula - the weekly benefit amount will be calculated as follows:
  1) 90% of the employee's average weekly wage* that is equal to or less than 50% of the state average weekly wage (SAWW)**; *plus*
  2) 66% of the employee's average weekly wage that is greater than 50% of the SAWW.

  * *Employee's average weekly wage: 1/52 of aggregate total wages paid in the state for a covered individual, as reported on employer contribution reports for the calendar year, divided by the arithmetic mean of midmonth weekly covered employment reported on employer contribution reports for the calendar year. (This is similar to the definition of 'Annual Average Weekly Wage' in Maine's unemployment insurance law; regulations and/or other guidance may clarify.)*

  ** *The SAWW is $1,103.71 effective 7/1/23.*
- The Maximum Weekly Benefit will be equivalent to the SAWW.
  - By January 1 of the year in which claims begin being processed (*i.e., January 1, 2026*) and annually thereafter, the MDOL will take into consideration the recommendation of the Authority to adjust the maximum weekly benefit amount if/as necessary to maintain the solvency of the Fund, and the adjusted maximum weekly benefit amount will take effect on January 1 of the year following the adjustment.
- The weekly benefit amount will be prorated for leave taken on an intermittent or reduced leave schedule.

Taxation of Benefits

- ***If the Internal Revenue Service determines that ME PFML benefits received are subject to federal income tax***, the MDOL will advise an employee filing a new claim for PFML benefits that:
  1) the IRS has determined that benefits are subject to federal income tax;
  2) there are requirements for filing estimated tax payments;
  3) the applicant may elect to have federal income tax withheld from benefits; and
  4) the applicant is permitted to change a previously elected withholding status.

  MDOL will follow all procedures specified by the IRS pertaining to the deducting and withholding of income tax.
- MDOL, in consultation with the Department of Administrative and Financial Services, Bureau of Revenue Services, will adopt rules regarding federal and state tax treatment and related procedures regarding ME PFML benefits and the sharing of necessary information between MDOL and the Bureau of Revenue Services.

Employment and Benefits Protection

Job Protection/Reinstatement

- Upon return from ME PFML an employee who has been employed for at least 120 days is entitled to be restored by the employer to the position held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

Maine Paid Family and Medical Leave (ME PFML)

LD258 (*creates MRSA Tit. 26, Ch. 7, Sub Ch. 6-C*)

- An employer must not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee for requesting or obtaining ME PFML benefits or leave, or for exercising any other right under the law.

Maintenance of Benefits

- The taking of ME PFML may not affect an employee's right to accrue vacation time, sick time, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs.
- During the duration of an employee's ME PFML leave, the employer must continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the same level and under the same conditions coverage would have been provided if the employee had continued working continuously for the duration of leave. (*This provision does not apply to a person who is no longer an employee who was an employee when that person began taking PFML.*)

Coordination with Other Leaves and Programs

- ME PFML runs concurrently with leave taken for the same purpose under Maine Family Medical Leave and/or the Family and Medical Leave Act of 1993 (FMLA). Employees may take ME PFML while ineligible for leave under FMLA in the same benefit year.
- An employee may elect to use accrued sick or vacation pay or other paid leave provided under a collective bargaining agreement or employer policy during the 7-day waiting period for medical leave. An employer may not require an employee to exhaust any sick, vacation, or personal time before or while taking ME PFML.
- The ME PFML law does not prohibit an employee entitled to receive benefits for family leave or medical leave under a collective bargaining agreement or employer policy from also receiving ME PFML benefits as long as the employee is otherwise eligible for ME PFML benefits.
- The weekly benefit amount will be reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on PFML:
  - A government program or law, including, but not limited to, state unemployment insurance (*MRSA Tit. 26, Ch. 13*) and workers' compensation under (*MRSA Tit. 39-A*) other than for compensation received for partial incapacity for an injury that occurred prior to the PFML claim, or under other state or federal temporary or permanent disability benefits law; or
  - A permanent disability policy or program of an employer.
- An employer policy adopted or retained on or after this law's effective date* may not diminish an employee's right to ME PFML benefits. Any agreement by an employee to waive the employee's rights under this subchapter is against public policy and is void and unenforceable.

  * *It is unclear whether this refers to the bill's effective date of October 25, 2023, or the PFML program effective date.*

Notice to Employees

1) Each employer must post in a conspicuous place on each of its premises a workplace notice advising employees of benefits available under the ME PFML program.
   - MDOL will provide the model notice in English, Spanish, French, Somali and Portuguese, and any other language that is the primary language of at least 2,000 residents of the state.

Maine Paid Family and Medical Leave (ME PFML)
LD258 (*creates MRSA Tit. 26, Ch. 7, Sub Ch. 6-C*)

- The employer must post the notice in English and each language other than English that is the primary language of three or more employees of that workplace, if such translation is available from MDOL.

2) Each employer must issue to each employee not more than 30 days from the beginning date of the employee's employment the following written information provided or approved by MDOL in the employee's primary language:
   - an explanation of the availability of ME PFML benefits, including rights to reinstatement and continuation of health insurance;
   - the employee's premium amount and obligations;
   - the name and mailing address of the employer;
   - the identification number assigned to the employer by the ME PFML program administrator;
   - instructions on how to file a claim for ME PFML benefits;
   - the mailing address, e-mail address, and telephone number of the ME PFML program administrator; and
   - any other information required by the ME PFML program administrator.

New York Disability Benefits Law (NY DBL)

Regulations Updates

On May 4 the New York Workers' Compensation Board announced the adoption of amendments to NY DBL regulations effective January 1, 2024. Included in the amendments are changes to the definition of disability (*changes in italics*):

a) Disability during employment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the regular duties of his employment or the duties of any other employment which his employer may offer him at his regular wages and which his injury or sickness does not prevent him from performing.

b) Regular wages as used herein means the wages, as defined in section 357.1, that the employee would have earned if disability had not prevented him from working.

c) Disability during unemployment means the inability of an employee, as a result of injury or sickness not arising out of and in the course of an employment, to perform the duties of any employment for which he is reasonably qualified by training and experience.

d) Injury and sickness means accidental injury, disease, infection or illness *or incapacitation as a result of being an organ donor in a transplant operation*.

e) *Disability includes disability caused by or in connection with a pregnancy. An employee is presumed to have a disability caused by or in connection with a pregnancy for at least the four weeks prior to the child's estimated due date and for the six weeks after giving birth via vaginal delivery. An employee who delivers by Caesarean section has a disability caused by or in connection with a pregnancy for eight weeks after giving birth. Any further disability requires medical certification of a complication due to pregnancy or childbirth.*

Oregon Paid and Unpaid Family and Medical Leave (OR PFML and OFLA)

OR PFML Program Benefits – Effective Date

Our May 25 Update included coverage of SB31, which authorized an evaluation of the solvency of Oregon's Paid Family and Medical Leave Insurance Fund, and a delay in the OR PFML benefits start date if it was deemed necessary. On July 18 the Oregon Employment Department (OED) issued a press release stating that the program will begin paying benefits on September 3, 2023, as planned. The first benefit payments are expected to be issued on September 13.

On August 14 OED began accepting benefit applications for leave to be taken on or after September 3 through the Frances Online portal. Employees may apply for benefits 30 calendar days prior to the start of leave, and up to 30 calendar days after. Updated resources for employees include an employee toolkit to help employees learn more about the program and prepare to file a claim.

OR PFML Program Benefits – Maximum Weekly Benefit

On June 1 the Oregon Employment Department (OED) issued a press release to announce that the state average weekly wage (SAWW) would increase to $1,269.69 as of July 1, 2023, and remain in effect through June 30, 2024.

The SAWW is the basis for establishing the minimum and maximum weekly benefit amounts for unemployment insurance and under the OR PFML program. When the OED begins paying OR PFML benefits on September 3, the minimum weekly benefit amount will be $63.48, and the maximum will be $1,523.63.

The SAWW is set for each fiscal year beginning July 1, and will be applied to the calculation of OR PFML benefits starting the first full week following July 1. The SAWW in effect when an employee's Benefit Year* is established will apply to their entire Benefit Year even if the SAWW changes with the new fiscal year.

* *An individual's Benefit Year is the period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that an individual's OR PFML commences.*

OR PFML Regulations Updates

Below are highlights of OR PFML regulation updates finalized by the Oregon Employment Department (OED) effective August 1 (*part of "Batch 7" rules*).

Benefits and Assistance Grants

- Definitions:
  - "Consecutive" leave means leave taken for a continuous period of time, without interruption, based upon an employee's regular work schedule from all employment for a single qualifying purpose. An employee who is taking consecutive leave may not perform work for any employer or perform self-employed work during the leave period.
  - "Intermittent" leave means leave taken periodically in separate blocks of time or when leave is taken for two or more leave types simultaneously for an entire work day or work week from all employment. An employee who is taking intermittent leave can perform work for any employer or perform self-employed work on work days they are not taking leave.
- Intermittent leave: An employee taking OR PFML benefits on an intermittent leave schedule must file a weekly claim in order to receive benefits for that week.

  The weekly claim must be submitted only after that work week has ended and no later than 30 calendar days following the end of the work week in which leave was taken. Weekly claims submitted after 30 calendar days will be denied, except in cases where the employee can demonstrate a weekly claim was submitted late for reasons that constitute good cause.
- Notice to employer: If leave is foreseeable, an employee must give *verbal* notice at least 30 calendar days before commencing leave. An employer may require an eligible employee to give *written* notice at least 30 calendar days before commencing leave.

Notice for consecutive leave only needs to be given one time prior to taking the consecutive leave, but the employee must advise the employer as soon as practicable if the dates of any scheduled leave change, are extended, or were initially unknown. Notice for intermittent leave shall be given verbally to the employer within 24 hours of the commencement of each work day taken, or earlier if known.

- Simultaneous qualifying purposes: An employee may take OR PFML for more than one qualifying purpose during the same week, provided the employee submits a separate and complete application for each qualifying purpose. For any week in which an employee takes leave for more than one qualifying purpose, that employee must file a weekly claim.

  The multiple qualifying reasons taken within the same week can be for the same type of qualifying purpose; for example, family leave for two different family members, each with their own serious health condition. However, the employee will not receive a benefit payment for more than one type of qualifying purpose taken on a single work day.
- Benefit payments (*state program*):
  - The primary payment method for OR PFML benefits will be through direct deposit into a checking or savings account in a financial institution in the United States as an electronic funds transfer.
  - Employees who do not select direct deposit will be paid by debit card, including but not limited to, ReliaCard® Visa.
  - If the OED determines that it is not feasible to issue payment through direct deposit or a stored value card, then a check may be issued.
- Benefit offsets (*state program*):
  - After any benefit reduction under ORS 657B.040 (*penalty to employee for failure to provide adequate notice of leave*), an employee's weekly benefit payment may be reduced, as applicable, before OED issues the weekly benefit payment. The priority of additional offsets to the weekly benefit payment are:
    1) OR PFML benefit overpayments;
    2) federal personal income tax withholdings;
    3) state personal income tax withholdings;
    4) child support orders;
    5) funds due to entities that serve a garnishment or levy on the OED.

    After all offsets, weekly benefit payments of less than $1.00 will not be issued.

OR PFML Amendments

The governor of Oregon recently signed several pieces of legislation amending various elements of the OR PFML law:

SB912 (*signed May 19*) outlines circumstances under and methods by which the Oregon Employment Department (OED) may recoup illegitimate benefit payments or small employer assistance grants, and identifies penalties to which private plan sponsors may be subject if their plan is found to be out of compliance:

1) $1,000 for the first violation.
2) $2,000 for the second and each subsequent violation.

OED may waive assessed penalties if (1) the violation is the employer's first violation and is corrected within 30 days of receiving notice, or (2) it is determined that the violation was an inadvertent error by the employer. The decision to assess a penalty will be final unless the employer submits a written request for a review hearing within 20 days following the date of the notice of violation.

Any fines collected will be deposited into the Paid Family and Medical Leave Insurance Fund.

SB913 (*signed July 13*):

- Beginning January 1, 2024 the maximum wages against which the OR PFML contribution rate may be applied will align with the maximum earnings subject to the Social Security Old-Age, Survivors, and Disability Insurance tax for that year. The original law (HB2005) set the maximum wages at a fixed $132,900, which was the applicable SSA maximum when the law was passed.
- The "localization" guidelines regarding the applicability of contributions and benefits have been expanded. The revised law text more closely resembles guidance previously provided by regulation and in resources such as the Place of Performance Fact Sheet:
    1) An employee's wages shall be used to make determinations [*under the OR PFML law*] if wages are earned for service that is:
        a. Localized within this state; or
        b. Not localized within any state, but some of the service is performed within this state and:
            i. the base of operations is in this state or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or
            ii. the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.
    2) Service is localized within this state if it is:
        a. performed entirely within this state; or
        b. performed both within and outside this state, but the service performed outside this state is incidental to the employee's service within this state.
- If an employer elects to pay some or all of the required employee contribution on its employees' behalf, those contribution amounts are not considered wages for purposes of the OR PFML program (*they are considered wages for income tax purposes, however*).
- The law text regarding coordination of OR PFML benefits and paid time off has been amended (*edits in italics*):

    An employer may permit an employee to use *all or a portion of* paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving OR PFML benefits ~~*to replace an employee's wages up to 100% of the eligible employee's average weekly wage*~~ during a period of leave taken for family leave, medical leave or safe leave.

    Note: OFLA and OR PFML differ on the topic of an employee's use of paid time off during an unpaid period of leave (in the case of OR PFML, the portion of wages not covered by the OR PFML benefit). As stated in the OR PFML text above, an employer "may permit" an employee to supplement their OR PFML benefits with accrued paid time off, while under OFLA and employee "is entitled to" use this time. Oregon's Bureau of Labor and Industries (BOLI) weighed in on the issue in an April 7 opinion letter, essentially stating that when the two leaves are running concurrently, an employer should apply the law that is most generous to the employee (in this case, OFLA) – future legislation or rulemaking may address.
- All records received and maintained by the Oregon Employment Department (OED) in the course of program administration are kept confidential, except that under certain circumstances they may be shared with parties or agencies outside of OED. Examples include, but are not limited to, requests for disclosure of information to an employee, their employer, or a legal representative in order to process a claim for benefits, or information needed by a state or local agency for the purposes of child support obligations, unemployment insurance, public assistance programs, or government planning. The full list is included in Section 8 of the law text; more information as to what information may be collected and shared may be found in OED's Temporary Administrative Order issued August 9 (*OAR 471-070-0900 through 471-070-0930, pages 3-6*).

SB999 (*signed June 7, effective September 3*)

- Job protection: The PFML law requires that employees who have worked for their employer for at least 90 days prior to taking leave be restored to their position upon their return or, if their position no longer exists, an equivalent position. SB999 adds that, if an equivalent position is not available at the employee's former work site, the employee must be offered an equivalent position at a work

site within 50 miles of that location, if such a position is available. If equivalent positions are available at multiple work sites, the employer must first offer the employee the position at the location that is nearest to the employee's former work site.

For employers with fewer than 25 employees, an employee whose position is no longer available upon return from leave may be restored to a different position with similar job duties but with the same employment benefits and pay.

- Benefits protection: While an employee is taking leave under OR PFML, their health benefits must be maintained as if they were continuously employed. SB999 adds that the employee is still responsible for paying their regular contributions toward such benefits. If the employer pays any part of the employee's share of the cost for "disability, life or other insurance coverage" while the employee is on leave, the employer may deduct the owed amount from the employee's pay upon the employee's return to work. The retroactive contributions may not exceed 10% of the employee's gross pay each period.

  More information on job and benefits protection may be found in OED's Temporary Administrative Order issued August 9 (*OAR 471-070-1330, pages 13-14*).

- Covered family members: OR PFML's definition of family member includes "any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship".

  SB999 includes the requirement that regulations be developed prior to September 3 addressing (1) what qualifies an individual as a family member by reason of affinity, and (2) the means by which an employee can attest to the relationship. OED's August 9 Temporary Administrative Order defines "affinity" as a relationship that meets the following requirements:

  a) there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;
  b) this bond may be demonstrated by, but is not limited to, the following factors, with no single factor being determinative:
     - shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
     - emergency contact designation of the claimant by the other individual in the relationship, or vice versa;
     - the expectation to provide care because of the relationship or the prior provision of care;
     - cohabitation and its duration and purpose;
     - geographical proximity; and
     - any other factor that demonstrates the existence of a family-like relationship.

SB999 also makes changes to the state's unpaid leave law, the Oregon Family Leave Act (OFLA); details on those amendments are below.

OFLA Amendments

In addition to the OR PFML changes noted above, SB999 also amends the Oregon Family Leave Act (OFLA) to better align the two laws. The amendments:

- Define the "one-year period" for determining an employee's leave entitlement:

  Currently, the law only specifies "one-year period". Effective immediately SB999 clarifies that an employer may use one of the following methods to determine the one-year period:

  1) a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences; or
  2) a consecutive 12-month period, such as:
     a) a calendar year commencing on January 1 and ending on December 31;
     b) a fiscal year;

c) the 12-month period that ends on the date that the employee uses any family leave; or
d) the 12-month period that begins on the date on which an employee commences a period of family leave

As of July 1, 2024, employers must use the same "measured forward" method required under OR PFML: A period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

In advance of updates to the regulations, Oregon's Bureau of Labor and Industries (BOLI) issued the following opinion letter on July 14: OFLA leave year change.

Note: The "measured forward" method may differ from an employer's chosen method for administering FMLA. FMLA rules do permit multi-state employers to employ one method for employees working in a state with a required method, and another for all other employees. Refer to the Department of Labor Wage and Hour Division's (WHD) Fact Sheet #28H for more information.

Employees must be provided 60 days' notice of a change in the calculation method for FMLA, and (for both FMLA and OFLA) any transition must permit the impacted employees to retain their full leave entitlement under the chosen method.

- Expand the definition of covered family member effective September 3, 2023 to include siblings and individuals related "by blood *or affinity*".

On August 23 BOLI filed a Temporary Administrative Order reflecting the changes to the definition of family member made by SB999, and adds some clarifications.

- Employee's spouse or domestic partner (*removes the "same-gender" limitation for domestic partner*)
- Employee's child*, child's spouse or domestic partner, or the employee's spouse or domestic partner's child
- Employee's parent*, parent's spouse or domestic partner, or the employee's spouse or domestic partner's parent
- Employee's sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner
- Employee's grandparent or the grandparent's spouse or domestic partner
- Employee's grandchild or the grandchild's spouse or domestic partner
- Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

** Child and parent relationships include biological, adoptive, foster, step, and in loco parentis. For parental leave and sick child leave, a child must be under the age of 18 or an adult child limited by physical or mental impairment, as defined by ORS 659A.104(1)(a), (3) and (4).*

Note: The Order also reflects amendments to the definition of family member under Oregon Paid Sick Time, as the PST law directs to OFLA's definition of family member.

The Order defines "affinity" as a relationship that meets the following requirements:

a) there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;
b) this bond may be demonstrated by, but is not limited to, the following factors, with no single factor being determinative:
    - shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
    - emergency contact designation of the claimant by the other individual in the relationship, or vice versa;
    - the expectation to provide care because of the relationship or the prior provision of care;
    - cohabitation and its duration and purpose;
    - geographical proximity; and
    - any other factor that demonstrates the existence of a family-like relationship.

- Amend the law's job protection provisions effective September 3, 2023 so that, upon an employee's return from leave, if an equivalent position is not available at the employee's former work site, the employee must be offered an equivalent position at a work site within 50 miles of that location, if such a position is available. SB999 increases the distance threshold from the current 20 miles, and adds that if equivalent positions are available at multiple work sites, the employer must first offer the employee the position at the location that is nearest to the employee's former work site.

  Note: Despite this alignment, eligibility for job protection under OFLA and OR PFML still differ. Employees are eligible for job protection under OFLA if they have worked for their employer for 180 consecutive days prior to leave, and at least 25 hours per week during that period (exceptions apply for parental leave and during a public health emergency), while OR PFML provides job protection after 90 days of employment.

- Specify that OFLA-qualifying leave that also qualifies as leave under FMLA and/or OR PFML must be taken concurrently with, and not in addition to, those leaves. This requirement is already stated in the OR PFML law.

Rhode Island Temporary Disability Insurance and Temporary Caregiver Insurance (RI TDI/TCI)

Maximum Weekly Benefit Increase

Effective July 1, 2023 the maximum weekly benefit for Rhode Island Temporary Disability Insurance (RI TDI) and Temporary Caregiver Insurance (RI TCI) increased from $1,007 to $1,043 ($1,408 with the dependency allowance). The minimum weekly benefit remains $121.

Washington Paid Family and Medical Leave (WA PFML)

Amendments

SB5586 (*signed May 9*)

Effective January 1, 2024 SB5586 amends the WA PFML law to allow access to information related to an employee's WA PFML claim to the employee, the employee's current employer or the employer's third party administrator. Information that may be provided include the type of leave taken, the dates of leave requested, and whether the employee was approved for and paid benefits during a given week. Such information may be used for the sole purpose of administering an employer's leave or benefit practices under established policies.

HB1570 (*signed May 15*)

The WA PFML law currently permits self-employed individuals to voluntarily participate in the program. HB1570 directs Washington's Employment Security Department (ESD) to establish a pilot program under which transportation network companies (TCN), such as Uber and Lyft, must reimburse their drivers for premiums paid to the state for such participation.

Following the end of each calendar quarter each TCN will be required to report to each driver the total amount of compensation that the driver earned during that quarter through the TCN. In addition, ESD will share information with each TCN on the drivers who, during that quarter, paid WA PFML premiums based on compensation earned under that TCN or withdrew from participation. Following receipt of that information, the TCN will be responsible for reimbursing each driver the WA PFML premiums paid by that driver.

The pilot program will be in effective from July 1, 2024 through December 31, 2028.

Regulations Updates

The Employment Security Department (ESD) recently finalized regulations making the following changes effective July 1, 2023:

- Amendment to the definition of "placement" of a child for bonding (*WAC 192-500-195(5), edits in italics*):

Qualifying paid family leave to bond with a child placed for adoption, guardianship, foster care, or nonparental custody does not include:

(a) ~~*Placement with a birth parent*~~ *Any arrangement where the child is already in the care and custody of a parent and remains in that same parent's care and custody*;

(b) *Any arrangement where a child is returned to the care and custody of a parent or is placed with a parent whose entitlement to family leave to bond with that child has already expired*; and

(c) Any adoptive, guardianship, foster care, or nonparental custody placement of a child with an employee that occurs more than 12 months after that child is first placed in the employee's home.

- Updates to data elements required in quarterly reports to include employee dates of birth, and require that a report of "no payroll" must be filed if no wages were paid, for up to eight consecutive quarters (*see WAC 192-540-030*).

Tennessee Paid Family and Medical Leave Tax Credit

On May 11 the governor of Tennessee signed HB323/Pub. Ch. 377 establishing the Tennessee Works Tax Act. The Act includes a provision whereby employers who offer paid family and medical leave may be eligible for a tax credit against their franchise and excise tax liability for the 2024 and 2025 tax years. The Tennessee credit is based on the federal paid family and medical leave credit under Internal Revenue Code §45S.

For more information on the Tennessee PFML tax credit, view the Tennessee Department of Revenue's Notice #23-10 and June 2023 Tax Manual Updates. More information on the federal PFML tax credit may be found in the IRS FAQ and CRS IF11141 (*2/27/2023*).

Paid Family Leave as a Class of Insurance

In the past few months three more states have joined states such as Arkansas, Tennessee, and Virginia to amend their insurance codes by adding paid family leave as a class of insurance:

Alabama

HB141, enacted April 27, adds Article 4 to Chapter 19 of the Alabama Insurance Code. Effective August 1, 2023, the law permits disability insurers to expand their fully insured benefits to include paid family leave benefits through employer-sponsored group insurance policies or voluntarily purchased employee policies.

The law outlines minimum requirements for family leave insurance policies, including that coverage must provide benefits for a minimum of two weeks per 52-week period. Covered reasons for use may include:

- caring for a family member with a serious health condition;
- bonding with a new child within 12 months of birth or placement for foster care or adoption;
- addressing needs associated with a qualifying exigency;
- caring for a family member who is a service member injured in the line of duty; or
- other leave to provide care for a family member, or other family leave, as specified in the policy.

Family leave insurance may be written as an amendment or rider to a group disability income insurance policy, or as a separate group insurance policy.

Florida

HB721, approved on and effective May 25, adds section 624.406 to Part V of Chapter 624 of the Florida Insurance Code, and provides that paid family leave insurance may be issued to and purchased by an employer as an amendment or a rider to a group disability income policy, included in a group disability income policy, or issued as a separate group insurance policy.

Family leave insurance must provide for paid benefits for at least two weeks per 52-week period for reasons such as:

- caring for a family member with a serious health condition;
- bonding with a new child within 12 months of birth or placement for foster care or adoption;
- addressing needs associated with a qualifying exigency;
- caring for a family member who is a service member injured in the line of duty; or

- caring for a family member or other leave, as specified in the policy.

Texas

HB1996, signed June 12, adds Chapter 1255 to Title 8, Subtitle B of the Texas Insurance Code, and establishes that family leave insurance may be written as a separate policy, amendment or rider to a group disability policy delivered or issued for delivery in Texas by a life, health, and accident insurance company on or after January 1, 2024.

The law outlines minimum requirements for family leave insurance policies, including that coverage must provide benefits for a minimum of two weeks per 52-week period. Covered reasons for use may include:

- caring for a family member with a serious health condition;
- bonding with a new child within 12 months of birth or placement for foster care or adoption;
- addressing needs associated with a qualifying exigency;
- caring for a family member who is a service member injured in the line of duty; or
- other leave to provide care for a family member, or other family leave, as specified in the policy.

Accrued Paid Leave

Colorado Healthy Families and Workplaces Act – Amendment and Updated Required Notice

On June 2 the governor of Colorado signed SB23-017, expanding the reasons for which time earned under the state's accrued paid leave law may be used.

Prior to the amendment, the Healthy Families and Workplaces Act (HFWA) provided that accrued time may be used for the following reasons:

- diagnosis of or treatment for the employee's or a covered family member's mental or physical illness, injury, or health condition that prevents work, or for preventive care;
- needs associated with the employee or a covered family member being a victim of domestic abuse, sexual assault, or criminal harassment, such as medical attention, mental health care or other counseling, legal or other victim services, or relocation; and
- during a public health emergency, if a public official has closed the employee's workplace, or the school or place of care of the employee's child.

Effective August 7, 2023 SB23-017 added the following:

- for the employee to grieve, attend a funeral or memorial, or tend to financial or legal needs after the death of a family member; and
- if, due to inclement weather, power/heat/water loss, or other unexpected event, the employee must evacuate their residence or care for a family member whose school or place of care was closed.

The Colorado Department of Labor and Employment (CDLE) has updated the following resources:

- The Workplace Public Health Rights Poster, which is required to be displayed in a conspicuous place for all employees, and/or posted or distributed electronically for remote workers. The poster must be made available in English as well as any language spoken by at least 5% of employees; translations are available here. Per the HFWA regulations, the poster may also satisfy the individual notice requirement.
- Interpretive Notice & Formal Onion (INFO) #6B, found here.

More information on HFWA may be found on the CDLE's dedicated webpage.

Connecticut Paid Sick Leave – Amendment

Connecticut's paid sick leave law entitles employees engaged in defined classes of occupation *("service workers" as defined under §31-57r(7)*) to accrue paid time off to be used for the employee's or a covered family member's health needs, or for safe leave. On June 26 the governor signed SB2/Public Act 23-101, making the following amendments to the law effective October 1, 2023:

- Reasons for use of accrued time will include an employee's "mental health wellness day", defined as a day during which the employee may attend to their emotional and psychological well-being in lieu of attending a regularly scheduled shift.
- Currently an employee may use accrued time to tend to various needs if they are the victim of family violence or sexual assault. This reason will be expanded in the event the victim is a child to whom the employee is a parent or guardian, as long as the employee is not the perpetrator or alleged perpetrator of the violence or sexual assault.

A new version of the required poster will be available here once updated by the Connecticut Department of Labor (CT DOL).

St. Paul, Minnesota Earned Sick and Safe Time – Regulations Updates

In our February 27 Update we summarized recent amendments to St. Paul's Earned Sick and Safe Time law. On May 25 the city's Human Rights & Equal Economic Department (HREEO) published updated Administrative Rules updated to align with the amended ordinance.

Oregon Paid Sick Time – Regulations Updates

On August 23 Oregon's Bureau of Labor and Industries (BOLI) filed a Temporary Administrative Order reflecting amendments to regulations in accordance with changes to the Oregon Family Leave Act (OFLA) made by SB999 (*see 'OFLA Amendments' section above*). As Oregon's Paid Sick Time law directs to OFLA's definition of family member, following is the list of family members for whom accrued paid time may be used effective September 3, 2023:

- Employee's spouse or domestic partner (*removes the "same-gender" limitation for domestic partner*)
- Employee's child*, child's spouse or domestic partner, or the employee's spouse or domestic partner's child
- Employee's parent*, parent's spouse or domestic partner, or the employee's spouse or domestic partner's parent
- Employee's sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner
- Employee's grandparent or the grandparent's spouse or domestic partner
- Employee's grandchild or the grandchild's spouse or domestic partner
- Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

* *Child and parent relationships include biological, adoptive, foster, step, and in loco parentis.*

The Order also states that when an employee uses sick time to care for a family member who is related by affinity, the employer may require the employee to attest in writing that the employee and the person cared for have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship.

Washington Paid Sick Leave – Amendment

Under Washington's Paid Sick Leave law employers are generally not obligated to pay an employee's accrued but unused leave upon separation of employment. However, if a former employee is rehired within 12 months of the separation date, the unused time must be reinstated.

On May 4 the governor signed SB5111 which, effective January 1, 2024, adds an exception to both of these rules: certain construction workers* who have not met their 90th day of eligibility for use of accrued time as of the date of their separation must be paid the balance of their accrued but unused sick leave at the end of the pay period following separation. Given this payout, should the worker be rehired within 12 months, they are not entitled to the law's reinstatement provision.

* *workers covered under NAICS Code 23, but excluding Code 236100: Residential Building Construction*

Seattle, WA Paid Sick and Safe Time for Gig Workers – *NEW*

On March 29 the mayor of Seattle signed Ordinance Number 126788, establishing Paid Sick and Safe Time (PSST) for "app-based" workers. Effective May 1, 2023, the ordinance picked up where temporary protections related to COVID-19 left off.

Applies to:

- "App-based" workers who have entered into an agreement with a network company governing the terms and conditions of use of the company's worker platform, or are affiliated with and accepting offers to perform services for compensation via a network company's worker platform.
  - Excludes individuals classified as "employees" and therefore eligible under the Seattle Paid Sick and Safe Time law.
- Network companies that facilitate the work of 250 or more app-based workers worldwide.
  - A "network company" is defined as an organization, whether a corporation, partnership, sole proprietor, or other form, operating in Seattle that uses an online-enabled application or platform, such as an application dispatch system, to connect customers with app-based workers, present offers to app-based workers through a worker platform, and/or facilitate the provision of services for compensation by app-based workers.
  - Excludes entities that meet the definition of Transportation Network Companies (TCN)(*e.g., rideshare companies such as Uber and Lyft*), as statewide paid sick leave entitlements for drivers associated with those companies became effective January 1, 2023 per 2022's HB2076 (*more information available here*).

Effective dates:

- Food delivery network companies were required to begin complying with the ordinance's requirements on May 1, 2023.
  - A "food delivery network company" is defined as an organization operating in Seattle that offers prearranged delivery services for compensation using an online-enabled application or platform to connect customers with workers for delivery from one or more of the following: (1) eating and drinking establishments; (2) food processing establishments; (3) grocery stores; or (4) any facility supplying groceries or prepared food and beverages for an online order.
- Beginning January 13, 2024 all network companies covered by the law must comply.

Leave entitlement and use:

- Eligible workers will accrue 1 day of PSST for every 30 calendar days during which the worker performed services for the network company in whole or in part within the city of Seattle.
  - In lieu of accrual, a network company may frontload PSST time.
    - Any discrepancy between frontloaded time and what the worker would have accrued must be corrected as soon as practicable but no later than 30 days after discrepancy is identified by the company or reported by the worker. Note, however, that if the frontloaded amount is *less* than what the worker would have accrued based on days worked, the network company may not request or require reimbursement from the worker.
- A worker is entitled to use accrued PSST if they have performed services in whole or part in Seattle within 90 calendar days prior to the request for use.
- Accrued PSST may be used, in minimum increments of 24 hours, for the following reasons:
  - the diagnosis or treatment of the worker's own mental or physical illness, injury or health condition, or for preventive care;
  - needs associated with a family member's mental or physical illness, injury or health condition, or for preventive care;
  - safe leave:
    - when the network company has suspended or otherwise discontinued operations for health- or safety-related reasons;

- when the app-based worker's family member's school or place of care has been closed; and
- for any of the following reasons related to domestic violence, sexual assault, or stalking, as set out in Washington's Domestic Violence Leave law.

- Workers must be permitted to carry over at least nine days of accrued but unused PSST from one year to the next. This requirement applies even if time is frontloaded.
- If a worker separates from the network company due to inactivity, deactivation, or other reason, and re-commences working within 12 months of the separation,
  - previous work will be counted for purposes of determining the worker's eligibility to use accrued PSST (*the 90 calendar day eligibility noted above*), except that if separation does occur, the total time of work used to determine eligibility must occur within three years, and
  - previously accrued, unused PSST must be retained by the worker and the based worker is entitled to use such PSST (*if the 90 calendar day eligibility noted above has been satisfied*).

Additional Network Company Requirements:

- Network companies are required to establish an accessible system for workers to understand, request, and use their PSST. The system must be made available to workers via smartphone application or online web portal.
- Workers must be compensated for PSST no later than 14 calendar days or the next regularly scheduled date of compensation following the requested day(s), whichever date is sooner.
- Network companies may not request verification of the need for use until a worker uses more than three consecutive days of PSST, and must provide the worker with a reasonable time period to provide such verification.
- On a monthly basis, network companies must provide each worker with written notification of their PSST. The notification must include the current rate of average daily compensation for use of PSST, an account of the amount of PSST accrued and used since the last notification, and the worker's PSST balance. This notice is not required if the worker has not worked any days since the last notification.

More information may be found on the Seattle Office of Labor Standards' dedicated webpage.

Other News

Anaheim, CA Hotel Worker Protections – *NEW*

On June 27 the Anaheim City Council passed Ordinance Number 38015, adding Chapter 6.101 to the city's Municipal Code effective January 1, 2024.

The ordinance requires parties who own, control, or operate a hotel within the city to establish and implement safety measures for workers in the event they are threatened with or experience violent conduct. In addition to the requirements for making available personal security devices, as well as training for and protocols around the use of such devices, employers must allow a worker who has experienced violent or threatening conduct up to three hours of paid time on the day of the incident to report the incident to law enforcement and/or to seek counseling. The employer must also make reasonable accommodations requested by a worker who has been subjected to violent or threatening conduct, such as a modified work schedule, reassignment to a vacant position, or other reasonable adjustment to job structure, workplace facility, or work requirements.

Illinois

Victims' Economic Security and Safety Act (VESSA) – Amendment

HB2493/Public Act 103-0314 (*approved July 28*) amends Illinois' Victims' Economic Security and Safety Act (VESSA) effective January 1, 2024.

VESSA currently requires that eligible employees be provided with up to 12 weeks* of unpaid, job-protected leave per 12-month period for care or services needed if the employee or their covered family or household member is the victim of a violent crime. The amendment expands the reasons an employee may take leave to include needs associated with the loss of a covered family or household member due to violent crime:

- to attend the covered family or household member's wake, funeral, or alternative to a funeral;
- to make arrangements necessitated by the covered family or household member's death; and/or
- to grieve.

Leave for these reasons is limited to two work weeks (10 work days) and must be completed within 60 days after the employee receives notice of the family or household member's death.

If the employee is also eligible for and entitled to leave under Illinois' Family Bereavement Leave Act (FBLA):

- bereavement leave taken under VESSA counts against an employee's leave entitlement under FBLA;
- bereavement leave taken under VESSA or FBLA does *not* reduce the total amount of leave time the employee is otherwise entitled to under VESSA. (*If the employee is not eligible for leave under FBLA, bereavement leave taken under VESSA does count against total VESSA leave entitlement*).

A new version of the required poster will be available here once updated by the Illinois Department of Labor.

* *VESSA leave entitlement requirements are based on employer size: 4 weeks for employers with 1-14 employees, 8 weeks for employers with 15-49 employees, and 12 weeks for employers with 50 or more employees.*

Child Extended Bereavement Leave – *NEW*

SB2034/Public Act 103-0466 (*approved August 4*) creates the Child Extended Bereavement Leave Act (also named Zachary's Parent Protection Act) to establish a leave entitlement for employees who lose a child by suicide or homicide. Effective January 1, 2024, employers with 50 to 249 full-time employees in the state of Illinois must provide 6 weeks of leave; employers with 250 or more full-time employees in the state must provide 12 weeks. Employees are eligible after two weeks of employment. The law's requirements exclude the federal government and its agencies, and employees of the state who are otherwise eligible for Family Responsibility Leave or a leave of absence without pay.

This leave is unpaid; however, an employee may elect to substitute all or a period of this leave with paid leave as provided by company policy, collective bargaining agreement, or law. Leave may be taken continuously or intermittently in increments of at least four hours, and must be completed within one year of the employee notifying the employer of the loss. Employees are entitled to benefits protection and job reinstatement upon return from leave, and employers are prohibited from taking any adverse action against any employee who requests or takes leave. Leave under this law does not extend the maximum period of leave provided under any other federal, state or local law, an employer's benefits program, or a collective bargaining agreement.

An employee who utilizes leave under this law may not also take leave under Illinois' Family Bereavement Leave Act (FBLA) for the loss of the same child.

Blood and Organ Donation Leave – Amendment

HB3516/Public Act 103-0450 (*approved August 4*) amends Illinois' Employee Blood Donation Leave Act effective January 1, 2024 to provide up to 10 days of leave per 12-month period for the purpose of donating an organ. "Organ" is defined as any biological tissue of the human body that may be donated by a living donor including, but not limited to, the kidney, liver, lung, pancreas, intestine, bone and skin, or any subpart thereof.

The law currently requires employers to provide leave of up to one hour every 56 days for blood donation. Employees are eligible for blood (and organ) donation leave after six months of employment.

Louisiana Leave for Genetic Testing and Cancer Screening – *NEW*

SB200/Act No. 210 (*signed June 8*) amends the Louisiana Employment Discrimination Law (RS 23:301 *et seq.*) effective August 1, 2023 to require that employers provide employees with one day of leave in order to obtain "medically necessary" genetic testing or preventive cancer screening.

> "Medically necessary" tests or screenings are those deemed reasonably necessary to diagnose, correct, cure, alleviate, or prevent the worsening of a condition or conditions that endanger life, cause suffering or pain, or have resulted or will result in a handicap, physical deformity, or malfunction, and those for which no equally effective and less costly course of treatment is available or suitable for the recipient.

Leave is unpaid; however, an employee must be permitted to substitute any accrued vacation time or other appropriate paid leave. Employees must provide at least 15 days' notice prior to taking leave, and must make a reasonable effort to schedule the leave so as to not unduly disrupt the employer's operations. Employers may require documentation confirming the test or screening was performed, but may not require the employee to disclose any test or screening results.

The Louisiana Workforce Commission has posted an updated version of the required poster on its website, in both English and Spanish.

Minnesota Voting Leave – Amendment

On May 24 the governor of Minnesota approved budget appropriations bill HF1830, which includes an amendment to the state's voting leave law effective June 1, 2023, allowing employees time off *prior to* an election day to cast an absentee vote in person, in accordance with MN Stat. §203B.081.

An employee's pay may not be deducted during the time "necessary" for the employee to appear at the employee's polling place, cast a ballot, and return to work, and employers may not otherwise interfere with an employee's election rights.

Nevada Domestic Violence Leave – Amendment

Nevada's domestic violence leave law provides employees who have worked at least 90 days for their employer up to 160 hours of unpaid, job-protected leave per 12-month period for care or services needed if the employee or their covered family or household member is the victim of domestic violence.

On June 5 the governor approved AB163, amending the law to extend protections to victims of sexual assault effective January 1, 2024. Sections of the state's anti-discrimination, accommodations and unemployment compensation laws are similarly amended.

A new version of the required notice will be available here once updated by Nevada's Office of the Labor Commissioner (OLC). The notice must be posted in a conspicuous location in each workplace maintained by the employer.

New Hampshire Accommodations for Nursing Mothers – *NEW*

On August 4 the governor of New Hampshire signed HB358, requiring employers to provide nursing employees with certain accommodations. Effective July 1, 2025, the law applies to any employer with 6 or more employees working in the state.

- Employers must provide nursing employees reasonable break time and access to a designated space for the employee to express milk during work hours for a nursing child for up to one year from the child's birth.
- "Reasonable" break time means unpaid breaks of approximately 30 minutes for every 3 hours of work performed by a nursing employee for the purpose of expressing milk.
- The space provided
  - may be permanent or temporary in nature;
  - must be a clean space shielded from view and free from intrusion from coworkers and the public;
  - must be within a reasonable walk from the employee's worksite, unless otherwise mutually agreed to by the employer and employee;
  - may not be a bathroom;
  - must have, at a minimum, an electrical outlet and a chair, if feasible; and

  - if the space is not solely for the use of employees expressing milk, it must be made available when requested by the employee for this law's purposes.
- A nursing employee is required to notify the employer at least two weeks prior to needing such accommodations, provided that this notice complies with the employer's policies.
- Employers must adopt a policy outlining its response to these requirements, and provide the policy to employees at the time of hire.
- An employer may not require an employee to make up time related to the use of break periods under this law's provisions.
- An employer may be exempted from these requirements if providing reasonable break time and sufficient space for expressing milk would impose an undue hardship on the employer's operations.

Oregon Leave for Victims of Domestic Violence, Sexual Assault or Stalking – Amendment

Oregon law currently requires that "reasonable leave" be provided to an employee if the employee or the employee's minor dependent is a victim of domestic violence, harassment, sexual assault, or stalking.

On July 31 the governor signed HB3443, extending this leave entitlement to victims of bias crime effective January 1, 2024. Bias crime is defined as injury, intimidation, or damage to personal property based on an individual's perceived race, color, religion, gender identity, sexual orientation, disability, or national origin.

The law also amends the Oregon statute regarding workplace discrimination against victims and reasonable safety accommodations.

Please contact your MMA account team members with specific questions about this or other Updates. View past Updates on the Absence, Disability & Life blog at https://mma-adl.com/blog/.