



Employers State Law Alert

Summarizing Significant New Employment Laws & Regs in All 50 States



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Employees need time off for medical reasons? Know state law obligations

by Tammy Binford

Of the many lessons employers learned during the pandemic, the need for employees to stay home when sick stands out.

The COVID-19 siege caused many employers to urge workers to stay home if they felt ill instead of adhering to the outdated habit among many employees to show devotion to duty by powering through at work even when contagious. Now, employers often show respect for employees who protect coworkers by staying home when ill instead of coming to work and infecting others.

The pandemic led to passage of a federal law, the Families First Coronavirus Response Act (FFCRA), which temporarily

required certain employers to provide employees with paid sick leave or expanded family and medical leave for reasons related to COVID-19. Although the FFCRA leave requirements were temporary, the desire among employees—and state and local lawmakers—for paid leave time hasn’t gone away.

Offering paid leave is one way employers help employees feel comfortable staying home when sick. More employers are now offering paid sick days, family and medical leave time, or both.

Paid sick days allow employees to stay away from work for short periods while recovering from an illness or injury. Typically, employer policies allow workers to accrue time off based on the number of hours worked. Some employer policies also allow employees to take those sick days not just for their own illness or injury but also to care for family members’ needs.

While sick days help employees with short-term absences, family and medical leave allows employees extended time off to deal with their own or a family member’s serious medical condition.

Maine became the latest state to pass a law requiring paid leave for certain medical reasons. In July, the governor signed a state budget that includes a paid family and medical leave

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program. Benefits from the program are set to begin in May 2026. The law will enable workers to receive up to 12 weeks of paid leave per year for their own medical condition or that of a family member.

Here's a look at other states with laws providing leave for long-term medical conditions or sick leave for short-duration illnesses and injuries.

FAMILY AND MEDICAL LEAVE

According to information from KFF, formerly known as The Kaiser Family Foundation, 13 states and Washington, D.C., have laws providing some form of paid family and medical leave.

Those states are California, Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Washington.

States often pattern their laws after the federal Family and Medical Leave Act (FMLA), which allows eligible employees to take up to 12 weeks of job-protected leave in a 12-month period to care for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Unlike the state laws, the federal FMLA does not require the leave to be paid. It just means the employee will have a job to return to.

FMLA leave, as well as leave provided under various state laws, can be used to care for a serious health condition that makes the employee unable to perform the job. Federal FMLA leave is also available to care for an employee's spouse, child, or parent who has a serious health condition.

In addition, FMLA leave can be used to care for a newborn child or a newly adopted or foster child. Also, under the FMLA, employees can take time to care for a spouse, son, daughter, or parent who is a covered member of the military.

PAID SICK TIME

Unlike family and medical leave, no federal law requires employers to offer sick time, but some states and municipalities have passed laws requiring such time.

KFF lists 15 states plus Washington, D.C., with laws providing paid sick time for certain employees. Those states are Arizona, California, Colorado, Connecticut, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. (Minnesota's law, though on the books, doesn't take effect until January 2024.)

In addition to those states, both Maine and Nevada have laws that provide general paid time off that can be used for illness or other reasons.

Many of the state laws include exemptions. The National Partnership for Women and Families has compiled a chart showing details about exemptions incorporated into various state laws.

For example, Connecticut's law provides paid sick leave just for employees in one of 68 listed service occupations. Also, employers with fewer than 50 employees are exempted. In addition, salaried workers, temporary workers, and certain state employees are exempted, along with manufacturing employers and nationally chartered nonprofits.

Other states' laws exempt public sector employees, independent contractors, employees of small employers, and employees covered under collective bargaining agreements.

State laws may vary, but they generally allow paid sick leave to be used for doctor appointments and sometimes for workplace, school, or childcare closures associated with a public health emergency.

Paid sick leave laws generally call for payment of 100% of workers' regular wages and allow for the accrual of a set number of hours or days per year, such as one hour of leave earned for every 30 hours worked.

KFF says that on average, private sector employees in states with paid sick leave laws are offered seven days of paid sick leave per year, and the benefits are paid by the employer. Often, the laws allow employers to limit the amount of sick time employees can accrue in a year.

Another feature states sometimes include covers employees needing time because of sexual assault or domestic violence.

STATUTES

California

Workers' Compensation

Disability payments

This law extends an existing pilot program by one year to allow workers' compensation temporary and permanent disability indemnity payments to continue to be made using prepaid cards.

Cite: 2023 CA AB489, CA Pub. Ch. 63 (3 pages)

Enacted: 7/13/2023

Effective: 1/1/2024

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB489

Delaware

Employment Discrimination

Verification by domestic violence victims

Delaware law expressly prohibits employment discrimination based on surviving domestic violence, sexual assault, or stalking. Current law requires the victim of domestic violence, sexual assault, or stalking to provide verification to their employer. This law provides employers with the option to require verification to receive accommodations.

Cite: 2023 DE HB184, DE Pub. Ch. 119 (2 pages)

Enacted: 7/25/2023

Effective: 7/25/2023

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocumentEngrossment?engrossmentId=35946&docTypeId=6>

Unemployment Compensation

Tax assessments

This law will continue for calendar year 2024 the temporary relief provided in calendar year 2023 to employers that pay unemployment tax assessments. It will continue to reduce new employer tax rates, hold constant overall employer tax rates from last calendar year, and reduce the maximum earned rate. The law will also continue the temporary simplification of the tax rate schedules that are used to calculate unemployment assessments paid by employers.

The governor's agreement to use federal pandemic funds to restore the pandemic-depleted Unemployment Trust Fund made it sufficiently solvent and is allowing the department to implement unemployment tax relief measures to Delaware employers for an additional one-year period for calendar year 2024. The law also restructures the supplemental assessment that is currently collected from all employers, keeping it at the same rate of 0.2% but depositing it in the Special Administration Fund instead of the UI Trust Fund.

Cite: 2023 DE SB236, DE Pub. Ch. 120 (2 pages)

Enacted: 7/25/2023

Effective: 7/25/2023

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=140650&legislationTypeId=1&docTypeId=2&legislationName=HB236>

Wages

Closes prevailing wage loophole

This law closes a loophole in the prevailing wage statute that was being used to pay workers below the prevailing wage by performing work offsite instead of onsite, regardless of whether it was necessary to do so.

Cite: 2023 DE SB102 (2 pages)

Enacted: 7/26/2023

Effective: 7/26/2023

<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=130263&legislationTypeId=1&docTypeId=2&legislationName=SB102>

Hawaii

Wages

Wage rates

This law requires certain job listings to include an hourly rate or salary range. It prohibits an employer from discriminating between employees because of any protected category established under state law by paying wages to employees in an establishment at a rate less than the rate at which the employer pays wages to other employees in the establishment for substantially similar work.

Cite: 2023 HI SB1057, HI Pub. Ch. 203 (5 pages)

Enacted: 7/5/2023

Effective: 1/1/2024

https://www.capitol.hawaii.gov/sessions/session2023/bills/SB1057_CD1_.pdf

Illinois

Wages

Wage payment and collection

This law amends the Minimum Wage Law and the Illinois Wage Payment and Collection Act. The law provides that wages recovered by the Illinois Department of Labor shall be deposited into the Department of Labor Special State Trust Fund, from which the Department shall disburse the sums owed to the employee or employees. It provides that the Department shall conduct a good-faith search to find all employees for whom it has recovered unpaid minimum wages or unpaid overtime compensation.

Cite: 2023 IL HB3227, IL Pub. Ch. 103-0182 (11 pages)

Enacted: 6/30/2023

Effective: 6/30/2023

<https://www.ilga.gov/legislation/publicacts/103/PDF/103-0182.pdf>

Maine

Employee Benefits

Creates Paid Family and Medical Leave Program

This law implements a paid family and medical leave benefits program. The program provides up to 12 weeks of family leave and up to 12 weeks of medical leave to eligible covered individuals. No more than 16 weeks of family leave and medical leave in the aggregate may be taken in a 12-month period. An individual is eligible for leave under the program after earning at least 6 times the state average weekly wage in the preceding 4 calendar quarters prior to submitting an application or if the individual is self-employed and has elected to be part of the program. A person who exercises their right to benefits under the law is, upon the expiration of those benefits, entitled to be restored by their employer to the position they held when the family medical leave commenced, or to a position with equivalent seniority, status,

employment benefits, pay and other terms and conditions of employment including any other benefits and service credits that they had been entitled to at the commencement of leave. During a family medical leave taken pursuant to the law, the employer shall maintain any existing health benefits of the employee in effect for the duration of the leave as if the employee had continued employment from the date the employee commenced the leave until the date the leave terminates as long as the employee continues to pay any employee shares of the costs of health benefits as required prior to the commencement of the leave.

Cite: 2023 ME LD258

Enacted: 7/11/2023

Effective: 7/11/2023

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0800&item=1&snum=131>

Employee Rights

Protects employee freedom of speech

The Act to Protect Employee Freedom of Speech prohibits an employer from discharging, disciplining, or otherwise penalizing or threatening to discharge, discipline, or taking any adverse employment action against an employee because the employee declines to attend or participate in an employer-sponsored meeting or declines to receive or listen to a communication from the employer if the employer's purpose is to communicate the opinion of the employer about religious or political matters. The law defines political matters as matters relating to elections for political office, political parties, proposals to change legislation, proposals to change rules or regulations, proposals to change public policy and the decision to join or support any political party or political, civic, community, fraternal or labor organization. Certain communications by the employer are not affected. The law does not prohibit communications of information that the employer is required by law to communicate or limit the rights of an employer to conduct meetings involving religious matters or political matters as long as attendance is wholly voluntary or to engage in communications as long as receipt or listening is wholly voluntary. The law also does not limit the rights of an employer from communicating to its employees any information that is necessary for such employees to perform their lawfully required job duties. The law provides an exemption for religious employers.

Cite: 2023 ME SP702, ME Pub. Ch. 414 (2 pages)

Enacted: 7/11/2023

Effective: 10/25/2023

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0702&item=7&snum=131>

Wages

Expands Equal Pay Law

This law expands the Maine Equal Pay Law to add that an employer may not discriminate between employees in the same establishment on the basis of race by paying wages to any employee in any occupation at a rate less than the rate at which the employer pays any employee of another race for comparable work on jobs that have comparable requirements relating to skill, effort, and responsibility.

Cite: 2023 ME LD1703, ME Pub. Ch. 266 (1 page)

Enacted: 6/22/2023

Effective: 6/22/2023

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1092&item=3&snum=131>

Wages

Tip pooling

This law allows nontipped employees to participate in tip pools under certain circumstances. The law allows nontipped employees to participate in tip pools if all the participating employees are being paid the minimum hourly wage and if the employer does not use the FICA tip credit.

Cite: 2023 ME LD903, ME Pub. Ch.179 (1 page)

Enacted: 6/15/2023

Effective: 6/15/2023

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0559&item=3&snum=131>

Workers' Compensation

Allows for fronting companies

Current law provides that group self-insurers under the Maine Workers' Compensation Act of 1992 are regulated by the Superintendent of Insurance. Under current law, employees of a member of a self-insurance group who live and work out of state cannot be covered by the group but must purchase a conventional insurance policy in each

state in which the employees work. This bill establishes fronting companies, which allow self-insured groups to insure employees in other states.

Cite: 2023 ME HP886, ME Pub. Ch. 393 (3 pages)

Enacted: 7/6/2023

Effective: 10/25/2023

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0886&item=1&snum=131>

New Jersey



ANALYSIS

Service Workers

Cleaning house: New Jersey enacts Building Service Worker Retention Law

by Romie Michel, Genova Burns LLC

On July 24, 2023, Governor Phil Murphy signed into law Assembly Bill 4682/Senate Bill 2389 protecting nonmanagerial and professional service workers who work at eligible locations from sudden and unexpected loss of employment because of changes in ownership. New Jersey's new law is the second of its kind in the United States.

SERVICE WORKER DEFINED

Under the new law, service employees are defined as nonmanagerial or professional employees who have been working on a full- or part-time basis for at least 60 days and are regularly scheduled to work at least 16 hours per week. Service workers must work in connection with the following:

- The care or maintenance of a building or property;
- Passenger-related security services, cargo-related and ramp services, in-terminal and passenger handling, and cleaning services at an airport; or
- Food preparation services at a primary or secondary school or at a tertiary educational institution.

ELIGIBLE LOCATIONS

The law applies to locations such as:

- Multifamily residential buildings with more than 50 units;
- Large commercial centers and office buildings with more than 100,000 square feet;
- Schools;

- Cultural centers;
- Industrial sites or pharmaceutical labs;
- Airports and train stations;
- Certain hospitals, certain nursing care facilities, certain senior care centers, or other healthcare provider locations;
- State court; or
- Warehouses or distribution centers.

PROTECTIONS

Before change in ownership, a current employer must:

- Give a 15-day notice to employees and their collective bargaining representative.
- Post a notification at the jobsite about the change in property ownership.
- Provide the name of the new employer.
- Provide the new employer with current employee information.

The new employer is required to keep service workers employed for 60 days or until its service contract is terminated, whichever is earlier. In addition, the new employer may not reduce service workers' hours to circumvent the law.

The new employer can retain less than all the service employees if:

- Fewer service workers are required to perform the work.
- It retains service workers by seniority.
- It maintains a preferential hiring list of those employees not retained.
- It hires any additional service employees from the list in order of seniority until all affected service employees have been offered employment.

However, the law doesn't apply to the new employer if it agrees to assume the collective bargaining agreement (CBA) on or before the termination of the service contract, so long as the CBA includes terms and conditions for the discharge or laying off of employees.

An employee who has been fired in violation of the law may file suit in court against the new employer. For the first violation, a fine may be imposed not exceeding \$2,500, and second and subsequent violations carry a fine not exceeding \$5,000. The court may also order restitution and injunctive relief.

BOTTOM LINE

You are free to sell your business, but the new employer will be bound to certain restrictions that protect current employees. If the new employer disregards the above and violates the law, it may be subject to punishment if employees choose to exercise their rights.

*Excerpted from New Jersey Employment Law Letter
John C. Petrella and Dina M. Mastellone, Editors
Genova Burns LLC*

Workers' Compensation

Evaluating physicians

This law establishes parity in workers' compensation fees between evaluating physicians of claimants for a written opinion regarding the need for medical treatment or providing an estimation of permanent disability. The law sets the maximum fees of evaluating physicians for claimants for the written reports at \$1,000. The maximum fee of \$1,000 represents an increase of \$400 over the current maximum of \$600 in the case of a claimant's evaluating physician. The law provides that a psychologist, nurse practitioner, or licensed clinical social worker who provides psychological treatment may be paid a fee for a report or testimony concerning that provider's course of treatment of the injured worker in that provider's role as a provider of treatment as permitted by law.

Cite: 2023 NJ SB3309, NJ Pub. Ch. 114 (2 pages)

Enacted: 7/20/2023

Effective: 7/20/2023

https://www.njleg.state.nj.us/bill-search/2022/S3309/bill-text?f=S3500&n=3309_11

Oregon

Employee Benefits

Paid leave program amended

This law makes several changes to the Paid Leave Oregon program and modifications to procedures, including modifying procedures for requesting a hearing, determining when benefits are available to certain persons, and disclosing of confidential information. The law also changes the fixed maximum wage subject to Paid Leave Oregon contributions to match the U.S. Social Security contribution and benefit base limit. The law specifies when the Director of Oregon Employment Department (OED) may dismiss a request for hearing under the family and medical leave insurance benefit program (Paid Leave Oregon). It

modifies when benefits are available to self-employed persons and employees of tribal government. It changes the maximum salary contribution amount to align with Social Security. The law modifies if the Paid Leave Oregon applies to an employee's wages based on their place of employment.

Cite: 2023 OR SB913, (18 pages)

Enacted: 7/13/2023

Effective: 10/1/2023

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB913/Enrolled>

REGULATIONS

Alaska

Wages

Minimum wage and overtime deductions for board and lodging

The Department of Labor and Workforce Development amended regulations to establish requirements for an employer and employee to enter into an agreement to deduct pay as compensation for board and lodging provided, with updated terminology, a requirement of written notice and acceptance, and a requirement that the department determine whether the deductions are without profit to the employer and add an appeal process for aggrieved employers.

Cite: 8 AAC 15.160 (Online Public Notice System, 06/28/2023) (8 pages)

Adopted: 6/28/2023

Effective: 7/28/2023

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=142434>

Arizona

Licensure

Dental therapist licensure

The State Board of Dental Examiners amended regulations to add rules for the licensure of dental therapists, including licensure by credential, duties and qualifications, limitations of supervision, consultants, collaborative practice agreements, and collaborative practice relationships.

Cite: A.A.C. R4-11-101, 201, 202, 203, 206, 301, 303, 401, 403, 701, 702, 1210, 1502, 1503; Article 16; R4-11-1601, 1602, 1603, 1604 (29 A.A.R. 1330, 06/09/2023) (12 pages)

Adopted: 6/9/2023

Effective: 7/10/2023

https://apps.azsos.gov/public_services/register/2023/23/contents.pdf

Colorado

Collective Bargaining

County collective bargaining rules

The Department of Labor and Employment adopted rules to administer and enforce the provisions of the Collective Bargaining by County Employees Act, consistent with the State Administrative Procedure Act, including rules for definitions, filings, representation, unfair labor practices, and judicial review.

Cite: 7 C.C.R. 1103-16 (46 CR 11, 06/10/2023) (10 pages)

Adopted: 05/11/23

Effective: 07/01/23

<https://www.sos.state.co.us/CCR/Upload/AGORequest/AdoptedRules02023-00169.docx>

Labor

Apprenticeships

The Department of Labor and Employment adopted rules in conformity with federal regulations under the National Apprenticeship Act, with criteria for program registration, equal opportunity requirements, reciprocity, and policies for suspensions, cancellations, and deregistrations.

Cite: 7 C.C.R. 1108-1 (46 CR 11, 06/10/2023) (36 pages)

Adopted: 5/10/2023

Effective: 6/30/2023

<https://www.sos.state.co.us/CCR/Upload/AGORequest/AdoptedRules02023-00168.docx>

Labor

Labor peace and industrial relations rules

The Department of Labor and Employment adopted rules to exercise the authority of the department and the Division of Labor Standards and Statistics to administer and enforce the provisions of the Industrial Relations Act and the Labor Peace Act, including definitions, notice requirements, collective bargaining unit elections, unfair labor practices, and labor disputes.

Cite: 7 C.C.R. 1101-1 (46 CR 11, 06/10/2023) (16 pages)

Adopted: 5/11/2023

Effective: 7/1/2023

<https://www.sos.state.co.us/CCR/Upload/AGORequest/AdoptedRules02023-00173.docx>

Delaware

Benefits

Medical leave insurance program

The Department of Labor adopted rules defining and regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program, and the Division of Paid Leave.

Cite: 19 DE Admin. Code 1401 (27 DE Reg. 51, 07/01/2023) (11 pages)

Adopted: 7/1/2023

Effective: 7/11/2023

<http://regulations.delaware.gov/register/july2023/final/27%20DE%20Reg%2051%2007-01-23.pdf>

Florida

Licensure

Continuing education requirements

The Construction Industry Licensing Board amended rules for continuing education for licensees, removing an outdated reference and adding a new category in the required courses for cement cladding, stucco, plastering, and lath installation and repair methodologies.

Cite: Fla. Admin. Code R. 61G4-18.001 (49 faw 2217, 06/13/2023) (7 pages)

Adopted: 6/6/2023

Effective: 6/26/2023

<https://www.flrules.org/gateway/readFile.asp?sid=0&tid=0&cno=61G4-18&caid=1549786&type=4&file=61G4-18.doc>

Licensure

Structural engineer recognition

The Board of Professional Engineers amended rules for the Structural Engineering Recognition Program for Professional Engineers, with minimum standards for recognition, including examination criteria and documentation requirements to demonstrate the scope of an applicant's work on significant structural engineering projects.

Cite: Fla. Admin. Code R. 61G15-20.0011 (49 faw 2218, 06/13/2023) (14 pages)

Adopted: 6/9/2023

Effective: 6/29/2023

<https://www.flrules.org/gateway/readFile.asp?sid=0&tid=0&cno=61G15-20&caid=1550853&type=4&file=61G15-20.doc>

Illinois

Licensure: Healthcare Professionals

Continuing education for pharmacy technicians

The Department of Financial and Professional Regulation amended rules pursuant to the Pharmacy Practice Act, modifying provisions regarding continuing education for certified pharmacy technicians, training requirements for pharmacy technicians, and the permitting of student pharmacists and pharmacy technicians to receive transferred prescriptions.

Cite: 68 Ill. Adm. Code 1330 (47 Ill. Reg. 8352, 06/16/2023) (57 pages)

Adopted: 6/2/2023

Effective: 6/2/2023

https://www.ilsos.gov/departments/index/register/volume47/register_volume47_24.pdf

Kansas

Licensure: Healthcare Professionals

Continuing education for nurses

The Board of Nursing amended definitions and rules governing continuing nursing education standards for license renewal and for the approval of continuing nursing education providers and offerings.

Cite: K.A.R. 60-9-105, 106, 107 (42-26 kan reg 821, 06/29/2023) (5 pages)

Adopted: 7/14/2023

Effective: 7/14/2023

<https://sos.ks.gov/publications/Register/Volume-42/PDF/Vol-42-No-26-June-29-2023.pdf>

Louisiana

Licensure

Academic requirements for licensure

The Licensed Professional Counselors Board of Examiners amended rules governing academic requirements for licensure or provisional licensure as a marriage and family therapist, with an appropriately accredited master's or doctoral degree and specific requirements for hours in defined fields of instruction.

Cite: La. Admin. Code tit. 46, Part LX, Subpart 2, Chapter 33, §3309, §3311 (LR 49:1087, 06/20/2023) (1 page)

Adopted: 6/20/2023

Effective: 6/20/2023

<https://www.doa.la.gov/media/hjsjxxbz/2306.pdf>

Licensure

Architecture license for dependents of healthcare professionals

The Board of Architectural Examiners amended rules to exempt dependents of healthcare professionals from normal submission to the board of an NCARB certificate for licensure, subject to an alternative process.

Cite: La. Admin. Code tit. 46, Part I, Chapter 11, §1103, §1111 (LR 49:1033, 06/20/2023) (2 pages)

Adopted: 6/20/2023

Effective: 6/20/2023

<https://www.doa.la.gov/media/hjsjxxbz/2306.pdf>

Massachusetts



ANALYSIS

Parental Leave

MCAD finalizes parental leave guidelines

by Amelia J. Holstrom, Skoler, Abbott & Presser, P.C.

The Massachusetts Maternity Leave Act became the Massachusetts Parental Leave Act in 2015 after some significant amendments, including that the Parental Leave Act applies to employees of all genders, that full-time employees can use parental leave after just three months of employment even if the employer's introductory period is longer, and that it requires employers to post a notice about parental leave in the workplace.

Although the statute was amended more than eight years ago, the Massachusetts Commission Against Discrimination (MCAD) just issued some guidelines on the law, which cover a number of topics, such as when leave may be taken; the type of leave that may be taken; the use of accrued paid time off (PTO) during leave; job restoration following parental leave; the interrelationship between parental leave and other leave laws, including the Massachusetts Paid Family and Medical Leave (PFML) Act; and notice and posting requirements. While employers should carefully review the guidelines, here are the highlights and what they might mean for your business.

CONTINUOUS, INTERMITTENT, OR REDUCED-SCHEDULE LEAVE

The guidelines make clear that employees may take parental leave in a continuous block of time or on an intermittent or a reduced-schedule basis. An employee may only use parental leave on an intermittent or a reduced-schedule basis with the employer's agreement, but the guidelines indicate employers may not "unreasonably deny" the intermittent or reduced-schedule leave.

Notably, this reasonable denial requirement is in conflict with other states providing leave for the same reasons. Specifically, parental leave runs concurrently with Massachusetts PFML and federal Family and Medical Leave Act (FMLA) leave when an employee also qualifies for those leaves. Under both of those statutes, employees may only take intermittent or reduced-schedule leave for bonding if the employer mutually agrees, but employers can adopt a policy prohibiting it in general.

Some employers indicate in their PFML and FMLA policies they don't permit employees to take leave on an intermittent or a reduced schedule for bonding after birth.

The new guidelines mean that whenever parental leave runs concurrently with PFML and/or the FMLA, employers must look at each request for intermittent or reduced-schedule leave for bonding, and they can't "unreasonably deny" the request. The guidelines don't provide clarification on what a reasonable denial would include.

If that issue is ever in dispute, it will likely need to be decided by a court, so employers should discuss any request and potential denial with labor and employment counsel to ensure they're mindful of the risks associated with any decisions they make.

LEAVE CAN BEGIN BEFORE BIRTH OR ADOPTION AND UP TO ONE YEAR AFTER BIRTH

The guidelines also provide that parental leave is available “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” and, therefore, can be started before the birth or adoption and must be used within a “reasonable timeframe” after the birth or adoption.

The MCAD indicates that one year after the birth generally will be considered a reasonable time frame to take parental leave. Both the PFML and FMLA statutes already permit employees to take leave for bonding up to 12 months after the birth, adoption, or placement of a child.

EXCEPTIONS FOR USE-IT-OR-LOSE-IT VACATION POLICIES

Employers with use-it-or-lose-it PTO policies will have to be careful moving forward. The guidelines make clear that nonstate employees who use parental leave are entitled to all of the vacation and sick time they accrued before their leave but didn’t use during their leave.

Therefore, if an employer has a policy stating employees lose all accrued unused vacation they haven’t used by January 1, but as of January 1, an employee has 15 hours of vacation time left because they were on parental leave beginning December 15, the employee is entitled to those 15 hours upon return from their eight weeks of parental leave.

CAN’T FORCE USE OF COMPANY-PROVIDED PTO

The guidelines reiterate that employees can’t be required to use their available vacation or other nonsick leave PTO during any unpaid parental leave. However, employers can require employees to use any time available to them pursuant to the Massachusetts Earned Sick Time statute. There is a catch, though: The PFML statute prohibits employers from requiring employees to use company-provided sick pay. Accordingly, whenever parental leave runs concurrently with PFML, employers can’t require employees to use their earned sick time.

BOTTOM LINE

Now that the guidelines are final, you should review them carefully and make any necessary changes to existing policies and procedures. You should also work closely with labor and employment counsel when doing so.

*Excerpted from Massachusetts Employment Law Letter
Amelia J. Holstrom, Marylou V. Fabbo, Timothy F. Murphy, John S. Gannon, Erica E. Flores, and Meaghan E. Murphy, Editors
Skoler, Abbott & Presser, P.C.*

Return to TOC

Michigan

Licensure

Physical therapy general rules

The Department of Licensing and Regulatory Affairs updated rules for physical therapists and physical therapist assistants, including definitions, general provisions, educational programs, licensure by examination, licensure by endorsement, relicensure, and delegation of tasks.

Cite: AC, R 338.7121, 7122, 7126, 7131, 7132, 7133, 7134, 7135, 7136, 7137, 7139, 7141, 7142, 7145, 7146, 7147, 7148, 7149, 7161, 7163 (2023 MR 9, 06/01/2023, page 2) (19 pages)

Adopted: 5/1/2023

Effective: 5/1/2023

https://www.michigan.gov/lara/-/media/Project/Websites/lara/moahr/ARD/2023-Michigan-Register/MR9_060123.pdf?rev=258cc107427546ba8ec3003aa0c14e33&hash=BBB566ACA06C75B6BA3320F57F08B438

Minnesota

Occupational Safety

Electric code adoption

The Department of Labor and Industry adopted the 2023 edition of the National Electric Code as approved by the American National Standards Institute, requiring all new electrical wiring, apparatus, and equipment for electric light, heat, power, and technology circuits and systems, as well as alarm and communication systems, to comply with the regulations.

Cite: Minn. R. 1315.0200 (47 SR 1185, 06/20/2023) (1 page)

Adopted: 7/1/2023

Effective: 7/1/2023

<https://www.revisor.mn.gov/rules/pdf/1315.0200/2023-07-20%2009:44:54+00:00>

Mississippi

Healthcare Professionals

Issuance of certificates

The State Board of Medical Licensure amended rules to revise the bariatric and pain management practice rules, removing the issuance of certificates in favor of a digital process.

Cite: 30 Miss. Admin Code, Pt. 2640, R.1.6 and R.1.14 (Mississippi Administrative Bulletin, 06/19/2023) (4 pages)

Adopted: 6/13/2023

Effective: 7/14/2023

<https://www.sos.ms.gov/adminsearch/ACProposed/00027009b.pdf>; <https://www.sos.ms.gov/adminsearch/ACProposed/00027008b.pdf>

Licensure

Registration for foresters

The Board of Registration for Foresters amended rules for the regulation of foresters to clean up and update rules, implement the Military Family Freedom Act and Universal Recognition of Occupational Licenses Act, and increase license renewal and late renewal fees.

Cite: 30 Miss. Admin. Code Pt. 1001 (Mississippi Administrative Bulletin, 06/19/2023) (26 pages)

Adopted: 6/19/2023

Effective: 7/20/2023

<https://www.sos.ms.gov/adminsearch/ACProposed/00027020b.pdf>

New York

Licensure

Licensure and practice of nursing home administrators

The Department of Health amended rules to clarify and update the nursing home administrator licensure program, increasing the pool of qualified nursing home administrator candidates for licensure.

Cite: 10 NYCRR 96 (2023-26 N.Y. St. Reg. 27, 06/28/2023) (1 page)

Adopted: 6/12/2023

Effective: 6/28/2023

[https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I06ca3220b65611ddb903a4af59fec65a&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=I06ca3220b65611ddb903a4af59fec65a&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

Workers' Compensation

Telehealth

The Workers' Compensation Board amended rules to add a new section providing an option for telehealth visits in certain circumstances, including definitions, treatment standards, and rules for independent medical examinations.

Cite: 12 NYCRR 325-1.26 (2023-26 N.Y. St. Reg. 42, 06/28/2023) (2 pages)

Adopted: 6/9/2023

Effective: 7/11/2023

<https://dos.ny.gov/system/files/documents/2023/06/062823.pdf>

Texas

Workers' Compensation

Settlement agreements

The Division of Workers' Compensation adopted amendments to rules concerning Compromise Settlement Agreements for lump sum payments, with changes to submission method requirements and corrections to obsolete references.

Cite: 28 TAC § 55.15 (48 TexReg 3505, 06/30/2023) (2 pages)

Adopted: 6/13/2023

Effective: 7/3/2023

<https://www.sos.state.tx.us/texreg/archive/June302023/Adopted%20Rules/28.INSURANCE.html#44>

Washington

Licensure

Electrician examinations

The Department of Labor and Industries amended rules to provide permanent alternative pathways to qualify for the journey-level electrician examination and to provide current trainees who have certain levels of experience with the ability to continue gaining experience without becoming registered apprentices.

Cite: WAC 296-46B-945 (WSR 23-24-115, 07/03/2023) (7 pages)

Adopted: 6/21/2023

Effective: 7/3/2023

<https://lawfilesexternal.wa.gov/law/wsr/2023/13/23-13-115.htm>