



PLADS

LEGISLATIVE ADVISORY

REGULATORY UPDATES FROM
AFLAC'S PREMIER LIFE, ABSENCE AND
DISABILITY SOLUTIONS DIVISION

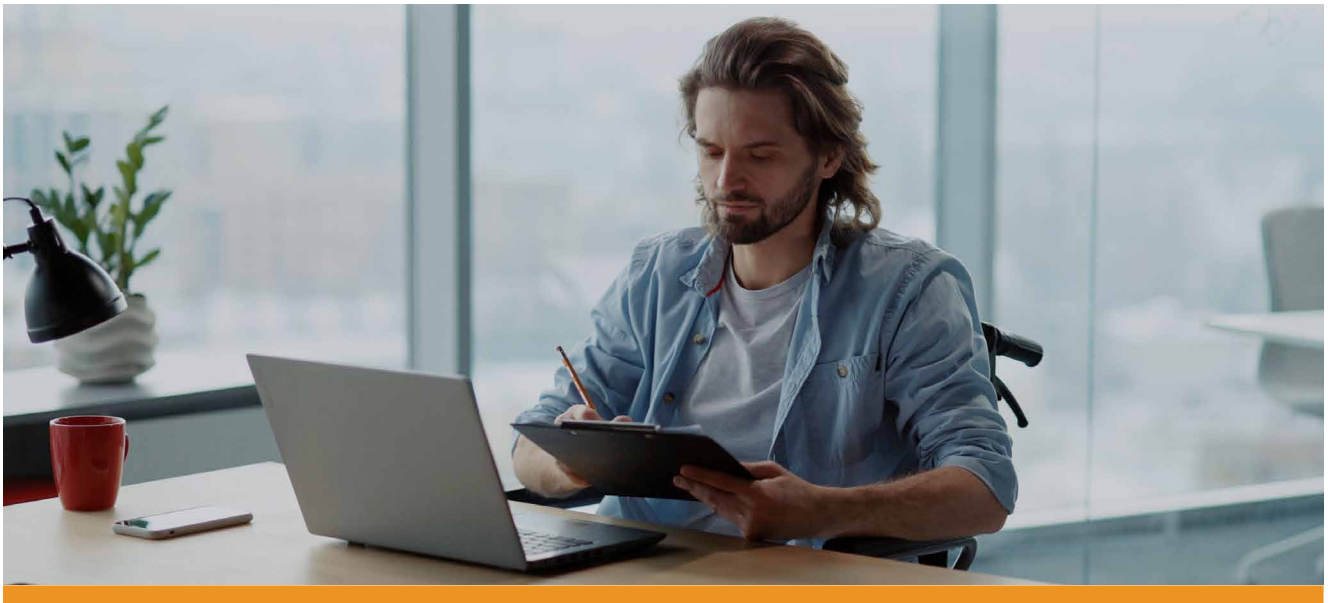


FEBRUARY 2023

We are pleased to share the February 2023 PLADS Legislative Advisory, information related to paid and unpaid leave legislation as well as other regulatory updates.

TOP NEWS INSIDE

- COVID-19 and employment trends for people with disabilities.
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- State/other paid leave legislation: Ever-changing paid leave landscape.
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- State/other leave legislation: Illinois - Paid Leave for All Workers Act.
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COVID-19 and employment trends for people with disabilities

For three years and counting, we have coped with COVID-19 and still have plenty to learn about its overall effect. A paper published by the National Bureau of Economic Research, “How Has COVID-19 Impacted Disability Employment,” explains that the growth of remote work may have contributed to increased employment of disabled workers. A brief published by the Department of Labor’s Office of Disability Employment Policy, “Employment of Persons with a Disability: Analysis of Trends during the COVID-19 Pandemic,” aligns with that position.¹

Workers with disabilities have reentered the labor force in greater numbers during the COVID-19 recovery than pre-pandemic levels. In August of 2021, the employment-population ratio for people with disabilities fully recovered to 19.4%² and has remained above its pre-pandemic level.³ Although this improves the historical employment gap between workers with and without disabilities; there remains significant differences in labor force participation and employment between people with and without disabilities. Closing these gaps is important to our continued economic recovery and commitment to inclusivity. Businesses inclusive of people with disabilities benefit from a broader pool of talent, skills and creative business solutions.⁴

The impact of long COVID on employment

The Centers for Disease Control and Prevention (CDC) reported more than 80% of adults who have long COVID also had trouble carrying out daily activities.⁵ There is limited data validating how many people are not working due to long COVID, however a Brookings report in August of 2022 estimated as many as 4 million workers were out of work due to long COVID suggesting long COVID⁶ contributed to the labor shortage.⁷

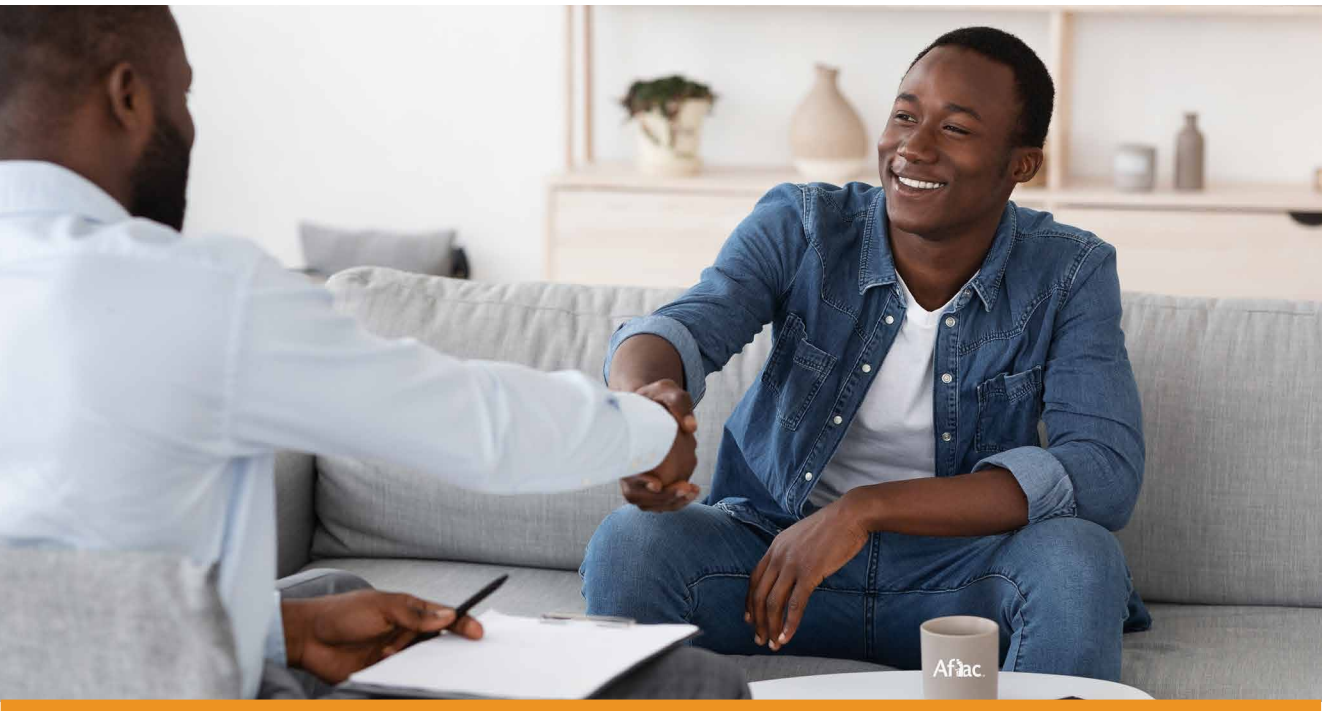
Can COVID-19 and long COVID help us evolve to a more inclusive workforce, specifically for workers with disabilities?

Just like the business response to COVID-19, expanded flexibilities in the workplace increased the participation of people with disabilities; innovative accommodations and practical approaches for managing long COVID may similarly result in increasing the number of people with disabilities in the workplace. The following recommendations from a 2023 report on long COVID⁸ helps employers take more deliberate steps to create a

diverse, inclusive and accessible workplace by keeping those disabled with long COVID at work or returned to work sooner:

- Change outdated opinions and attitudes about long-term illnesses and disabilities organization wide through regular communication and education. Think functional abilities instead of restrictions. Ask how can you help.
- Address challenges and potential solutions around health care access, treatment and costs. Effective results for supporting employees with long COVID may require moving beyond general practices.
- Provide mental support as well as physical care. Our mental health is equally important. Accommodations for employees reporting brain fog, depression, anxiety or other mental health issues are in the best interest of the employee, employer and the community at large.⁹

According to the Centers for Disease Control and Prevention, 1-in-4 adults¹⁰ in the U.S. has a disability including invisible disabilities. Your workforce probably includes employees with disabilities. Without disability inclusion, your business isn't doing all it can to support its current workers or potential candidates. The good news for employers is that well-thought-out and creative programs can make a positive difference by increasing the talent pool through closing the employment gap between those with disabilities and those without.



¹ COVID-19 and Employment Trends for People with Disabilities | U.S. Department of Labor Blog (dol.gov).

² COVID-19 and Employment Trends for People with Disabilities | U.S. Department of Labor Blog (dol.gov).

³ COVID-19 and Employment Trends for People with Disabilities | U.S. Department of Labor Blog (dol.gov).

⁴ <https://askearn.org/page/disability-inclusion-in-the-workplace>.

⁵ Long COVID: Assessing and Managing Workforce Impact - Disability Management Employer Coalition (DMEC).

⁶ New data shows long Covid is keeping as many as 4 million people out of work (brookings.edu).

⁷ Long Covid has 'underappreciated' role in labor gap: study (cnbc.com).

⁸ Long COVID: Assessing and Managing Workforce Impact - Disability Management Employer Coalition (DMEC).

⁹ Long COVID: Assessing and Managing Workforce Impact - Disability Management Employer Coalition (DMEC).

¹⁰ Disability Impacts All of Us Infographic | CDC.

STATE/OTHER PAID LEAVE LEGISLATION

Everchanging paid leave landscape

Multiple states are proposing paid family medical leave benefits (PFML) and are using different plan designs for employers and employees to take advantage of the programs. Some states are looking to create mandatory PFML benefits which means employers in the state are required to comply with the PFML statute. Currently, mandatory PFML is the most common program design and has already been implemented in states such as Washington, Connecticut and Massachusetts with Oregon and Colorado getting close to starting their PFML administration. Other PFML proposals are voluntary which means that private employers may voluntarily choose to offer a PFML policy to their employees but are not obligated to do so. New Hampshire and Vermont have passed legislation for voluntary PFML.

While states continue to draft new bills, we wanted to offer a snapshot of newly proposed PFML legislation. As statutes are passed, we will keep you updated through our monthly newsletter.

STATE	MANDATORY	VOLUNTARY
ARIZONA	X	
ARKANSAS		X
HAWAII (PFL ONLY)	X	
ILLINOIS		X
INDIANA	X	
IOWA	X	
MINNESOTA	X	
MISSISSIPPI	X	
MISSOURI	X	
NEBRASKA	X	
NEW MEXICO	X	
NORTH DAKOTA	X	
OKLAHOMA	X	
SOUTH DAKOTA		X
TENNESSEE		X

The landscape of PFML is rapidly changing and maturing with the number of states with some sort of paid statutory leave program in double digits. Moreover, PFML benefits, wage replacement, duration and who funds these programs is all over the board. These huge disparities make it especially difficult for employers and employees in rural areas to take advantage of these benefits, if even offered in their state.

“Rural workers have even less access to both employer-provided paid family leave and paid sick leave than workers in metropolitan areas because the types of jobs that are most prevalent in rural communities are less likely than others to offer paid leave benefits.”¹ Additionally, depending on the seriousness of the diagnosis, rural workers are less likely to return to work than patients in metropolitan areas because the kinds of jobs that are common in rural areas involve physical labor, have fewer return to work options and do not offer paid leave benefits.² Lastly, as opposed to employees in cities, rural workers typically have less access to FMLA, which is unpaid, job protected leave, because they tend to work for smaller employers who are not required to offer FMLA.³

In addition, rural communities trend older and have more caregiving needs. There are more multigenerational families in rural areas and more young adults in the “sandwich generation” providing care for both their own children and their adult parents.⁴ Family members are forced to choose to leave their jobs risking financial stability, or keep their jobs and push themselves past their limits, putting themselves and their family members at risk.⁵ While states are beginning to allow insurers to offer PFML policies, whether standalone or a rider to short term disability policies, companies in rural areas may be less likely to offer the voluntary benefit because employers are smaller, have few employees and cannot afford for employees to take long durations of time away from work despite understanding how important it is to keep and retain employees.⁶

Support for paid sick and family leave is popular among rural Americans, according to the National Partnership for Women & Families, which found in 2020 polling that 80% of rural voters supported a permanent paid family and medical leave program, allowing people to take time off from work to care for children or other family members.⁷

New data, published by New America, make a clear and compelling case to legislators that access to PFML is imperative to employees:

- Among U.S. states with more than 20% of the population living in rural areas, none guarantee workers access to paid family and medical leave and only two (Vermont and New Mexico) guarantee access to paid sick time.
- In the absence of legislative requirements or programs, just over half of workers in rural communities (55.7%) report having employer-provided paid sick time through their jobs, and both men and women in rural communities are seven percentage points less likely than metropolitan-area workers to have access to paid sick time. Fewer than half of rural workers with a recent cancer diagnosis reported access to paid sick days (49%).

Additional findings can be found here: <https://www.newamerica.org/better-life-lab/reports/health-work-and-care-rural-america/key-findings/>.

¹ <https://www.newamerica.org/better-life-lab/blog/rural-vermonters-especially-parents-with-sick-children-need-paid-leave-to-manage-distances-to-hospital-based-care/>

² <https://www.newamerica.org/better-life-lab/blog/rural-vermonters-especially-parents-with-sick-children-need-paid-leave-to-manage-distances-to-hospital-based-care/>

³ <https://www.newamerica.org/better-life-lab/blog/rural-vermonters-especially-parents-with-sick-children-need-paid-leave-to-manage-distances-to-hospital-based-care/>

⁴ https://www.southernminn.com/northfield_news/opinion/paid-family-and-medical-leave-is-good-for-rural-communities/article_bfb575d4-9683-11ed-b339-1fc8dabe9f02.html

⁵ https://www.southernminn.com/northfield_news/opinion/paid-family-and-medical-leave-is-good-for-rural-communities/article_bfb575d4-9683-11ed-b339-1fc8dabe9f02.html

⁶ <https://www.npr.org/sections/health-shots/2023/01/18/1149693773/with-less-access-to-paid-leave-rural-workers-face-hard-choices-about-health-fami>

⁷ <https://khn.org/news/article/rural-workers-paid-sick-leave-medical-maternity-family/>

STATE/OTHER LEAVE LEGISLATION

ILLINOIS

Paid Leave for All Workers Act (SB0208)

On Jan. 10, 2023, both the House and Senate passed the Paid Leave for All Workers Act, which requires employers to provide paid leave to employees for any reason. If approved by the governor, it is anticipated that effective Jan. 1, 2024, employees would be entitled to accrue and use a minimum of 40 hours of paid leave during a 12-month period.

Covered employers:

- Employer has the same application and meaning as that provided in Sections 1 and 2 of the [Illinois Wage Payment and Collection Act](#): “As used in this Act, the term “employer” shall include any individual, partnership, association, corporation, limited liability company, business trust, employment and labor placement agencies where wage payments are made directly or indirectly by the agency or business for work undertaken by employees under hire to a third party pursuant to a contract between the business or agency with the third party, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, for which one or more persons is gainfully employed.”
- In addition, the “employer” means the state and units of local government, any political subdivision of the state or units of local government or any state or local government agency.
- Employer does not include school districts organized under the School Code or park districts organized under the Park District Code.

Covered employees: Employees who work in Illinois

- Employee has the same application and meaning as that provided in Sections 1 and 2 of the [Illinois Wage Payment and Collection Act](#): As used in this Act, the term “employee” shall include any individual permitted to work by an employer in an occupation, but shall not include any individual:
 - o who has been and will continue to be free from control and direction over the performance of his work, both under his contract of service with his employer and in fact; and
 - o who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and
 - o who is in an independently established trade, occupation, profession or business.
- Employee also includes all domestic workers, and, for the purposes of this Act, domestic workers shall not be excluded as employees under the provisions of item (1), (2), or (3) of Section 2 of the Illinois Wage Payment and Collection Act.
- Not included:
 - o an employee as defined in the federal Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.) or the Railway Labor Act;
 - o a student enrolled in and regularly attending classes in a college or university that is also the student’s employer, and who is employed on a temporary basis at less than full time at the college or university, but this exclusion applies only to work performed for that college or university; or

- o a short-term employee who is employed by an institution of higher education for less than two consecutive calendar quarters during a calendar year and who does not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year.

Administration:

- Accrual begins at the commencement of employment or on the effective date.
- One hour of paid leave is accrued for every 40 hours.
- Exempt employees are deemed to work 40 hours per week. If the employee's regular work week is less than 40 hours, the employee would accrue based on their regular workweek.
- Employers may elect to pre-fund paid leave balances in lieu of tracking accruals.
 - o While applying this method, an employer may implement a "use it or lose it" employee policy. This generally means that the employee must use all paid leave prior to the end of the benefit year, or any remaining balance is forfeited. If this policy is not formally created, the employer is required to carryover the balance year to year.
- The 40 hours must be paid at the employee's hourly rate of pay.
 - o The Act states that employees engaged in an occupation in which gratuities or commissions have customarily and usually constituted and have been recognized as part of the remuneration for hire purposes shall be paid by their employer at least the full minimum wage in the jurisdiction in which they are employed when paid leave is taken. This wage shall be treated as the employee's regular rate of pay for purposes of this Act.
- Upon separation of employment, employers are not required to pay out unused paid leave.
- The 12-month period may be any consecutive 12-month period designed by the employer in writing at the time of hire.

Usage:

- May be used for any reason:
 - o Employees are not required to provide the employer a reason for the leave; and
 - o may not be required to provide documentation or certification.
- Employees choose if they will use paid leave prior to any other leave provided by the employer or state law.
- Employees may begin using paid leave after 90 days of employment or on the effective date of the new paid leave, whichever is the later date. Employers may choose to permit usage sooner.

Employer responsibilities:

- Provide written notice of the designated the consecutive 12-month period.
- For a period not less than three years, maintain and preserve records documenting hours worked, paid leave accrued and taken, and remaining paid leave balance for each employee.
- An employer who provides paid leave on an accrual basis is required to provide notice of the amount of paid leave accrued or used by an employee up on request.

- If an employer's existing policy satisfies all requirements of the Act, the employer will not be required to modify their existing policy.
- Employers are required to display a notice in a visible and accessible place on the premises of the employer where notices to employees are customarily posted, and include it in a written document, or written employee manual or policy if the employer has one, a notice, to be prepared by the Department, summarizing the requirements of this Act.

For more information, visit ilga.gov.

While Aflac PLADS does not administer paid time programs based on accruals, we encourage employers to review and update their internal policies and provide appropriate updates/training to their management.



These are educational materials only. Employers should consult their own counsel for obligations for state-mandated leave and disability programs. Products and services are provided by Continental American Insurance Company. In California, coverage is offered by Continental American Life Insurance Company. In New York, products and services are provided by American Family Life Assurance Company of New York. Products may not be available in all states and may vary depending on state law.

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