



ABSENCE ADVISORY

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



SEPTEMBER 2023

We are pleased to share the September 2023 Absence Advisory, along with information related to state and other paid leave legislation.

TOP NEWS INSIDE

- [Battling mental health in the workplace.](#)
.....
- State/other leave legislation:
 - [New York.](#)
 - [Oregon.](#)
 - [Illinois.](#)
 - [Delaware.](#)
.....



BATTLING MENTAL HEALTH IN THE WORKPLACE

October is Depression Awareness Month, and this is a perfect time to evaluate what employers can do to support, protect, recruit and retain employees in the midst of increased mental health challenges. Today, caring for employees' psychological well-being is a fundamental expectation for successful businesses.¹

81% of survey respondents said that an employers' support for mental health will be an important consideration when they look for work in the future.²

In 2021 8.3% of all U.S. adults had at least one major depressive episode in the past year, and 5.7% had at least one major depressive episode with severe impairment. Depression (also known as major depression or clinical depression) is one of the most common mental disorders in the United States.

¹NIMH Information Resource Center. <https://www.nimh.nih.gov/health/statistics/major-depression>. Last Updated: July 2023, [Accessed 09/08/23](#)

²NIMH Information Resource Center. https://www.nimh.nih.gov/health/statistics/major-depression#part_2564. Last Updated: July 2023, [Accessed 09/08/23](#)

³NIMH Information Resource Center. <https://www.nimh.nih.gov/health/topics/depression>. Last Updated: July 2023, [Accessed 09/08/23](#)

⁴2022 Mind the Workplace: Employer Responsibility to Employee Mental Health. https://mhanational.org/sites/default/files/MTW_Report_2022.pdf. 2022, [Accessed 09/08/23](#)

Depression is a mood disorder causing severe symptoms that affect how a person feels, thinks and handles daily activities including responsibilities at work. Symptoms that interfere with day-to-day functioning at work include fatigue and difficulty concentrating, remembering or making decisions.³

Mental Health America’s annual 2022 Mind the Workplace report found that 71% of employees experienced difficulty concentrating at work, compared to 65% in 2021 and 46% in 2018.⁴

Depression can also cause changes in mood that could negatively impact relationships with co-workers and customers; for example, having increased anger or irritability, feeling restless or on edge and becoming withdrawn, negative or detached. This can lead to an inability for employees to meet their responsibilities at work, impacting business productivity.⁵ Such impacts to employee productivity reveals why it’s vital for employers to recognize that protecting and supporting their employees’ mental health is vital to the future of their business.

In the past, the general belief by many companies and employees was that mental health conditions were something to manage outside the workplace. However, in 2020, just prior to the pandemic, a pivot occurred, and a conversation started to equip both leaders and employees with resources to address mental health issues and begin reducing the stigma associated with mental illness at work. During the pandemic, providing mental health support escalated from a nice-to-have to a business priority.

Now, support for mental health is becoming widely accepted within the workplace, even making it part of employers’ overall diversity, equity and inclusion (DEI) strategies.⁸

While many people may still have a negative view and/or fear of those with mental illness, this can exasperate symptoms for employees and create a barrier to getting help.⁹ Mental health stigma can still be challenging in the workplace. Employees may be concerned about discussing mental health issues due to fear of being treated differently, experiencing discriminatory behavior from co-workers and superiors, facing social exclusion, being perceived as incompetent or even losing their jobs.⁶

Overcoming the stigma of mental illness is one reason mental health is a DEI issue. Living with mental illness is a dimension of difference. People often find it hard to share that they have a mental health condition with their supervisor and request accommodation.

There are also mental health implications for minority groups whose identity is socially challenged. They are more likely to experience discrimination, social exclusion, unconscious bias, harassment and microaggressions, all of which negatively impact their mental well-being.¹⁰

⁵NIMH Information Resource Center. <https://www.nimh.nih.gov/health/topics/depression>. Last Updated: July 2023, [Accessed 09/08/23](#)

⁶2022 Mind the Workplace: Employer Responsibility to Employee Mental Health. https://mhanational.org/sites/default/files/MTW_Report_2022.pdf. 2022, [Accessed 09/08/23](#)

⁷NIMH Information Resource Center. <https://www.nimh.nih.gov/health/topics/depression>. Last Updated: July 2023, [Accessed 09/08/23](#)

⁸It’s a New Era for Mental Health at Work. <https://hbr.org/2021/10/its-a-new-era-for-mental-health-at-work>. 10/04/23, [Accessed 09/08/23](#)

⁹Understanding the Impact of Stigma. https://www.ncsc.org/___data/assets/pdf_file/0028/79741/Understanding-the-Impact-of-Stigma.pdf. July 2022, [Accessed 09/08/23](#)

¹⁰Three Reasons Why Mental Health is a DEI Issue. <https://kgdiversity.com/three-reasons-why-mental-health-is-a-dei-issue/>. 05/09/23, [Accessed 09/08/23](#)

How does DEI support good mental health? A commitment to DEI involves ensuring employees have access to the support they need from leadership and peers by creating an inclusive work environment. It also means ensuring that human support systems have the skills to navigate conversations and respond to the unique needs of a diverse workforce.

Enabling people to share their authentic identity and to accept and value their differences improves both mental well-being and overall engagement.¹⁰

It is often difficult for employers to gauge the mental health needs of their employees because the stigma that still exists related to mental health conditions sometimes keeps employees from speaking up and asking for help.⁷ Training is one of the tools the World Health Organization recommends as an intervention to protect and promote mental health at work. Specifically, training to improve understanding about mental health and well-being that helps shift attitudes about mental health conditions to reduce stigma.⁸ Organizations have to train leaders, managers and all employees on how to navigate mental health at work, have difficult conversations and create supportive workplaces that promote well-being. Only 11% surveyed by the American Psychological Association reported that their employer has people on-site who have received mental health training, but of those who reported their employer does offer this support, 94% considered it effective.

Here are four areas you can focus on to address mental health in the workplace:

- 1. Culture:** Create and promote an inclusive and supportive work culture around mental health. Establish employee mental health and well-being as a top organizational priority.
- 2. Robust mental health benefits:** Reexamine health insurance policies with a focus on employee mental health.
- 3. Workplace policies, practices and resources:** Put in place policies, practices and provide mental health resources, then communicate. Take a critical look at equity, diversity and inclusion policies.
- 4. Leadership:** Invest in developing supportive and emotionally intelligent people managers equipped to support workers if they have a mental health condition or symptom.

Employees don't experience mental health challenges in isolation. Therefore, employers must pivot from viewing mental health as an individual issue to addressing it as a collective priority. Considering the impact to business success, companies no longer have the luxury to classify mental health as an individual's responsibility to face alone through self-care, paid time off or employee benefits. Organizations must proactively build healthy cultures that address damaging norms, beliefs, bias and workplace practices. "Just like DEI is more than recruiting numbers, supporting mental health is more than medical benefits."¹⁶

¹⁰Organizational Best Practices Supporting Mental Health in the Workplace. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8631150/>. 10/06/21, Accessed 09/08/23

¹²Mental Health at Work: Policy Brief. file:///C:/Users/E20967/Downloads/9789240057944-eng.pdf. 2022, Accessed 09/08/23

¹³APA's 2022 Work and Well-being Survey results. <https://www.apa.org/pubs/reports/work-well-being/2022-mental-health-support>. 2022, Accessed 09/08/23

¹⁴Organizational Best Practices Supporting Mental Health in the Workplace. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8631150/>. 10/06/21, Accessed 09/08/23

¹⁵It's a New Era for Mental Health at Work. <https://hbr.org/2021/10/its-a-new-era-for-mental-health-at-work>. 10/04/23, Accessed 09/08/23

¹⁶Principles To Navigating DEI, Mental Health and Emerging Needs Amidst Multiple Pandemics. <https://www.forbes.com/sites/mindsharepartners/2020/07/23/Report>. 2022, Accessed 09/08/23



STATE/OTHER LEAVE LEGISLATION

NEW YORK

New York Paid Family Leave to raise max benefit amount

As of Jan. 1, 2024, employees eligible for benefits under the New York Paid Family Leave (NY PFL) program could receive a weekly benefit of 67% of the employee's average weekly wage up to \$1,151.16, an increase from the 2023 maximum benefit of \$1,131.08. Additionally, the employee contribution rate for 2024 will be 0.737% of an employee's wages not to exceed \$333.25 annually. This is a decrease from 0.455% in 2023. The duration of NY PFL will remain the same with employees potentially eligible for up to 12 weeks.

For more information, please see:

https://www.dfs.ny.gov/apps_and_licensing/health_insurers/pfl_rate_decision_2024_page.

Oregon Paid Leave updates

Oregon Paid Leave has added bias crimes to their definition of safe leave under eligible leave reasons. According to Oregon legislation, a bias crime is a crime motivated in part or whole by bias against another person’s race, color, disability, religion, national origin, sexual orientation or gender identity. (Source: [Home - Paid Leave Oregon](#).) There are federal, state and tribal hate and bias crime laws, each defined separately under individual state’s laws, federal law and individual tribe’s laws. (See: <https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/bias-and-hate/whats-the-difference-between-a-hate-or-bias-crime-and-a-bias-incident/>).

Examples of hate and bias crimes

Bias crimes can also be verbal, physical or visual. Some examples include:

- | | | |
|---|--|--|
| 1. Assaulting, injuring or even touching someone in an offensive manner because of their perceived protected class. | 2. Creating racist or derogatory graffiti on someone else’s property based on their perceived protected class. | 3. Threatening to physically harm a person, their family or their property based on their perceived protected class. |
|---|--|--|

Oregon Paid Leave has also added clarification to the definition of an “affinity” family member. It outlines the characteristics of a family relationship to determine whether an affinity relationship exists. The amendment interprets the affinity relationship to mean there is a significant personal bond that is like a family relationship, and while there are factors to take into consideration, reviewers must look at situation in its totality:

- | | |
|---|--|
| 1. Is there shared personal financial responsibility? | 4. Geographical proximity? |
| 2. Is there an emergency designation of the employee by the other individual or vice versa? | 5. Prior cohabitation? |
| 3. Expectation to provide care? | 6. Look at any other factor that demonstrates the existence of a family-like relationship. |

For more information, see: https://www.oregon.gov/employ/Agency/Documents/ED_6-2023_Batch_8_confidentialty_assistance_grants_benefits_TEMP_20230809.pdf.

For more information, see: <https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/bias-and-hate/whats-the-difference-between-a-hate-or-bias-crime-and-a-bias-incident/>.

Oregon Paid Leave began claims administration on Sept. 3, 2023, and has provided a list of resources for employees who are using the state plan. The Oregon Paid Leave claims process has two parts:

1. Creating an account using Frances Online: https://frances.oregon.gov/_/.
2. Submitting an employee’s claim with supporting documents. The new employee toolkit can help with this process: <https://paidleave.oregon.gov/employees/employee-toolkit.html>.

There is also a “What You Need to Apply for Benefits” checklist: <https://d1o0i0v5q5lp8h.cloudfront.net/paidleave/live/assets/resources/Paid-Leave-What-You-Need-To-Apply-Checklist-EN.pdf>.

For more information, see: <https://paidleave.oregon.gov/>.

Employee Blood Donation and Organ Donation Leave Act – House Bill 3516

On Aug. 4, 2023, the state of Illinois enacted amendments to the Employee Blood Donation Leave Act including renaming the act to the Employee Blood and Organ Donation Leave Act.

Effective Jan. 1, 2024, the act provides up to 10 days of leave in any 12-month period to serve as an organ donor. The time that an employee may take to donate blood has not changed. An employee may still use up to one hour or more if authorized by the employer, or a collective bargaining agreement, to donate blood every 56 days in accordance with appropriate medical standards established by the American Red Cross, America's Blood Centers, the American Association of Blood Banks or other nationally recognized standards.

- Covered employers include units of local government, board of election commissioners or private employers in the state of Illinois with 51 or more employees.
- An eligible employee is a full-time employee who has been employed for a minimum of six months and donates blood or an organ.
- "Organ" has been 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.

For more information: [Illinois General Assembly - Full Text of HB3516 \(ilga.gov\)](https://www.ilga.gov/legislation/2023/2023HB03516.htm).

Aflac recommends that employers review and update impacted policies, Human Resources systems, and provide updated training to their management team.

Child Extended Bereavement Leave Act - SB 2034

Illinois also amended the state's bereavement leave, and on Aug. 4, 2023, enacted the Child Extended Bereavement Act, which is also referred to as Zachary's Parent Protection Act.

Effective Jan. 1, 2024, eligible employees may take unpaid job-protected leave to grieve when they have lost a child by suicide or homicide.

Employees are eligible for unpaid leave if they have worked for their employer for a minimum of two weeks.

Covered employers are large or small employers other than the federal government or an agency of the federal government.

- Large employers: Employs 250 employees on a full-time basis in Illinois.
- Small employers: Employs between 50 to 249 employees on a full-time basis in Illinois.

The duration of leave is determined by the size of the employer and is to be taken within one year after the employee notifies the employer of the loss.

- Large employers: Eligible employees are entitled to up to 12 weeks of unpaid leave.
- Small employers: Eligible employees are entitled to up to six weeks of unpaid leave.

Whether a large or small employer, leave may be taken on a continuous basis or intermittently in increments of not less than four hours.

Reasonable documentation may be required in the following forms:

- Death certificate.
- A published obituary.
- Written verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or government agency.

An employer may also require that the documentation include the cause of death.

Aflac recommends that employers review and update impacted policies and human resources systems, and provide updated training to their management team.

Employees may choose to use paid time while on leave for these reasons.

For more information: [Illinois General Assembly - Full Text of SB2034 \(ilga.gov\)](#).

DELAWARE

Domestic Violence, Sexual Assault and Stalking Certification - HB 184

On July 25, 2023, Delaware enacted and made effective changes to certification requirements when an employee is a victim of domestic violence, sexual assault or stalking. Prior to the change, employees were required to provide verification of the offense by submission of an official document when requesting accommodation related to the beforementioned acts of violence and stalking. Effective July 25, 2023, employers now have the option to request certification or to waive the need for certification.

If the employer requires certification, it may be verified by:

- An official document from a sexual violence service provider.
- A medical provider.
- A mental health provider.
- Law enforcement.
- A court order.
- Family medical leave.

For more information: [Bill Detail - Delaware General Assembly](#).

Aflac recommends that employers review and determine how their policies will change and provide updated training to their management team.



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. Continental American Insurance Company | Columbia, SC
Aflac New York | 22 Corporate Woods Boulevard, Suite 2 | Albany, NY 12211