



PLADS

LEGISLATIVE ADVISORY

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



JULY 2022

We are pleased to share the July 2022 **PLADS Legislative Advisory**, information related to paid and unpaid leave legislation as well as other regulatory updates.

TOP NEWS INSIDE

- State paid leave legislation: Colorado, Connecticut, District of Columbia, New Hampshire, Massachusetts, Washington.
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- State/other leave legislation: Connecticut, Washington.
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- Other state legislation: Rhode Island.
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STATE/OTHER PAID LEAVE LEGISLATION

COLORADO

Colorado FAMILI and TABOR

Colorado passed Proposition 118 on Nov. 3, 2020, and the Colorado Family and Medical Leave Insurance – CO FAMILI – program was born. Contributions to help fund the program will begin on Jan. 1, 2023, and eligible employees can begin to receive benefits for eligible leave reasons on Jan. 1, 2024.

On June 21, 2022, the Colorado’s Supreme Court ruled against Chronos Builders’ assertion that the collection of premiums violates the state’s Taxpayers Bill of Rights (TABOR). The state Supreme Court determined that TABOR does not apply to the program because “The Act, a family and medical leave law, is not an income tax law or a change to such a law,” with further elaboration that “Moreover, the premium collected pursuant to the Act is a fee used to fund specific services, rather than a tax or comparable surcharge collected to defray general government expenses,” Justice Monica Márquez wrote for the court.

Contributions into the fund for CO FAMILI will begin Jan. 1, 2024, as planned. Unless the employer is approved for a private plan exemption, employers and their employees are responsible for funding the program. Premiums, capped at the Social Security Wage Base, are set to 0.9% of the employee’s wage, and shared 50/50 by the employer and employee for businesses with 10 or more employees’ premiums. The employer may choose to pay a larger portion or all the employee’s premium. There are specific rules for local government, employers with nine or fewer employees and the self-employed. For more information about premiums and possible exemptions, visit: [Employers | Family and Medical Leave Insurance \(colorado.gov\)](https://colorado.gov/employers-family-and-medical-leave-insurance).

CONNECTICUT

Connecticut Paid Leave

Connecticut’s minimum wage increased from \$13 to \$14 on July 1, 2022. This may impact the paid leave benefit amount an employee is eligible to receive.

The new Connecticut Paid Leave weekly benefit maximum increased from \$780 to \$840 as of July 1, 2022. The change in minimum wage does not affect the benefit amount for existing claims because the benefit amount is based on the employee’s earnings in the base period (i.e., the first four quarters of the five most recently completed quarters). www.ctpaidleave.org.

As a reminder, a covered employee’s weekly benefits are calculated in the following ways:

- If the employee’s wages are less than or equal to the Connecticut minimum wage multiplied by 40, their weekly benefit rate under the CTPL will be 95% of their average weekly wage. (Note: 40 times the minimum wage was equal to \$520 weekly as of January 2022, and increased to \$560 on July 1, 2022.)
- If the employee’s wages exceed the Connecticut minimum wage multiplied by 40, their weekly benefit rate will be 95% of the Connecticut minimum wage multiplied by 40, plus 60% of the amount the employee’s average weekly wage that exceeds the Connecticut minimum wage multiplied by 40. The benefit rate is capped at 60 times the Connecticut minimum wage. (Note: 60 times the minimum wage was equal to \$780 weekly as of January 2022, and increased to \$840 on July 1, 2022.)

Employees can visit www.ctpaidleave.org and use the calculator to estimate their weekly benefits.

DISTRICT OF COLUMBIA

District of Columbia Universal Paid Leave to increase benefits

Effective Oct. 1, 2022, the District of Columbia Universal Paid Leave (DC UPL) benefit will change in several areas. One of the most impactful changes is to the amount of leave an employee can take. <https://does.dc.gov/page/dc-paid-family-leave>.

- Parental leave: Will go from eight weeks to 12 weeks.
- Family leave: Will go from six weeks to 12 weeks.
- Medical leave: Will go from six weeks to 12 weeks.
- Prenatal leave: Will remain the same at two weeks.

The maximum amount of combined leave an employee can take in a 52-workweek period has increased from eight weeks to 12 weeks. However, when an employee takes both prenatal and parental leave, the combined duration has increased to 14 weeks.

While DC UPL is funded entirely by employers, on July 1, 2022, employers' contributions to the DC UPL Fund were reduced from 0.62% to 0.26% of an employee's salary. Also, the elimination of a waiting period is now a permanent part of the DC UPL benefit. This had been temporarily delayed during the height of the COVID-19 pandemic.

For more information, please see: <https://does.dc.gov/page/dc-paid-family-leave>.

NEW HAMPSHIRE

Granite State Paid Family Leave update

New Hampshire has stepped into the paid family leave arena by coming at it from a different direction. Except for state employees, paid family leave is a voluntary benefit for employers to purchase from an individual insurance carrier rather than a mandatory benefit administered by the state. Under the Granite State Paid Family Leave (PFL) plan, private employers and non-state public employers may opt in. In addition, individuals who work for an employer that does not voluntarily provide coverage through the Granite State PFL plan can purchase their own coverage through an individual pool.

Under the law, a request for proposals was published to select a carrier that will administer benefits for all three groups with the requirement that by Jan. 1, 2023, coverage must be in place for state employees and available for purchase by private employers, non-state public employers and individuals.

As of May 9, the deadline to respond to the RFP, only two insurance carriers had submitted bids. The NH Department of Administrative Services, which oversees the RFP process, has selected one of those carriers to administer the benefit and has begun to negotiate a final contract and evaluate the program with the goal of submitting the entire package to the Executive Council sometime this summer.

For more information, please see: <https://apps.das.nh.gov/bidscontracts/bids.aspx>, <https://www.governor.nh.gov/news-and-media/full-steam-ahead-nh-releases-paid-family-medical-leave-rfp> and <https://www.nhbr.com/two-companies-turn-in-bids-to-run-granite-state-paid-family-leave-plan/>.

MASSACHUSETTS

Massachusetts Paid Family Medical Leave to update current regulations

The Massachusetts Department of Family and Medical Leave (MA DFML) has posted proposed changes to the current Paid Family Medical Leave regulations. The changes focus on employees being able to maintain health insurance benefits under CMR 2.16 Employee Job Protection, Prohibition on Retaliation, Maintenance of Health Insurance. Anyone wishing to comment on the draft regulations will have an opportunity to do so during a public comment period and/or at a public hearing.

MA DFML will announce dates for those events in the coming weeks on their website: <https://www.mass.gov/how-to/view-the-draft-markup-of-the-revised-paid-family-and-medical-leave-pfml-regulations>.

WASHINGTON

Washington Paid Family Medical Leave program – lessons learned

The following is part of a series taking a look at paid statutory leaves implemented around the country and providing some lessons learned from each one. This month: Washington Paid Family Medical Leave (PFML).

State website	https://paidleave.wa.gov/
Covered employer	All employers in the state of Washington, including out-of-state employers with employees working in Washington, are required to participate. There are very few exceptions.
Eligible employees	<p>Under the state plan, an employee must work 820 hours during the “qualifying period” and the employee can earn these total hours under more than one employer.</p> <p>The qualifying period is the first four of the last five full quarters in the calendar.</p> <p>Private plans have different eligibility requirements.</p>
Leave reasons	<ul style="list-style-type: none">• Employee’s own serious health condition.• Bonding with a newly born, adopted or fostered child.• Bereavement following the death of a qualifying family member.• Care for a family member with a serious health condition.• Military exigency.

Covered family members	Spouses and domestic partners, child, parent, legal guardian, sibling, grandchild, grandparent, parent-in-law, son-in-law, daughter-in-law, “someone who has an expectation to rely on the employee for care whether they live together or not.”
Duration	<ul style="list-style-type: none"> • Medical leave: 12 weeks. • Family leave: 12 weeks. • An employee is eligible for an additional two weeks of leave for a pregnancy that results in incapacity. • Overall family and medical leave duration: Up to a maximum of 16 weeks (up to 18 weeks for a pregnancy that results in incapacity). • Bereavement allows for seven calendar days following the death of a qualifying family member.
Funding	0.6% of each employee’s gross wages, not including tips, up to the 2022 Social Security cap (\$147,000). Of this, employers with 50 or more employees will pay up to 26.78% and employees will pay 73.22%.
Wage replacement	The sum of 90% of employee average weekly wage (AWW) up to 50% of the state AWW; plus 50% of the employee’s AWW that is greater than 50% subject to the annual max benefit.
How coverage is provided	State plan or self-funded voluntary plan (private plan exemption).



Washington Paid Family Medical Leave began claim administration on Jan. 1, 2020, and mandated that just about all employers had to offer WA PFML whether through the state plan or a self-funded voluntary plan (private plan). Washington regulations also allow for an employer to have a voluntary plan for the medical piece, the family leave piece or both. Where Washington was really the first PFML program in the United States, the question employers ask is whether their short-term disability (STD) policy qualified for a voluntary plan exemption under the medical leave part of PFML?

While the short answer is no, the longer answer is more complicated. Under WA PFML, an employee needs only to have a serious health condition that prevents them from working. STD plans have a much more restrictive definition of disabled in that an employee must be totally disabled from the material and substantial duties of their job. Moreover, PFML claims are not medically managed, and the return-to-work expectations differ between PFML and short-term disability.

Also, under WA PFML and other PFML programs, an employee may take medical leave intermittently, which is typically not allowed under a STD policy. PFML benefits have mandatory requirements such as job protection, duration of benefits and percentage of wages covered, whereas STD policies can vary in all those areas. STD benefits do not typically carry any job protection and that is left to state and federal laws.

While WA PFML sparked many questions for employers and carriers, to date, the Washington Employment Security Department continues to look for ways to improve the program. Most recently, Washington added an additional leave reason to the WA PFML benefit. Eligible residents can now take WA PFML during the seven calendar days following the death of a qualifying family member. A qualifying family member is an individual for whom the employee would have qualified for medical leave for the birth of their child or for family leave to bond with their child after birth or placement for adoption. <https://paidleave.wa.gov/>.

In addition, while there was never a waiting period for bonding or military exigency, there is no longer a waiting week required for medical leave during the “postnatal period.”

Next month will focus on Massachusetts Paid Family Medical Leave.

STATE/OTHER LEAVE LEGISLATION

CONNECTICUT

Protections for individuals who are victims of family violence

On May 24, 2022, the Connecticut Senate passed Bill 5 (Public Act No. 22-82) that amended Connecticut’s Human Rights and Opportunities Act, and also enacted the Protections for Victims of Family Violence, which becomes effective Oct. 1, 2022.

Under the amended state law, individuals who are victims of domestic violence will be designated as a protected class and employers will be required to provide an employee with a reasonable absence for the following matters:

- To seek care for injuries caused by domestic violence, including for a child who is a victim of domestic violence, provided the employee is not the perpetrator of the domestic violence against the child.
- To obtain services including safety planning from a domestic violence agency or rape crisis center as a result of domestic violence.
- To obtain psychological counseling related to an incident or incidents of domestic violence, including for a child who is a victim of domestic violence, provided the employee is not the perpetrator of the domestic violence against the child.

- To take other actions to increase safety from future incidents of domestic violence, including temporary or permanent relocation.
- To obtain legal services, assist in the prosecution of the offense or otherwise participate in legal proceedings in relation to the incident or incidents of domestic violence.

An employer may request certification that supports the reason the employee is absent from work. If certification is requested, the employee must, within a reasonable time after the absence, provide a certification to the employer. Such certification may be:

- A police report indicating that the employee or the employee’s child was a victim of domestic violence.
- A court order protecting or separating the employee or employee’s child from the perpetrator of an act of domestic violence.
- Other evidence from the court or prosecuting attorney that the employee appeared in court.
- Documentation from a medical professional, domestic violence counselor or other health care provider, that the employee or the employee’s child was receiving services, counseling or treatment for physical or mental injuries, or abuse resulting in victimization from an act of domestic violence.

If the incident of domestic violence results in an employee having a physical or mental disability, the employer must treat the employee in the same manner as an employee with any other disability.

Covered employers: Applies to employers with three or more employees.

Additional employer responsibilities: Employers must post, in a prominent and accessible location, a notice of employee’s rights and resources available to victims of domestic violence.

For more information about the bill, please visit [Bill Text: CT SB00005 | 2022 | General Assembly | Chaptered | LegiScan](#).

WASHINGTON

Washington Industrial Safety and Health Act

Washington has expanded the Industrial Safety and Health Act and amended chapter 357-31 WAC to align with Engrossed Substitute Senate Bill (ESSB) 5115. The act relating to establishing health emergency labor standards states that that “during a public health emergency, no employer may discharge, permanently replace or in any manner discriminate against an employee who is high risk as a result of the employee seeking accommodation that protects them from the risk of exposure to the infectious or contagious disease, or if no accommodation is reasonable.” Employers must allow an employee to use all available leave options, including absence without pay, and in any order.

Effective July 1, 2022, the law has been modified and expanded leave options:

- For high-risk employees seeking an accommodation to protect themselves during a public health emergency if the employer determines no other accommodation is reasonable, besides the use of leave.
- Expand sick leave use to employees when an employee needs to provide care for a child, household or family member who has been exposed to a contagious disease and is required to quarantine, or when a child’s school or place of care has been closed for health-related reasons.

- Removed references to the emergency proclamation.
- Repealed outdated language addressing an employee's eligibility to use compensatory time in lieu of temporary layoff during the 2009-11 biennium.
- Expanded leave with pay options to include COVID-19 booster vaccines.
- Expanded leave without pay options from "essential services" to "current workload demands and business needs."

For information about changes to the law, please visit [Bill Resource \(statenet.com\)](https://www.statenet.com).

OTHER STATE LEGISLATION

RHODE ISLAND

Rhode Island Temporary Disability Insurance to raise max benefit amount

An employee receiving benefits under the Rhode Island Temporary Disability Insurance program will receive a weekly benefit rate equal to 4.62% of the wages paid to the employee in the highest quarter of the employee's base period. While the weekly benefit rate remains the same throughout the employee's benefit year, claims with a benefit year beginning July 1, 2022, or later, can see wage replacement up to the maximum benefit rate of \$1,007. The minimum benefit rate is \$114. This does not include dependency allowance.

If an employee has dependent children less than 18 years of age, the employee may be entitled to a dependency allowance. Incapacitated children over 18 may also be counted toward the dependency allowance. The dependency allowance is limited to five dependents and is equal to the greater of \$10 or 7% of the employee's benefit rate. The dependency allowance is determined at the start of the employee's benefit year and remains the same for the entire period.

For more information, please see: <https://dlt.ri.gov/individuals/temporary-disability-caregiver-insurance/temporary-disability-tdi-faq>.



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