



PLADS

LEGISLATIVE ADVISORY

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



NOVEMBER 2022

We are pleased to share the November 2022 **PLADS Legislative Advisory**, featuring the latest paid and unpaid leave legislation as well as other regulatory updates.

TOP NEWS INSIDE

- State/other paid leave legislation: California, Massachusetts, New Jersey, New York, Oregon and Washington.
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- State/other leave legislation: Michigan and Minnesota.
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STATE/OTHER PAID LEAVE LEGISLATION

CALIFORNIA

Changes to California's disability/PFL contribution rates and weekly benefit amount

California Governor Gavin Newsom approved several amendments last September. In October, we wrote about the changes to the California Family Rights Act, and this month we present the changes that are presented in September's SB 951, AB 138 and SB 1058.

[SB 951](#) removes the taxable wage base for purposes of employee contributions required for California State Disability Insurance (SDI) and Paid Family Leave (PFL) effective Jan. 1, 2024. SDI is a deduction from employees' wages that provide a partial wage replacement benefit to workers for non-work-related disabilities. The PFL rate is included in the SDI rate and covers partial wage replacement when a worker needs time off to care for a seriously ill family member or to bond with a new child. Currently, employee contributions are based on a percentage of wages that are capped. For 2022, the SDI withholding rate is 1.1% with a taxable wage limit of \$146,000 with a up to a maximum tax of \$1,601.60/year. In 2023, the SDI tax withholding rate is 0.9% with a taxable wage limit of [\\$153,164](#).

In addition, the governor approved the continuation of the current wage disability and PFL replacement rates of 60% to 70% up to a defined maximum weekly benefit, through Dec. 31, 2024 ([AB 138](#)). For 2023, the defined maximum weekly benefit is \$1,620. For periods of disability and PFL commencing on or after Jan. 1, 2025, the wage replacement rates will increase to 70% and 90%.

It is noteworthy that [AB 138](#) also requires the Employment Development Department (EDD) to provide an option to claimants to receive unemployment insurance or disability insurance benefits by direct deposit, in addition to other payment methods including checks and debit cards by Jan. 1, 2024.

What about approved private voluntary plans? Great question! From experience, we know that approved California Voluntary Disability Insurance (VDI) plans must provide at least one right or benefit that is greater than the rights or benefits provided by the state. This means employers who have an approved VDI plan should consider reviewing these future changes with their claims administrator to determine if and how their plan will be impacted and review for any adjustments that may be needed. [Become a Voluntary Plan Employer \(ca.gov\)](#).

[SB 1058](#) requires the EDD to collect demographic data for individuals who collect disability and PFL benefits through the California SDI programs. The data points include race, ethnicity, sexual orientation and gender identity. On or before July 1, 2026, the department is charged with setting up data collection standards, procedures and processes in addition to creating a public-facing dashboard that publishes the disaggregated demographic data each quarter. Currently, there is no indication that this will be required of approved private VDI plans.

MASSACHUSETTS

Massachusetts Paid Family Medical Leave 2023 rate and max benefit changes

Massachusetts Paid Family Medical Leave (MA PFML) contribution rates have been released for 2023 from the Massachusetts Department of Family and Medical Leave (DFML). In 2023, the contribution rate for MA PFML will decrease from 0.68% of eligible wages to 0.63% of an employee's eligible wages capped at the Social Security contribution limit.

Family leave

Up to 100% of the family leave contribution can be withheld from a covered individual's wages (0.11% of eligible wages). <https://www.mass.gov/info-details/paid-family-and-medical-leave-employer-contribution-rates-and-calculator#2023->

Medical leave

Up to 40% of the medical leave contribution can be withheld from a covered individual's wages (0.208% of eligible wages). Employers are responsible for contributing the remaining 60% (0.312% of eligible wages). <https://www.mass.gov/info-details/paid-family-and-medical-leave-employer-contribution-rates-and-calculator#2023->

The maximum weekly benefit will be \$1,129.82, an increase from \$1,084.31 in 2022.

For more information, please see: <https://www.mass.gov/orgs/department-of-family-and-medical-leave>.

NEW JERSEY

2023 changes to New Jersey Temporary Disability Insurance and Family Leave Insurance

The New Jersey Department of Labor and Workforce has announced a reduction in contribution rates to the state's Temporary Disability Insurance and Family Leave Insurance programs for 2023. In 2022, employees contributed 0.14% for N.J. TDI, which has now been dropped to 0% for 2023. As of the date of this publication, the employer's portion of New Jersey TDI contributions is .005% until June 30, 2023.

The FLI rate has been cut by more than half going from 0.14% in 2022 to 0.06% in 2023. Employers do not contribute to the Family Leave program.

Summary of the New Jersey TDI/FLI rates for 2023

- Taxable employee wage base for TDI and FLI for 2023 is set at \$156,800. The employer tax wage base for TDI for 2023 is set at \$41,100. In previous years, these amounts were equal, but are now separate due to recently signed legislation that affects New Jersey Temporary Disability benefits and New Jersey Paid Family Leave.
- To qualify for Temporary Disability or Family Leave benefits in 2023, an applicant must have earned at least \$260 per week for 20 base weeks or alternatively, have earned at least \$13,000 during the base weeks.
- Maximum TDI and FLI weekly benefit rate for 2023: \$1,025.

For more information, please see <https://www.nj.gov/labor/ea/employer-services/rate-info/>.

NEW YORK

2023 changes to New York Paid Family Leave

N.Y. Paid Family Leave premium rates have been released for 2023 from the Department of Financial Services. In 2023, the maximum contribution rate for Paid Family Leave will go down from 0.511% to 0.455% of an employee's gross annualized wages capped at \$87,785.88, which is the updated annualized N.Y. state average weekly wage. This translates to a maximum annual premium contribution of \$399.43 per employee, down from \$423.71 in 2022.

The maximum weekly benefit will be \$1,131.08, an increase from \$1,068.36 in 2022.

In addition to the rate and maximum weekly benefit changes, sibling coverage starts in 2023.

Lastly, benefits have been extended to domestic workers hired directly by a private homeowner who work 20 or more hours a week for the private homeowner. These workers are eligible to take Paid Family Leave once they have been in employment for 26 consecutive weeks.

For more information, please see: <https://paidfamilyleave.ny.gov/>

New York Paid Family Leave arbitration – NAM to continue as arbiter

In 2016, New York enacted Paid Family Leave (NY PFL) so working families would not have to choose between caring for their loved ones and risking their economic security. In Nov. 2021, Governor Kathy Hochul signed legislation expanding NY PFL to cover siblings, effective Jan. 1, 2023.

NY PFL provides eligible employees job-protected, paid time off to:

- Bond with a newly born, adopted or fostered child.
- Care for a family member with a serious health condition.
- Assist loved ones when a spouse, domestic partner, child or parent is deployed abroad on active military service.

NY PFL may also be available in some situations when an employee or their minor, dependent child is under an order of quarantine or isolation due to COVID-19.

When there are claim-related disputes, for example, disagreement over a denial, benefit amount or issue with timeliness of payment, parties can request arbitration from National Arbitration and Mediation (NAM).

According to the Life Insurance Council of New York:

- New York Workers' Compensation Board has announced that NAM will continue to provide arbitration services for the state's Paid Family Leave (PFL) program.
- The Board and NAM agreed to a three-year contract, with two optional one-year extension periods, which is the same structure as the original agreement that took effect with the launch of Paid Family Leave in 2018. The new contract took effect Nov. 1, 2022.

You can find more information about the NY PFL arbitration process [here](#), as well as [quarterly reports summarizing Paid Family Leave claim-related disputes handled by NAM](#).

OREGON

Oregon Paid Leave poster requirement – deadline Jan. 1, 2023

Oregon Paid Leave (OR PL) has published a model employee notification poster that can be found at: <https://paidleave.oregon.gov/Pages/resources.aspx>.

The model notice poster informs employees about the benefits provided by Oregon Paid Leave and tells employees about their rights and duties under the program. Employers are required to post the model notice poster at each work site, and they must provide it electronically or by mail to any remote workers. Posters must be displayed or sent out no later than Jan. 1, 2023.

The model notice poster should also be displayed or sent out in the language(s) the employer uses to communicate with employees.

Paid Leave Oregon has the poster published in 11 languages. You can find additional posters at: <https://paidleave.oregon.gov/Pages/resources.aspx>.

As a reminder, contributions for Oregon Paid Leave begin on Jan. 1, 2023, and benefits become available for Oregon Paid Leave on Sept. 3, 2023.

For more information, please see <https://paidleave.oregon.gov/Pages/resources.aspx>.

WASHINGTON

2023 changes to Washington Paid Family Medical Leave

During the Oct. 20, 2022, Washington Paid Family & Medical Leave (WA PFML) Advisory Committee meeting, it was announced that WA PFML premium rates will increase in 2023. In 2022, the maximum contribution rate for WA PFML was 0.60% of an employee's gross annualized wages capped at the Social Security contribution limit of \$160,000. In 2023, the Committee advised they are increasing the rate to 0.80% to better cover benefits and operating costs as the program goes forward. Employers will pay 27.24% of the total premium and employees will pay 72.76%.

Employers can choose to withhold the entire 72.76% from an employee's paycheck, or employers can cover all or some of the premium on the employee's behalf.

The maximum weekly benefit for 2023 was not announced and as more details emerge, we will provide future updates. For more information, please see <https://esd.wa.gov/newsroom/pr/paid-family-medical-leave-premiums-to-increase-in-2023#:~:text=To%20keep%20pace%20with%20more,premium%20rate%20will%20be%200.8%25>.

Washington DC Paid Family Leave 2023 Updates

The Washington D.C. Paid Family Leave (DC PFL) contribution rates have been released for last quarter 2022. Beginning Oct. 1, 2022, the rate changed to 0.26%.

According to the website, additional updates include:

- The current weekly maximum is \$1,049.
- No waiting period for claims filed after July 25, 2022.
- For claims submitted on or after Oct. 1, 2022, with date of disability on or after Sept. 25, 2022:
 - o 12 weeks for medical leave within 52 calendar weeks.
 - o 12 weeks for family leave within 52 calendar weeks.
 - o 12 weeks for parental leave following qualifying event within 52 calendar weeks.
 - o 2 weeks of prenatal leave within 52 calendar weeks.
- Employees can receive only 12 weeks of benefits within 52 calendar weeks; 14 weeks if prenatal leave is used.

DC PFL also clarified the definition of "in-person treatment," which will mean when both health care provider and patient are in the same physical space or meet through telehealth. For additional information, please see <https://dcpaidfamilyleave.dc.gov/>.

STATE/OTHER LEAVE LEGISLATION

MICHIGAN

Earned Sick Time

This past July, the Michigan Court of Claims issued a decision that repealed the 2018 amended version of the Michigan Paid Medical Leave Act formally known as the Earned Sick Time Act (ESTA). The 2018 amendments changed the law that dismissed employers with fewer than 50 employees from having to provide paid sick leave and decreased the leave entitlement to 40 hours among other changes.

Here are some of the provisions from the original ESTA law:

- Covers most small and larger employers except for the federal government.
- Employees of large employers (more than 10) were entitled to accrue and use up to 72 hours of paid sick leave year.
- The employee was permitted to use sick leave for an individual related by “affinity.”

The courts entered an order staying the effect of the decision until Feb. 19, 2023, to allow time for those impacted to accommodate the changes.

Per the press release on [Michigan.gov](https://www.michigan.gov), the intention is to update their web page with further clarification as the “situation continues to develop.” It is unclear if employers should begin making the changes now or wait for Michigan to publish further guidance. It is recommended that employers engage their internal counsel to determine next steps.

HB 6070 Tax Credit for Adoption Leave

On Oct. 7, Governor Gretchen Whitmer approved [HB 6070](#) that grants employers the ability to claim a credit against taxes required to be withheld and remitted to the state beginning on and after Jan. 1, 2023.

The amount an employer may claim is equal to 50% of the wages paid to each qualified employee during any period during the tax year in which a qualified employee is on adoption leave. The maximum credit is \$4,000 per qualified employee for a single adoption leave that is up to 12 weeks.

Important definitions:

- Adoption leave: A period of absence related to the adoption of a child by an employee to provide time for bonding and adjustments immediately after placement of that child with the employee.
- Parental leave: The period of absence related to the active participation or supervision in the day-to-day, ongoing care or maintenance of an employee’s child immediately following the birth of that child, for which the employee reduces or eliminates the number of hours worked for the employer in a normal work-time period.
- Qualified employee: An individual who has been employed by the employer for at least one year, and for the preceding year had compensation that does not exceed 60% of the amount applicable for highly compensated employees under [section 414\(q\)\(1\)\(B\)](#) of the internal revenue code for that same year.

- Qualified employer: An employer that has a written policy offering parental leave and adoption leave that satisfies both of the following:
 - o Provides at least two weeks of paid parental leave and adoption leave for each full-time qualified employee and a proportionate amount of parental leave and adoption leave for each part-time qualified employee.
 - o The rate of payment for parental leave and adoption leave is not less than 50% of the wages normally paid to that same employee for services performed for the employer.
- Wages: The term as defined in [section 3306\(b\)](#) of the internal revenue code.

For full text of HB 6070: [2022-PA-0207.pdf \(mi.gov\)](#).

MINNESOTA

Bloomington Sick & Safe Leave Ordinance 2022-31

Effective July 1, 2023, the city of Bloomington will be the fourth Minnesota city to have an earned paid sick and safe leave law. This new law requires private employers operating in Bloomington to provide paid leave to employees. Employees are entitled to accrue at least one hour of paid leave for every 30 hours worked within the geographic boundaries of the city up to a maximum of 48 hours in a calendar year. Employers may agree to a higher maximum.

Covered employers:

- Employers with five or more than employees must provide paid sick and safe leave.
- Employers with less than five employees must provide unpaid leave and have the option to provide paid leave.
- Does not include the United States government; the State of Minnesota, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or any county or local government, except the city.

Covered employees:

- Any individual who performs services for hire and compensation for an employer, including temporary employees and part-time employees and who performs work at a location or locations within the geographic boundaries of the city for at least 80 hours in a year for that employer. For purposes of this article, “employee” does not include:
 - o Employees classified as extended employment program workers as defined in [Minnesota Rules part 3300.6000](#) and participating in the Minnesota Statutes, [Section 268A.15](#) extended employment program, independent contractors or student interns.

Calendar year: Employers may define the regular and consecutive 12-month method that will be consistently applied.

Carry-over: Accrued and unused time may be carried over into the following designated year. The total time of accrued but unused sick and safe leave time may not exceed 80 hours unless an employer agrees to a higher amount.

Usage:

Employees may begin using accrued time after 90 calendar days of employment for the following reasons:

- The employee's mental or physical illness; injury; health condition; need for medical diagnosis; care, including prenatal care; treatment of a mental or physical illness, injury or health condition; or need for preventive medical or health care.
- The care of a family member with a mental or physical illness, injury or health condition who needs a medical diagnosis; care including prenatal care, treatment of a mental or physical illness, injury or health condition who needs preventive medical or health care; or the death of a family member.
- An absence due to domestic abuse, sexual assault or stalking of the employee or employee's family member, provided the absence is to do any of the following:
 - o Seek medical attention or psychological or other counseling services related to physical or psychological injury or disability caused by domestic abuse, sexual assault or stalking.
 - o Obtain services from a victim services organization.
 - o Seek relocation due to domestic abuse, sexual assault or stalking.
 - o Seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault or stalking.
- The closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin, hazardous material or other public health emergency.
- To accommodate the employee's need to care for a family member whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin, hazardous material or other public health emergency.
- To accommodate the employee's need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water or other unexpected closure.

Family members include:

- Spouse.
- Child, stepchild, foster child, adult child.
- Parent, stepparent, mother-in-law, father-in-law.
- Grandchild, grandparent, sibling.
- Guardian, ward or members of the employee's household.

Usage:

Employees may use accrued paid time for:

- Sick leave to care for the employee's own health or the health of another member for their household when going to the doctor, resting or recovering.

Safe leave when an employee is impacted by domestic violence, sexual assault or stalking to include time to attend court for a restraining order, counseling, relocation or time with an attorney.

Notices:

- Employers must post, in a conspicuous place at any workplace or job site where any employee works, the notices that will be provided by the city.
- Every employer shall post this notice in English, and any language spoken by at least 5% of the employees at the workplace or job site if published by the City Attorney's Office.
- An employer that provides an employee handbook to its employees must include in the handbook the notice of employee rights and remedies.
- Upon request by an employee, the employer must provide a statement of the employee's current amount of accrued sick and safe time available and used portion of sick and safe leave.
 - o The notice may be in writing or electronic format.

[Establishing earned sick and safe leave in the City of Bloomington \(bloomingtonmn.gov\)](http://bloomingtonmn.gov)

Please note, Aflac PLADS will not administer this program. We encourage employers to review and update their internal policies, provide timely and appropriate updates/training to management, and engage timekeeping and payroll partners to implement the laws as it applies to your company.



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 New York, products and services are provided by American Family Life Assurance Company of New York. In California, coverage is offered by Continental American Life Insurance Company. Products may not be available in all states and may vary depending on state law.

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