



PLADS

LEGISLATIVE ADVISORY

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



SEPTEMBER 2022

We are pleased to share the September 2022 **PLADS Legislative Advisory**, recent webinar, paid and unpaid leave legislation as well as other regulatory updates.

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EMPLOYER NEXT STEPS FOR OR PFML AND CO FAMLI REPLAY

With contributions for Oregon Paid Family and Medical Leave (OR PFML) and Colorado Family and Medical Leave Insurance (CO FAMLI) beginning Jan. 1, 2023, employers should begin having or should have already started their consultative conversations with human resource teams and their consultants.

Aflac hosted a webinar on Aug. 24, 2022, to help guide employers through their next steps for the OR PFML and CO FAMLI programs.

During this webinar we:

- Provided an overview of the benefits for each state program.
- Reported any recent changes or additional details because of the rulemaking.
- Highlighted the steps an employer must follow to apply for an exemption (private plan).
- Informed employers on next steps.

You can access the replay [here](#). Please reach out to your Aflac representative if you have any questions.

STATE/OTHER PAID LEAVE LEGISLATION

DISTRICT OF COLUMBIA

Lessons learned on Universal Paid Leave

On July 1, 2020, Washington D.C.'s Universal Paid Leave (DC UPL) began to administer claims. All private sector employers in Washington D.C. are required to participate in the program and contribute on behalf of their employees. The program is 100% funded by employers. Unlike most states where there are paid family medical leave laws, the DC UPL program is only administered by the D.C. Department of Employment Services. Private plans (voluntary plans, exemptions) are not allowed.

DC UPL regulations do not allow insurers to reduce fully insured short-term disability benefits by the DC UPL benefit. This, of course, becomes problematic because the employee may receive more than 100% of their average weekly wage while out of work. On the other hand, self-funded STD plans can take the offset for DC UPL from their STD plans.

Recently, the Council of the District of Columbia passed an additional, temporary resolution when it comes to offsetting. The Department of Insurance, Securities and Banking's (DISB) ability to enforce the anti-offsetting law, as intended, is hampered by the fact that the agency's enforcement authority is typically limited to insurance policies that were written or issued in the district. Thus, DISB is likely unable to take enforcement action against an insurer for unlawfully offsetting UPL benefits for district-based employees because the employer's short-term disability policy was written or delivered outside the district. (<https://lms.dccouncil.gov/Legislation/PR24-0863>)

The intent of the resolution is to strengthen DISB's enforcement authority by including an extraterritoriality clause that requires application of the DC UPL law regardless of the jurisdiction in which the STD insurance policy was written or issued.

The interesting lesson coming out of the DC UPL regulations is whether they have set a precedent that other states will start to follow by disallowing a reduction of the STD benefit. The concern would be potentially paying an employee on disability more than the employee would receive had they been working.

Employers should review their PFML policies and handbooks to ensure the materials do not conflict with the District's intent.

For additional information, please see: <https://does.dc.gov/page/dc-paid-family-leave>. For the temporary resolution, please see: <https://lms.dccouncil.gov/Legislation/PR24-0863>.

State website	https://does.dc.gov/page/dc-paid-family-leave
Covered employer	All private-sector employers in Washington, D.C. must participate in the program.
Eligible employees	Employee must work for a covered employer in Washington, D.C.

Leave reasons	<ul style="list-style-type: none"> • Parental leave. • Family leave. • Medical leave. • Prenatal leave.
Covered family members	<p>Child: biological, adopted, foster, stepchild, child of domestic partner, in loco parentis. Parent: biological, adopted, foster, stepparent, parent of domestic partner, parent-in-law. Grandparent: biological, adopted, foster, stepparent. Spouse: marriage or domestic partner. Sibling: biological, adopted, foster, half or stepsibling as well as spouse of a sibling, sibling of a spouse and spouse of your spouse’s sibling.</p>
Duration	<ul style="list-style-type: none"> • 2 weeks for pregnancy. • 8 weeks to bond with a new child. • 6 weeks to care for a family member with a serious health condition. • 6 weeks to care for an employee’s own serious health condition.
Funding	0.62% of employee’s wages, employer funded (no contributions can be taken from an employee’s paycheck).
Wage replacement	90% of wages up to 1.5 times D.C.’s minimum wage and 50% of wages above 1.5 times D.C.’s minimum wage. Max benefit \$1,009.
How coverage is provided	Through the district. No private plans.

MASSACHUSETTS

Paid Family Medical Leave (MA PFML) ‘top off’ update

On Aug. 9, 2022, the Department of Family and Medical Leave (DFML) posted an update to their website stating DFML had received inquiries as to whether employees are permitted to use their accrued sick or vacation leave to “top off” their weekly PFML benefit. DFML indicated that “there has been no change to the DFML law. Employees may not use their accrued sick or vacation leave in weeks that they are receiving benefits from DFML.”

The DFML posted the update to alleviate confusion regarding language that was included in HB 5050 but not approved by the governor. The House had overridden the governor’s amendment, but as of Aug. 18, 2022, the senate had not taken any action. As a result, the language allowing the use of accrued sick or vacation leave to “top off” PFML benefits is not law. It should be noted that the Massachusetts legislature’s website includes an unedited version of session law that will soon be updated to include the governor’s actions and any subsequent legislative action. For additional information, please see: <https://www.mass.gov/news/a-department-of-family-and-medical-leave-dfml-program-alert>.

NEW YORK

2023 changes to New York Paid Family Leave

The Department of Financial Services have released the 2023 N.Y. Paid Family Leave premium rates. 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 (<https://paidfamilyleave.ny.gov/2023>). The maximum weekly benefit will be \$1,131.09, 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/>.

WASHINGTON

Updates to Washington Paid Family Medical Leave

Washington Second Substitute Senate Bill 5649 (SB 5649) has made some sweeping changes to the Washington Paid Family Medical Leave (WA PFML) program. As of June 9, 2022, the following changes went into effect:

Waiting period update

The new adopted rules clarifies that a waiting period does not reduce the maximum duration of an employee's available paid family or medical leave and that the waiting period does not apply to medical leave taken upon the birth of a child. The rules also clarify that that proration of benefits and the calculation of typical work week hours do not apply to the waiting period.

Bereavement leave added as a new leave reason for benefits

In addition to medical leave for an employee's serious health condition, care of a family member, bonding and military exigency, WA PFML will now include bereavement under certain circumstances. The new bereavement category allows for seven calendar days following the death of a child for whom the employee would have qualified for medical or family leave to bond with the child following their birth or placement.

Medical leave after the birth of a child

WA PFML will now designate any leave taken during the first six weeks after the birth of a child will be acknowledged as a medical leave unless the employee specifically chooses to use family bonding leave. A related amendment to the program no longer requires employees using medical leave during the postnatal period to provide certification of a serious health condition.

Collective bargaining expiration

When WA PFML was first adopted, the law allowed employees subject to a collective bargaining agreement to be exempt from WA PFML until the agreement was: a) reopened; b) renegotiated; or c) employees subject to the agreement elected to participate in the program. Under the new changes, the collective bargaining agreement exemption will expire on Dec. 31, 2023.

Lastly, given the insolvency of the program, SB 5649 also mandated an audit of the program as well as a financial consultant to advise on solvency issues and a review committee to develop recommendations for any possible 2023 legislative program changes.

Given the new amendments, employers should review their PFML policies and handbooks to ensure the materials are in line with the new amendments.

For more information, please see: <https://lawfilesexternal.leg.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5649-S2%20SBR%20FBR%2022.pdf?q=20220817131912> and <https://paidleave.wa.gov/updates/>.

STATE/OTHER LEAVE LEGISLATION

CALIFORNIA-SAN FRANCISCO

San Francisco Proposition G — Public Health Emergency Leave

Effective Oct. 1, 2022, San Francisco's latest Public Health Emergency Leave (PHEL) ordinance will go into effect. It provides up to 80 hours of paid leave and is in addition to any paid time off, including paid sick leave under San Francisco's Paid Sick Leave Ordinance.

Covered uses

San Francisco PHEL creates a paid leave for the following covered uses:

- The recommendations or requirements of an individual or general federal, state or local health order (including an order issued by the local jurisdiction in which an employee resides) related to the Public health emergency.*
- The employee has been advised by a health care provider to isolate or quarantine.*
- The employee is experiencing symptoms of and seeking a medical diagnosis, or has received a positive medical diagnosis, for a possible infectious, contagious or communicable disease associated with the public health emergency.
- San Francisco PHEL also applies to the employee who is caring for a family member who is subject to any of the above stated reasons.
- The employee is caring for a family member if the school or place of care of the family member has been closed or the care provider of such family member is unavailable due to the public health emergency.
- An air quality emergency, if the employee is a member of a vulnerable population and primarily works outdoors.*

An employer of an employee who is a health care provider or an emergency responder may elect to limit such an employee's use of PHEL, but at a minimum such an employee may use PHEL during a public health emergency to the extent that the employee is unable to work due to any of the following:

- The employee has been advised by a health care provider to isolate or quarantine.*
- The employee is experiencing symptoms of and is seeking a medical diagnosis or has received a positive medical diagnosis for a possible infectious, contagious or communicable disease associated with the public health emergency and does not meet federal, state or local guidance to return to work.

- An air quality emergency, if the employee is a member of a vulnerable population, primarily works outdoors and has been advised by a health care provider not to work during an air quality emergency.*

*If an employee can telework without increasing their exposure to disease or unhealthy air quality, the employee may not use Public Health Emergency Leave.

Covered employers are those with 100 or more employees worldwide and includes the city of San Francisco.

PHEL will not apply to certain nonprofit organizations or any other government entity other than the city of San Francisco.

Covered employees are those that work in the city or county of San Francisco. If the workforce is unionized, the ordinance will not apply to employees covered by a bona fide collective bargaining agreement that expressly waives the ordinance's requirements in clear and unambiguous terms.

Family members

San Francisco PHEL applies the same definition of a family member as San Francisco's Paid Sick Leave Ordinance:

- Spouse and registered domestic partner under any state or local law.
- Child, including adoptive, step relationships, foster, a child of a domestic partner and a child of a person standing in loco parentis.
- Legal guardian or ward.
- Parent.
- Sibling.
- Grandparent.
- Grandchild.
- A designated person if the employee has no spouse or domestic partner.

Amount of leave

On Oct. 1, 2022, and on Jan. 1 of each following year, or for employees not employed on October 1 or January 1, when a public health emergency starts – employers must allocate PHEL for that year as follows, with the amount of PHEL not exceeding 80 hours:

- Employee works full time, regular or on a fixed schedule: An amount equal to the number of hours the employee regularly works or takes paid leave over a two-week period.
- Employee whose weekly hours vary: An amount equal to: (a) the average number of hours the employee worked or took paid leave over a two-week period during the previous calendar year (or during the previous six months if not employed on Oct. 1 or Jan. 1) or (b) since the employee's start date is after the beginning of the previous calendar year (or since the employee's start date if employed for fewer than six months if not employed on October 1 or January 1).

For Oct. 1, 2022-Dec. 31, 2022, however, employers are to calculate the entitlement using a one-week period and the PHEL allocation cannot exceed 40 hours.

Employers are not required to carry over unused PHEL from year to year.

Offsets

After Oct. 1, 2022, employers may reduce the amount of PHEL provided if the employee uses one of the following types of paid leave or paid time off:

- Paid leave or paid time off employees may use for covered reasons under the ordinance that employers voluntarily provide.
- California COVID-19 supplemental paid sick leave (SPSL) if the state extends SPSL requirements beyond September 30, 2022.

Similarly, during 2023 and subsequent years, if federal, state or San Francisco law requires employers to provide paid leave or paid time off to address a public health threat, and employees may use this type of leave for covered reasons under the ordinance, employers may reduce the amount of PHEL they must provide.

Employer requirements – postings/notices

- Employers must post in a conspicuous space, the city-created notice in all languages that San Francisco OLSE makes available.
 - <https://sfgov.org/olse/sites/default/files/Public%20Health%20Emergency%20Leave%20Poster%207.2022.pdf>.
- Where feasible, employers should provide notice to employees via electronic notice and/or place in a conspicuous place on the employer’s web- or app-based platform.

Notices

If employers must provide similar notice under California’s paid sick leave law – the Healthy Workplaces, Healthy Families Act of 2014 – they must display the amount of PHEL available on paystubs or other mandatory written notices employees receive on payday. If employers provide unlimited paid leave or paid time off, they can indicate “unlimited.”

Recordkeeping

The employer must keep records that document hours worked and PHEL taken for four years.

Legal Text: <http://files.amlegal.com/pdf/files/sanfran/2022-06-07-PropG.pdf>

Internal policies must meet or exceed the same terms and conditions as the law requires. For example, generally, existing paid time policies do not include per-diem employees. Under HWA, per-diem employees should accrue paid time.

While Aflac PLADS does not administer local level, paid-time programs on behalf of clients, we encourage employers to review and update their internal policies, processes and provide appropriate updates/training to management.



STATE/OTHER LEAVE LEGISLATION (CONT.)

CONNECTICUT

Voting Leave (SB 361)

Senate Bill 361, Public Act No. 22-129, An Act Concerning Probate Court Operations, was amended to allow employees to use up to two hours of unpaid leave for purposes of voting in specified elections. The specified elections include a state election or any special election for United States senator, representative in Congress, state senator or state representative. This has been in effect since June 23, 2021, and now extended through June 30, 2024. Employees must request time off no less than two working days in advance prior to the election.

Employers should review any internal policies related to taking time off to vote in an election and adjust accordingly.

For additional information, please visit <https://www.cga.ct.gov/2022/ACT/PA/PDF/2022PA-00129-R00SB-00361-PA.PDF>.

Family Medical Leave Act (FMLA)

The Connecticut Department of Labor issued the final regulations for Connecticut Family Medical Leave Act (CT FMLA), which make amendments to previously existing regulations and went into effect Aug. 3, 2022. The final regulations make several minor changes after the proposed regulations were rejected due to lack of definitions for key terms and technical corrections to the text.

As a reminder, below are the CT FMLA changes.

Provision	Previous entitlement	Updated entitlement
Leave duration	16 weeks in a 24-month period. 26 weeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.	12 weeks during any 12-month period. 26 weeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness.
Eligibility for employers	Employers with 75 or more employees.	Employers with one or more employees.
Eligibility for employees	Employed for 12 months. The employee must also be employed for at least 1,000 hours of service with such employer during the previous 12-month.	Employed for three consecutive months (defined as 13 weeks) immediately preceding the date the employee's CT FMLA leave commences.

Covered relationships for care of a family member	Spouse, children (son or daughter under the age of 18) or parents.	Spouses, children (son or daughter of any age), parents, siblings (biological sibling, half-sibling, stepsibling, adopted sibling, foster sibling or sibling-in-law of the eligible employee or the eligible employee’s spouse), parents-in-law, grandparents, grandchildren, as well as any other “individual related to the employee by blood or affinity whose close association the employee shows to be the equivalent of those family relationships.”
Additional leave due to incapacity during pregnancy	None.	Employees are entitled to take up to two additional workweeks of leave during the 12-month period if the employee is incapacitated and has a serious health condition while pregnant.
Accrual of benefits and requalification for benefits	The CT FMLA regulations were silent.	Employee is entitled to accrue additional benefits or seniority during leave if the employer’s policy provides those other employees on unpaid leave are entitled to such accrual. Employers may also not require any employees returning from leave to requalify for benefits to which they were entitled to prior to taking their leave.
Recertification	Employers can’t require employees to provide recertification for leave more than once in a 30-day period.	Employers can require one recertification when less than 30 days when: <ul style="list-style-type: none"> • Employee requests an extension of leave. • Circumstances described by the prior certification have changed significantly. • The employer discovers information that calls into question the employee’s stated reason for the absence or the continuing validity of the certification.

For more information regarding the regulation, visit <https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid=%7b40166582-0600-CE35-BE50-6DEF7A157DAA%7d>.

Volunteer Emergency Responder Leave Amendment (KY Rev. Stat. § 337.100)

Kentucky recently expanded employment protections for volunteer emergency responders. Previously, Volunteer Emergency Responder Leave prohibited employers from terminating an employee in certain volunteer positions (firefighter, rescue squad member, emergency medical technician, peace officer or member of emergency management) if they were absent or late to respond to an emergency. Effective July 14, 2022, employers are prohibited from terminating employees in volunteer positions who take leave after being involved in a critical incident if they were acting in a volunteer capacity during the incident. The new law is codified at Section 337.100 of the Kentucky Revised Statutes.

What is a critical incident?

The amendment defines a critical incident as any event that has a stressful impact sufficient enough to overwhelm a volunteer emergency responder's usual coping strategies.

While volunteer rescue squad members, emergency medical technician and members of emergency management are covered under the amendment, HB 562 specifically outlines the following events for voluntary peace officers and firefighters:

Peace officers

- An officer-involved shooting.
- A vehicle crash resulting in serious injury or death to an officer or citizen.
- An officer being the victim of a felonious assault.
- The death of a colleague or partner.
- The death of, or serious injury to, a person in the custody of the officer.
- The severe injury to, or death of, a child, particularly if the officer has a child of or near the same age.
- An incident involving multiple deaths or injuries in a short amount of time.

Firefighters

- A fire or vehicle crash resulting in serious injury or death to a first responder or citizen.
- A firefighter being the victim of a felonious assault.
- The death of a colleague or partner.
- A death of, or serious injury to, a person in the medical care of the firefighter.
- The severe injury to, or death of, a child, particularly if the firefighter has a child of or near the same age.
- An incident involving multiple deaths or injuries in a short amount of time.
- Leave duration

Any peace officer or firefighter involved directly in a critical incident may take up to 48 hours of leave immediately following a critical incident. This leave may commence when both occur:

- The completion of that peace officer's or firefighter's shift encompassing the critical incident, or when all necessary administrative procedures relating to a critical incident have been completed.
- The officer or firefighter informs his or her supervisor.

Pay status

Volunteer peace offers: This leave may be unpaid or paid leave. The pay status is to be determined by the officer's employment contract, collective labor agreement, if any, or by written departmental policy.

Volunteer firefighters: This leave may be unpaid or paid leave. The pay status is to be determined by the firefighter's written departmental policy.

For detailed information about the amendment: [statute.aspx \(ky.gov\)](http://statute.aspx(ky.gov)).



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. Products may not be available in all states and may vary depending on state law.

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