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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | January 2025

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Federal

29 C.F.R. § 825.300 (DOL final rule re 2025 federal civil penalties inflation adjustment)

Adopted: Jan. 10, 2025

Effective: Jan. 15, 2025

Informational only – FMLA posting notice information

The U.S. Department of Labor (DOL) has adopted a final rule to adjust for inflation the civil monetary penalties assessed or enforced by the DOL. The Inflation Adjustment Act requires the DOL to make annual adjustments to its civil money penalty levels to account for inflation no later than Jan. 15 of each year. In addition to penalties for violations associated with minimum wage and overtime payments, child labor laws and workplace safety requirements, the amended rule addresses Family and Medical Leave Act (FMLA) notice requirements.

Every employer covered by the FMLA is required to post and keep posted on its premises – in conspicuous places – a notice explaining FMLA provisions and providing information concerning the procedures for filing complaints of violations. An employer that willfully violates the posting requirement may be assessed a civil money penalty not to exceed $211 for each separate offense. The amended rule provides that the penalty should not exceed $216.

Federal

29 C.F.R. § 1602 (EEOC recordkeeping and reporting requirements under Title VII, the ADA, GINA and PWFA)

Adopted: Jan. 10, 2025

Effective: Jan. 10, 2025

The Equal Employment Opportunity Commission (EEOC) has issued rules regarding its reporting requirements under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act and the Pregnant Workers Fairness Act. The EEOC requires covered employers to file reports yearly (such as the Employer Information Report EEO-1, EEO-2, or EEO-3) containing demographic workforce data.

The new rules clarify that an exemption from the reporting requirement is available if preparing or filing the report would cause an undue hardship to the employer's operations. To request an exemption, the employer must submit a written application that documents and describes the undue hardship. However, the employer should continue to collect and prepare data in case the exemption request is denied.

The EEOC's chief data officer will determine whether to grant an exemption. In making the determination, the EEOC will consider various circumstances, such as the efforts the employer made to get the information and the employer's prior reporting history. The rules emphasize that the following will generally not support a finding of undue hardship: (1) employer's number of establishments, (2) employer's lack of knowledge about requirements, (3) data expungement by a third party or (4) employer's failure to plan for the security, maintenance or transfer of data.

Delaware

19 DAC Subch. 1401 (final rule re Healthy Delaware Families Act and the paid family and medical leave program)

Adopted: Feb. 1, 2025

Effective: Feb. 10, 2025

Benefits begin: Jan. 1, 2026

Delaware adopted final rules implementing the Healthy Delaware Families Act (HDFA) on June 30, 2023. The regulations, which were amended in March 2024 and August 2024, have been amended again to clarify definitions, program waivers and employee notice provisions, among others. The amendments also contain provisions related to private plans. See below for the provisions relevant to employers using the state-provided plan.

The amended definitions clarify that an employee's average weekly wage means an employee's gross earnings earned in Delaware, as determined under the Federal Insurance Contribution Act (FICA). Likewise, the definition of a covered individual was amended to clarify that only employees whose Delaware wages are subject to FICA are covered under the HDFA. Teachers and other individuals working at schools are included in the definition of employee. The amended definition of employer clarifies that if a company is a client of a professional employer organization, the client is considered the employer.

The rules require employers to provide certain information to the state about employee contributions. The amended regulations permit employers to provide hours, number of weeks worked and wages as quarterly figures rather than weekly. For temporary employees or those working fewer than 25 hours per week, the employer can waive the employee and employer contributions to the HDFA program. The employer must sign a waiver of contributions, and the employee must also sign if they are making contributions. Employers must file the waiver through the state's online administrative system. The amended rules also provide a procedure for waiver removal.

Employers that choose to use a private plan to fulfill the HDFA requirements rather than the state plan are subject to additional regulations. Employers must obtain approval from the state to use private plans, generally during an application period of Oct. 1 through Dec. 1, subject to certain exceptions. For the initial HDFA year, 2026, the approval period ended Dec.1, 2024, but can be extended by the state. Employers wishing to use a private plan in 2026 must agree to provide the surety bond by Dec.1, 2025, and agree to prefund a dedicated claims bank account by Jan. 1, 2026. In most cases, employers using a private plan may not deduct any employee contributions for the plan until Jan. 1, 2026. Employee contributions cannot be more than 50% of the cost of the private plan. Additionally, the amended regulations make it clear that employee contributions under a private plan cannot be higher than they would be under the state plan.

Employers must provide notice to employees of their rights under the HDFA program. If the employer and the employee are both making contributions under the state plan, employers must provide notice at least 30 days before Jan. 1, 2025. If, however, the employer is paying the entire cost of the state program or is using a private plan, the written notice must be provided at least 30 days before Jan. 1, 2026.

Michigan

Mich. Comp. Law §§ 408.961 et seq. (Earned Sick Time Act)

Enacted: Sept. 6, 2018

Effective: Feb. 21, 2025

Informational only – Sedgwick does not administer

IMPORTANT DEVELOPMENT: On July 31, 2024, the Michigan Supreme Court held that the Paid Medical Leave Act (PMLA) was VOID and REINSTATED the Earned Sick Time Act effective Feb. 21, 2025. At this time, neither the court nor the state labor department has provided clarification concerning what happens to leave accumulated under the PMLA and what continuing rights, if any, employees have under the PMLA.

The Michigan Legislature adopted as law a proposed ballot measure that requires employers to provide their employees paid leave that can be used for "sick" and "safe" time purposes and for other reasons. The Earned Sick Time Act (ESTA) applies to all private employers employing one or more individuals, though different standards will apply depending on whether an employer has ten or more individuals or fewer than ten individuals (a "small business") working for compensation on its payroll during any twenty or more calendar workweeks in either the current or preceding calendar year.

An individual engaged in service to an employer in the employer's business is a covered employee. Generally, the ESTA contains no employee exceptions. However, employees covered by a collective bargaining agreement (CBA) in effect on the law's effective date will not be subject to the law until the CBA expires. Evergreen clauses in pre-ESTA CBAs will not be recognized for ESTA purposes, meaning that when the CBA expires, employees covered thereunder will be covered under the law, regardless of what the CBA says about its continued validity.

Employers can comply with the ESTA by providing paid leave (e.g., vacation, personal days, PTO) that (1) is accrued at a rate equal to or greater than what the law requires, (2) is at least the same amount the law requires and (3) may be used for the same purposes and under the same conditions as the law requires. Additionally, for small employers, employees must be entitled to use paid leave before using unpaid leave. Otherwise, employees must begin accruing leave on the law's effective date or when employment begins – whichever is later – at a rate of at least one hour of paid earned sick time for every 30 hours worked.

Generally, employees accrue paid leave, but employees of small businesses will accrue paid then unpaid leave. If employees are covered by the FLSA's executive, administrative, professional or outside sales exemptions, they are assumed to work 40 hours each workweek. If their normal workweek is less than 40 hours, they accrue leave based on hours worked in their normal workweek.

As currently written, the ESTA does not contain an annual or overall accrual cap and provides that accrued leave must carry over from year to year. An employee may use leave as it is accrued. However, for employees hired after April 1, 2019, employers may require that they wait until the ninetieth calendar day after commencing employment before using it.

Employees are not entitled to use more than 72 leave hours per year unless the employer selects a higher limit. However, for employees of small employers, 72 leave hours break down to 40 paid and 32 unpaid hours, with employees being entitled to use paid leave before having to use unpaid leave. Leave may be used in hourly increments or the smallest increment an employer's payroll system uses to account for absences or use of other time, whichever is smaller.

Employees can use leave for themselves or to care for or assist a family member, which includes a child, grandchild, grandparent, parent, sibling, spouse and any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. Under the ESTA, leave can be used for the following "sick" time purposes: mental or physical illness, injury or health condition of an employee or covered relation; medical diagnosis, care or treatment thereof, or preventative medical care.

If an employee or covered relation is a victim of domestic violence or sexual assault, leave can be used for the following "safe" time purposes: medical care or psychological or other counseling for physical or psychological injury or disability, to obtain services from a victim services organization, to relocate, to obtain legal services and to participate in any civil or criminal proceedings. Additionally, employees can use leave if their place of business or their child's school or place of care has been closed by a public official due to a public health emergency. Leave can also be used when health officials or a health care provider determines that an employee's or covered relation's presence in the community would jeopardize others' health because of the individual's exposure to a communicable disease. Finally, employees can use leave to attend meetings at a child's school or place of care related to the child's health or disability or the effects of domestic violence or sexual assault on the child.

If the need to use leave is foreseeable, an employer may require advance notice of the employee's intention to use leave, which cannot exceed seven days before the date leave will begin. If the need is unforeseeable, an employer may require the employee to give notice as soon as practicable. Whether foreseeable or unforeseeable, an employer cannot require an employee to disclose details relating to domestic violence, sexual assault or a medical condition as a condition of providing leave. If an employee uses leave for more than three consecutive days, an employer may require reasonable documentation that leave has been used for a covered purpose. If requested, an employee must provide documentation in a timely manner, but the law does not address what "timely" means.

Under the ESTA, employees using leave must be paid their normal hourly wage or the state minimum wage, whichever is greater. If an employee's hourly rate varies depending on the work performed, leave must be paid at the employee's average hourly wage in the pay period immediately before the pay period in which leave was used.

At the time of hiring or by April 1, 2019 – whichever is later – an employer must provide each employee written notice which includes but is not limited to, all of the following information: (1) the amount of sick time required to be provided under the law, (2) the employer's choice of how to calculate a year, (3) the terms under which sick time may be used, (4) that retaliatory personnel action against an employee for requesting or using sick time for which the employee is eligible is prohibited and (5) the employee's right to bring a civil action or file a complaint with the Department of Licensing and Regulatory Affairs for any violation.

Additionally, an employer must conspicuously display a poster at its place of business in a place that is accessible to employees and contains the information in the required notice. The notice must be in English, Spanish and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the notice or poster into such language.

For not less than three years, an employer must retain records documenting the hours worked and earned sick time taken by employees. If a question arises as to whether an employer has violated an employee's right to earned sick time and the employer does not maintain or retain adequate required records or does not allow the department reasonable access to those records, there is a presumption that the employer has violated the law, which can be rebutted only by clear and convincing evidence.

Under the ESTA, an employer cannot require an employee to search for or secure a replacement worker as a condition for using leave. Also, a contract or agreement between an employer and employee, or acceptance by an employee of a paid or unpaid leave policy that provides fewer rights or benefits than the law provides, is void and unenforceable.

An employer or any other person cannot interfere with, restrain or deny the exercise of, or the attempt to exercise, any right protected under the law. Additionally, an employer cannot retaliate or discriminate against an employee for exercising protected rights under the law. There is a rebuttable presumption of retaliation if an employer takes adverse personnel action against a person within 90 days after the person exercises any of the aforementioned protected rights and/or opposes any unlawful policy, practice or act. An employer's absence control policy cannot treat earned sick time taken under the law as an absence that may lead to or result in retaliatory personnel action.

At any time within three years after the violation or the date when the employee knew of the violation – whichever is later – an employee affected by the violation may bring a civil action or file a claim with the Department of Licensing and Regulatory Affairs, though this is not a prerequisite or bar to filing a civil action.

Washington

WAC 192-570-050 (final rule re paid family and medical leave damages)

Adopted: Jan. 16, 2025

Effective: Feb. 16, 2025

Washington has amended its regulations regarding enforcement of the state's paid family and medical leave program (PFML). Under the PFML program, employers must provide employees with 12 weeks of paid time off for the birth or adoption of a child or for the serious medical condition of the employee or the employee's family member.

The law prohibits an employer from interfering with an employee's exercise of rights under the law or discriminating against employees who have done so. An employee may file a complaint against an employer with the Employment Security Department. If the Department determines that the employer has committed a willful violation of the law, the Department may award the employee liquidated damages. The employer must pay the liquidated damages in full or file an appeal within 30 calendar days of the decision.

Under this amendment to the enforcement regulations, if the employer fails to pay the liquidated damages by the date on which they are due and payable as prescribed by the Department, any unpaid amount will bear interest at the rate of one percent per month until the employer makes the damages payment plus the accrued interest.

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