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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | January 2023

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California: San Francisco

Ordinance No. 008-23 (private sector military leave pay)

Enacted Jan. 20, 2023.
Effective Feb. 19, 2023.
Informational only – Sedgwick does not administer.

San Francisco has enacted a law requiring private employers to pay employees who are military reservists and called for military duty the difference between their military salary and their salary as private employees for up to 30 days per calendar year. Under the ordinance, employees on military leave must be paid the difference between their gross military pay and the gross pay they would normally receive from their employer, had the employee continued their normal work schedule. Military leave with supplemental compensation can be taken in daily increments for up to 30 days in any calendar year.

However, any amounts paid to the employee must be offset by any amounts required to be paid pursuant to any other law or employer policy for military leave. In addition, if an employee who is fit for employment does not return to work within 60 days of their release from military duty, the supplemental compensation may be treated as a loan payable: (1) in equal monthly installments over a maximum of five years; and (2) with an interest rate equal to the minimum amount necessary to avoid imputed income tax. The first installment is due and interest begins to accrue 90 days from the employee's release from military duty or return to fitness for employment, whichever is later.

The ordinance covers private employers with more than 100 employees, including those employed through temporary services or staffing agencies. The ordinance also covers both part-time and full-time employees working within the geographic boundaries of San Francisco and who are members of the reserve corps of the U.S. Armed Forces, National Guard or other uniformed service organization of the United States, and are called to active duty. Employees covered by a bona fide collective bargaining agreement are covered employees unless the requirements of the ordinance are waived in the agreement in clear and unambiguous terms.

District of Columbia

7 DCMR ch. 34 & 35 (final rule re: Universal Paid Leave Program amendments)

Enacted Jan. 27, 2023.
Effective upon the date of publication in the District of Columbia Register.

In October 2022, the District of Columbia enacted temporary regulations implementing the Universal Paid Leave Act ("Act"). Those regulations updated the contribution schedule and maximum leave amounts. This final rule supersedes the temporary regulation, makes those updates permanent, and defines additional terms for purposes of the Act.

The final rule makes permanent the removal of the waiting period for paid leave benefits and sets forth the maximum amounts of paid leave available to employees. For claims submitted on or after Oct. 1, 2022, with requested leave dates beginning Sept. 25, 2022, an employee is entitled to the following amounts of leave within a 52-calendar week period: (1) 12 workweeks of medical leave; (2) 12 workweeks of family leave; (3) 12 workweeks of parental leave; and (4) two workweeks of prenatal leave.

The final rule also finalizes the "in-person treatment" definition provided in the temporary regulation and adds definitions for "long-term disability payment" and "long-term disability program." For purposes of the Act, a "long-term disability payment" is defined as a monetary benefit (excluding in-kind or medical benefits) payable from a public or private long-term disability program. A "long-term disability program" is defined as a plan or policy, including insurance plans either funded through premiums paid by the covered individual or another entity or person, intended to compensate for an individual's lost wages due to the individual's own disability. This definition only includes plans or policies where the maximum allowable duration of benefits payable to the individual, as established in the program's rules, is 24 months or longer.

Illinois

SB 208 (paid leave for all workers act)

Passed Senate; Passed House; To governor Jan. 30, 2023.
If enacted, effective Jan. 1, 2024.
Informational only – Sedgwick does not administer.

The Illinois legislature has sent to the governor a proposed act that would establish a minimum paid sick leave standard for all workers in Illinois. This proposed act does not apply to employers covered by and in compliance with the Chicago Minimum Wage and Paid Sick Leave Ordinance or the Cook County Earned Sick Leave Ordinance.

If enacted, the proposed paid sick leave act would apply to all employers in Illinois, including units of state and local government and government agencies. It would not, however, cover school districts organized under the School Code or park districts organized under the Park District Code. The proposed act would cover all employees, but exclude: (1) employees as defined in the federal Railroad Unemployment Insurance Act or the Railway Labor Act; (2) temporary college or university student-employees; (3) certain short-term employees of an institution of higher learning; (4) employees working in the construction industry who are covered by a bona fide collective bargaining agreement (CBA); and (5) employees who are covered by a bona fide CBA with an employer that provides services nationally and internationally of delivery, pickup and transportation of parcels, documents and freight. The proposed act would not affect the validity or change the terms of a valid CBA in effect on Jan. 1, 2024. Following that date, the requirements of the act could be waived in a bona fide CBA if the waiver is set forth explicitly in the agreement in clear and unambiguous terms.

If enacted, covered employees will accrue one hour of paid sick leave for every 40 hours worked starting on Jan. 1, 2024, or the first date of employment, whichever is later. Exempt employees will be presumed to work 40 hours per workweek for the purposes of accrual unless their regular workweek is less than 40 hours, in which case paid leave will accrue based on that regular workweek. Employees would accrue up to 40 hours in a 12-month period. Under the proposed act, a 12-month period may be any 12-month period designated by the employer in writing at the time of hire. Employees may carry over paid leave from one 12-month period to the next.

Instead of accruing time, the proposed act would allow employers to choose to frontload 40 hours of paid sick leave on the first day of the 12-month period. If the full 40 hours is frontloaded at the beginning of the 12-month period, carryover from year to year would not be required, and any unused leave would be forfeited at the end of the 12-month period. Employees could not use their paid leave until they have completed 90 calendar days of employment, or March 31, 2024, whichever is later.

If enacted, the proposed act would allow an employer to require up to seven days advance notice of a foreseeable need for paid sick leave. If the leave is unforeseeable, employees would only need to provide notice as soon as practicable. An employer that requires advance notice for unforeseeable absences would have to adopt a written policy that contains procedures for the employee to provide notice. The proposed act would expressly prohibit employers from requiring documentation or certification to support an employee's need for leave and would not allow an employer to require that an employee seek or find a replacement worker to cover the hours during which the employee uses paid leave.

The proposed act would allow employers to set a reasonable minimum increment of use for paid sick leave, but in no event more than two hours. If an employee's shift length is less than two hours, the minimum increment of use will be the length of the employee's scheduled shift. Employees would receive their hourly rate of pay when using paid leave, which does not include commissions or gratuities. However, an employee's hourly rate of pay for leave under the proposed act could not drop below the applicable minimum wage.

If enacted, employers would be able to use other types of paid leave policies to satisfy their obligation to provide paid sick leave. An employer would "not be required to modify [their] policy" if it satisfies the minimum amount of leave required under the proposed act and the employee is permitted to take paid leave for any reason. If an employer does use another type of vacation bank to satisfy its obligations under the proposed act, any unused leave would have to be paid out upon separation from employment, consistent with the requirements under the Illinois Wage Payment and Collection Act.

The proposed act would require employers to post a notice in a conspicuous place on the employer's premises and include a copy of the notice in a written document, or written employee manual or policy. The proposed act would require employers to maintain accurate records for each employee showing the employee's: (1) hours worked; (2) paid leave accrued and used; and (3) remaining paid leave balance. Records would have to be retained for at least three years and be available for inspection by the Illinois Department of Labor. While an employee's paid leave accruals need not be reported on a paystub, employers would have to provide this information to an employee upon request.

Massachusetts

458 CMR 2.00 (final rule re: paid family and medical leave and health insurance benefits)

Enacted Jan. 6, 2023.
Effective Jan. 6, 2023.

Massachusetts has amended its regulations regarding the Massachusetts Paid Family and Medical Leave law. Under the law, employees may take up to 26 weeks of paid family and medical leave per year for various purposes. An employer must continue to maintain an employee's work-related health insurance benefits while the employee is on leave. The amended regulations clarify that this includes covering an employee's cost for coverage such as premium contributions, co-pays and deductibles.

The amended regulations offer examples of how an employer can maintain the benefits: (1) by continuing to pay the employer portion of the insurance premiums while the employee pays the employee portion; (2) by reimbursing the employee for the employer's portion of the insurance premiums under certain circumstances; (3) by participating in a plan that permits employees to maintain coverage. The amended regulations also clarify that employers need not maintain benefits for employees who are not eligible to receive benefits when their leave begins, or for employees that resign during leave.

Minnesota: St. Paul

Ordinance No. 23-2 (amendment to paid sick and safe time ordinance)

Enacted Jan. 19, 2023.
Effective Feb. 18, 2023.
Informational only – Sedgwick does not administer.

The City of Saint Paul, Minnesota, previously enacted an ordinance to govern and enforce the City's paid sick and safe time law. The City has issued an amended ordinance to conform the law to Minnesota Supreme Court holdings concerning the territorial applicability of sick and safe time laws for municipalities. In addition, the amended law addresses rules for accrual and carry over of sick and safe time, as well as employer compliance with the amended law.

The existing law establishes a framework for an employee's use of earned sick and safe time. The amended law provides that an employer is only required to allow an employee to use sick and safe time that is accrued when the employee is scheduled to perform work within the geographic boundaries of the city. However, an employer may allow use of accrued sick and safe time when an employee is scheduled to perform work for the employer outside of the city.

As to accrual of sick and safe time, the amended law specifies that employees accrue a minimum of one hour of sick and safe time for every 30 hours worked within the geographic boundaries of the city. Further, the amended law clarifies that employers are not required to allow accrual of more than 48 hours of sick and safe time in a single calendar or fiscal year. A "year" is defined as a regular and consecutive 12-month period, either calendar or fiscal, as determined by an employer and clearly communicated to each employee of that employer.

The amended law also addresses carry over of sick and safe time. Previously, employers had to allow employees to accrue up to 80 hours of sick and safe time, and unused sick and safe time could be carried over into the following year. The amended law specifies that employers can agree to allow a higher amount of unused sick and safe time to be carried over into a subsequent year. However, employers are not required to permit carry over of unused sick and safe time if they frontload employees at least 48 hours of earned sick and safe time during the first year and 80 hours of earned sick and safe time at the beginning of each subsequent year.

Under the amended law, employers must establish the method of compliance through either carry over or frontloading at the beginning of the calendar or fiscal year, and employers may not modify the method until the

next reporting year. An employer that decides to modify its method of compliance must ensure that employees have at least as much sick and safe time available on the first day of the new reporting year as they did on the last day of the immediately preceding year.

The amended law also clarifies that if an employer has an existing paid leave policy, including any combination of sick, personal or vacation leave that provides an amount of paid leave that is consistent with the amended law, such leave may be used for the same purposes and same conditions as provided in the amended law, and the employer is not required to provide additional sick and safe time.

Ohio

HB 343 (leave for court attendance for crime victims)

Enacted Jan. 5, 2023
Effective April 6, 2023

Ohio passed a law amending its statutes concerning victim's rights, including its law prohibiting an employer from discriminating or retaliating against an employee who is a crime victim, a member of a crime victim's family or a victim's representative for participating in or attending a criminal or delinquency proceeding.

State law prohibits employers from discharging, disciplining or otherwise retaliating against an employee who is a victim, a member of the victim's family or a victim's representative for: (1) participating in a criminal proceeding, or (2) attending a criminal proceeding if the attendance is reasonably necessary to protect the interests of the victim.

This amendment adds that an employee may also use this leave to attend a criminal proceeding if the employee is a crime victim and a victim's attendance is permitted under the person's constitutional and statutory rights.

While the existing law did not require an employer to pay an employee for time lost as a result of attendance at a criminal proceeding, the amended law eliminates that provision. The amended statute is now silent regarding an employer's obligation to pay its employees for time lost as a result of attendance at a criminal proceeding as a victim, a member of a victim's family or a victim's representative. Sedgwick administers the job protection for this leave. The update did not require any changes to our current setup. Any payment remains the responsibility of the employer.

United States

DOL Final Rule re Federal Civil Penalties Inflation Adjustment for 2023

Enacted Jan. 13, 2023
Effective Jan. 15, 2023

The U.S. Department of Labor ("Department") has adopted a final rule to adjust for inflation for the civil monetary penalties assessed or enforced by the Department. The Inflation Adjustment Act requires the Department to annually adjust its civil money penalty levels for inflation no later than Jan. 15 of each year. This includes 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 $189 for each separate offense. The amended rule provides that the penalty should not exceed $204.

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