

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | December 2020

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California

San Francisco Ordinance No. 201264 (public health emergency leave)

Enacted Dec. 23, 2020

Effective Dec. 14, 2020

Informational only — Sedgwick does not administer

The city of San Francisco, California, has reenacted the emergency [public health emergency leave ordinance](#) (PHELO). The ordinance temporarily requires private employers with 500 or more employees worldwide to provide up to 80 hours of paid public health emergency leave to each employee who performs work in San Francisco. San Francisco's Office of Labor Standards Enforcement (OLSE) has also issued guidelines to help employers and employees understand their obligations and rights under the PHELO.

The ordinance was originally set to expire on Dec. 13, 2020, and now is extended to apply until it expires on Feb. 13, 2021.

California

San Mateo Ordinance No. 20-930 (supplemental paid sick leave)

Enacted Dec. 8, 2020

Effective Dec. 8, 2020

Informational only — Sedgwick does not administer

San Mateo County has extended its [supplemental paid sick leave ordinance](#) in response to COVID-19. The ordinance requires employers with 500 or more employees to provide supplemental paid sick leave for COVID-related reasons. Employees can use leave if:

- A health care provider advises the employee to isolate or self-quarantine;
- The employee is experiencing COVID-19 symptoms;
- The employee needs to care for an individual exhibiting COVID-19 symptoms; or
- The employee provides care for a senior or child(ren) whose providers are closed due to COVID-19.

The ordinance was set to expire on Dec. 31, 2020. This amendment extends the effective period through June 30, 2021.

Colorado

Emergency Rule 7 CCR 1103.7 (Wage Protection Act)

Enacted Dec. 23, 2020

Effective Jan. 1, 2021

Informational only — Sedgwick does not administer

Colorado adopted an emergency rule that amends the [wage protection rules](#) implementing the Colorado Wage Act (CWA), the Wage Protection Act (WPA) and the Healthy Families and Workplaces Act (HFWA). The HFWA established three paid leave programs in the state:

1. COVID-19 paid sick leave
2. Paid sick and safe time
3. Public health emergency leave

The emergency rule clarifies that a qualifying public health emergency has triggered the 80-hour COVID-19 related paid leave as of Jan. 1, 2021. In addition, it amends the wage protection rules to clarify that a public health emergency is considered “declared” by any initial, amended, extended, restated or prolonged declaration of an emergency that meets the definition as defined at C.R.S. § 8-13.3-402(9).

It states that employees have up to 80 hours of supplemental paid sick leave usable as of Jan. 1, 2021, because a public health emergency declared after the HFWA effective date remains in effect long enough to trigger paid leave in 2021. It further clarifies that employees receive their supplement of up to 80 hours of leave under the HFWA usable as of Jan. 1, 2021, only once during the entirety of a public health emergency even if such public health emergency is amended, extended, restated or prolonged.

Colorado

Proposition 118 (paid family and medical leave)

Approved by voters Nov. 3, 2020

Effective Jan. 1, 2023

In November 2020, Colorado voters passed [Proposition 118](#), which provides 12 weeks of paid family and medical leave (PFML) funded through a payroll tax paid 50/50 by employers and employees. An additional four weeks of paid leave is available for pregnancy or childbirth complications, bringing the maximum potential amount of paid leave to 16 weeks. Benefits under this law are set to begin Jan. 1, 2024.

Covered employers and employees

The new law applies to any employer that has at least one employee in Colorado. However, the law lessens the cost burden on smaller employers, defined as those with fewer than 10 employees. These smaller employers are not required to pay the employer's share of the premium, although they still must withhold and pay the employees' contribution into the fund.

Most Colorado employees will be covered by the new law. It provides PFML to any person who earned at least \$2,500 in wages subject to PFML premiums and has been employed by the employee's current employer for at least 180 days prior to the commencement of the PFML.

Reasons for taking leave

Beginning in 2024, covered individuals will be able to take leave for the following reasons:

- Caring for their own "serious health condition," meaning an illness, injury impairment pregnancy, recovery from childbirth or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider.
- Caring for a new child during the first year after the birth or adoption or for foster care of a new child.
- Caring for a family member with a serious health condition.
- When a family member is on active-duty military service or is called for active-duty military service.
- When the individual or the individual's family member is a victim of domestic violence, stalking or sexual assault, as defined under Colorado law.

These covered reasons are broader than those provided under the federal Family and Medical Leave Act (FMLA), which does not necessarily provide for leave relating to domestic violence, stalking or sexual assault unless it qualifies as a serious health condition.

Notice requirements

The new law requires that the division develop a "program notice" detailing program requirements, benefits, claims process, payroll deduction requirements, job protection rights, benefits continuation, protection from

discrimination and retaliation and other information. Once the division creates this notice, employers must post the notice in a prominent location in the workplace and notify employees of the program upon hiring and upon learning that a covered individual experiences a triggering event under the program.

United States

HR 133 (CARES Act)

Enacted Dec. 27, 2020

Effective Dec. 27, 2020

The United States has [enacted a bill](#) funding the government through FY2021 and providing a financial stimulus in response to the COVID-19 pandemic.

No extension of FFCRA leave requirements

The bill allows covered employers to **voluntarily** provide emergency paid sick leave or emergency paid Family and Medical Act leave under the Families First Coronavirus Response Act (FFCRA) as adopted earlier this year, which expired on Dec. 31, 2020, and to take the tax credit associated with this leave through March 31, 2021. In other words, FFCRA leave is no longer required, but if covered employers voluntarily provide these leave benefits they are eligible to take the tax credit for the leave. While employers with fewer than 500 employees will no longer be required to provide paid leave under federal law as of Jan. 1, 2021, they should be mindful of other paid leave requirements under state and local laws, as well as their own paid leave and PTO policies. Further, any leave voluntarily provided by employers to their employees after Dec. 31, 2020 will not count against an employee's FMLA entitlement.

Tax provisions

The legislation expands the employee retention credit intended to prevent layoffs. It also includes a two-year tax break for businesses and rolls over a variety of temporary tax breaks known as "extenders," some for multiple years. Finally, it extends a payroll tax subsidy for employers offering workers paid sick leave and boosts the earned income tax credit.

The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company's attendance and/or leave policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

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