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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | April 2024

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Federal: US

29 CFR Part 1636 (United States EEOC final rule re pregnant workers fairness act)

Enacted April 15, 2024

Effective June 18, 2024

The Pregnant Workers Fairness Act (PWFA) expands protections for qualified individuals in the workforce by requiring employers with 15 or more employees to make reasonable accommodations for known limitations of employees and applicants related to pregnancy, childbirth, or related medical conditions. The EEOC has released **its final rule and interpretive guidance** implementing the PWFA and providing examples of reasonable accommodations, as directed by Congress in the PWFA. The final rule and interpretive guidance cover a wide variety of topics in detail, with key provisions outlined below.

The final rule reflects the EEOC's expansive reading of "pregnancy, childbirth or related medical conditions" to include current pregnancy, past pregnancy, potential pregnancy, lactation (including breastfeeding and pumping), use of contraception, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth or having or choosing not to have an abortion, among other conditions. The interpretive guidance clarifies that "related medical conditions" can include not only new physical and mental conditions originating during pregnancy but also pre-existing conditions that are exacerbated by pregnancy or childbirth.

In the final rule, the EEOC confirms that under the PWFA, the physical or mental condition that leads an employee or applicant to request an accommodation can be modest, minor or episodic, and there is no requirement that conditions rise to a specific severity threshold. The final rule reminds employers that the PWFA is intended to cover conditions that do not rise to the level of disability applied under the Americans with Disabilities Act (ADA) and its implementing regulations and is intended to help maintain the individual's health and ability to work.

When Congress passed the PWFA, it defined a "qualified" employee or applicant to not only include an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of a job but also an employee or applicant who cannot perform an essential function of the job for a temporary period, if the person is or is expected to be able to perform the essential function in the near future, and the inability to perform the essential function can be reasonably accommodated.

The PWFA does not define either "temporary" or "in the near future." The final rule defines "temporary" as lasting for a limited time — not permanent — and may be extended in the near future. Because pregnancy is a temporary condition with an ascertainable end date, the EEOC tied the definition of "in the near future" to the typical length of a full-term pregnancy. The final rule, thus, defines "in the near future" as it relates to pregnancy as generally 40 weeks from the start of the temporary suspension of an essential function. The final rule, however, does not define

“in the near future” for childbirth or related medical conditions, leaving this to be determined on a case-by-case basis, and noting only that in the near future does not mean indefinitely.

Employers accustomed to the ADA framework, in which inability to perform essential functions of a job (with or without reasonable accommodation) is disqualifying, will need to follow the PWFA’s different framework carefully when evaluating accommodation requests. A worker seeking a temporary suspension of an essential job function will be considered “qualified” to seek accommodation under PWFA if the worker is or is expected to be able to perform the essential duties in the near future, and the employer can reasonably accommodate the inability to perform that function. If, on the other hand, there is no reasonable accommodation for the temporary suspension of an essential job function, then the individual is not “qualified.” Similarly, if the temporary suspension of the essential function causes an undue hardship, then the employer need not provide a reasonable accommodation that includes the suspension of that job function.

Under the final rule, the time an employee is on post-partum leave is not considered in the calculus of how long an employer must consider waiving an essential function of the job. Once the employee can return to work, the clock will restart, and the employer will need to consider at that point whether it can temporarily waive an essential function of the job as an accommodation. Rather than adopt a set definition of “in the near future” for conditions arising after the birth of a child or for other related medical conditions, the final rule simply notes that employers must make a case-by-case determination, and a few examples are included in the EEOC’s interpretive guidance.

The final rule also provides that whether the employer can reasonably accommodate the person’s inability to perform the essential function must be reassessed when the employee returns to work from pregnancy or childbirth, regardless of whether the employer provided the same or a different accommodation either prior to or during the employee’s pregnancy.

The EEOC affirms that the PWFA incorporates the definitions of reasonable accommodation and undue hardship found in the ADA, but the final rule and interpretive guidance also outline changes to these concepts given the aim of the PWFA and the wide range of conditions covered by the PWFA. For example, the EEOC’s definition of the “interactive process” largely tracks the ADA’s interactive process with a few tweaks. As under the ADA, notice of the need for a PWFA accommodation can be conveyed verbally or in writing, can be expressed in plain language, and can come from a representative of the employee or applicant. The EEOC emphasizes that these should be simple processes. The individual, or their representative, must only identify the relevant limitation and their need for an adjustment at work to trigger an employer’s obligation to engage in the interactive process. The final rule adds union representative to the category of employee representatives who may seek an accommodation on an employee’s behalf.

The final rule and interpretive guidance, however, depart slightly from the ADA standard. Given the temporary nature of pregnancy-related conditions, the EEOC encourages employers to respond expeditiously to employees’ requests and to consider granting an accommodation request on an interim basis, such as where a limitation has arisen suddenly, even if the employer believes it needs additional information to determine a reasonable accommodation. The final rule notes that this is a best practice, but that providing interim reasonable

accommodations is not required. The EEOC further notes that providing an interim accommodation can be evidence an employer may use to contest a claim by an employee that an employer caused an unnecessary delay in providing a reasonable accommodation. The EEOC cautions that in many instances, the appropriate accommodation should be obvious to the employer and/or employee and that requiring an employee to take leave as an interim accommodation may violate the PWFA, depending on the circumstances.

As directed by Congress, the EEOC provides a number of detailed examples of reasonable accommodations that it asserts would address known limitations related to pregnancy, childbirth or related medical conditions, including: (1) frequent breaks; (2) sitting/standing; (3) schedule changes, part-time work, and paid and unpaid leave; (4) telework or remote work; (5) reserved parking; (6) light duty; (7) making existing facilities accessible or modifying work environment; (8) job restructuring; (9) temporarily suspending one or more essential functions; (10) acquiring or modifying equipment, uniforms or devices; and (11) adjusting or modifying examinations or policies.

While the PWFA incorporates the ADA's definition of reasonable accommodation, which requires an individualized assessment, the final rule specifies four specific accommodations deemed de facto reasonable, referring to these as "predictable assessments." The final rule states that these accommodations commonly will be requested and will typically require modest and minor alterations in the workplace on a temporary basis. The interpretive guidance advises that these specific modifications will not impose an undue hardship in virtually all cases, but employers may show in an individual case that they do create an undue hardship: (1) allowing an employee to carry or keep water and drink, as needed, in or nearby the employee's work area; (2) allowing an employee to take additional restroom breaks, as needed; (3) allowing an employee whose work requires standing to sit, and vice versa, as needed; and (4) allowing an employee to take breaks, as needed, to eat and drink. The final rule also states that an employer's delay in providing the accommodations identified as predictable assessments will virtually always result in a finding of unnecessary delay and a violation of the PWFA.

The EEOC encourages employers and employees to communicate openly about accommodation needs under the PWFA and discourages employers from seeking documentation simply to establish a pregnancy. In particular, the EEOC rejected adopting the ADA's approach to supporting documentation. Instead, the final rule states that an employer may obtain a medical documentation only if it is reasonable under the circumstances to determine if the employee has a qualifying condition and needs an adjustment or change at work due to the limitation.

The final rule limits "reasonable documentation" to the following: (1) documentation that is the minimum sufficient to confirm the physical or mental condition underlying the employee's limitation; (2) documentation that confirms that the condition is related to, affected by, or arises out of pregnancy, childbirth or related medical conditions; and (3) documentation that states that the change or adjustment to the job is needed due to the limitation. In the interpretive guidance, the EEOC notes that employers may ask the expected duration of the requested modification. The final rule notes that requests for more information than what is permitted may violate the PWFA's prohibition on retaliation and that employers may not require supporting documentation to be submitted on a specific form. Medical documentation obtained must be kept confidential consistent with the confidentiality provisions of the ADA.

The final rule includes a blanket prohibition on employers' seeking supporting documentation in five instances, under which an employee's self-confirmation is the only thing an employer may seek: (1) when the limitation and need for a reasonable accommodation is obvious; (2) when the employer already has sufficient information to support a known limitation related to pregnancy; (3) when the request is for one of the four predictable assessment accommodations; (4) when the request is for a lactation accommodation; and (5) when employees without known limitations under the PWFA receive the requested modification under the employer's existing policy or practice without submitting supporting documentation.

The final rule clarifies that the EEOC does not consider it to be reasonable to seek supporting documentation when an employee seeks a reasonable accommodation involving lactation and a time or place to pump at work or other modification related to pumping at work. However, the final rule does not prohibit employers from seeking documentation if an employee seeks full-time remote work due to a condition that makes pumping difficult. In addition, the final rule provides that a lactation accommodation can include permitting the employee to nurse during work hours where the child is in close proximity to the employee — e.g., when the employee is teleworking or when an employee takes a break to travel to a nearby or onsite daycare facility. Employers may not request or require an employee to be examined by a healthcare provider of the employer's choosing.

The final rule outlines the EEOC's interpretation of five prohibited practices under the PWFA: (1) failure to provide reasonable accommodations; (2) Requiring an employee or applicant to accept an accommodation; (3) denying equal employment opportunities; (4) requiring the employee to take leave when other accommodations are available; and (5) taking adverse action against a worker for seeking or using a reasonable accommodation.

Illinois

56 IAC 200 (final rule re paid leave for all workers act)

Enacted April 30, 2024

Effective April 30, 2024

Informational only — Sedgwick does not administer.

The Illinois Department of Labor has published **final regulations** that implement and clarify the requirements for providing mandatory paid leave under the Paid Leave for All Workers Act. The act permits employees to accrue 40 hours of paid leave per year to use for any purpose.

The final rule amends and adds multiple definitions of interest to employers related to the act. “Accrual” or “accrue” means the practice of accumulating paid time off over a period of time, proportionately to hours worked. “Domicile,” for purposes of the definition of what constitutes an employee, domicile means the true, fixed and permanent legal home of a person or the place to which the person intends to return even though the person may reside elsewhere. Further, a “person may have more than one residence but only one domicile.” “Frontload” means to make available the minimum number of hours of paid leave time, subject to pro rata requirements of the act, to an employee on the first day of employment or the first day of the 12-month period. “Independent contractor” is clarified by the regulation to mean that an independent contractor, for purposes of the act, uses the same definition as the Illinois Wage Payment and Collection Act.

“Rate of pay” means for an employee who is not engaged in an occupation in which gratuities or commissions have customarily and usually constituted part of remuneration for hire, an employee's hourly rate of pay, and for an employee who is engaged in an occupation in which gratuities or commissions have customarily and usually constituted part of remuneration for hire, the full minimum wage in the jurisdiction where the employee is employed or the agreed-upon hourly base wage rate, whichever is higher. "Qualifying pre-existing paid leave policy" means a bona fide paid leave policy that an employer has enacted prior to Jan. 1, 2024, that, in practice, satisfies the minimum amount of leave required by the act if the policy offers an employee the option, at the employee's discretion, to take paid leave for any reason.

Additionally, the definitions of “construction industry,” “domestic work,” “domestic worker,” “employee,” “employer, “writing” or “written” are aligned with the act’s statutory definitions. Other definitions included in the regulations are “foreseeable,” “practical,” “shared services” and “unforeseeable.”

The Act does not affect the validity or change the terms of a valid collective bargaining agreement (“CBA”) in effect on Jan. 1, 2024. After that date, a CBA must explicitly waive the act’s requirements in clear and unambiguous terms. The final rule clarifies that for a CBA in effect on Jan. 1, 2024, the paid leave law does not apply until that CBA expires. In addition, the act will not apply to any employer that is covered by a municipal or county ordinance that is in effect as of Jan. 1, 2024, that requires employers to give any form of paid leave to their employees,

including paid sick leave or paid leave. The final rule clarifies that an employer covered by a municipal or county ordinance but has employees who are not covered by the municipal or county ordinance, is required to provide paid leave to employees under the act.

The act requires that paid leave accrue at a rate of one hour for every 40 hours worked. The final rule provides that the calculation must be made by a minute-by-minute basis or may be rounded up to the next 15 minutes. An employer cannot round down time worked. If an employer provides paid leave by accrual, rather than frontloading, the act requires carryover of accrued but unused leave from one 12-month period to the next. The final rule provides that a 40-hour carryover cap may be imposed by employers through a valid written policy.

The act allows employers to frontload 40 hours of paid leave on the first day of the 12-month period. The final rule provides that frontloading may be reduced for part-time employees and mid-year hires at a pro rata amount consistent with the employee's anticipated work schedule for that year. To calculate the pro rata amount, employers must ensure that the number of hours is not less than what the employee would be entitled to earn at a rate of one hour for every 40 hours worked during the time period at issue.

In addition, the final rule states that employees who receive frontloaded paid leave at the beginning of the 12-month period are not entitled to carry over paid leave time from one 12-month period to the next unless the employer allow them to carry their paid leave time over. Further, the final regulation provides that an employer may give some of its employees paid leave through frontloading, and other employees through the accrual method.

Under the final rule, an employee must begin to earn paid leave hours, through frontloading or accrual, at the commencement of the individual's employment with the employer or on Jan. 1, 2024, whichever is later.

The act provides that employees may determine how much paid leave they want to use, except that employers can set a minimum increment of at least two hours per day. The final rule provides the following example to illustrate that an employee may take the leave in hour increments if it is used at least two hours in a single workday: "Employee C's children's before and after school care is canceled. Employee C's employer requires a minimum usage of two hours of paid leave per day. Employee C may take one hour of paid leave in the morning and one hour of paid leave in the afternoon to do drop-off and pick-up."

The act requires employees to be paid for their hourly rate of pay for paid leave, however, employees who work in an occupation where gratuities are the customary form of payment must be paid at least the full minimum wage in the jurisdiction in which they are employed when paid leave is taken. The final rule also clarifies that employees who work in an occupation where commissions are customarily the form of payment must be paid at least the full minimum wage in the jurisdiction where the employer is located or the agreed upon based hourly wage rate, whichever is higher, for all paid leave hours. In addition, employees who earn compensation through any other method must be paid for their hourly rate of pay when taking paid leave.

Under the final rule, employers may now deny an employee's request to the use the minimum amount of paid leave if all the following are met: (1) the employer's policy for considering leave requests under the act, including any basis for denial is disclosed to the employee, in writing, consistent with the regulation; (2) the employer's paid leave policy establishes certain limited circumstances in which paid leave may be denied in order to meet the employer's operational needs for the requested time period; and (3) the employer's policy is consistently applied to similarly situated employees and does not effectively deny an employee adequate opportunity to use all paid leave time they are entitled to over a 12-month period.

The final rule reiterates the act's requirements for accrued, unused time. Unused time must be reinstated and made available for use if the employee is rehired within 12 months of separation. Moreover, employees transferring to a separate division, entity, or location will retain their accrued paid leave time. However, the final rule clarifies that if an employer does not provide an additional form of paid leave allowance and doesn't choose to combine or credit the multiple forms of leave together, then an employer is not required to pay out, provide financial benefit or reimbursement of unused paid leave earned under the act upon an employee's termination, resignation, retirement or other separation from employment at any time of the year.

The act requires multiple notice requirements including a workplace poster, defining a 12-month period in writing to an employee, a written policy and if there are any changes to an employer's leave policy. The final rule provides for these notice requirements, but the final rule also creates other notice requirements for employers. The act requires a notice posting to be kept in a conspicuous place of the premises of the employer where notices to employees are customarily posted. In addition to physically posting the notice, the final rule requires employers who regularly communicate with employees via electronic means to provide the notice through the employer's regular electronic communication method.

If an employer chooses to credit the paid leave provided for under the act to an existing paid leave policy provided by the employer, the policy must be communicated to the employee within 30 days after the start of employment or of the effective date of the policy. Employers must give written notice to an employee if an employer chooses to frontload paid leave instead of using the accrual method. The notice must inform the employee of how many paid leave hours that the employee is receiving on or before the first day of initial employment or on or before the first day of the initial 12-month period.

When employers change their paid leave policy, the employer must notify the employee of the updated policy as soon as practical. "Practical" is defined by the regulation as realistically capable of being accomplished in the actual circumstances. The final rule further clarifies that if the changes relate to a switch from frontloading to accrual, there must be at least 30 days' notice prior to the end of the 12-month period. If the employer changes the amount of frontloaded leave that will be provided, employers must provide a written notice communicating to the employee how many paid leave hours that the employee is receiving on or before the initial 12-month period.

The act requires employers to maintain records for at least three years regarding an employee's hours worked, paid leave accrued and used, and the remaining paid leave balance. The final rule also requires the following employee records to be created and maintained for at least three years: (1) name and address; (2) hours worked

each day in each workweek; (3) paid leave earned or accrued in each workweek; (4) paid leave taken or used in each workweek; (5) request by the employee to use paid leave that the employer denied; and (6) remaining paid leave balance in each workweek and upon employee's separation or termination from employment. Employers must make all records related to the act available to the employee or for inspection by the Department of Labor upon request.

The act prohibits retaliation and explicitly prohibits consideration of the use of paid leave as a negative factor in any employment action that involves evaluating, promoting, disciplining or counting paid leave under a no-fault attendance policy. The final rule clarifies that is it also unlawful for an employer to take adverse employment action under an attendance point system or equivalent scoring or tracking system when an employee exercises their rights under the act.

Kentucky

HB 179 (paid family leave insurance)

Enacted April 5, 2024

Effective April 5, 2024

Informational only — Sedgwick does not administer.

Kentucky has enacted **the Paid Family Leave Insurance Act**, which authorizes qualified life insurers to offer paid family leave insurance policies under specified circumstances. The act details the requirements of such policies, including required and permissive terms and conditions. Employers should note that this law does not require an employer to purchase a policy or to provide paid family and medical leave to employees. Because it is not required and because Sedgwick is not a qualified life insurer, Sedgwick does not administer this insurance policy.

The act defines key terms relating to paid family and medical leave insurance. “Paid family leave insurance” means insurance issued to an employer related to a benefit program provided to employees to pay for a percentage or portion of the employee’s income loss caused by absences that are not based on the employee’s disability. “Child” is a person who is either under 18 years of age or 18 or older and incapable of self-care because of a mental or physical disability, and who is the employee’s biological or adopted child; the employee’s stepchild or the child of the employee’s domestic partner; the employee’s legal ward; or a person to whom the employee stands in loco parentis. “Family member” includes the employee’s child, spouse, or parent, and any other person defined as a family member in the policy. “Parent” includes the employee’s biological, foster or adoptive parent; stepparent; legal guardian; and a person who stood in loco parentis to the employee when they were a child.

Other key terms include “Armed Forces of the United States” meaning members of the National Guard and the United States Armed Forces Reserves. “First responder” includes a peace officer; paid or volunteer emergency medical services or rescue personnel; a paid or volunteer member of an organized fire department; and personnel of a private not-for-profit organization providing fire, rescue or emergency medical services.

Under the act, a paid family leave insurance policy may provide leave benefits for an employee to: (1) provide physical or psychological care for a family member because of a serious health condition or any other reason specified in the policy; (2) bond with a child during the first 12 months after birth, adoption or placement with the employee for foster care; (3) address a qualifying exigency recognized under the federal Family and Medical Leave act for a family member on covered active duty or notified of an impending call to active duty in the armed forces; (4) to care for a family member injured in the line of duty as a member of the armed forces or as a first responder; or (5) for any other reasons not based on the employee’s disability specified in the policy.

A paid family leave insurance policy must: (1) include the details, requirements and length of benefits available for each covered reason for family leave; (2) provide for at least 2 weeks of leave during a period of 52 consecutive calendar weeks (calculated using one of the five methods described in the act); (3) state whether there is an

unpaid waiting period for benefits and the terms and conditions of the waiting period; (4) state the amount of benefits to be paid for each covered reason for leave; (5) provide the definition of and methods for calculating the wages upon which the amount of benefits would be based; (6) indicate whether benefits would be subject to offsets for other wages or income and the circumstances under which wages may be offset; and (7) state any other limitation, exclusion or reduction of eligibility for benefits available under the policy.

The act allows several limitations, exclusions, and reductions from an employee's eligibility for benefits, including for any period of family leave where: (1) the employee fails to provide notice and medical certification as required under the policy; (2) the employee performs work for remuneration or profit; (3) the employee is eligible for other remuneration or maintenance; (4) the employee is eligible for benefits under another statutory or employer-sponsored program; or (5) more than one person is seeking leave for the same family member.

A policy may also include limitations, exclusions, and reductions from eligibility where an employee seeks leave before becoming eligible for benefits or where the leave sought is due to a serious health condition or other harm to a family member intentionally caused by the employee seeking leave. Unless a limitation, exclusion or reduction applies, or the family leave period is contested, benefits due and payable under a paid family leave insurance policy must be paid within 30 days from the date that notice, and proof of claim are provided to the insurer.

Maine

LD 2214 (paid family and medical leave amendments)

Enacted April 22, 2024

Effective July 16, 2024

Benefits begin May 1, 2026

Maine has amended its Paid Family and Medical Leave (PFML) law. The PFML program will provide up to 12 weeks of paid leave per year to all eligible employees, regardless of employer size. Contributions to fund the program begin on Jan. 1, 2025, and employees may begin taking leave on May 1, 2026.

The amendments change several definitions related to the law's administration. In order to calculate the amount of benefits that an employee will receive, the state will use the employee's pay during the base period. The base period is now defined as the first four of the last five completed calendar quarters immediately before the first day of the employee's benefit year. The amendments define a benefit year as the 12-month period that begins on the first day of the calendar week immediately before the first date of approved family or medical leave.

Under the amended law, employees may take intermittent leave in increments of one day or may agree with the employer to take leave in a smaller increment of not less than one hour.

Maryland

HB 571 / SB 485 (family and medical leave insurance program delay)

Adopted April 25, 2024

Effective Oct. 1, 2024

Benefits now begin July 1, 2026

In 2022, Maryland enacted a Family and Medical Leave Insurance Program to provide paid benefits to employees who are using leave for a variety of reasons related to medical and family care. Under the law, employers and employees make contributions to the state to fund the benefits provided while the employee is on leave. While these contributions were set to begin on Oct. 1, 2024, **the amendments** delay the employer and employee contributions until July 1, 2025. Similarly, while employees were set to be able to use paid leave under the law beginning Jan. 1, 2026, the amendments delay that date to July 1, 2026.

In calculating an individual's average weekly wage to determine the amount of monetary benefits that an employee will receive under the law, the state uses the total wages received by the individual over the last 680 hours or work, divided by the number of weeks worked. Under the amended law, the average weekly wage is calculated by taking the total wages received by the individual in the highest of the previous four completed calendar quarters for which quarterly reports have been required, divided by 13.

New York

AB 8806 / SB 8306 (paid lactation breaks and COVID-19 sick leave repeal)

Enacted April 20, 2024

Effective April 20, 2024

New York's budget legislation for FY2025 includes provisions impacting employers. **The amendments** modify existing provisions affording paid break time for nursing employees to express breast milk and sunset COVID-19 paid sick leave provisions.

State law requires employers to provide reasonable unpaid break time or permit an employee to use paid break time or meal time to express breast milk for the employee's nursing child each time the employee has a reasonable need to express breast milk. An employee is entitled to these lactation breaks for up to three years following the child's birth. As amended, the law now requires employers to provide paid break time for 30 minutes, and permits an employee to use existing paid time or meal time for time in excess of 30 minutes to express breast milk. Sedgwick will not be administering this paid break time.

In March 2020, New York enacted a law that provides for certain employee benefits when an employee is subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. The law has been amended to repeal these provisions as of July 31, 2025.

New York

AB 8805 / SB 8305 (paid prenatal leave)

Enacted April 20, 2024

Effective April 20, 2024

Informational only — Sedgwick does not administer.

New York's budget legislation for FY2025 includes provisions impacting employers. **This amendment** modifies the state's paid sick leave law to require employers to provide paid prenatal leave. State law requires employers with 100 or more employees to provide 56 hours of paid sick leave per year, and employers with 99 or fewer employees to provide 40 hours of paid sick leave per year. An employee may accrue and use paid sick leave for the following purposes: (1) a mental or physical illness, injury or health condition of an employee or employee's family member; (2) the diagnosis, care or treatment of a mental or physical illness, injury, injury or health condition of an employee or family member, or for preventive care; and (3) the employee to take certain actions and obtain services when the employee or a family member has been the victim of domestic violence, a family offense, sexual offense, stalking or human trafficking.

As amended, the law provides that in addition to the foregoing required leave, employers must provide 20 hours of paid prenatal leave per year. An eligible employee may use this leave to obtain healthcare services during pregnancy or related to pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a healthcare provider. Paid prenatal leave must be taken in hourly increments and must be paid at the employee's regular rate or at the applicable minimum wage, whichever is greater.

An employer may not require an employee to disclose confidential information as a condition of granting paid prenatal leave, nor may an employer discharge, threaten, penalize or in any other way discriminate or retaliate against an employee for requesting or using paid prenatal leave. Upon returning from prenatal leave, an employee must be restored to the position they held prior to that leave, with the same pay and other terms and conditions of employment. Employers are not required to pay an employee for unused accrued prenatal leave upon separation from employment. Finally, nothing in the amended law prohibits an employer from providing paid prenatal leave in excess of the required 20 hours or from adopting a paid leave policy that provides for additional benefits.

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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