

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | March 2020

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Colorado

Regulation 7 CCR 1103-10 (health and emergency leave with pay)

Enacted March 11, 2020

Effective March 11, 2020

Informational only — Sedgwick does not administer

The Colorado Department of Labor and Employment has issued Colorado [health emergency leave with pay](#) (Colorado HELP) rules that require certain employers to provide paid sick leave for employees with flu-like symptoms who are being tested for COVID-19. The rules take effect immediately and will remain in effect for 30 days or for the duration of the declared state of emergency, whichever is longer, for up to 120 days. The amendments to Colorado HELP extend coverage under the rules to retail establishments that sell groceries. Thus, these retailers are now required to provide paid sick leave to employees under Colorado HELP. The amendments also extend eligibility for paid sick leave under Colorado HELP to employees in a covered industry who are under instructions from a health care provider to quarantine or isolate due to a risk of having COVID-19.

Covered employers must provide employees with flu-like symptoms who are being tested for COVID-19 up to four paid sick leave days. The paid leave entitlement ends when employees receive a negative COVID-19 test result. If employers already offer a sufficient amount of paid leave, they need not provide additional paid sick leave unless employees have exhausted their employer-provided leave and then experience a qualifying event.

Sick leave pay is due for an employee's regularly worked hours at the employee's regular rate. Employers must use the same formula they use when calculating the regular rate for overtime purposes. The regular rate includes all forms of wages and compensation. For tip-credit employees, the regular rate is the full minimum wage. If an employee's pay rate or hours worked varied before the absence, employers must use the employee's average daily pay for the preceding month.

To the extent possible, the Colorado HELP rules state that employers and employees should comply with federal Family and Medical Leave Act (FMLA) procedures for requesting and providing leave. However, employers cannot fire employees if they are unable to provide documentation during a covered absence.

A failure to provide paid sick leave will be akin to a failure to pay wages. The state labor department will enforce the rules and investigate alleged violations. Additionally, a private right of action is available.

Colorado

Regulation 7 CCR 1103-10 (health and emergency leave with pay)

Enacted March 26, 2020

Effective March 26, 2020

Informational only — Sedgwick does not administer

The Colorado Department of Labor and Employment has amended its Colorado [health emergency leave with pay](#) (“Colorado HELP”) rules. Colorado HELP requires employers in certain industries to temporarily provide a small amount of paid sick leave to employees with flu-like symptoms who are being tested for COVID-19.

The amendments to Colorado HELP extend coverage under the rules to retail establishments that sell groceries. Thus, these retailers are now required to provide paid sick leave to employees under Colorado HELP. The amendments also extend eligibility for paid sick leave under Colorado HELP to employees in a covered industry who are under instructions from a health care provider to quarantine or isolate due to a risk of having COVID-19.

District of Columbia

Bill 718 (COVID-19 Response Emergency Amendment Act)

Enacted March 17, 2020

Effective March 17, 2020

On March 17, 2020, the District of Columbia enacted the [COVID-19 Response Emergency Amendment Act](#) in response to the COVID-19 pandemic. The Act temporarily expands covered absences under the D.C. Family and Medical Leave Act (DCFMLA) and broadens unemployment insurance access for affected employees. The legislation will remain in effect no longer than 90 days.

[Expansion of the D.C. Family and Medical Leave Act](#)

The DCFMLA covers employers with 20 or more employees in the District. Under the DCFMLA, employees must be employed for one year with the same employer, without a break in service, and work at least 1,000 hours during the 12 months immediately preceding the time leave is requested in order to be eligible to take DCFMLA leave. If eligible, employees can take up to 16 weeks of unpaid family leave and 16 weeks of unpaid medical leave during a 24-month period.

The Act expands the DCFMLA by creating a new category of declaration of emergency (DOE) leave. Employees are entitled to DOE leave when an employee is unable to work during a period of time in which the mayor has declared a public health emergency, and the mayor, other federal or state official or a medical professional has ordered or recommended that the employee self-isolate or quarantine. Under these circumstances, the law also suspends the one-year-of-employment and 1,000-hours-of-work requirements for eligibility.

[Expansion of unemployment insurance: Informational only — Sedgwick doesn't administer](#)

The Act also expands the District of Columbia's unemployment insurance (UI) eligibility by providing coverage to employees who, following the mayor's declaration of the public health emergency, have been ordered to quarantine or self-isolate by a federal agency, District agency or medical professional or decided to quarantine or self-isolate in a manner consistent with recommendations from the Department of Health or similar federal agency.

The Act also eliminates the current requirement that an employee must certify that they are actively searching for new employment, and also permits UI benefits to be issued even if the employer has no date certain for when the employee will be able to return to work or the employee has reason to doubt they will ever resume employment with the employer.

New Jersey

AB 3848 (protected time off due to COVID-19)

Enacted March 20, 2020

Effective March 20, 2020

This [law](#) prohibits an employer from terminating or refusing to reinstate an employee if the employee requests or takes time off from work during the public health emergency and state of emergency declared by the governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic. The request must be based on a written or electronically transmitted recommendation from a medical professional licensed in New Jersey that the employee take time off work for a specified period of time because the employee has, or is likely to have, an infectious disease that may infect others at the employee's workplace. The employer cannot, following that specified period of time, refuse to reinstate the employee in the position the employee held when the leave commenced with no reduction in seniority, status, employment benefits, pay or other terms and conditions of employment.

If an employer violates this law, the affected employee may file a complaint with the Commissioner of Labor and Workforce Development or initiate a court action. If the employer is found to be in violation, the commissioner or the court is required to order the reinstatement of the employee and fine the employer \$2,500 for each violation.

New Jersey

SB 2304 (family leave and disability benefits during epidemic)

Enacted March 25, 2020

Effective March 25, 2020

New Jersey amended its [laws](#) providing for earned sick and safe leave, family leave and temporary disability benefits. The following changes are not temporary measures exclusively enacted in response to the COVID-19 pandemic. They are permanent amendments to the law.

[New Jersey Earned Sick and Safe Leave Law \(NJESSL\): Informational only — Sedgwick does not administer](#)

Under the NJESSL, employees can accrue up to 40 hours of paid sick and safe time. Employees are entitled to use earned sick and safe time if their place of work or their child's place of care is closed by a public official. The amendments extend this provision to allow employees to use their earned leave when they cannot work due to the closure of their workplace or their child's school/place of care because of a state of emergency declared by the governor; or upon the recommendation of a health care provider or public official; or if the employee undergoes isolation or quarantine or cares for a family member in quarantine as a result of suspected exposure to a communicable disease.

[New Jersey Family Leave Act \(NJFLA\)](#)

The NJFLA allows qualifying employees of covered employers to take up to 12 weeks of *unpaid* family leave in a 24-month period for the birth or adoption of a child or to care for a family member with a serious health condition. The amendments to the NJFLA expand the definition of "serious health condition" during a governor-declared state of emergency or similar health crisis. The amendments also eliminate certain advance notice and certification requirements when the leave is due to these expanded serious health conditions related to a state of emergency or similar health crisis.

[New Jersey Temporary Disability Benefits Law](#)

This law provides wage replacement benefits, subject to certain caps, for qualifying employees during a period when an employee is taking an otherwise unpaid qualifying family or medical leave. The amendment expands the definition of "serious health condition," amends the definition of what is considered a "compensable disability" to include leave to care for family members suffering from accident or sickness and the definition of "sickness" to mirror the expansion to the definition of "serious health condition" under the NJFLA described above; and eliminate the seven-day waiting period for benefits eligibility when benefits are sought related to an employee's own serious health condition *only* if it falls within the newly expanded definition.

New York

SB 8091 (COVID-19 paid sick leave benefits)

Enacted March 18, 2020

Effective March 18, 2020

New York has enacted a new [law](#) in response to the spread of the novel coronavirus (COVID-19) across the state. The new law provides employees, who are subject to a COVID-19 mandatory or precautionary quarantine or isolation order, with immediate paid or unpaid time off specific to the COVID-19 crisis.

[Amount of COVID-19-specific sick time available: Informational only — Sedgwick does not administer](#)

Under the new law, employees subject to an order of mandatory or precautionary quarantine or isolation in the state must be provided sick leave based on the size and/or net income of their employer. Employers must provide this leave without loss of any other accrued sick leave (e.g., New York City Earned Sick and Safe Time Act leave).

The law defines “mandatory or precautionary order of quarantine or isolation” as one issued by the “state of New York, the department of health, local board of health or any government entity duly authorized to issue such order due to COVID-19.”

The guidance appears to confirm that only those employees subject to an order of mandatory or precautionary order of quarantine because they have been exposed to COVID-19 or traveled to a high-risk area, will be allowed leave under the law.

The law does not apply if an employee can physically work while under a mandatory or precautionary quarantine or isolation order through “remote access or similar means” and either is deemed asymptomatic or has not yet been diagnosed with any medical condition. If those conditions are met, the employee is not entitled to any additional paid or unpaid leave.

[Retaliation provisions](#)

Employers are explicitly prohibited from discriminating or retaliating against employees for taking leave under this law.

New York

12 NYCRR 355.9 (emergency rules re: paid family leave)

Enacted March 27, 2020

Effective March 27, 2020

New York law provides paid leave to care for family members. This [amendment](#) clarifies that employees may take family leave to care for a family member diagnosed with COVID-19. Now, “serious health condition” means an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice or residential health care facility; or continuing treatment or continuing supervision by a health care provider. Serious health condition also means a COVID-19 diagnosis by a health care provider.

Oregon

OAR 839-009-0230 (temporary rule re: use of OFLA leave during public health emergency)

Enacted March 18, 2020

Effective March 18, 2020

Oregon has [amended the regulations](#) implementing the Oregon Family Leave Act (OFLA) in response to COVID-19. The OFLA generally provides eligible employees with up to 12 weeks of leave within any one-year period to use for specified qualifying purposes. One such qualifying purpose is to care for the employee's sick child who is suffering from an illness or injury that requires home care but is not a serious health condition. The amended rules add as a qualifying purpose that an employee may use leave to care for the employee's child whose school or place of care has been closed because of a statewide public health emergency declared by a public health official.

The amended rule will be effective through September 13, 2020.

Pennsylvania: Philadelphia

9-4100 Philadelphia Code (Promoting Healthy Families and Workplaces Act)

Enacted March 16, 2020

Effective March 16, 2020

Informational only — Sedgwick does not administer

Philadelphia has [amended](#) its paid sick leave law, the Promoting Healthy Families and Workplaces Act, to explicitly cover certain COVID-19 related situations, change documentation restrictions and clarify the rate of pay. The emergency rule expands the definition of “preventative care” to allow use of paid sick leave for business and school closures, official and self-quarantine, COVID-19 evaluation and for certain members of vulnerable and high-risk populations.

With respect to business and school closures, employees may use their paid sick leave if a family member remains at home due to closure of school, daycare, adult care facility or other care facility, or an employee remains at home because a governor, state health secretary, mayor or local health commissioner requires businesses, or a particular type of business, to remain closed.

With respect to quarantine, paid sick leave will be available if an employee or family member has to self-quarantine for two weeks because of COVID-19 symptoms (*e.g.*, fever, dry cough, shortness of breath), the individual returns to the U.S. after traveling to a Tier 2 or 3 country as defined by the federal Centers for Disease Control and Prevention (CDC) or the employee has contact with a COVID-19-diagnosed person or the employee or family member must self-quarantine because the governor, state health secretary, mayor or local health commissioner requires residents of certain Pennsylvania areas not to travel and such travel is necessary to report to work.

The emergency rule also changes the requirements for reasonable documentation for use of paid sick leave. Reasonable documentation may include an employee's signed statement affirming qualifying conditions apply to the employee and/or a family member, along with a public statement from a government official, local health department or CDC for quarantine. However, employers cannot require a note from a health professional in order to use consecutive paid sick leave due to COVID-19.

Puerto Rico

HB 2428 (amending Puerto Rico Minimum Salary, Vacation and Sick Leave Act)

Passed House; passed Senate March 16, 2020

If enacted, effective immediately

Following the outbreak of COVID-19 and the World Health Organization's declaration of a pandemic, the Puerto Rico House of Representatives approved House Bill 2428 on March 12, 2020 to establish a new unpaid emergency leave of 20 days for employees with a suspected or actual diagnosis of a pandemic illness.

If [HB 2428](#) is enacted, employees who are sick or suspected of being sick as a result of a pandemic illness during a state of emergency declared by the governor of Puerto Rico, or the Secretary of the Department of Health, must first use any accrued sick leave. Once accrued sick leave is exhausted, employees may use accrued vacation leave to receive pay during any absence. Should the employee need additional leave, HB 2428 provides an unpaid emergency leave of 20 working days. Under the bill, employers may allow employees to use the unpaid emergency leave before using accrued vacation leave.

Washington

HB 2614 (paid family and medical leave)

Enacted March 25, 2020

Effective June 23, 2020

Clarifying definitions

The [amended law](#) expands the definition of family members covered under the law to include not only a child, but also a child's spouse. Additionally, the amendments clarify that casual labor is not included in the definition of employment. Casual labor means work that is performed infrequently (12 or fewer times in a calendar quarter) and irregularly and, if performed for an employer, does not promote or advance the employer's customary trade or business.

Waiting period

The law provides benefits to qualified employees after a seven-day waiting period, unless an employee is taking leave for the birth or placement for adoption of a child. The amendments clarify that a waiting period is not required for leave taken because of any qualifying exigency permitted under the federal Family and Medical Leave Act for family members as defined under state law. The amendments also state that eligible employees may satisfy the waiting period requirement while simultaneously receiving paid time off for any part of the waiting period. The amended law also removes the provision that deems successive periods of leave caused by the same or related injury or sickness to be a single period of leave if they are separated by less than four months.

Supplemental benefits

The law permits employers to provide supplemental benefit payments to an employee on leave in addition to the leave benefits the employee receives from the state. The amended law defines supplemental benefit payments as payments made by an employer to an employee as salary continuation or as paid time off. The amendments also clarify that the state will not treat these supplemental benefit payments as remuneration and will not prorate or reduce an employee's weekly benefit amount because of them.

Washington: Seattle

Seattle Council Bill 119754 (Paid Sick Leave Ordinance)

Enacted March 18, 2020

Effective March 18, 2020

Informational only — Sedgwick does not administer

Seattle has [amended its ordinance](#) regarding sick and safe leave. The ordinance provides sick and safe leave to employees that work in Seattle. The amended ordinance specifies that when determining eligibility for paid safe time, the term “family member” means an employee’s child, parent, spouse, registered domestic partner, grandparent, grandchild or sibling. It also specifies that under the law, a parent means a biological, adoptive, de facto, foster or stepparent; or legal guardian of an employee, the employee's spouse or registered domestic partner; or a person who stood in loco parentis when the employee was a minor child.

The amended ordinance allows employees to use paid sick leave if a family member's school or place of care closes. It also permits employees to use paid sick leave if the employee works for a Tier 3 employer, meaning an employer with 250 or more full-time-equivalent employees located anywhere, and the employee's place of business reduces operations or closes for any health- or safety-related reason.

Under the amended ordinance, for use of the leave described above of more than three consecutive days, an employer may require reasonable verification that leave was taken for a covered purpose. Employers may require that employees provide verification of a notice of reduced operations or closure, which the employee may satisfy by providing the notice, or a copy of the notice, in whatever form the employee received it.

United States

HR 6201 (Families First Coronavirus Response Act)

Enacted March 18, 2020

Effective April 2, 2020

This [act](#) includes requirements for specified employers to provide emergency paid sick leave, as well as emergency paid leave under the Family and Medical Leave Act (FMLA). The Act also creates new requirements on health insurance plans to cover certain expenses related to COVID-19.

[Emergency Family and Medical Leave Act](#)

The new law provides that private-sector employers with fewer than 500 employees, and covered public-sector employers, must provide up to 12 weeks of job-protected FMLA leave for “a qualifying need related to a public health emergency” to employees who have been on the payroll for 30 calendar days. This “qualifying need” is limited to circumstances where an employee is unable to work (or telework) due to a need to care for a minor child if the child’s school or place of childcare has been closed or is unavailable due to a public health emergency.

[Emergency Paid Sick Leave: Informational only — Sedgwick does not administer](#)

The new law requires private employers with fewer than 500 employees, and covered public employers, to provide paid sick time to an employee who is unable to work (or telework) for reasons related to COVID-19. Unlike the emergency FMLA requirements, an employee is immediately eligible for this leave (there is no 30-day-on-payroll requirement).

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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