

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | September 2022

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California

AB 152 (COVID-19 supplemental paid sick leave)

Enacted Sep. 29, 2022

Effective Sep. 29, 2022

Informational only – Sedgwick does not administer

California has enacted a law to extend the effective period of the state's COVID-19 supplemental paid sick leave requirement. Accordingly, employers with 26 or more employees must continue to provide COVID-19 supplemental paid sick leave ("CA 2022 SPSL") through Dec. 31, 2022. [The new law](#) also amends standards for when employees use CA 2022 SPSL because they test positive for COVID-19 and creates the California Small Business and Nonprofit COVID-19 Supplemental Paid Sick Leave Relief Grant Program.

Originally, California law required covered employers to provide CA 2022 SPSL through Sept. 30, 2022. Under this bill, the potentially up to 80 hours of CA 2022 SPSL that employees could have used between Jan. 1, 2022, and the original expiration date must continue to be available through the remainder of 2022. If an employee begins a covered absence at the end of 2022 that continues, uninterrupted, into 2023, these hours may be used beyond 2022.

Under state law, if an employee uses CA 2022 SPSL from their COVID-positive bank — if an employer uses a two-bank setup or generally if the employer uses a single-bank setup — an employer can require the employee to take a diagnostic test on or after the fifth day after the initial test and provide documentation of those results. As amended, the law additionally provides that if the diagnostic test is positive, the employer may also require the employee to submit to a second diagnostic test within no less than 24 hours.

Moreover, state law says employers do not need to provide CA 2022 SPSL if an employee refuses an employer's request to provide documentation of the test results. As amended, employers can also deny CA 2022 SPSL to an employee who refuses to submit to a diagnostic test.

Finally, under this amendment, certain private employers and registered non-profits that (1) began operating before June 1, 2021, (2) are currently active and operating, (3) with a physical presence in California, and (4) 26 to 49 employees may be eligible for a grant of up to \$50,000 to cover the actual costs incurred for providing CA 2022 SPSL. Any grant they receive will not count as "gross income" for state tax purposes.

California

AB 1041 (leave for designated persons)

Enacted Sep. 29, 2022

Effective Jan. 1, 2023

California law provides employees with unpaid and paid leave for a variety of family care and/or medical needs, depending on the circumstances. The California Family Rights Act (CFRA) requires an employer to provide covered employees with unpaid leave for family care and medical leave. Under CFRA, the leave may be used to care for their child, parent, grandparent, grandchild, sibling, spouse or domestic partner. California law also requires employers to provide paid sick leave to care for themselves or their child, parent, spouse, registered domestic partner, grandparent, grandchild or sibling.

Under [the amended law](#), employees may also use CFRA to care for a designated person. The CFRA amendments define a designated person as an individual related by blood or whose association with the employee is equivalent to a family relationship. This person may be named by the employee when they request leave.

An employer may, but is not required to, limit the employee to one designated person per one 12-month period. Of note, many states are adding this or a similar relationship to their job protected and paid leave offerings without limiting to one individual. These states include the current Washington Paid Family and Medical Leave, Connecticut Paid Leave and the upcoming Paid Leave Oregon and Colorado FAMLI.

California

AB 1949 (bereavement leave)

Enacted Sep. 29, 2022

Effective Jan. 1, 2023

California has amended the California Family Rights Act (CFRA) to allow employees to use CFRA leave for bereavement time upon the death of a family member. The CFRA, [as amended](#), permits covered employees to take up to five days of bereavement leave within three months of the death of a family member. The five days are not required to be consecutive. The bereavement leave must be taken pursuant to the employer's existing bereavement leave policy. In the absence of a policy, the bereavement leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

The five days of leave is separate from the 12 weeks of leave provided under CFRA. This means the employee will receive up to five days of bereavement leave even if they have already used 12 weeks of CFRA and any time taken for bereavement will not reduce their 12-week entitlement.

The employer may request documentation of the death of the family member from the employee within 30 days of the first day of leave. Examples of acceptable documentation include death certificates, published obituaries or written verifications of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or governmental agency. The employer must maintain the confidentiality of any employee requesting leave under this law. Any documentation provided to the employer for purposes of utilizing bereavement leave must be maintained as confidential. It can only be disclosed to internal personnel or counsel, as necessary, or as required by law.

The amended CFRA prohibits employers from interfering with, restraining or denying the exercise of any right provided under this law. Moreover, employers cannot refuse to hire, discharge, demote, fine, suspend, expel or discriminate against an individual because an individual exercises the right to bereavement leave or gives information or testimony in relation to the individual's or another person's bereavement leave in an inquiry or proceeding related to rights under this law.

This law does not apply to an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required by this law. To be considered valid, the agreement must also provide for the wages, hours of work and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked, where applicable, and a regular hourly rate of pay for those employees of not less than 30% above the state minimum wage.

California

SB 951 (family temporary disability insurance)

Enacted Sep. 30, 2022

Effective Jan. 1, 2023

California has amended its unemployment insurance law to increase the amount of benefits provided to qualified individuals under the Family Temporary Disability Insurance (FTDI) program. Employees can qualify for up to eight weeks of paid family leave benefits for certain purposes under the FTDI program. [The amended law](#) increases the benefits available: (1) for an individual with a base period wage of less than \$722.50, the benefit is \$50 per week; (2) for an individual with a base period wage of more than 70% of the state average quarterly wage, the benefit is the greater of 70% of the wages paid during the quarter, divided by 13, as long as it does not exceed the state's maximum workers' compensation weekly benefit, or 63% of the state's average weekly wage; and (3) for an individual with a base period wage of more than \$722.50 but less than 70% of the state average quarterly wage, the benefit is 90% of the individual's wages, divided by 13, as long as it does not exceed the state's maximum workers' compensation weekly benefit.

California

SB 1044 (anti-retaliation during an emergency condition)

Enacted Sep. 29, 2022

Effective Jan. 1, 2023

Informational only – Sedgwick does not administer

California has enacted a new law establishing protections for employees during a state of emergency. [Under the new law](#), an employer is prohibited from taking or threatening to take adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within an affected area because the employee has a reasonable belief that the workplace or worksite is unsafe. There are multiple exceptions to this provision as outlined below. An employer is also prohibited from preventing any employee from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety during the state of emergency. Please note this law does not provide the right to a leave of absence.

"Emergency condition" means the existence of either of the following but does not include a health pandemic: (1) Conditions of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act; or (2) An order to evacuate a workplace, a worksite, a worker's home or the school of a worker's child due to natural disaster or a criminal act.

"A reasonable belief that the workplace or worksite is unsafe" means that a reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enters or remains on the premises. The existence of any health and safety regulations specific to the emergency condition and an employer's compliance or noncompliance with those regulations will be a relevant factor if this information is known to the employee at the time of the emergency condition, or the employee received training on the health and safety regulations mandated by law specific to the emergency condition. When feasible, an employee must notify their employer of the emergency condition requiring the employee to leave or refuse to report to the workplace or worksite prior to leaving or refusing to report. When notice described is not feasible, the employee must notify the employer as soon as possible.

For the retaliation provision above, the new law does not apply to employees of a licensed residential care facility or of a depository institution, along with certain categories of individuals, including those required by law to render aid, remain on the premises, or participate in emergency response or evacuation such as a first responder, a disaster service worker, a healthcare facility worker who provides direct patient care or support services, military employees, employees performing essential work on relating to nuclear energy, or employees of public works called upon to aid in emergency response.

Colorado

Final Rule 7 CCR 1107-3 (family and medical leave insurance)

Enacted Aug. 26, 2022

Effective Oct. 15, 2022

Colorado has issued [final regulations](#) for some topics in their paid family and medical leave insurance program (“FAMLI”). The regulations under 7 CCR 1107-3 cover benefits and employer participation requirements (“Benefits Rules”), which provide the most concrete guidance regarding the benefits to which employees will be entitled under the FAMLI program. The Benefits Rules clarify which employees are eligible for FAMLI benefits.

Under the FAMLI statute, all Colorado individuals are entitled to FAMLI benefits once they earn \$2,500 during a “base period,” which generally means they have earned at least \$2,500 in wages within Colorado at any point over the preceding year. The Benefits Rules clarify that this \$2,500 threshold can be met “from any combination of employers.” In other words, the \$2,500 threshold does not mean that the employee must earn \$2,500 in compensation from a single employer to be eligible for benefits.

Under the FAMLI program, an employee is entitled to benefits—up to 12 weeks of paid leave for qualifying reasons and an extra four weeks for pregnancy or childbirth-related reasons — on a 12-month period rolling backwards, beginning on the first day in which an employee begins taking FAMLI benefits. Employers may only use the 12-month period rolling backwards in evaluating benefits eligibility under the FAMLI program.

Additionally, the process for how employees may apply for benefits is more clearly spelled out in the Benefits Rules. Employees will apply for benefits directly to the FAMLI Division unless an employer has been approved to use a private plan to meet its FAMLI obligations. Once an application for FAMLI benefits is received by the Division, it will notify the claimant’s employer of the application within five business days of the submission. Separately, however, the Benefits Rules make clear that employers can require employees to give notice to their employer directly of the need for FAMLI leave, separate and apart from the Division providing notice of the benefits application.

Once an application for FAMLI benefits is fully and properly submitted by an employee, the Division will adjudicate the claim for benefits within two weeks. The Division will contemporaneously notify the employee and employer of the outcome of the benefits claim. The Benefits Rules also provide separate and distinct mechanisms by which employers and employees may each grieve or appeal a benefits determination.

The Benefits Rules confirm that employers may require a covered individual to submit a fitness-for-duty certification upon their return to work for a serious health condition, similar to the process under the federal FMLA.

United States

S. 2293 (Civilian Reservist Emergency Workforce Act)

Enacted Dec. 8, 2021

Effective Sep. 29, 2022

The [Civilian Reservist Emergency Workforce \(CREW\) Act](#) was signed into law on Sept. 29, 2022. It extends employment and re-employment rights under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) to include FEMA reservists when they are deployed to disasters and emergencies on behalf of FEMA. The full protections afforded by the USERRA to uniformed service personnel are now available to FEMA Reservists, even if they are not able to give notice to their employers before deployment.

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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