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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | December 2024

TABLE OF CONTENTS

Colorado

7 CCR 1107-4 (final rule re coordination of FAMLI benefits and reimbursement of advance payments)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

The Colorado Division of Family and Medical Leave Insurance has amended its rules regarding requirements for the coordination of benefits among the Paid Family and Medical Leave Insurance Act (FAMLI Act), paid leave benefit plans, workers' compensation benefits and an employer-provided separate bank of paid family and medical leave.

Under the rules, when an employee's serious health condition is related to a workplace injury, an employee is not allowed to apply for FAMLI benefits unless the individual was denied workers' compensation benefits. The amended rules clarify the types of documents an employee can submit to the state to demonstrate that they are ineligible or are no longer eligible for workers' compensation benefits. The rules also make it clear that if an employee receives workers' compensation benefits while receiving FAMLI benefits, the state can recover the overpayment of FAMLI benefits.

An employer may permit an employee receiving FAMLI benefits to use employer-provided paid leave benefits so that the employee receives their full wage while on leave. The amended rules clarify that such an agreement must be in writing and that one agreement may cover any future arrangements as long as it remains revocable by the employee. When an employee is receiving both FAMLI and employer-provided benefits, the rules also permit employers to recoup any amounts they pay to an employee in excess of their average weekly wage. If there is an overpayment (the employee receives more than their average weekly wage from the combined FAMLI and employer-provided paid leave benefits), the employer must put the amount of the overpayment back into the employee's bank of employer-provided paid leave if the employee requests it or the employer decides to recoup the overpayment.

The amended rules contain various penalties directed toward employers for violations of the FAMLI Act: (1) $50 per employee per day if the employer violates the rules regarding coordination of FAMLI and employer-provided paid leave benefits, (2) $500 per employee per day if the employer violates the rules regarding continuation of employer-provided benefits during FAMLI leave and (3) $500 per employee per day if the employer violates the rules regarding coordination of FAMLI and disability benefits.

Colorado

7 CCR 1107-9 (final rule re FAMLI appeals)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

The Colorado Division of Family and Medical Leave Insurance (Division) has issued a final administrative rule regarding the Paid Family and Medical Leave Insurance Act (FAMLI Act) to clarify the procedures and deadlines for appeals from a determination that a party has violated the FAMLI Act. Under the FAMLI Act, covered individuals may take leave for a variety of medical and family-related reasons and receive wage replacement benefits while doing so. If the Division issues a determination or redetermination, an employer or employee may appeal it.

The final rule adds or amends several definitions under the regulation. Under the final rule, “appeal” means a written statement challenging any part of a determination and submitted to the Appeals Unit for review by a FAMLI hearing officer after internal review has occurred if required by statute or state regulation.

"Determination” means an administrative decision or a private plan decision that is designated as a “determination” or “reconsideration,” or is a decision that (1) explicitly or effectively denies all or part of a FAMLI claim, (2) imposes fines, fees or penalties, (3) identifies an overpayment or requires repayment of benefits, (4) awards damages or other remedies, (5) denies or grants all or part of the relief requested in an accepted grievance, investigation or complaint or (6) withdraws the approval of a private plan or finds that a private plan committed a violation of the FAMLI Act or its implementing regulations. “Determination” does not include a Division notice that only informs a claimant or applicant that an application is incomplete or requests additional information. Note that the final rule removes the provisions regarding determinations from this section. The final rule regarding determinations is now discussed in Title 7, Section 1107-8.10.

“Appellant” means the party making the request for a FAMLI hearing officer to review a determination or reconsideration. “Claimant” means a person who has filed a FAMLI Claim, regardless of whether the person is a covered individual. If that person has a designated representative, the designated representative must abide by the same deadlines and obligations as the claimant.

Any party adversely affected by a determination may appeal it to the Appeals Unit, which is the work unit presently within the Policy and Appeals Branch of the FAMLI Division authorized to resolve appeals of determinations and reconsiderations. A party must request an internal review and reconsideration before filing an appeal when required by statute or state regulation. The Division does not have jurisdiction over any matter that has been adjudicated or is currently being adjudicated by the court system or by another government administrative body. If a party has filed a civil action in a court pertaining to the same subject matter as a determination previously issued by the Division, the Appeals Unit will dismiss the appeal.

For an appeal to be valid, it must (1) be timely filed with the Division, (2) include a copy of the determination or reconsideration at issue or sufficiently identify the determination or reconsideration appealed and the date of issuance and (3) be signed or electronically verified by the party or the party's authorized representative.

Prior to the final rule, for an appeal to be timely filed, it must have been filed within 45 days of the date the Division issued the determination or redetermination. The final rule increases the filing time to 49 days from the date the Division issued the determination or reconsideration to be timely filed. Unless otherwise specified, deadlines may be extended up to a maximum of 49 days for good cause. If a deadline falls on a weekend or state holiday, the deadline will become the next business day.

Upon receiving an appeal, the Appeals Unit will determine whether the appeal meets the requirements to be procedurally valid. Prior to the final rule, the Appeals Unit would send a notice of procedural deficiency if an appeal was not procedurally valid. Under the final rule, the Appeals Unit will now also send a notice of procedural deficiency if the appeal was not timely filed. In addition, prior to the final rule, the appellant had five days to respond. However, under the final rule, the appellant has seven days to respond to an order to show cause.

Prior to the final rule, a party or the hearing officer was allowed to initiate a prehearing conference to address issues on appeal, questions related to party status, the evidence to be presented and any other relevant matters that may simplify the proceedings. The final rule expands on this and permits the prehearing conference to address requests for language interpretation or other reasonable accommodations. The final rule requires genuine disputes of any material fact to be resolved at an evidentiary hearing or by stipulation of all the parties of record.

Within seven days after the parties have been notified that an appeal has been accepted and assigned to a hearing officer for review, the Division or private plan will file with the Appeals Unit an initial disclosure of information or documents supporting the determination at issue. “Documents” means any designated documents or electronically stored information. Confidential documents and information will not lose any protections from disclosure because an appeal was filed. The hearing officer may take certain actions deemed necessary to ensure confidentiality. Only interested parties to an appeal have the right to access documents submitted for that appeal. Parties are responsible for providing relevant documents to their own witnesses.

The hearing officer will not communicate with a party unless all parties are present or simultaneously receive the hearing officer’s verbal or written communication. If such a communication occurs, the hearing officer will immediately notify all parties.

Parties of record are entitled to at least 14 days’ advance notice of a hearing and advance notice of the issues that may be considered at an evidentiary hearing. The final rule expands on this and specifies that parties of record are entitled to at least 14 days’ notice of any hearing where parties will offer witness testimony or documentary evidence (an "evidentiary hearing"). The final rule provides that when setting an evidentiary hearing date, the hearing officer must ensure that the parties of record have had sufficient opportunity to exchange exhibits and prepare for the hearing. The hearing officer can set an evidentiary hearing to occur with less than 14 days’ notice with mutual agreement of all the parties.

A hearing officer, on their own initiative or the motion of a party, may reconsider a decision within 14 days of issuance when it appears that an error has been made or that there will be an injustice as a result of the decision.

The appellant may withdraw their appeal at any time. If the appellant withdraws their appeal, they may not appeal the determination again except for certain circumstances in which the appellant must prove that denying the right to appeal will result in an obvious injustice. In the event an appellant withdraws their appeal during the hearing, the hearing officer must inform the appellant that withdrawal of their appeal will make the determination final.

Colorado

7 CCR 1107-6 (final rule re FAMLI benefit overpayment or underpayment)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

Colorado's Division of Family and Medical Leave Insurance (Division) has amended the administrative rules implementing the Paid Family and Medical Insurance Leave Act (FAMLI Act) in order to elaborate on the penalties for violations of benefit overpayment.

The rules state that claimants who receive family and medical leave insurance benefits they are not entitled to receive will be liable for repayment of the amount overpaid. A claimant may appeal a determination of benefit overpayment. In addition, the Division may waive any amount of benefit overpayment where the recovery would go against equity and good conscience unless the overpayment resulted from the individual's willful misrepresentation or willful failure to disclose a material fact. The amendment elaborates that a request to waive an overpayment is not considered an appeal, and the waiver request must be submitted through the benefits system. The Division's determination of equity and good conscience will only be overturned upon finding that the Division abused its discretion.

With respect to private plans, the rules require private plan administrators to notify a claimant of any determination of benefit overpayment by sending a determination letter to the claimant's correct address. For determinations of benefit overpayments totaling $25 or more, the private plan administrator must additionally notify the Division by sending copies of the determination letters to the Division. The amendment adds that if the Division determines that a private plan administrator did not notify the Division of an overpayment in accordance with these rules, the Division may assess a fine of up to $50.00 upon the private plan administrator.

Colorado

7 CCR 1107-3 (final rule re FAMLI benefits and employer participation requirements)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

Colorado's Division of Family and Medical Leave Insurance (Division) has amended the administrative rules implementing the Paid Family and Medical Insurance Leave Act (FAMLI Act).

Where previously an individual's regular work schedule was defined as the average number of weekly hours typically worked at any job, the amended rules define "regular work schedule" as the number of weekly hours an individual works at any job plus the number of weekly hours they would have worked but for any paid holidays and other paid leave, including paid family and medical leave. If the number of weekly hours cannot be determined, the regular work schedule is determined by the average number of weekly hours worked over the four weeks before the benefit start date. This average must be calculated for each job individually and then aggregated to determine the aggregate regular work schedule for each week.

The rules require employers, including those who meet their FAMLI obligations through an approved private plan, to register with the Division via "MyFAMLI+Employer." The amended rules prohibit entities that register multiple accounts from registering unnecessary accounts, including accounts for fake or illegitimate employers or an employer with no employees whose work is localized to Colorado. Entities that register multiple accounts on behalf of multiple employers must submit a document to the Division that describes the methods used to determine that a registrant is a legitimate employer that needs to register an account. This document is due to the Division upon the earlier of March 31, 2025, or upon the entity's first registration of multiple accounts, and then annually thereafter on Nov. 1.

The amended rules also provide for the following fines: (A) up to $500 for each of the following violations: (1) failure to register as required via MyFAMLI+Employer, (2) registration of accounts the Division determines are unnecessary or (3) failure to submit the verification documents for registration of multiple employers, and (B) up to $250 for each of the following violations: (1) failure to notify the Division where an employer ceases business operations or ceases to employ workers in Colorado or (2) failure to re-register if the employer later resumes business operation or again employs workers in Colorado.

Following a separation from employment, if the employee receives unemployment benefits, an award of continuous leave ends. The amended rules clarify that the award of continuous leave also ends if the Division determines that the individual separated from employment is ineligible for benefits under the FAMLI Act and its implementing regulations. Where the employee is awarded intermittent leave or a reduced leave schedule and becomes unemployed or changes employers, the awarded leave also terminates. The amended rules add the end of a temporary work assignment to the meaning of becoming unemployed.

Further, the amended rules specify that an individual must be employed at the outset of their leave. Thus, if the individual experiences a separation of employment for any reason, including the end of seasonal work or between temporary work placements, the claim for benefits will be denied. The claimant is responsible for notifying the Division of a separation from employment prior to the benefit start date.

The amended rules also clarify how a holiday that occurs within a period of leave will be counted for purposes of determining the amount of leave an employee uses. If the employee is awarded continuous leave, any holiday occurring during the leave will be counted as FAMLI leave and the employee will receive wage replacement benefits for that time. If the employee is using intermittent leave or a reduced leave schedule, the holiday will not count against the employee's FAMLI entitlement.

The amended rules also specify that (1) an additional four weeks of leave per benefit year for leave related to pregnancy or childbirth complications cannot exceed four weeks per pregnancy, (2) a covered individual is not eligible for benefits for any period they are not localized in Colorado and (3) paid family and medical leave includes travel time reasonably necessary to satisfy a qualifying leave reason.

For the purposes of awarding FAMLI benefits, the state will calculate the weekly wage based on the employee's wages that were subject to the program's premiums. The amended rules exclude from this calculation any wages from a current job only if the covered individual is not taking any paid family and medical leave from that job as of the benefit start date.

In addition, the amended rules clarify a claimant is not eligible for paid FAMLI benefits for continuous leave from an employer during any period for which they have already been awarded benefits on a separate claim from that same employer. Finally, FAMLI leave approved by the Division is considered protected leave taken as part of the individual's maximum annual leave allotment, regardless of the benefit amount to which the individual is entitled.

The rules require medical records and documents relating to employees or their family members created for purposes of the FAMLI to be maintained as confidential medical records in separate files from the usual personnel files. The amended rules add a fine of up to $500 per violation for an employer who fails to maintain such records confidentially and separately from usual personnel files.

Under the amended rules, failure to post or deliver the required program notice to employees can result in a fine of up to $500 per violation. Each day that the employer fails to post or deliver the program notice is a separate violation.

The FAMLI Act requires employees needing leave to provide 30 days' notice to the employer if the need for leave is foreseeable and as soon as practicable if not foreseeable. The amended rules require the employee to also notify the employer whether the leave is continuous, intermittent and/or a reduced leave schedule. The notice to the employer does not need to use these exact words but must reasonably notify the employer of the type of leave the employee is taking, along with reasonable details about their work and leave schedule. In addition, the employee must take reasonable steps to notify the employer in advance of any change in their planned schedule, which include following the employers' policies on requests or changes of leave to the extent they are not contrary to the rights and protections of the FAMLI Act.

Previously, the rules allowed only for employer grievances relating to the Division's initial decision to award benefits. The amended rules rename this process as "benefit reconsideration" and allow both the employer and

the claimant to request reconsideration if they have a good faith belief, supported by evidence, that the Division's initial decision was not authorized by the FAMLI Act and its implementing regulations. The initial determination includes a denial of a claim for benefits because the reported wages do not establish that the individual has met the $2,500 threshold for benefits.

These requests must be submitted within 49 days of the initial determination, with an additional 49 days possible for good cause, and are required before the Division will accept an appeal of the determination. Any determination other than the initial benefit determination can only be challenged by filing an appeal. Finally, a claimant must file an appeal to initiate the Division's review of a private plan's initial benefits determination.

Colorado

7 CCR 1107-8 (final rule re FAMLI investigations, determinations and appeals)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

The Colorado Division of Family and Medical Leave Insurance (Division) has amended the administrative rules implementing the Paid Family and Medical Insurance Leave Act (FAMLI Act). The amendment makes several changes to the rule's definitions and clarifications. "Complainants" are now referred to as the charging party. Definitions for "motivating factor" and "position statement" are added. A motivating factor means a standard that requires the charging party to show that the protected activity under the FAMLI Act and regulations was a motivating factor in an employer's adverse action. A position statement is a statement by the respondent that addresses all the allegations in a charging party's complaint, provides relevant evidence to support the respondent's position and asserts any applicable defenses.

The amended rule clarifies that nothing in the FAMLI Act or its implementing regulations limits the Division's authority to conduct pre-investigation fact -finding, facilitate settlements or make referrals to other criminal or civil enforcement agencies. The amended rule also requires respondents to comply with the federal "Preservation of Records Made or Kept" rule, requiring that the respondent "must preserve all personnel records relevant to the charge or action until final disposition of the charge or the action" and provides what relevant personnel records include.

The amended rule also details the procedure the Division must follow during an investigation. Whenever the Division initiates an investigation, it must send a notice of investigation to the subject. The subject of an investigation may designate an authorized representative to represent it. The subject of an investigation or the representative must submit a complete response to a notice of investigation within 14 calendar days unless extended. If the Division initiates an investigation, then it will end the investigation by issuing either a determination or a notice of investigation termination.

For investigations initiated by a job protection and retaliation complaint form, the subject will be sent a notice of complaint. A respondent must provide a position statement responding to the allegations contained within the charging party's complaint within 30 days unless an extension is granted for good cause. Complaints may be settled at any time during the investigation. Any settlement reached must be in writing and signed by both parties and must identify the claims resolved. Upon conclusion of an investigation, the Division will issue and deliver to the parties a written determination with appeal rights or a notice of dismissal.

The amended rules conclude by clarifying what constitutes a determination. Determinations must include some explanation of the facts forming the basis for the determination, citation to relevant provisions of the law, date the determination was issued and a notice of appeal rights. No party can appeal a Division decision to a hearing officer unless the decision constitutes a determination. Determinations are deemed final, and redetermination and appeal deadlines are calculated from the Division's date of issuance.

Colorado

7 CCR 1107-7 (final rule re FAMLI job protections, anti-retaliation and anti-interference)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

The Colorado Division of Family and Medical Leave Insurance (Division) has amended its administrative rules implementing the Paid Family and Medical Insurance Leave Act (FAMLI Act). Under the FAMLI Act, covered individuals may take leave for a variety of medical and family-related reasons and receive wage replacement benefits while doing so. The amendment clarifies what constitutes "interference," requirements for employment agencies and fines under the FAMLI Act.

The amended rules modify examples of interference previously provided in the rules. Under the final rule, "interference" now also includes requiring an individual to perform work during a period of paid family and medical leave. Previously, the administrative rules provided that one example of "interference" included failing to cooperate with the Division during the processing of a complaint arising under the FAMLI Act. Now, the amended rules provide that "interference" includes failing to cooperate with the Division's compliance activities that implicate an individual's rights under the FAMLI Act and its implementing regulations.

In addition, the administrative rules provided that another example of "interference" was taking any effort to use a person's immigration status to negatively impact their rights, responsibilities or proceedings of any person or entity under the FAMLI Act. These efforts were considered to constitute per se interference and/or extortion. However, the amended rules remove the per se interference and extortion provision.

Under the administrative rules, responsibilities are outlined for employment agencies and their clients, also known as "client employers." The final rule clarifies responsibilities for employment agencies under the FAMLI Act. Employment agencies must meet all of their obligations under the FAMLI Act even when their client employers are not in compliance or do not provide support to the employment agency in meeting these responsibilities. Further, when calculating the 180 days of employment pursuant to eligibility requirements under the FAMLI Act, an employment agency cannot include in the calculation any days in which a covered individual was awaiting a work assignment in a staffing pool.

The amended rules provide that any awards for damages and equitable relief under the FAMLI Act will accrue interest from the date of the award, pursuant to Colorado's Consumer Credit Code.

Colorado

7 CCR 1107-1 (final rule re FAMLI premiums)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

The Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance (Division) has amended the administrative rules implementing the Paid Family and Medical Insurance Leave Act (FAMLI Act). Amendments to the rule pertaining to FAMLI premiums are discussed below. Additional amendments applicable to persons electing coverage as self-employed individuals and employees of local governments that have declined participation in FAMLI are not included here.

The amendment makes several changes to the rule's definitions and clarifications, largely pertaining to self-employed individuals. Relevant to employers, the amendment clarifies that for the purposes of the FAMLI Act and its implementing regulations, entities that are employers and have different federal Employer Identification Numbers are different employers with separate rights and obligations. However, this clarification does not impact the ability of private plan administrators to report aggregate data as allowed elsewhere in the regulations.

Under the rule, individuals may elect coverage for an initial period of three years by creating a My FAMLI+ Employer account and using that account to submit their notice of election of coverage. Coverage becomes effective on (1) the date the notice of election is filed or (2) if the individual chooses, the first day of one of the five most recent closed calendar quarters. This amendment eliminates the latter option, meaning that elective coverage now becomes effective on the date the notice of election is filed in all cases.

The rule requires employers to submit their premiums to the Division at least quarterly and due the last day of the month immediately following the end of the quarter in which the premiums accrued. This amendment adds that if an individual electing coverage owes unpaid premiums, fines, penalties or interest, the Division may recoup that amount via benefits offset.

The rule provides that employers may only deduct the amount necessary to pay the employee's share of the premium. This amendment adds that if an employer deducts more than the amount authorized by the FAMLI Act and its implementing regulations to pay for the employee, the Division may assess a fine of up to $25 per employee per instance. These excessive deductions also violate Colorado's wage payment statute pertaining to permitted payroll deductions. If the Division issues a written determination concluding that the employer deducted more than the amount authorized, this determination may constitute a "written demand" pursuant to Colorado wage payment law.

The consequences of an employer deducting from employee wages less than the amount necessary to make the premium payment remain unchanged with this amendment (i.e., the Division will deem the employer to have elected to pay the additional portion of the employee's share and the employer may not deduct the difference from the employee's pay in a future paycheck). Similarly, both before and after the rule's amendment, employers may not deduct the premium amount when there are insufficient employee wages to cover the premium for that pay period.

Finally, the rule provides that if the Division issues a reimbursement of premiums to an employer, the employer must return to its employees any portion of the reimbursed amount that it collected from the employees. The amendment adds that if the employer fails to return any portion collected from employees within 60 days of a reimbursement, the Division may assess a fine against the employer of up to $50 per employee owed a reimbursement per day that the employer fails to do so.

The FAMLI Act 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 ten employees. These smaller employers do not have to pay the employer's share of the premium, although they still must withhold and pay the employees' contributions into the fund.

The rule provides that the employer's size is calculated at the time the employer registers with the program and then annually during the first quarter of the year. This amendment adds that it is the employer's responsibility to notify the Division of its size upon registration and annually thereafter, and if the employer fails to do so, the Division may presume that the employer has 10 or more employees. The Division also may, on its own initiative, determine an employer's size based on a preponderance of evidence. If the Division makes an employer-size determination and the employer wants to challenge that determination, it must first request a reconsideration of the determination within 49 days of the date of the determination. The deadline to request a reconsideration may be extended by up to a maximum of 49 days for good cause. The employer may appeal the outcome of the reconsideration. The Division will not adjust an employer size based on fluctuations throughout the year.

The rule's provisions on when an employee counts toward the total number of employees remain unchanged.

Colorado

7 CCR 1107-5 (final rule re FAMLI private plan requirements)

Adopted: Dec. 10, 2024

Effective: Jan. 1, 2025

The Colorado Department of Labor's Division of Family and Medical Leave Insurance (Division) has amended its regulations regarding the Family and Medical Leave Insurance Act (FAMLI Act)'s requirements for private plans. The final rules amend various provisions related to private plan application, administration and termination.

Existing regulations state that for an employee to be covered under FAMLI, they must meet a minimum earnings requirement but that these earnings are not "per-employer." The final rule clarifies that an employee with multiple employers must submit verified wages from other employers to the administrator of their approved private plan. If the employee fails to provide these wages, the administrator may determine the employee's FAMLI benefit amounts based on their own wages for the employee. However, the rules require employees to be able to appeal this decision and provide verified wage information.

The final rules also clarify that an insurer of a private plan cannot allow an employer's coverage to become effective earlier than 30 days before the employer has received private plan approval from the Division.

Existing regulations require employers to notify new employees of specific information relating to their approved private plan. Under the final rules, this notification requirement also applies to existing employees who are transferred to Colorado. Additionally, existing regulations require private plans to provide employees with all documents and records relevant to their benefits upon request. The final rules clarify that these documents must be provided within seven days of the employee's request.

Prior to the final rules, the Division calculated an annual maintenance fee for each private plan employer based on the costs arising from the administration of their private plan. Under the amended rules, the Division will calculate a flat fee per private plan employer for all routine costs annually and will assess each private plan employer with an individualized fee for other non-routine costs. Employers will be provided an invoice of their fees by Nov. 30 each year, and the fees are due by Dec. 31. However, employers who are members of a PEO do not have to pay a separate maintenance fee from their PEO.

Existing regulations require an employer to notify the Division of any material change to their private plan at least 60 days in advance. The final rules clarify that if an employer is transitioning from one approved private plan to another insurer's approved private plan, the employer only must provide written notice 35 days in advance.

Finally, the new rules state that a private plan cannot require a claimant to go through any internal review, reconsideration or appeal before appealing a private plan determination to the Division.

Although the regulations require private plan applicants to pay an application fee, the final rules clarify that an employer in a PEO is not subject to the application fee if they are covered by their PEO's private plan and the PEO has already paid an application fee. Additionally, the final rules clarify that applications for private plans must use

the self-insurance private plan template published by the Division and available on its website. The final rules also include new requirements for private plan application bond sureties, as well as policies for termination and credits of bond amounts. Finally, the final rules clarify that if a private plan administrator is found to be violating the FAMLI Act, its private plan approval may be withdrawn, and its approval of future plan applications may be denied.

The final rules also add the following penalties for private plan employers that commit any of the following violations of the regulations: (1) failing to provide documents to employees within seven days: $250 per violation, (2) requiring employees to use more onerous forms to access benefits than those provided by the Division: $500 per violation, (3) failing to provide notice of FAMLI benefits to employees: $500 per violation, (4) failing to notify the Division of a material change to its private plan: $250 per violation, (5) failing to notify employees of a private plan's termination: $100 per employee per day, (6) failing to notify employees of a material change to a private plan: $100 per employee per day and (7) failing to continue a private plan's coverage through its scheduled withdrawal date: the lesser of the employee's daily premium under the plan or $500.

Maine

12-702 CMR Ch. X (final rule re paid family and medical leave program)

Adopted: Dec. 4, 2024

Effective: Jan. 1, 2025

In 2023, Maine enacted a paid family and medical leave (PFML) law. The Maine Department of Labor has adopted rules to implement and clarify the 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 Jan. 1, 2026. The new rules provide definitions or expanded definitions of relevant terms in the PFML law, as well as additional details about the administration of the PFML program. Note that the rules provide additional requirements for private plans that are not summarized here.

The PFML law covers all public and private full- and part-time employees who have earned a threshold amount. The rules clarify that the following workers are not covered under the law: (1) certain railroad employees, (2) incarcerated workers, (3) certain student workers in a federal work-study program, (4) certain volunteers and (5) federal government employees.

Employees may take leave on a continuous, intermittent or reduced-schedule basis. The rules provide that intermittent or reduced-schedule leave must be taken in increments of at least one day unless the employer agrees in writing to increments as small as one hour. The rules provide additional information about how the state will administer benefits to employees on an intermittent or reduced-schedule basis.

The PFML provides up to 12 weeks of paid leave for an employee to (1) bond with their child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care, (2) care for a family member with a serious health condition, (3) attend to a qualifying military exigency or to care for a family member who is a covered service member, (4) take safe leave, otherwise known as sexual assault victim leave or (5) any reason in Maine's unpaid family and medical leave statute.

The rules explain that if an employee takes medical leave during their pregnancy or recovery from childbirth, they can take family leave immediately after the medical leave. The total amount of leave remains 12 weeks per year. This amount is reduced by any leave that the employee took under the federal Family and Medical Leave Act or the state's unpaid family and medical leave law in the previous 12 months if that leave was not taken concurrently with PFML leave.

The law requires employees to give reasonable notice to the employer of their intent to take leave. The rules explain that reasonable notice means providing 30 days' notice in writing before the employee's leave unless the employer determines otherwise. For unforeseeable absences, the employee should make a good-faith effort to provide written notice of the leave as soon as possible. If the employee is incapacitated, however, a family member or health care provider may provide notice. The employee may provide written notice by letter, email or

text message. It must include (1) the reason for the requested leave,(2) whether leave will be continuous, reduced schedule or intermittent, (3) anticipated timing and duration, and (4) any other relevant information.

In non-emergency circumstances, the PFML law requires employees to schedule leave in a way that will prevent an undue hardship on the employer. After an employee requests leave from the state, an employer may claim within 10 business days that the proposed leave would cause an undue hardship, or if the employer and employee agree to a schedule of leave, the employer can waive the 10-day review of undue hardship circumstances. The rules provide the steps the employer must take to determine and document whether the proposed leave would cause an undue hardship.

The state will calculate the amount of PFML benefits due to an employee. The law provides that the program will replace 90% of an employee's wages for income earned that is equal to or less than 50% of Maine's average weekly wage, which is currently $1,036. The portion of the covered individual's average weekly wage that is over 50% of the state average weekly wage must be replaced at 66% up to the maximum weekly benefit. The rules provide a more detailed calculation method that the state will use to determine benefit amounts. Medical benefits are not paid for the first seven days that an employee is on leave.

Under the law, employers may begin withholding PFML premiums from employees' wages on Jan. 1, 2025. Employers must remit the payments to the state quarterly on a schedule set forth in the rules. Employers with 15 or more employees must remit 100% of the required premium but can deduct 50% of that amount from employee wages. Employers with fewer than 15 employees must remit only 50% of the premium and can deduct that entire 50% from employee wages. The rules explain the timing of premium deductions. If an employer fails to remit the premiums, they could be liable for a penalty of 1% of their total payroll for the quarter.

The rules also set forth the process an employee must follow to claim PFML benefits from the state. The application must be submitted to the state within 60 days of when the leave is set to begin or within 90 days after the leave has begun, with exceptions. The state will then notify the employer of the employee's application within five days of receipt.

Ohio

SB 154 (definition of armed forces)

Enacted: Dec. 19, 2024

Effective: May 20, 2025

Ohio has amended laws relating to military leave and military status for members of the armed forces and uniformed services. Specifically, under the amendment, whenever there is a reference in these Ohio laws to "armed forces," "armed services," "uniformed services," "armed forces of the United States" or "armed services of the United States," these terms must now be construed to include the United States Space Force. This addition to the definition of armed forces does not require any changes to Sedgwick's current policies.

Oregon

OAR 471-070 (final rule re FMLA benefits and confidentiality)

Adopted: Dec. 27, 2024

Effective: Jan. 1, 2025

Oregon has amended its rules regarding the state's paid family and medical leave insurance law (PFMLI). The PFMLI program provides paid leave for employees in a variety of circumstances. The rules were amended to clarify several points that have been changed via statutory amendment.

Under the regulations, the state must provide certain information about the employee's claim to the employer for the employer to administer the leave, such as the dates of the employee's leave. As amended, the regulations require the state to disclose the weekly benefit amount as well. If an employer has more information about the employee's claim once it receives the state's correspondence, it must respond to the state within five calendar days.

The amended rules provide definitions for pre-placement leave and foster care. Under the rules, pre-placement leave means leave taken before an adoption or foster care placement of a child, if leave is required for the placement or adoption to proceed. This may be taken for (1) counseling sessions, (2) appearances in court, (3) attorney consultations, (4) physical examinations or home studies, (5) travels to another state or country to complete an adoption or (6) other necessary actions. Pre-placement leave must be taken intermittently.

Under the amended rules, foster care means 24-hour care for children in substitution of, and away from, their parent or guardian. It is made in agreement with the state or through a court order.

A new rule sets forth the verification requirements an employee must provide to take pre-placement leave under the PFMLI. An employee must provide one of the following: (1) copy of a court order, (2) letter signed by an attorney representing the employee in the matter, (3) document from the relevant foster care agency, adoption agency or social worker, (4) document for the child issued by the U.S. Citizenship and Immigration Services or (5) another approved document. The rule also requires certain information to be included in the verification, such as the child's date of birth. The verification document must be dated no earlier than 180 days before the start date of the PFMLI leave. Sedgwick's processes have been updated to account for pre-placement leave under Paid Leave Oregon. As a reminder, this leave reason is no longer covered under OFLA.

For other types of leave, such as leave related to a serious health condition, the amended rules state that verification documentation must include the claimant's birth date. The rules also clarify what medical information should be provided in the verification, including a description of symptoms or treatment of the serious health condition at issue.

Pennsylvania: Philadelphia

Ordinance No. 240932 (public health emergency leave)

Adopted: Dec. 23, 2024

Effective: Dec. 23, 2024

Informational only – Sedgwick does not administer

Philadelphia has amended the Promoting Healthy Families and Workplaces ordinance regarding pool health care professionals and health care employees. Under the ordinance, a health care employee is a person who works full-time or part-time in a health care organization, such as a hospital, nursing home or home health care provider. A pool employee is a health care professional, meaning a person licensed under state or federal law to provide medical or emergency services that only works when they indicate they are available.

The ordinance requires health care employers to provide reimbursement for all lost wages related to a pandemic- or epidemic-related disease during the event. The amendment changes the nomenclature to ensure reimbursement for all lost wages related to a public health emergency and ensures that employees will be reimbursed for the duration of the public health emergency. The amendment defines "public health emergency" as a declared emergency related to a public health threat, risk, disaster or emergency that affects the city and is issued by a federal, state or local official.

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