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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | October 2024

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Delaware

19 DAC Subch. 1401 (final rule re Healthy Delaware Families Act and paid family and medical leave program)

Adopted Aug. 1, 2024

Effective Aug. 11, 2024

Delaware adopted final rules implementing the Healthy Delaware Families Act (HDFA) on June 30, 2023. The regulations, which were amended in March 2024, have been amended again to clarify coverage, benefit use and reinstatement provisions, among others. See below for the amended regulations relevant to employers.

An employer is covered by the HDFA for parental leave purposes if it has 10 employees and covered for family caregiving and medical leave purposes if it has 25 employees. Whether an employer meets this threshold number is determined by looking at the number of employees over the past 12-month period. The amended regulations state that the threshold number will be determined quarterly instead. When an employer meets the threshold number for HDFA coverage, it must provide coverage to its employees within five weeks from when the threshold was met. Under the regulations, an employer and employee can agree to waive HDFA coverage for the employee if the employee is not expected to work 25 hours a week or was not hired on a permanent basis. The amended rules contain procedures for filing and removing a waiver.

Employers that completely close their business for 30 or more consecutive days during a year are excluded from coverage by the HDFA. The amended rules clarify that an excluded employer may maintain its business during the closure but cannot engage in commerce during that time.

If an employee works primarily in another state, an employer can reclassify them as working primarily in Delaware while they are working out of state to qualify them for HDFA coverage. The amended rules clarify that an employer cannot do so if the employee is subject to another state's paid family medical leave law while working in the other state.

The amended rules state that an employee may apply for HDFA benefits as soon as they are aware that they need the leave. If the need for leave is unforeseeable, the employee must apply for HDFA benefits within 30 days of the beginning of the leave. The weekly benefit amount is calculated using an employee's average weekly wage. If the weekly benefit amount is below $100, the employee will instead receive the average of their weekly wages. The amended rules remove this requirement, leaving no guaranteed minimum amount of benefits. The amended regulations state that an employer must approve a reduced or intermittent leave schedule for an employee on parental leave. The smallest leave increment that can be used intermittently is one day.

When an employee returns from leave protected by the HDFA, they must be restored to their same or an equivalent position, even if their job has been restructured, reclassified or covered by a replacement worker. An employer may require an employee to provide documentation from their healthcare provider that they can return to work. However, an employer may not require an employee to get a second medical opinion.

Employers are not required to reinstate a returning worker if (1) the worker's leave lasts longer than permitted by law or policy; (2) the worker's contract has ended; (3) the worker's position was eliminated during downsizing or reorganization; (4) the worker can no longer perform the essential functions of their job (subject to state and federal disability law); or (5) the worker engaged in fraud in their HDFA application or certification.

While on leave, an employee must continue to make contributions toward their health care benefits, or the employer may discontinue their benefits. The amended rules detail procedures by which an employer can recover any insurance costs it covers on behalf of the employee. Upon return from leave, an employee's other benefits, such as life insurance, sick leave, vacation, pension or 401k benefits, must be restored.

An individual may file a complaint with the state or a civil lawsuit if they believe they have been retaliated against for exercising a right under the law.

District of Columbia

B 937 (Universal Paid Leave Act amendment)

Enacted Oct. 8, 2024

Effective Oct. 8, 2024

This emergency measure extends the effective period of the amendments described below through Jan. 6, 2025, until they can be made permanent.

In order to fund the universal paid leave program, both employers and employees contribute to the District-run fund from which leave benefits are administered. Amendments to the program made by District of Columbia B 784 and B 875 (both reported in the July newsletter) modify the employer contribution provisions. The District required employers to contribute 0.62% of the wages of each of its covered employees to the District or a lower rate if employers' projected contribution rate necessary to maintain the benefit durations required by the act was lower than 0.62%. Under the amendments, all employers must contribute 0.75% of the wages of each covered employee.

The mayor was required to provide employers notice at least 60 days before implementing any paid leave benefit expansion or employer contribution rate change. Under the amendments, the mayor is no longer required to provide 60-day notice to employers in advance of contribution rate changes.

Illinois

HB 5640 (definition of armed forces)

Enacted Aug. 2, 2024

Effective Jan. 1, 2025

Illinois has amended its laws regarding employment protections for members of the armed forces and uniformed services. Specifically, under the amendment, whenever there is a reference in any Illinois law to "armed forces," "armed forces of the United States," "U.S. Armed Forces," "United States Armed Forces" or "uniformed services," these terms must now be construed to include the United States Space Force. This change does not affect any of Sedgwick's policies or processes for Illinois military members.

Illinois

Cook County amended paid leave ordinance rules

Adopted Oct. 24, 2024

Effective Oct. 24, 2024

Informational only – Sedgwick does not administer

Cook County, Illinois, has amended its interpretive and procedural rules regarding the county's paid leave ordinance. The ordinance requires employers to provide 40 hours of paid leave per year for an employee to use for any purpose. New employees begin accruing leave on the first calendar day after the start of their employment. Under the amended rules, accrual now begins at the start of employment. The amended rules also clarify that employees accrue paid leave both while they are working and while they are using their accrued paid leave hours.

The rules state that federal Family and Medical Leave Act (FMLA) rules and regulations take precedence over the ordinance and rules when the employee uses FMLA leave. The amended rules clarify that an employer can require an employee who is taking FMLA leave to use the employee's accrued paid leave, sick leave or family leave during some or all of their FMLA leave before taking unpaid FMLA leave. If an employer does not require this, employees may choose whether to use accrued paid or unpaid leave for FMLA leave purposes. The amended rules also clarify that outside of the FMLA context, an employer cannot require an employee to take paid leave before using other employer or state-provided leave.

Under the ordinance, an employer can deny an employee's request to use paid leave under certain circumstances. The amended rules require the reasons for denial to be included in the employer's written policy and clarify that an employer can deny an employee's request for leave if the employee has volunteered to accept an additional shift or to cover a partial or entire shift.

Employers must pay employees their wages earned during paid leave in the next pay period beginning after the leave was used. Under the amended rules, the leave must now be paid during the period in which it is used. The payment should be included in an employee's regular paycheck. For employees with a variable rate of pay, the employer should use an average of all hourly rates or the greater of the minimum wage or the lowest rate. The amended rules clarify that all unused accrued leave must be paid out at the time of an employee's separation from employment, if possible, but at the latest on their next regularly scheduled payday.

The amended rules make it clear that an employer can send a copy of the required workplace poster to any employees who do not work at a physical worksite via email, intranet or whatever their usual method of communication is. Under the previous version of the rules, employers had to provide each employee with a written notice of their rights under the ordinance. The amended rules clarify that this is a written policy instead and should be given to employees by the start of their employment or the date of initial leave accrual, whichever is later.

Washington

WAC 296-128-99140 (final rule re transportation network companies and paid sick leave)

Adopted July 23, 2024

Effective Aug. 23, 2024

Informational only – Sedgwick does not administer

The Washington Department of Labor and Industries has adopted a final rule regarding the use of paid sick time by drivers working for transportation network companies, which expands the authorized purposes for which paid sick leave can be used.

Under the state's paid sick leave law, rideshare drivers may use accrued paid sick leave when the driver's child's school or place of care has been closed by order of a public official for any health-related reason. Under the final rule, paid sick leave can also be used in the event of a declaration of an emergency by the federal government or by a local or state government or agency. This is in addition to the other already established permissible bases for the use of paid sick leave.

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