sedgwick

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | March 2024

TABLE OF CONTENTS

Illinois: Cook County

Interpretative and Procedural Rules (final rules re: paid leave ordinance)

Adopted March 14, 2024

Effective March 14, 2024

Informational only — Sedgwick does not administer.

Cook County, Illinois, recently enacted an ordinance (ordinance), effective Dec. 31, 2023, and summarized in the December 2023 newsletter, which repealed its prior paid sick and safe leave ordinance and created new paid leave provisions. The new ordinance requires employers to provide 40 hours of paid leave per year for an employee to use for any purpose. The Cook County Commission on Human Rights (agency) has now amended its **Interpretive and Procedural Rules** (rules) regarding paid sick leave to align with the new paid leave ordinance. The rules are detailed and largely mirror the provisions of the ordinance, so only key provisions that clarify or enhance the provisions in the ordinance are discussed.

The new ordinance applies to all employers, as that term is defined under the Illinois Wage Payment and Collection Act. The rules further explain that an "employer" is any individual, partnership, association, corporation, limited liability company, business trust or person or group of persons that gainfully employs at least one employee, unless the employer is exempt from coverage. Exempt employers include those for whom federal or state law preempts coverage by the ordinance, those who exclusively employ exempt employees and government employers. The new ordinance and the rules also provide exemptions for valid CBAs and pre-existing PTO policies.

Under the ordinance, all employees are covered except for:

- Employees as defined in the federal Railroad Unemployment Insurance Act.
- Temporary college or university student-employees.
- Certain short-term employees of an institution of higher learning.
- Employees working in the construction industry who are covered by a bona fide collective bargaining agreement (CBA).

The rules clarify that an individual is a "employee" if they are not exempt and perform compensated work for an "employer" while physically present within the boundaries of Cook County. The agency will consider compensated work that an individual performs within Cook County that is equal to or greater than 50% of their total compensated work for the purpose of determining whether the individual is an "employee." Individuals who meet this criterion will be considered "employees" regardless of whether they are full-time, part-time, temporary,

seasonal, occasional, long-term or newly hired or rehired. Additionally, an individual is an "employee" if they are rehired by an employer within 12 months of separation from the same employer. Rehired employees may be subject to special rules regarding accrual and use of paid leave.

Under the rules, when two or more employers have control over an employee's work and each satisfies the definition of "employer," the agency may treat them as "joint employers." Joint employers may allocate responsibility for certain obligations among themselves; however, regardless of how joint employers allocate responsibility, they remain jointly responsible for compliance with and the payment of any penalties imposed for violations of the ordinance. The rules also provide that successor employers must provide paid leave without interruption or reduction in coverage, eligibility, accrual and use of paid leave.

Under the ordinance and rules, employees are entitled to accrue paid leave at the rate of at least one hour for every 40 hours worked for up to 40 hours accrued in a 12-month period. Employers must allow carryover of unused paid leave time from one year to the next. While employers may establish policies that limit the amount of leave that can be carried over, they cannot restrict employees from carrying over 40 hours or less. The rules state that for employees working for FMLA-eligible employers, the agency will consider paid leave to be Ordinance-restricted leave during the period in which it is accrued, though if carried over from one accrual period to the next, it may become FMLA-restricted leave in the next accrual period.

Alternatively, employers may frontload 40 hours of paid leave on the first day of the benefit year. If an employer chooses to frontload leave, then it need not carry over unused time but must comply with other requirements, such as written notice to employees concerning the amount of leave available at the start of employment; proration of frontloaded leave for employees who begin work after the start of the accrual period; refraining from reducing paid leave benefits or requiring an employee to repay frontloaded leave time if the employee's employment ends before the conclusion of the 12-month accrual period; and prior written notice to employees in the event that the accrual period or method is changing.

The rules also provide for mixed leave-calculation methods, meaning that employers can frontload leave for a part-time employee pro rata according to the employee's anticipated work schedule for the 12-month period. If the employee works more hours than anticipated, they are entitled to accrue additional hours at the rate of one hour for every 40 hours worked. But if an employee works fewer hours than anticipated, the employer cannot recoup, diminish or require repayment of used or unused frontloaded paid leave. An employer may provide some employees paid leave by frontloading and other employees by the accrual method, as long as its policy meets the requirements of the ordinance and rules, and it does not illegally discriminate in determining which employees qualify for frontloaded versus accrued leave.

The rules provide that the date on which an employee begins accruing leave is either Dec. 31, 2023, (the ordinance's effective date) or the first calendar day after their start of employment, whichever is later. The rules further provide that an employer may combine all paid time-off benefits into a single account, or a "time off bank," to use for multiple purposes rather than providing separate accounts for paid leave, sick time, personal time and other types of compensated leave.

The rules also state that the agency will presume that an overtime-exempt employee works 40 hours per week, but if the employee in fact works less, then the employer can credit accrued paid leave based on actual hours worked. If an overtime-exempt employee works more than 40 hours per week, the employer is not required to award more than one hour of paid leave per week. An overtime-exempt employee accrues paid leave based on actual hours worked. Regarding the frequency of accrual, employers are only required to award paid leave in hourly increments (i.e., an employer need not award fractional hours for less than 40 hours worked). However, employers must track the hours of work required to earn the next full hour of paid leave. Employers are not prohibited from using a payroll system that tracks fractional accrual of leave.

The ordinance sets minimum paid leave requirements; nothing in the ordinance or rules prohibits employers from permitting employees to accrue paid leave at a faster rate; providing a higher annual accrual cap; allowing employees to carry over more leave from one accrual period to the next; permitting employees to use more leave in each accrual period; or adopting sick leave, vacation, paid holidays or paid time off that are in addition to the minimum requirements of the ordinance.

Under the new ordinance, employers may limit the use of paid leave until the 90th day of employment or 90 days following the ordinance's effective date of March 30, 2024, whichever is later. Paid leave may be taken by an employee for any reason of the employee's choosing, except that an employer may not allow an employee to use paid leave when the employee has been suspended or placed on disciplinary leave. An employee may choose whether to use paid leave provided under the ordinance or any other leave provided by the employer or state law.

An employer may not require unreasonable accommodations from an employee taking paid leave, such as requiring the employee to find a replacement worker. Additionally, an employer may not impose terms and conditions on the use of paid leave without adopting a reasonable, written policy (available in English and any other language commonly spoken by the employer's workforce) that complies with and sets forth the protections of the ordinance and rules. An employer must provide its policy to an employee before or at the start of employment or within 90 days of the ordinance's effective date. If the employer regularly communicates with employees by electronic means, it must provide the policy through its regular electronic communication method. If an employer's policy does not specify otherwise, an employee may request paid leave either orally or in writing.

Employers may set a reasonable minimum increment of use for paid leave — even if the minimum increment causes an employee to use more paid leave than they would otherwise prefer — if the increment is not more than two hours. If an employer does not have a written policy stating the minimum leave increment, the agency will presume that paid leave may only be used in two-hour increments.

Employees must be paid their hourly rate for paid leave. However, employees who customarily receive gratuities or commissions must be paid by their employer at least the full minimum wage in the jurisdiction in which they are employed when paid leave is taken. Further, wages earned during paid leave must be paid within the next regular payroll period beginning after the employee used paid leave.

The ordinance provides that employers may require up to seven days' advance notice for the foreseeable need for paid leave. The agency will consider an employer policy on the notification required before an employee may use leave for a foreseeable absence to be unreasonable when the policy is not in writing; was not communicated to the employee in advance of the employee's failure to provide notice; requires the employee to give notice when they are unconscious or otherwise incapacitated; requires more than seven days' notice; or makes compliance so unreasonably difficult that paid leave cannot, as a practical matter, be used.

For the unforeseeable use of paid leave, an employee must provide notice as soon as practicable. The agency will consider an employer policy on the notification required before an unforeseeable absence to be unreasonable when the policy is not in writing; requires the employee to give notice when they are unconscious or otherwise incapacitated; does not allow a person other than the employee to give notice on the employee's behalf; requires the employee to provide notice prior to the day of the absence; or excludes notification by phone, email or text messaging. However, an employer may require an employee to memorialize their notification of an unforeseeable absence after the fact by the employer's preferred means of communication. Note that while Cook County's prior sick time ordinance allowed employers to require documentation or certification to support an employee's need for leave, the new ordinance and rules expressly prohibited employers from doing so.

An employer cannot deny an employee's request to use paid leave, even when the request does not meet the employer's foreseeability requirements, except where:

- The employer's policy for considering leave requests has been disclosed to the employee in writing.
- Restrictions on using paid leave are limited to the employee's regular workweek.
- The employer's policy sets forth the limited circumstances in which leave may be denied to meet the employer's core operational needs.

When considering whether a leave request can be denied due to core operational needs, relevant factors include whether the employee's work is critical to the health, safety or welfare of the people of Cook County; whether similarly situated employees are treated the same with regard to leave requests; and whether granting leave during the period in question would significantly impact business operations due to the employer's size.

The ordinance provides that employers are not required to pay employees for unused paid leave upon separation from employment. However, an employer is required to pay an employee for unused paid leave at the time of the employee's separation if the employer credited that leave to the employee's paid time off bank. In those cases, the employer must pay out unused accrued paid leave at the employee's regular rate of pay within 15 days of the employee's termination, resignation, retirement, or other separation. When an employer reinstates an employee less than 12 months after separation, the employee's previously accrued but unused leave must be reinstated. However, an employer need not reinstate any paid leave that it paid out prior to the date of rehire.

Employers must post a paid leave notice in a conspicuous place at each facility located in Cook County. The rules clarify that the posting must include a description of the benefit, coverage, rate of accrual, permissible uses, prohibited employer practices, the agency's contact information and how to make a complaint. The agency will provide a model posting on its website. Additionally, employers must provide every employee a notice of the foregoing information by the employee's date of coverage or date of eligibility, whichever is later, and at least once per calendar year thereafter.

The rules set forth detailed recordkeeping requirements under which employers must create and preserve records documenting leave earned and used for a period of no less than three years. Additionally, all records must be preserved during the period of a complaint. Employers who provide leave on an accrual basis must provide an employee with the amount accrued or used upon request.

The rules specify that, in addition to the prohibited actions under the ordinance, employers are prohibited from:

- Retaliating against an employee because the employee exercises their rights under the ordinance or participates as a party or witness in a case alleging a violation of the ordinance.
- Counting an absence during properly used paid leave as an absence triggering discipline or any other adverse employment action.
- Switching an employee's schedule after being notified that the employee is using or will use paid leave to avoid paying the employee during their absence.
- Forbidding or requiring an employee to take paid leave (except that employers are not prohibited from requiring an employee to use accrued paid leave when the employee can do so instead of taking an unpaid absence).

Employees have three years in which to bring an action against an employer for any alleged violation of the ordinance. The rules set forth detailed procedures for the Agency's review, investigation, hearing and resolution of employee complaints, as well as a process for the agency itself to initiate complaints. If the agency finds that an employer has violated the ordinance, it may assess a penalty, order the payment of lost wages and compensatory damages and order other injunctive relief. Any employer who labels an employee as an independent contractor to avoid complying with the ordinance will be subject to double penalties and damages.

Kentucky

HB 179 (paid family leave insurance)

Enacted April 5, 2024

Effective April 5, 2024

Informational only — Sedgwick is not a qualified life insurer.

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

The act defines key terms relating to paid family and medical leave insurance. "Paid family leave insurance" means insurance issued to an employer related to a benefit program provided to employees to pay for a percentage or portion of the employee's income loss caused by absences that are not based on the employee's disability. "Child" is a person who is either under 18 years of age or 18 or older and incapable of self-care because of a mental or physical disability, and who is the employee's biological or adopted child; the employee's stepchild or the child of the employee's domestic partner; the employee's legal ward; or a person to whom the employee stands *in loco parentis*. "Family member" includes the employee's child, spouse, or parent, and any other person defined as a family member in the policy. "Parent" includes the employee's biological, foster, or adoptive parent; stepparent; legal guardian; and a person who stood *in loco parentis* to the employee when they were a child. "Armed Forces of the United States" includes members of the National Guard and the United States Armed Forces Reserves."First responder" includes a peace officer; paid or volunteer emergency medical services or rescue personnel; a paid or volunteer member of an organized fire department; and personnel of a private not-for-profit organization providing fire, rescue or emergency medical services.

Under the act, a paid family leave insurance policy may provide leave benefits for an employee to:

- Provide physical or psychological care for a family member because of a serious health condition or any other reason specified in the policy.
- Bond with a child during the first 12 months after birth, adoption or placement with the employee for foster care.
- Address a qualifying exigency recognized under the federal Family and Medical Leave Act for a family member on covered active duty or notified of an impending call to active duty in the armed forces.
- Care for a family member injured in the line of duty as a member of the armed forces or as a first responder.

- For any other reasons not based on the employee's disability specified in the policy.

A paid family leave insurance policy must:

- Include the details, requirements and length of benefits available for each covered reason for family leave.
- Provide for at least two weeks of leave during a period of 52 consecutive calendar weeks (calculated using one of the five methods described in the act).
- State whether there is an unpaid waiting period for benefits and the terms and conditions of the waiting period.
- State the amount of benefits to be paid for each covered reason for leave.
- Provide the definition of and methods for calculating the wages upon which the amount of benefits would be based.
- Indicate whether benefits would be subject to offsets for other wages or income and the circumstances under which wages may be offset.
- State any other limitation, exclusion or reduction of eligibility for benefits available under the policy.

The act allows several limitations, exclusions and reductions from an employee's eligibility for benefits, including for any period of family leave where:

- The employee fails to provide notice and medical certification as required under the policy.
- The employee performs work for remuneration or profit.
- The employee is eligible for other remuneration or maintenance.
- The employee is eligible for benefits under another statutory or employer-sponsored program.
- More than one person is seeking leave for the same family member.

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

Oregon

SB 1515 (paid leave Oregon and OFLA amendments)

Enacted March 20, 2024
Effective March 20, 2024
Changes effective July 1, 2024

Oregon has amended its laws related to Paid Leave Oregon, its paid family and medical leave law, the Oregon Family Leave Act (OFLA), its unpaid family and medical leave law and the state's predictive scheduling law. The **amended law** will consolidate many of the leave provisions of the OFLA under the Paid Leave Oregon program. Sedgwick is actively updating our policies and processes to accommodate for this change effective July 1, 2024.

OFLA currently provides up to 12 weeks of unpaid protected leave to eligible employees for the following purposes:

- To care for a family member with a serious health condition.
- For an employee's own serious health condition.
- To care for a sick child of the employee or spouse or domestic partner who does not have a serious health condition but requires home care ("sick child leave"), including to care for a child of the employee or spouse or domestic partner whose school or childcare provider has been closed in conjunction with a declared public health emergency.
- To be with or care for a child of the employee or spouse or domestic partner after birth or placement for adoption or foster care ("parental bonding leave").
- For the employee's own disability due to their own pregnancy, childbirth or related medical condition, including absences for prenatal care ("pregnancy-related disability leave").
- To make arrangements necessitated by the death of a family member, to attend the family member's funeral or memorial service and/or to grieve the death of a family member ("bereavement leave").

Eligible employees are provided up to two weeks of bereavement leave per death of a covered family member, not to exceed 12 weeks.

Under OFLA, eligible employees are entitled to up to 12 weeks (and up to an additional 12 weeks for any pregnancy-related disability) in any leave year. Parents who use all 12 weeks of parental bonding leave are also entitled to take up to 12 weeks of sick-child leave. This means that an employee disabled due to their pregnancy

may take up to 12 weeks of OFLA pregnancy disability leave, then up to 12 weeks of parental bonding leave and ultimately up to another 12 weeks of OFLA sick child leave, for a total of up to 36 weeks of OFLA leave.

Paid Leave Oregon provides eligible employees up to 12 weeks of paid leave for the following purposes:

- Family leave to care for or bond with a child during the first year after the child's birth or placement through foster care or adoption; or to care for a family member with a serious health condition.
- Medical leave to care for the employee's own serious health condition.
- Safe leave to address domestic violence, harassment or stalking.

Eligible employees may qualify for up to two additional weeks of PLO for limitations relating to pregnancy, childbirth or a related medical condition (including lactation).

Under the amended law and effective July 1, 2024, OFLA will not include family leave (parental bonding leave) or serious health condition leave for an employee or their family member. Instead, Paid Leave Oregon will cover family leave and serious health condition leave. The amendments further limit OFLA leave to the following permissible reasons:

- Sick child leave, including caring for a child of the employee or spouse or domestic partner whose school or childcare provider has been closed in conjunction with a declared public health emergency.
- Bereavement leave up to a total of four weeks per year.
- Pregnancy-related disability leave (this leave is in addition to other leave available under OFLA and Paid Leave Oregon).

Currently, under the law, OFLA leave runs concurrently with leave taken under Paid Leave Oregon. The amended law, however, states that leave taken under OFLA is in addition to, and may not be taken concurrently with, any leave taken under Paid Leave Oregon as of July 1, 2024. However, Paid Leave Oregon and OFLA leave will still run concurrently with federal Family and Medical Leave Act leave taken for the same purpose.

OFLA allows eligible employees to take up to two weeks of family bereavement leave for each family member's death, up to 12 weeks in any one-year period. Under the amended law, eligible employees may take up to two weeks of family bereavement leave for each family member's death, not to exceed a total of four weeks in any one-year period. OFLA bereavement leave must be completed within 60 days of the date on which the employee receives notice of the death of the family member. Bereavement leave is not available under Paid Leave Oregon.

OFLA sick child leave is available to eligible employees: (1) to care for a sick child of the employee or spouse or domestic partner who does not have a serious health condition but requires home care and (2) to care for a child

of the employee or spouse or domestic partner whose school or childcare provider has been closed in conjunction with a declared public health emergency. Under the amended law, OFLA sick child leave will be expanded to include home care of a child even if the child needs home care for a serious health condition.

The amended law provides that effective Jan. 1, 2025, the definition of "Family Leave" under Paid Leave Oregon will include leave to effectuate the legal process required for foster child placement or child adoption. Because Paid Leave Oregon's coverage for leave related to the foster or adoption legal process is not available until the law's effective date, from July 1, 2024, through Dec. 31, 2024, a temporary amendment to OFLA will provide an eligible employee a total of two weeks of OFLA leave to effectuate the legal process required for placement of a foster child or the adoption of a child. Under this temporary amendment, an eligible employee must give oral notice within 24 hours of commencing OFLA adoption or foster care legal process leave and must give written notice within three days after the employee returns to work.

Under the law, an employer may permit an employee to use other paid leave benefits in addition to Paid Leave Oregon benefits but may also deny the use of other paid leave benefits. The amended law states that an eligible employee is entitled to use any accrued paid sick leave, accrued paid vacation leave or any other paid leave offered by the employer in addition to receiving Paid Leave Oregon benefits, but only to the extent that the total combined amount of accrued paid leave and Paid Leave Oregon benefits received by the employee does not exceed an amount equal to the employee's regular full wage during the period of Paid Leave Oregon leave. However, the amendment permits (but does not require) an employer to allow combined paid leave benefits and Paid Leave Oregon benefits to exceed an employee's regular full wage. Subject to any collective bargaining or other agreement between the employee and employer, the employer may determine the order in which accrued leave is used when more than one type of accrued leave is available to the eligible employee.

Oregon's predictive scheduling law requires certain employers to provide written work schedules to employees at least two weeks in advance of the first day of work on the schedule. With limited exceptions, an employer must pay a penalty wage to an employee for any changes to the work schedule that were made without at least 14 days advance notice. Under the amended law, a new exception applies for short-notice schedule changes needed to replace an employee commencing or to accommodate an employee returning from, protected leave when the employee fails to provide 14 days' advance notice to their employer. The exception applies in the case of Paid Leave Oregon, OFLA or other protected leaves.

OFLA permits an employer to define a "one-year period" using a measurement period that aligns with the federal Family and Medical Leave Act. In contrast, the one-year period under Paid Leave Oregon is defined as 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences. Under the amended law, effective July 1, 2024, the OFLA "one-year period" will be measured in the same way as Paid Leave Oregon leave is measured, i.e., a one-year period means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

Oregon

OAR 471-070 (temporary rule re: paid leave benefits)

Adopted March 13, 2024

Effective March 13, 2024

Oregon has implemented temporary rules regarding the documentation and information required to be provided in connection with verifying Paid Leave Oregon claims, including claims for family leave to care for and bond with a child, medical or family leave claims involving a serious health condition and safe leave claims. The temporary rules also clarify the process for assigning representatives to incapacitated claimants and legal representatives and clarify the requirements for an individual to qualify as a temporary worker for an assistance grant for small employers.

Claimants applying for PFMLI benefits are required to provide specified documents and information to verify their entitlement to the benefits sought, and the specific information required depends on whether the claim is for leave to care for and bond with a child, for benefits for an individual's own serious health condition or to care for a family member with a serious health condition or for safe leave.

Claimants are required to submit at least one of the approved forms of verification for this leave. In addition to the forms of verification in the existing rule, additional forms of verification for leave to care for and bond with a child during the first year after the child's birth include:

- Court-issued documents establishing paternity or guardianship.
- A voluntary Acknowledgement of Paternity form signed and witnessed by a hospital representative issued within five days of the date of birth.
- Paid Leave Oregon Verification of Birth Form.

Additional forms of verification for leave to care for and bond with a child during the first year after foster placement or adoption include the PFMLI Verification of Adoption or Foster Care Placement Form. Further, if the verification document submitted in connection with foster placement or adoption is not issued by a government entity, the document must also contain identifying and contact information for the document issuer, as well as the issuer's signature and the date of issuance.

If any of the documents submitted for verification related to leave to care for and bond with a child do not include the full name of the claimant or the claimant's child or do not show the relationship of the child to the claimant, one or more of the following documents must be submitted to meet the verification requirements:

- Legal marriage certificate.
- Certified Declaration of Domestic Partnership.
- Legal birth certificate.
- Notarized Voluntary Acknowledgement of Paternity Affidavit.
- One or more documents issued by an independent and verifiable third party that establishes the parent's relationship to the child, issued within six months before the claimant's start of leave.

Claimants are required to submit one of the following forms of verification in connection with applications for PFMLI benefits for their own serious health condition or to care for a family member with a serious health condition:

- PFMLI Verification of a Serious Health Condition Form.
- Oregon and Federal Family and Medical Leave Health Care Provider Certification issued by the Oregon Bureau of Labor and Industries (BOLI).
- Family and Medical Leave Act (FMLA) certification of health care provider for a serious health condition form issued by the U.S. Department of Labor.
- FMLA certification for a serious health condition form issued by an employer.
- Document issued by a health care provider.
- Another document approved by the Oregon Employment Department for this purpose.

If any of these documents do not include the full name of the patient or claimant or do not show the family relationship between the claimant and patient, the claimant must also submit at least one of the specified documents to meet the verification requirements. The specified documents are the same as those identified for purposes of leave to care for and bond with a child.

A claimant applying for PFMLI benefits for safe leave must provide verification certifying that the claimant or the claimant's child is a survivor of domestic violence, harassment, sexual assault, bias, or stalking. In addition to the documents identified in the existing rule, claimants can also submit the PFMLI Safe Leave Verification Form. Any documentation submitted for safe leave verification must include: (1) the full name of the claimant; and (2) the full name of the child of the claimant, if the claimant's child is a survivor of domestic violence, harassment, sexual assault, bias or stalking.

Further, any verification documentation must be dated no more than 12 months before the date the claimant applied for leave. If dated earlier than 12 months before the date leave was applied for, the claimant must also

provide a written statement that describes the current need for leave, along with any additional information requested by the department.

Previously, the rule regarding claimant designated representatives did not address situations where a representative is being sought on behalf of an incapacitated claimant who is not otherwise able to submit the required information to designate a representative. The temporary rule explicitly provides a process for the assignment of representatives to incapacitated claimants and includes a number of specific additional documents that are required to be submitted.

The temporary rules also clarify the requirements for an individual to qualify as a temporary worker for purposes of small employer applications seeking assistance grants, which are available to employers with less than 25 employees. Now, in addition to the information already required by the existing rule, employers seeking assistance grants are required to submit written documentation demonstrating that they hired a temporary worker to replace an eligible employee on family leave, medical leave or safe leave, including the temporary worker's name, start date, Social Security number or individual tax identification number and documentation demonstrating that the worker qualifies as a temporary worker for an assistance grant. To demonstrate that a worker qualifies as temporary for an assistance grant, the worker must have been hired on or after the date an eligible employee provided notice of expected qualifying leave, the worker was hired to perform the same or substantially similar duties as the eligible employee and the worker was not initially hired for a period extending more than 30 calendar days beyond the expected end date of the eligible employee's qualifying leave.

Utah

HB 245 (military leave and veteran preference amendments)

Enacted March 18, 2024

Effective March 18, 2024

Utah has amended its law to require an employer to provide a leave of absence of up to five years for reservists. Sedgwick administers this leave. In addition, the amendment clarifies definitions for purposes of veteran preference eligibility. Sedgwick does not administer this portion of the amended law.

The **amended law** creates new leave entitlements for military reservists. Members of a reserve component of the armed forces of the United States that enters active duty, active duty for training, inactive duty training or state active duty must be granted a leave of absence from employment. However, the leave of absence cannot be more than five years. If the governor orders members of the Utah National Guard or the State Defense Force to state military service, they have the same rights and protections the federal military service has under federal law for the duration of their state service, but again, the leave may not exceed five years.

A member of the reserves or state National Guard or Defense Force must be permitted to return to their prior employment at the end of the leave upon satisfactory release from state or federal orders, or from hospitalization that occurred as a result of the military orders. Those members must have the same rights and protections as those provided by federal law for activation to federal military service. This includes rights and protections regarding seniority, status, pay and vacation that the member would have had as an employee if the member had not been absent for military purposes.

Also under the amendment, "preference eligible" means:

- Any individual who is a veteran or service member.
- An individual with a disability, regardless of the percentage of disability.
- The spouse or surviving spouse of a veteran or service member.
- A purple heart recipient.
- A retired member of the armed forces.

Prior to the amendment, the definition did not include the spouse or surviving spouse of a service member. Thus, spouses and surviving spouses of service members are now eligible for a hiring preference under the law.

If an employer willfully deprives an employee who is absent as a member of any of these benefits or discriminates in hiring for any employment position, public or private, based on membership in any reserve component of the armed forces, then the employer is guilty of a class B misdemeanor.

Virginia

HB 1098 (family bereavement leave)

Passed House; Passed Senate; to governor March 27, 2024
If enacted, effective July 1, 2024
Vetoed by governor on April 8, 2024.

The Virginia General Assembly has passed a proposed law that, if enacted, would require employers with 50 or more employees to provide eligible employees with unpaid family bereavement leave. The governor has vetoed this proposal as of April 8, 2024.

If enacted, an eligible employee could take up to 10 days of unpaid leave in any 12-month period to:

- Attend the funeral of a covered family member.
- Make arrangements necessitated by the death of a covered family member.
- Grieve the death of a covered family member.
- Be absent from work due to a miscarriage, an unsuccessful assisted reproductive technology procedure, a failed adoption, a failed surrogacy agreement or a stillbirth.

In addition, the proposed law would allow an eligible employee to take up to five days of leave in any 12-month period to be absent from work due to a diagnosis that negatively impacts pregnancy or fertility. If the employee experiences more than one death of a covered family member within the 12-month period, or the death of a child by homicide or suicide, the employee would be entitled to up to 30 days of bereavement leave in the 12-month period.

If enacted, **the proposed law** would define key terms, including “eligible employee” requesting family bereavement leave and who, as of the date that the requested family bereavement leave begins, is an employee covered by the Family Medical Leave Act per 29 C.F.R. § 825.801 or will have been employed by the employer for at least a 12-month period and 1,250 hours during the previous 12 months. “Covered family member” would mean an employee's child, spouse, domestic partner (as defined in the proposed law), sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent. “Child” would be defined as an employee's biological child, adopted child, foster child or stepchild.

The proposed law would require family bereavement leave to be completed within 60 days of the employee receiving notice of the death or event requiring leave. The employee would need to provide at least 48 hours’ notice to the employer of the intention to take leave, unless not reasonable or practicable. The employer would be

allowed to require reasonable documentation of the death or event, with examples provided in the proposed law. The returning employee would be restored to the position held when the bereavement leave began or an equivalent position, unless conditions exist to deny restoration unrelated to the bereavement leave. Finally, the employer would be required to maintain health benefit plan coverage for the duration of the employee's family bereavement leave.

Washington

SB 5793 (paid sick leave expansion)

Enacted March 28, 2024

Effective Jan. 1, 2025

Informational only — Sedgwick does not administer.

Washington has amended its paid sick leave law to expand the authorized purposes for taking paid sick leave. State law permits an employee to use paid sick leave:

- For the employee's own mental or physical health reasons, including recovering from illness or injury, or seeking diagnosis or treatment for a condition.
- For the employee to care for a family member with mental or physical health needs.
- When the employee's place of business or their child's school or childcare facility has been closed by a public official for health reasons.
- When the employee qualifies under the Domestic Violence Leave Act.

Accordingly, an employee may use paid sick leave if the employee is absent because their place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or child care has closed for that reason. **The amendment** expands this requirement to cover closures due to the declaration of an emergency by a state or local government or agency, or by the federal government. The amendment does not define or clarify what would constitute an "emergency."

Under the law, a "family member" means the employee's child, parent, spouse, domestic partner, grandparent, grandchild or sibling. The amendment expands the definition to include any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee will care for the person and that individual depends on the employee for care. It does not include an individual who simply resides in the same home with no expectation that the employee will care for the individual. Finally, the definition of "child" has expanded to include a child's spouse. The terms "grandchild" and "grandparent" are defined to mean the employee's grandchild or grandparent.

800.625.6588
Sedgwick@sedgwick.com
SEDGWICK.COM