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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | January 2024

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Littler

Minnesota

Final rules re: earned sick and safe time

Adopted Jan. 8, 2024
Effective Jan. 8, 2024
Informational only – Sedgwick does not administer

In October 2023, St. Paul, Minnesota amended its paid sick and safe time ordinance to align with the Minnesota statewide paid sick and safe leave law. In light of the amendments to the ordinance, the city has also amended the administrative rules, implementing the paid sick and safe leave ordinance to conform with the amendments to the ordinance.

Previously, the ordinance did not define "family member." The administrative rules adopt the ordinance's new, expanded definition of "family member" to include an employee's:

- Child, foster child, adult child, legal ward, child for whom the employee is legal guardian or child to whom the employee stands or stood in loco parentis.
- Spouse.
- Sibling, stepsibling or foster sibling.
- Biological, adoptive or foster parent, stepparent or a person who stood in loco parentis when the employee was a minor child.
- Grandchild, foster grandchild or step grandchild.
- Grandparent or step grandparent.
- Child of a sibling of the employee.
- Sibling of the parents of the employee.
- Child-in-law or sibling-in-law, as well as any of the listed family members of a spouse.
- Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

The final rules provide, like the ordinance, that upon request of an employee, an employer must provide an employee's current amount of earned sick and safe time (ESST) available and the amount of ESST used in a year in writing or electronically. An employer will be deemed compliant if the employer provides the ESST balance on each pay stub per pay period or makes the amount available electronically on an employee-accessible online system.

In addition, employers must provide notice of ESST at the commencement of employment. The notice must be in English and any primary language that the employee has identified to the employer. The notice must contain the following information:

- Employees are entitled to earn one hour of ESST for every 30 hours worked.
- Type of accrual method (accrual or frontloading).
- The maximum number of hours an employee may accrue in a year.
- How ESST carries over to the next year.
- The employer's notice requirements for using ESST.
- The written policy that requires advance notice from employees requesting ESST under the ordinance.
- The employer's policy for any employee suspected of abusing ESST.
- Employees can file a complaint with the Saint Paul Department of Human Rights and Equal Employment Opportunity.
- Employer retaliation is prohibited, and an employee may file a civil action for retaliation.

Previously, employers were not required to permit carryover of accrued but unused ESST if they frontloaded employees at least 48 hours of earned sick and safe time during the first year and 80 hours at the beginning of each subsequent year. The amended ordinance and final rules provide that employers may give its employees ESST that meet or exceed the ordinance's requirements and is available for immediate use at the beginning of subsequent years as provided by the following:

- 48 hours if the employer does pay accrued but unused ESST and is the same hourly rate as the employee earns from employment.
- 80 hours if the employer does not pay for accrued but unused ESST and is the same or greater hourly rate as the employee earned from employment.

The final rules adopt the ordinance's new requirements for documentation of leave and clarify what "reasonable documentation" includes. "Reasonable documentation" may include, but is not limited to, one of the following:

- Any documentation that indicates that the employee or their family member sought and received medical treatment.
- A written statement from the employee providing that ESST is being used or will be used for a qualifying purpose under the law if medical treatment was not sought or if a provider did not provide documentation. This statement may be written in any format in the employee's first language and does not need to be notarized.
- A court record or documentation signed by a volunteer or employee of a victim services organization, attorney, police officer or antiviolence counselor.

Previously, the ordinance and final rules provided that when there is a separation from employment and the employee was rehired within 90 days, any of the employee's previously accrued ESST that had not been used or paid must be reinstated. The ordinance and the new final rules extend this period of rehiring to 180 days.

The ESST ordinance provides that an employee can bring a civil action in a district court within 45 days after receipt of a notice of determination of no violation. The final rules clarify that notice is presumed to be five days from the date of service by mail of the written notice. Previously, the ordinance provided that a person injured by a violation of the law may bring civil action to recover any and all damages, together with costs and disbursement, including reasonable attorney's fees. The final rules add that back pay and reinstatement to the person's previous position, wages, benefits, hours and conditions of employment may also be awarded.

New York

Int. No. 0563-2022 (earned safe and sick time act amendment)

Enacted Jan. 20, 2023
Effective March 30, 2024
Informational only – Sedgwick does not administer

The New York City Earned Sick and Safe Time Act (ESSTA) permits employees to accrue and use paid leave for the care and treatment of sickness affecting themselves or a family member, seek legal and social service assistance or take other safety measures if the employee or a family member is a victim of an act or threatened act of domestic violence or unwanted sexual contact, stalking or human trafficking. The ESSTA permits employees who claim a violation of their rights under the ESSTA to file a complaint with the New York City Department of Consumer and Worker Protection (DCWP). The city has enacted amendments to the ESSTA to create a private right of action to seek damages and other relief for violations of the ESSTA.

The amendments allow an employee alleging a violation of the ESSTA to commence a civil action against the employer in court. Such an action could include compensatory damages, injunctive and declaratory relief, attorneys' fees and costs, as well as other relief the court deems appropriate. The statute of limitations for commencing a civil action is two years.

Under the amendments, employees can still file complaints with the DCWP. The amendments do not make filing an administrative complaint a prerequisite to filing a civil action in court, so failure to do so does not bar a civil action. If a civil action is commenced, the amendment requires the DCWP to pause its investigation (if it is investigating the same alleged violation as asserted in the civil action) and dismiss the DCWP complaint upon notice of a final judgment or settlement in the civil action that fully resolves the claim. The amendments provide that the DCWP retains the right to open an investigation into alleged violations on its own initiative.

With respect to penalties, the ESSTA permits the DCWP to impose a civil penalty of $500 for the first violation, $750 for subsequent violations that occur within two years of any previous violation (not to exceed $750) and $1,000 for each succeeding violation. The amendments permit imposition of such penalties for each instance of a violation.

Oregon

OAR Ch. 471 (final rules re: paid leave Oregon administration)

Adopted Jan. 4, 2024
Effective Jan. 12, 2024

Oregon has adopted final rules relating to the Paid Family and Medical Leave program (PFMLI or the "program"), under which eligible employees may take paid family and medical leave as of Sept. 3, 2023. The final rules cover various aspects of PFMLI, including confidentiality, benefits, equivalent plan reporting requirements and assistance grants.

Confidentiality

The final rules provide that the program will collect employer or employee information for specific purposes only. The information collected will be kept confidential and disclosed only in certain circumstances. The final rules add the definitions related to confidentiality. "Customer information" means information about an individual or a business entity contained in the records of the employment department related to PFMLI. This includes aggregations of data about fewer than three businesses or in which any one business accounts for more than 80% of the data and aggregations of data about fewer than three individuals. "Need to know" is defined as the access to, possession of or other use of customer information that is essential in order to carry out official duties.

Family member

Under PFMLI, an employee can take leave to care for family members for a variety of reasons. A family member includes an individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship. The final rules define "affinity" as a relationship that contains a significant personal bond like a family relationship. It may be demonstrated by, among other things, the following:

- Shared personal financial responsibility.
- Emergency contact designations.
- Expectation to provide care.
- Cohabitation.
- Geographic proximity.
- Other factors that demonstrate a family-like relationship.

First year

The final rules clarify that the "first year" after the child's birth, foster placement or adoption for use with family leave begins the day of the child's birth, foster placement or adoption and ends the day before the child's first birthday or first anniversary of the foster placement or adoption. In addition, the final rules clarify the definition of a "health care provider" as someone other than the claimant or the person for whom the claimant is providing care. The final rules list acceptable health care providers.

Claimant-designated representative

The final rules describe what is needed for a claimant to authorize a claimant-designated representative. A "claimant-designated representative" is an individual 18 years or older who is authorized by the claimant to represent them by exchanging information with the program on their behalf. The representative is authorized to provide and receive the following with the program:

- Information submitted by the claimant.
- Information about PFMLI benefits that the claimant has received or will receive.
- Information about pending or issued decisions made on the claimant's PFMLI claim.
- Information provided by a claimant-designated representative on behalf of a claimant.

The final rules provide procedures regarding how a claimant appoints a claimant-designated representative, when a claimant may revoke authorization and the requirements by which claimant-designated representatives must abide.

Bias

The final rules define "bias" for purposes of PFMLI leave as a "bias crime" as defined by Oregon law. Oregon law requires an employee to provide certification to an employer to verify that the employee is using leave for a permissible purpose. For purposes of verifying a leave due to a bias crime, the final rules list the permissible forms of documentation, including a written statement by the employee who can show good cause for not providing one of the other listed forms of documentation.

Reporting period

The final rules provide a new definition of reporting period for equivalent plan reporting requirements. "Reporting period" has different meanings depending on when the equivalent plan begins.

- For equivalent plans beginning in 2023, the first reporting period is the timeframe beginning with the start date of the equivalent plan and ending on the earlier of Dec. 31, 2024, or the last effective date of the terminated or withdrawn equivalent plan.
- The second reporting period (and for periods thereafter) is the timeframe beginning Jan. 1 of the calendar year and ending on the earlier of Dec. 31 of the same calendar year or the last effective date of the terminated or withdrawn equivalent plan.
- For equivalent plans beginning in 2024 or later, the timeframe beginning the later of Jan. 1 of the calendar year or the start date of the equivalent plan and ending on the earlier of Dec. 31 of the same calendar year or the last effective date of the terminated or withdrawn equivalent plan.

The required employer reports for each reporting period may no longer be filed with the annual equivalent plan reapplications but are due on or before the last day of the month that follows the close of the calendar year.

Restoring position

The final rules reflect recent changes to PFMLI regarding restoring an employee's position within a 50-mile radius of the employee's former job site and allowing an employer to deduct the employee's cost of health or insurance premiums paid by the employer while the employee is on paid leave from future paychecks.

Assistance grants

The final rules clarify the treatment of assistance grants for full and partial successors in interest when a business with a grant history transfers ownership. An employer is a total successor in interest when all or substantially all the components or parts of the business necessary to carry on day-to-day operations and essential business functions are carried on prior to the acquisition or transfer are transferred to or otherwise acquired by the successor in interest. A partial successor in interest is when a distinct and severable portion of the business necessary to carry on day-to-day operations and essential business functions are carried on prior to the acquisition or transfer to the successor in interest.

When an employer becomes a total successor in interest and has obtained an assistance grant, the employer: (1) is liable for the remaining contributions required under the law; and (2) maintains the grant history of the acquired business. Any grants received or applied before the ownership transfer occurred count toward the successor's annual limit.

When an employer becomes a partial successor in interest and has obtained an assistance grant, the employer: (1) maintains liability for any remaining employer contributions required under the law; and (2) maintains their respective grant history of the partial acquired business.

United States

Final rule re: 2024 federal civil penalties inflation adjustment

Adopted Jan. 10, 2024
Effective Jan. 15, 2024

The U.S. Department of Labor (DOL) has adopted a final rule to adjust for inflation the civil monetary penalties assessed or enforced by the DOL. The Inflation Adjustment Act requires the DOL to make annual adjustments to its civil money penalty levels to account for inflation no later than Jan. 15 of each year. Pertinent to FMLA notice requirements, every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places, a notice explaining FMLA provisions and providing information concerning the procedures for filing complaints of violations. An employer that willfully violates the posting requirement may be assessed a civil money penalty not to exceed $204 for each separate offense. The amended rule provides that the penalty should not exceed $211.

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