sedgwick

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | March 2023

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California

2 CCR 11087 and 11095 (final rule re: CFRA and designated person definition)

Enacted March 20, 2023

Effective March 20, 2023

California has amended its regulations related to the newly renamed Civil Rights Department. The amended regulations ensure that the former Department of Fair Employment and Housing is now known by its new name: The Civil Rights Department.

In conformity with the amended statute under the California Family Rights Act, the amended regulations also added "designated person" to the list of individuals an employee may use leave to care for. Notably, the regulation update did not provide additional information or description other than what is already provided in the law.

The amendments also added reproductive health decision-making to the list of protected characteristics under the state civil rights law, in conformity with the amended statute.

Colorado

HB 1045 (military leave amendments)

Enacted March 10, 2023

Effective March 10, 2023

Under Colorado law, a member of the Colorado National Guard or one of the reserve forces of the United States who leaves a non-temporary position with an employer in order to receive military training with the armed forces of the United States is generally entitled to be restored to that position or a similar position in the same status, pay and seniority, so long as the leave does not exceed 15 days in a calendar year. The period of absence is considered an absence with leave and without pay.

This law has been amended to allow leave for military training equivalent to three weeks of work on the person's regular work schedule in a calendar year. Moreover, the amendment allows the individual to use any paid leave available or use unpaid leave for the period of absence for military training.

Colorado

SB 46 (family and medical leave benefit calculation)

Enacted March 23, 2023

Effective March 23, 2023

Colorado has amended its paid family and medical leave law. Under the law, employees may receive paid family and medical leave insurance benefits for up to 12 weeks per year in a variety of circumstances. An employee's benefit amount is based on their average weekly wage, which is one-thirteenth of the wages received during the quarter of the individual's base period in which their total wages were the highest.

Under the law, an employee's benefit amount is based on their average weekly wage earned from the job(s) from which they are taking paid family and medical leave. The amended law removes the requirement that the average weekly wage be only the wage earned from the job(s) from which the individual is taking paid family and medical leave. This means that even if a worker has recently switched jobs before taking leave, the income from their previous job will be included when calculating their average weekly wage.

Illinois

SB 208 (Paid Leave for All Workers Act)

Enacted March 13, 2023

Effective Jan. 1, 2024

Informational only – Sedgwick does not administer

Illinois has enacted the Paid Leave for All Workers Act ("the Act") which requires nearly all covered Illinois employers to provide its covered employees up to 40 hours of paid leave per year to be used for any purpose.

The Act applies to all employers in Illinois except for some public entities. It covers all employees, with the following exceptions:

- Employees covered under the federal Railroad Unemployment Insurance Act or the Railway Labor 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).
- Employees covered by a bona fide CBA with an employer that provides services nationally and internationally of delivery, pickup and transportation of parcels, documents and freight.

The Act does not affect the validity or change the terms of a valid CBA in effect on Jan. 1, 2024. Following that date, the requirements of the Act can be waived in a bona fide CBA if the waiver is set forth explicitly in the agreement in clear and unambiguous terms.

The Act will not apply to any employer that is covered by a municipal or county ordinance in effect as of Jan. 1, 2024, that requires employers to give any form of paid leave to their employees, including paid sick leave or paid leave. Therefore, the Act does not preempt the Chicago Minimum Wage and Paid Sick Leave Ordinance or the Cook County Earned Sick Leave Ordinance, and employers not covered by those ordinances must provide paid leave under the Act. For any local ordinances enacted or amended on or after Jan. 1, 2024, an employer must comply only with the provisions of the local ordinance to the extent that it provides benefits, rights and remedies greater than or equal to the benefits, rights and remedies afforded under the Act.

Under the Act, covered employees will accrue one hour of paid leave for every 40 hours worked. Accrual begins on Jan. 1, 2024, or at the start of employment, whichever is later. Employees cannot use accrued paid leave until March 31, 2024, or until they have completed 90 calendar days of employment, whichever is later. Employees may accrue up to 40 hours in a 12-month period. A 12-month period may be any 12-month period designated by the employer in writing at the time of hire. Employees may carry over paid leave from one 12-month period to the next. In lieu of accruing time, employers may choose to grant (or "frontload") 40 hours of paid leave on the first day of the 12-month period. If the full 40 hours is frontloaded at the beginning of the 12-month period, carryover from year to year is not required, and any unused leave will be forfeited at the end of the 12-month period.

Employers may require up to seven days' advance notice of a foreseeable need for paid leave. If leave is unforeseeable, employees need only provide notice as soon as practicable. An employer that requires advance notice for unforeseeable absences must adopt a written policy that contains procedures for the employee to provide notice. However, employers are expressly prohibited from requiring documentation or certification to support an employee's need for leave under the Act.

Employers may set a reasonable minimum increment of use for paid leave under the Act, not to exceed two hours. If an employee's shift length is less than two hours in a day, the minimum increment of use will be the length of the employee's scheduled shift. Employees must receive their hourly rate of pay when using paid leave, which does not include commissions or gratuities. However, an employee's hourly rate of pay for leave under the Act cannot drop below the applicable minimum wage.

Unless an employer is using a more generous paid time off policy for compliance, employers are not required to pay employees for unused paid leave time upon separation from employment. Unused time must be reinstated and made available for use if the employee is rehired within 12 months of separation. Moreover, employees transferring to a separate division, entity or location will retain their accrued paid leave time.

Employers may use other types of paid leave policies to satisfy their obligation to provide paid leave under the Act. An employer is not required to modify its policy if it satisfies the minimum amount of leave required under the Act and the employee is permitted to take paid leave for any reason. If an employer does use another type of vacation bank to satisfy its obligations under the Act, any unused leave must be paid out upon separation from employment, consistent with the requirements under the Illinois Wage Payment and Collection Act.

Employers must post a notice, which will be published by the Illinois Department of Labor (IDOL), in a conspicuous place on the employer's premises and include a copy of the notice in a written document or written employee manual or policy. If the employer's workforce includes a significant portion of non-English speakers, the employer will be required to post a notice in that other language or languages. The IDOL will also publish the notice of rights in other languages.

Employers must maintain accurate records for each employee showing the employee's: (1) hours worked; (2) paid leave accrued and used; and (3) remaining paid leave balance. Records must be retained for at least three years and must be available for inspection by the IDOL. While an employee's paid leave accruals need not be reported on a paystub, employers must provide this information to an employee upon request.

Oregon

OAR 471-070-3150; 471-070-3160 (final rule re: employer size and paid leave)

Enacted March 16, 2023

Effective March 16, 2023

In November 2022, Oregon adopted a temporary rule amending its Paid Family and Medical Leave Insurance (PFMLI) program. Oregon has now finalized the temporary rule to amend the definition of employer size to calculate the employee threshold by changing the method from averaging over four quarters to averaging over 12 months. The final rule also gives multiple examples of how to calculate the number of employees employed by an employer.

Under the PFMLI law, large employers have different contribution obligations than small employers. The final rule provides that an employer's size is the average number of employees for the preceding 12 months and is based on the number of employees on payroll for the pay period that includes the 12th day of each month. The employee count is determined by adding the number of employees both in and outside Oregon who are on payroll for the pay period that includes the 12th day of the month. This number should not include replacement employees who are working temporarily to replace employees on PFMLI leave.

The final rule provides that employer size may not be rounded and should be determined for each calendar year based on the average of the monthly employee counts from the previous calendar year. The size of new employers will be determined each quarter for the first calendar year using the average monthly employee count for the previous 12 months, meaning that the employee count is zero for months during which the employer was not operating.

Tennessee

SB 454 (Paid Family Leave Insurance Act)

Enacted March 31, 2023

Effective Jan. 1, 2024

Tennessee has enacted a new law related to the creation of paid family leave insurance. Under the law, an insurer licensed to issue life or disability insurance in Tennessee can also issue a policy covering paid family leave. The paid family leave policy may be issued as an amendment to a group disability or life insurance policy or as a separate group insurance policy. The new law does not require an employer to sponsor a paid family leave insurance plan for its employees. To emphasize, **this is not a requirement for employers**. This law has opened the market for insurance carriers to write paid family leave insurance in this state.

Under the law, family leave insurance relates to a benefit program that will pay a portion of the employee's lost income due to the birth or adoption of a child, placement of a child for foster care, care of a family member with a serious health condition or the status of an employee's family member who is a service member on active duty or who has been notified of an impending call to active duty.

Washington: Seattle

Council Bill No. 120514 (paid sick and safe time for app-based workers)

Enacted March 29, 2023

Effective May 1, 2023

Informational only – Sedgwick does not administer

Seattle, Washington, has enacted an ordinance that entitles app-based workers to earn one day of paid sick and safe time for every 30 days worked. Beginning May 1, 2023, through Jan.12, 2024, only food delivery network companies are covered by the law. Beginning Jan. 13, 2024, any network companies with over 250 workers are covered. Covered app-based workers are those who perform services in whole or part in Seattle for a covered network company.

A network company is an organization operating in Seattle that uses an online-enabled application to connect customers with app-based workers, presents offers to app-based workers through a worker a worker platform and facilitates the provision of services for compensation by app-based workers. The ordinance defines an app-based worker as a person who has entered into an agreement with a network company that governs the terms and conditions of use of the network company's worker platform, or a person affiliated with and accepting offers to perform services through the company's worker platform. When an app-based worker logs into the worker platform, the worker is considered an app-based worker.

The new ordinance applies to network companies that facilitate work performed by 250 or more app-based workers worldwide, regardless of where the workers perform work. This includes, but is not limited to, chains, integrated enterprises or franchises that facilitate work performed by 250 or more app-based workers worldwide in aggregate. A network company does not include transportation network companies or any other "for hire vehicle company." The ordinance provides detailed guidance on determining the number of app-based workers a network company employs.

An app-based worker who accrued paid sick leave under the city's food delivery worker paid sick and safe leave ordinance must retain all accrued, unused paid sick and safe time and is entitled to use such paid time as provided by the new ordinance. Under the new ordinance, app-based workers will accrue at least one day of paid sick and safe time for every 30 days worked. Network companies may, but are not required to, frontload paid sick and safe time to a worker in advance of the accrual. In addition, network companies must allow workers to carry over at least nine days of accrued, unused paid sick and safe time to the following calendar year and may allow for a more

generous carryover. If an app-based worker carries over unused paid time to the following year, accrual of time in the subsequent year must be in addition to the hours accrued in the previous year and carried over.

App-based workers are entitled to use paid sick and safe time for the authorized purposes detailed in the ordinance and accrued days of paid time must be used in increments of 24 hours. Workers are entitled to use such time if the worker has performed services in whole or part in Seattle within 90 calendar days preceding the app-based worker's request to use paid sick and safe time. The new ordinance requires network companies to establish an accessible system for app-based worker to understand, request and use their paid sick and safe time. The system must be made available through a smartphone application or an online web portal and should include the required notices described below.

Network companies must make accrued time available for use as soon as practicable and no more than one week after the date of accrual. The network company must provide the accrued, available paid sick and safe time upon an app-based worker's request, which must be made as soon as practicable. Network companies must compensate workers for the requested days of paid sick and safe time no later than 14 calendar days or the next regularly scheduled date of compensation, whichever is sooner. Network companies cannot request or require reasonable verification except as provided by the ordinance. If verification is required, the app-based worker must be compensated for the requested day of paid sick and safe time no later than the worker's next regularly scheduled date of compensation after the verification is provided.

Notice of sick and safe time information

Network companies must provide each app-based worker with written notification of their paid sick and safe time information, including:

- The current rate of average daily compensation for use of paid sick and safe time.
- An updated amount of accrued paid sick and safe time since the last notification, reduced by time used since the last notification.
- Any unused paid sick and safe time available.

Network companies must provide this notification no less than monthly and may choose a reasonable system for providing the notifications as defined in the ordinance.

Notice of rights under the new ordinance

Network companies must provide each eligible app-based worker with a written notice of rights under the new ordinance. The notice must provide information on:

- The right to paid sick and safe time.
- The amount of paid sick and safe time accrual and terms of use.
- The right to be protected from retaliation for exercising the rights established by the ordinance in good faith.
- The right to file a complaint with the Office of Labor Standards or bring a civil action for a violation of the ordinance.
- Where and how to access further information.

The notice of rights must be provided according to the following schedule:

- By May 30, 2023, for workers hired as of May 1, 2023.
- For workers hired after May 1, 2023, network companies must provide the notice of rights prior to the worker commencing work.
- Annually for each worker.

Notice of company's policy and procedure

Network companies must also provide written notice of the company's policy and procedure, including:

- A worker's rights to paid sick and safe time.
- Whether the network company is using a year other than calendar year for carry over of accrued, unused paid sick and safe time.
- Authorized purposes for which paid time may be used.
- The manner of providing workers with written notification of the current rate of average daily compensation for use of paid sick and safe time and an updated amount of accrued, reduced, and available paid sick and safe time.
- Prohibitions against retaliation.

If applicable, network companies must provide an explanation of required verification, any shared paid sick and safe time programs, and any policy related to front loaded paid sick and safe time. The notice and policy must be provided in an electronic format, in English or any other primary language of the app-based workers.

Record retention

Network companies must retain the following documentation for each app-based worker:

- Date of commencement of work.
- Days worked in whole or part in Seattle.
- Compensation for days worked in whole or part in Seattle.
- Rates of average daily compensation as calculated every calendar month.
- Paid sick and safe time accrued, and any unused paid sick and paid safe time available for use.
- Paid sick and safe time reductions.
- Any other records that are necessary to effectuate the terms of the ordinance.

Records must be retained for three years from the date of days worked or the date of use of paid sick and safe time.

Wyoming

HB 57 (military service definitions)

Enacted Feb. 21, 2023

Effective July 1, 2023

Wyoming passed a law adopting uniform definitions of “armed forces” and “uniformed services” in order to align with federal law and expand the uniformed service members who are entitled to participate in programs under state law.

The amendment creates two new definitions. “Armed forces” means the Army, Navy, Air Force, Marine Corps, Space Force and Coast Guard. “Uniformed services” means all the following:

- The armed forces.
- The Commissioned Corps of the National Oceanic and Atmospheric Administration.
- The Commissioned corps of the Public Health Service.
- Any other category of persons designated by the President of the United States in time of war or emergency.

The remainder of the amendment simply aligns portions of the existing law to refer to “armed forces” and “uniformed services” where the law previously referred to “military forces” or “military service.”

The existing law contained a provision allowing private employers to grant preference to a veteran in hiring and promotion decisions without such a preference being considered discriminatory. Previously, the veteran hiring preference provision defined “veteran” to mean, in part, a member of the ”military forces” of the United States. Under the new law, “veteran” is now defined in relevant part to mean a member of the “armed forces” of the United States.

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