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LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | October 2023

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California

SB 616 (Healthy Workplaces, Healthy Families Act amendments)

Enacted Oct. 4, 2023

Effective Jan. 1, 2024

Informational only – Sedgwick does not administer

California has enacted amendments to the Healthy Workplaces, Healthy Families Act (HWHFA), resulting in significant changes to California's statewide paid sick and safe leave law. The amendments increase the number of job-protected paid leave hours employees can take each year under state law and the amount of paid leave employers must annually frontload when using a frontload policy. This also affects how companies can comply with the law via existing paid leave policies. The amendments extend limited HWHFA legal protections to certain unionized employees who are not currently covered by the HWHFA, establish greater statewide uniformity in some aspects of paid sick and safe leave through the partial preemption of local ordinances, and officially enact exclusions from the law that were previously established through a court challenge.

California's accrual limitation is not a finite annual or overall cap, but rather a temporary one — once an employee accumulates an amount of leave that equals the "cap" amount, they stop accruing leave but can immediately restart accruing when they use leave and their banked amount falls below the cap. Previously, an employee's banked, accrued paid sick and safe leave could be capped at 48 hours or six days, whichever was greater. Under these amendments, that amount has increased to the greater of 80 hours or 10 days.

In lieu of carryover, the HWHFA allows employers to frontload a specific amount of paid leave each year. Previously, the law required employers to frontload 24 hours or three days, whichever was greater. Under the amendments, that amount has increased to the greater of 40 hours or five days.

The amendments also impact two related, but less commonly discussed, HWHFA sick and safe time provisions. First, under the prior version of the HWHFA, instead of using the standard one leave hour for every 30 hours worked accrual rate, employers were permitted to use a different accrual rate as long as employees accrued leave on a regular basis resulting in no less than 24 hours of accrued leave by the completion of 120 days of employment and no less than 24 hours of accrued leave by the completion of 120 days in each subsequent year. The amendments change this accrual exception to require that, additionally, employees must accrue no less than 40 hours of leave by 200 days of employment and that same amount by 200 days in each subsequent year.

Second, California allows employers to impose a lengthier waiting period for new hires when using frontloading (120 days) than what the HWHFA allows when accrual is used to comply with paid sick and safe time obligations (89 days, per the state labor department). Before the enactment of these amendments, state law permitted employers using frontloading to provide no less than 24 hours or three days of paid leave for the employee to use by the time they completed 120 days of employment. As a result of this amended law, in addition to providing the

frontloaded 24 hours or three days of paid leave by the 120-day mark, employers must also provide no less than a total of 40 hours or five days of paid leave (between the initial 120-day frontloading and the subsequent 200-day frontloading) for the employee to use by the time they complete 200 days of employment. This change permits employers to provide the frontloaded amount in a piecemeal fashion rather than all at once.

Previously, the HWHFA did not apply to employees covered by a valid collective bargaining agreement (CBA) if the CBA: expressly provided for employees' wages, hours of work, and working conditions; provided paid sick days, paid leave or paid time off; required final and binding arbitration of disputes concerning paid leave; provided premium wage rates for all overtime hours worked; and established a regular hourly rate of pay of not less than 30% more than the state minimum wage rate. These amendments extend some of the HWHFA's protections to these employees:

- **Covered uses:** An employee covered by a CBA must be allowed paid leave to obtain diagnosis, care, or treatment of the employee's or the employee's family member's existing health condition or to obtain preventive care. Additionally, if an employee is a victim of domestic violence, sexual assault, or stalking, the employee must be permitted paid leave to: obtain or attempt to obtain any relief, including but not limited to a temporary restraining order, restraining order, or other injunctive relief; help ensure the health, safety, or welfare of the victim or their child; seek medical attention for injuries; obtain services from a domestic violence shelter, program, or rape crisis center; seek psychological counseling; and participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

- **Replacement worker prohibition:** An employer cannot require a CBA-covered employee to search for or find a replacement worker to cover the day(s) they will be absent from work as a condition of taking paid leave for a covered reason.

- **Anti-retaliation:** An employer cannot deny a CBA-covered employee the right to use sick days, nor may an employer discharge, threaten to discharge, demote, suspend, or in any way discriminate against an employee for using or attempting to use sick days, filing a complaint with the state labor department or alleging a violation of the HWHFA, cooperating in an investigation or prosecution of an alleged HWHFA violation, or opposing any policy, practice, or act that the HWHFA prohibits. A rebuttable presumption of retaliation applies if an employer takes prohibited action within 30 days of the employee filing a complaint with the state labor department or alleging a violation, cooperating with an investigation or prosecution of an alleged violation, and/or opposing an unlawful policy, practice or act.

The amendments add preemption provisions to the law and act to supersede any local ordinance that provides to the contrary with respect to the following obligations or practices:

- **End of employment and reinstatement:** Employers need not cash out unused paid sick and safe leave when employment ends but must reinstate such unused leave for employees rehired within one year of the date of separation unless leave was cashed out.

- **Advance leave:** At their discretion and with proper documentation, employers can advance leave to employees before they accrue it.

- **Paystubs:** The amount of paid leave available for HWHFA sick and safe time use must be on an itemized paystub or in a separate writing provided on payday.

- **Rate of pay:** The standards employers must use to calculate the rate of pay for paid sick and safe time use for employees who are non-exempt and exempt (which the state labor department limits only to those subject to the executive, administrative, and professional exemption).

- **Employee notice:** How much notice employees must provide their employer for foreseeable and unforeseeable absences.

- **When leave must be paid:** Employers must compensate employees for paid sick and safe leave they use by the payday for the pay period after the pay period in which the employee uses leave.

The amendments modify the HWHFA provision concerning so-called "grandfathered plans." When the HWHFA was enacted in 2014 (becoming effective in 2015), employers did not need to provide additional paid leave if they had a paid sick or time off plan in effect before Jan. 1, 2015, that included leave employees could use for the same reasons and under the same conditions as the HWHFA requires, subject to a few additional requirements. As with annual use caps, the amendments change this provision to increase the amount of leave employees must be able to accrue from three days or 24 hours to five days or 40 hours. Additionally, the amendments accelerate the timeframe for employees to accrue that amount of leave from within nine months of employment to within six months of employment.

Finally, the amendments exclude employees and employers covered by the federal Railroad Unemployment Insurance Act (RUIA). This change expressly incorporates into the law the outcome of litigation against the state by the rail industry, which successfully argued that the RUIA preempts California law.

California

SB 848 (leave for reproductive loss)

Enacted Oct. 10, 2023

Effective Jan. 1, 2024

California has enacted a new law that allows for a leave of absence for reproductive-related losses, which expands upon the existing bereavement leave available under California law for the death of an employee's family member. The new law increases leave entitlements for a "reproductive loss event," which means the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth or an unsuccessful assisted reproduction. The law makes it an unlawful employment practice for an employer to refuse to grant an eligible employee's request for up to five days of leave following a reproductive loss event and prohibits employers from retaliating against any employee for requesting or taking this leave. Sedgwick will be administering this unpaid leave.

The new law applies to California employers with five or more employees. Employees are only eligible for leave under the law if they have worked for the employer for at least 30 days prior to seeking leave. Notably, the law provides employers with the option to limit the amount of reproductive loss leave to a maximum of 20 days within a 12-month period, regardless of the number of reproductive loss events that occur in that 12-month period.

Subject to narrow exceptions when an employee takes applicable leave under state or federal law, eligible employees are required to take this leave within three months of the event that triggers the leave (i.e., reproductive loss events), but the leave is not required to be taken on consecutive days. Leave under the law is unpaid, unless the employer has an existing policy requiring paid leave under the circumstances. Further, eligible employees are entitled to choose to use any accrued and available sick leave or other paid time off for reproductive loss leave.

The law is silent regarding an employer's right to request documentation from an employee in connection with that employee's use of reproductive loss leave.

Colorado

7 CCR 1107-3 (final rule re: FAMLI employer requirements)

Adopted Oct. 31, 2023

Effective date not available at this time.

Colorado's Division of Family and Medical Leave Insurance has amended administrative rules implementing the Colorado Paid Family and Medical Insurance Leave Act (FAMLI Act). The amendments relate to key definitions, employer participation requirements, use of FAMLI benefits, detail of benefits, certification supporting the need for leave and notices to employees and employers.

The amended rules modify certain definitions to be used in implementing the law. Importantly, under the amendments, "application year" for purposes of FAMLI benefits is now measured forward from the date the employee uses paid leave, rather than backward. Additionally, under the amended rules, an employee's "regular work schedule" for purposes of FAMLI benefits is determined based on the hours normally worked by the employee, rather than the days of the week.

The FAMLI program requires employers to submit wage reports to the state on the same quarterly schedule as they submit premiums. Under the amended rules, if an employer submits their amended wage report after the due date to submit premiums and the wage report increases their premiums owed by 25% or more, then the wage report will not be considered timely.

The amended rules clarify that if an individual is awarded continuous FAMLI leave, the leave is not impacted by a subsequent unemployment award. However, the individual's FAMLI benefits are impacted if they receive unemployment benefits for this period of paid leave. Additionally, an individual receiving intermittent FAMLI leave will have their leave benefits terminated upon a "change in employment," which includes termination, resignation or a lack of available work. If a holiday occurs during a week a claimant is on continuous FAMLI leave for that week, the employee will receive payment for the entire week. If the holiday occurs during a week where the claimant's leave is for less than the entire week, the claimant will only receive payment for the holiday if they would ordinarily have been expected to work on that day.

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. Additionally, under the amended rules, FAMLI benefit usage will be determined by dividing the employee's hours of leave taken per week by their aggregate work schedule for that week. The amended rules also clarify that:

- An employee's hours of FAMLI leave cannot exceed the regular work schedule for their job.

- If a covered employee cannot provide the state with the number of scheduled or worked hours during their leave, the state may assign a reasonable approximate work schedule for the purposes of calculating leave usage.
- If an employee's work schedule changes during their leave, the state will adjust their benefit awards to reflect the increase or decrease, unless the employee's schedule reduces to zero hours.
- An employee's regular work schedule must be calculated as of the first date of their leave and, after then, upon any notification of a change in the work schedule.

Claimants do not need prior employer approval to access continuous, reduced or intermittent leave schedules, and benefit awards for approved leave are not impacted if the claimant's benefit year ends during their period of approved leave.

If a claimant's application for FAMLI benefits is certified by a health care provider, the provider may not be the claimant or a family member of the claimant.

Employers must display the FAMLI program notice in a conspicuous and accessible place for employees. If an employee or workspace is remote, the employer must distribute the notice through electronic communication or conspicuously display it on their electronic platform. Additionally, this notice must be delivered to employees upon hiring and again within five days of learning that an employee may qualify for leave. This notice must be provided in English, Spanish and any other language spoken as a first language by at least 5% of the workplace. An employee may request that the employer provide them with the notice in another language.

Under the amended rules, if the need for leave is foreseeable, a claimant must make a reasonable effort to schedule leave to not disrupt the employer's operations in consultation with the employer. If they fail to do so, the employer may require the claimant to arrange leave in a less disruptive schedule with the approval of a healthcare provider. If the need for leave is not foreseeable or a 30-day notice is not possible, the claimant must provide notice as soon as practicable. Ideally, this means on the same day or next business day of the employee learning they will need leave, though individual circumstances may mean that a longer period will still be considered reasonably practicable notice. An employee's failure to properly schedule leave or properly notify the employer of the need for leave does not allow the state to deny the employee's application for FAMLI benefits, nor does it change the state's obligation to timely pay the benefits.

Colorado

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

Adopted Oct. 31, 2023

Effective date not available at this time.

The Colorado Division of Family and Medical Leave Insurance has adopted a final rule that clarifies requirements for the coordination of benefits among the Family and Medical Leave Insurance Act (FAMLI Act), paid leave benefit plans, unemployment benefits and an employer-provided separate bank of paid family and medical leave. The final rule removes reference to paid parental leave under the definition of employer-provided paid leave. Employer-provided paid leave does not include benefits under a short-term disability policy, long term disability policy or a separate bank of time off solely for the purpose of paid family and medical leave.

The FAMLI Act and its regulations provide that benefits under the FAMLI program do not run concurrently with benefits under the Colorado Employment Security Act (CESA) or its implementing regulations. The final rule clarifies that regardless of an individual's status as a covered individual under the FAMLI program, the individual is not entitled to family and medical leave insurance benefits during any week the individual receives unemployment benefits pursuant to CESA for the same job. Further, if an individual is paid any benefits under CESA during a period of family and medical leave, then any family and medical leave wage replacement benefits paid to the individual for the same job during the same period of leave will be considered an overpayment.

Under the FAMLI Act, if family and medical leave is taken for a reason that also qualifies for benefits from a short-term disability policy, long-term disability policy or a separate bank of time off solely for the purpose of paid family and medical leave offered by the employer, then so long as the employer satisfies certain notice requirements, the employer may count both the wage replacement amount and the duration of the family and medical leave against the benefit amounts and leave duration provided under such policy or bank of time. The new final rule clarifies that if there is no remaining benefit amount or leave duration under such policy or bank of time when the covered individual takes family and medical leave, the employer or policy may not count either the wage replacement amount or duration against past or future balances.

The new final rule provides guidance on coordination of benefits between benefit plans providing paid family and medical leave benefits. To allow continuity of benefits for individuals covered under FAMLI or private plans, when changing plans, certain requirements must be met. The previous plan must continue paying all approved leave (continuous, intermittent and reduced leave schedules) through the duration previously approved or until a recertification is required, after which the claimant may reapply for benefits with their new plan. However, the previous plan does not have to continue to pay benefits where termination of approved leave is allowed under certain other rules. The previous plan must also provide any current benefit year duration utilization for any claimant previously covered under the previous plan by the employer to the new plan upon request.

The final rule also clarifies that if an individual has multiple jobs and is covered under multiple plans, the plans must provide information to each other to allow for accurate benefits to be paid to the covered individual. Each plan must calculate benefits based on leave taken under that plan, but proportionate to the covered individual's aggregate regular work schedule so that total benefits do not exceed the maximum weekly benefit and the total duration does not exceed the maximum number of weeks allowed.

Colorado

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

Adopted Oct. 31, 2023

Effective date not available at this time.

The Colorado Division of Family and Medical Leave Insurance has adopted a final rule that clarifies requirements for private plans under the Paid Family and Medical Leave Insurance Act ("FAMLI") program.

The FAMLI Act provides that employers who are approved to provide FAMLI benefits under a self-insured plan must establish and maintain a separate account which all employee contributions are deposited and kept, and from which all benefits must be paid, and from which private plan administrative costs may be paid. The final rule adds that employers may not withdraw from the account except to pay benefits and private plan administrative costs. In addition, the final rule provides that upon any voluntary or involuntary termination of a self-insured plan, the employer must remit any remaining balance to the Division.

Under the FAMLI Act, employees remain eligible for benefits under the FAMLI program on and after Jan. 1, 2024, and until the effective date of the approved private plan. The final rule provides that benefits awarded to an employee must be paid by the plan that awarded the benefits for the full duration of the employee's approved FAMLI benefits claim. If a private plan fails to pay benefits due to an insurance carrier's insolvency, and if the policy is covered by an insurance guaranty association, the claims will be paid by an insurance guaranty association. If the policy is not covered by a guaranty association, then the employer will be responsible for paying all claims approved by the private plan prior to the date of insolvency. In either scenario, employers must notify the division of the insolvency and the employer will be deemed covered under the system. If a self-insured employer fails to pay benefits as awarded and private plan approval is withdrawn, the division must execute upon the surety bond and use the proceeds and the remaining funds in the separate accounts to pay benefits due for claims arising prior to the date of termination.

If an employer fails to pay benefits as required by the rule or if the surety bond is insufficient to pay the benefits, the division must pay those claims. If the division does pay benefits to a covered individual that a private plan was obligated to pay, then the employer is indebted to the division for the amount of those benefits, and the division may pursue all legal means to collect any outstanding amounts from the employer.

Surety bond amounts must be an amount equal to one year of total premiums calculated pursuant under the FAMLI program statutes and may be based on four quarters of projected wages as reported by the employer to the division. The new rule includes that if an employer has not reported the four quarters of wages to the division, the previous quarters of wages reported to the Colorado Unemployment Insurance may suffice.

The FAMLI Act provides that premium contributions under the FAMLI program are considered wages paid for the benefit of the employee. The final rule provides that if an employer deducts premium contributions from an employee's wages, and then receives a refund of premiums paid from the private plan, the employer must distribute the refund proportionately and in accordance with how it was collected.

Under the new requirements, employers must retain wage records and records of any premium contributions the employer collected from employees for 4 years rather than 6 years. Beginning Jan. 1, 2025, private plan administrators must annually submit a private plan summary of the previous calendar year's plan to the division. The summary must be submitted by Feb. 28 immediately following the end of the calendar year and must contain the following information:

- Total number of benefits applications received.
- Total number of benefit applications approved, pending, denied or closed.
- Total benefit amounts paid.
- Total number of employees covered under private plan.
- Employer zip code.
- The purposes for approved leave.
- The gender, race, ethnicity and preferred language of individuals for whom leave was approved and for whom leave was denied in whole or in part.
- The average weekly wage of individuals for whom leave was approved.
- If leave was taken to care for a family member, the relationship of that family member to the beneficiary.
- Total number of grievances received from employers.
- Total number of appeals received.
- Total number of appeals affirmed, reversed, modified or withdrawn.

The final rule provides that employers that are voluntarily terminating a private plan and do not continue to provide coverage through the effective date of the plan will be fined. The fine must be the employee's lesser of (1) the daily total premium amount year per employee, calculated by using the total annual premium amount paid by the employer and employee, divided by 365, or (2) $500.

If the division withdraws approval for an employer's private plan, the division will issue a notice of withdrawal with an effective date 14 days after the date of the notice and an employer may appeal the withdrawal. The final rule

removes the 14-day effective date and provides that if an employer does not appeal, the effective date is the day following the deadline specified by existing regulations.

The new rule provides that employers may appeal any adverse determination by the final plan administrator. In addition, the final rule removes the provision that if a claimant appeals to the division a determination under an approved private plan, either the claimant or the private plan administrator may seek judicial review of the division's determination.

Colorado

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

Adopted Oct. 31, 2023
Effective date not available at this time.

The Colorado Division of Family and Medical Leave Insurance has amended its regulations implementing the Paid Family and Medical Leave Insurance Act (FAMLI Act) to clarify the process for recovering overpayments of benefits.

The regulations provide 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 unless otherwise relieved by the division. The regulations enumerate circumstances that would give rise to an overpayment. For instance, overpayment occurs when a claimant receives benefits, under the insurance benefits program or a private plan, for an absence from work caused by circumstances that would entitle the claimant to benefits provided under the Colorado Employment Security Act as well. This amendment clarifies that it covers claimants receiving benefits during any week the individual receives unemployment benefits for the same job under the Colorado Employment Security Act.

The regulations also provide that benefit overpayments may be identified through any lawful means, including division audits, division investigations or external tips. The benefit overpayment determinations were appealable. The amendment removes the right to appeal the determination.

Finally, at its discretion, the division may waive, in whole or in part, any amount of benefit overpayment owed where the recovery would be against equity and good conscience. The amended regulation clarifies that the division cannot waive overpayment in cases where the overpayment resulted from the individual's false representation or willful failure to disclose a material fact to the division.

Colorado

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

Adopted Oct. 31, 2023
Effective date not available at this time.

The Colorado Division of Family and Medical Leave Insurance has amended its administrative rules implementing the Paid Family and Medical Insurance Leave Act (FAMLI Act) to clarify when an employer may deny reinstatement and the required notice to the employee, as well as what may constitute retaliation or inference under the law.

The amended rules specify that at the conclusion of the leave, an employee is entitled to reinstatement to an equivalent position even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence, unless the employer can demonstrate a lawful reason to deny reinstatement. "Equivalent position" is now defined in the amended rules as a position that is nearly identical to the employee's former position as if the employee did not take paid family and medical leave. This includes pay, benefits and working conditions, privileges, perks, location and status. The equivalent position must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority.

The previous rules listed circumstances under which an employer is not required to reinstate an employee. The amended rules add the following situations in which reinstatement is not required: (1) the employee has failed to provide the required notice prior to taking leave, unless the need for leave was not foreseeable and unusual circumstances justify the failure to provide notice; or (2) the employee on leave provides the employer with written notice of resignation.

As soon as the employer decides to deny reinstatement to the employee on leave, the employer must provide written notice to the employee, either in person or by certified mail. The notice must include: (1) a statement that the employer intends to deny employment reinstatement when the leave ends; (2) the reasons for the decision; (3) an explanation that health benefits will be paid for the duration of the leave; and (4) the date that eligibility for health benefits ends.

The amended rules clarify that an employer may not treat an absence that is on appeal or under judicial review as an absence not protected by the FAMLI Act unless and until the leave is denied, and the employee has exhausted all rights to appeal or further review. However, if the outcome of the appeal or judicial review is pending outside of the benefit duration period under the FAMLI Act, it does not extend the duration of the leave available to the employee beyond the approved period.

The amended rules add to the examples of retaliation and interference previously provided in the rules. The new example of unlawful retaliation is initiating an eviction proceeding or evicting an employee from employer-paid housing because they engaged in protected activity. The additional example of unlawful interference is failing to reinstate, absent a qualified reason to deny reinstatement, an eligible employee to their position upon returning from leave as required by the FAMLI Act and the rules.

Colorado

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

Adopted Oct. 31, 2023

Effective date not available at this time.

The Colorado Division of Family and Medical Leave Insurance has amended its administrative rules regarding the Paid Family and Medical Insurance Leave Act (FAMLI Act). Specifically, the division has amended the rules concerning investigation and enforcement procedures for alleged violations of the FAMLI Act to include new and revised provisions on complaint procedures, investigatory procedures, the burden of proof, determinations by the Division and available remedies. Substantive changes are discussed below.

Among other clarifying changes to provisions concerning complaint-filing procedures, the amended rule provides that if a complaint does not include the complainant's signature and contact information, the respondent's contact information, and the basis for the complaint, it will be dismissed without prejudice. Similarly, a complainant's failure to respond to informational or investigatory requests from the division may result in dismissal without prejudice. However, if a complainant files a civil action in court against an employer or another entity named as a respondent in a complaint pending before the division, the division will dismiss the complaint before it with prejudice.

Under the definition of "Notice of Dismissal," the amendments clarify that a complaint can be dismissed with or without prejudice, and that a complaint that is dismissed with prejudice is considered a final determination by the division. Additionally, the rule previously provided that deadlines specified in the rules could be extended for good cause. The amended rule clarifies that such extensions may be no longer than 90 days.

The amended rule provides that in conducting its investigation, the division will thoroughly review the circumstances under which the alleged FAMLI Act violations occurred and any policies or practices that may appear to constitute retaliatory personnel action, even when those policies or practices have not been expressly raised by the complainant.

Prior to the amendment, the rule set forth the burden of proof for retaliation and unlawful interference claims. The amended rule adds a new provision regarding the burden of proof generally, which provides that the party seeking an award of benefits or damages, the imposition of a fine, penalty, fee or interest, or any other relief, has the burden of proof to show that the relief should be granted by a preponderance of the evidence. Further, when the division proves its grounds for imposing fines, penalties or fees, the amount of those fines, penalties or fees will be overturned or modified only if the employer or private plan proves that the division abused its discretion.

Prior to the rule's amendment, the division had 60 days to decide whether to investigate or dismiss a complaint. As amended, the rule provides that the division will decide whether it will either investigate or dismiss a complaint, and inform the parties of its decision in writing, within 90 days of the complaint's filing. Upon the conclusion of its investigation, the division will issue a written determination with appeal rights or a notice of dismissal. The division's determination must include findings of fact on which the determination is based, the relevant section(s) of the law, and the date the determination was issued. The amended rule provides that once the division's determination has been issued, the claimant cannot withdraw their complaint.

The amended rule includes a new section on remedies. These provisions provide that determinations may include the following remedies:

- Monetary or other relief authorized by the FAMLI Act and its implementing regulations.
- An assessment of an amount owed (fines and interest).
- Orders to comply, cease non-compliance, and/or otherwise correct direct or indirect consequences of FAMLI Act violations.

For any monetary award imposed under the rules, the division will issue a determination and "Notice of Assessment and Requirement to Report Payments Made," which will include:

- Total damages owed to the claimant.
- Total fines owed to the Division.
- Instructions for payment to the complainant(s) and/or division.
- Instructions for reporting payments to the complainant(s).
- Deadlines for payments to the complainant(s) and/or division.

The person awarded relief or remedies may request a certified copy of the final division decision and may file that copy with the clerk of the court having jurisdiction over the parties at any time after the entry of the determination. This filing can be in a county or district court and will have the effect of a judgment from which execution may be issued. While an aggrieved party is not required to first pursue the division's administrative remedies before bringing a lawsuit in the court system, an aggrieved party may not appeal a division determination to a court of competent jurisdiction until the aggrieved party has exhausted all administrative remedies, including appeal to a division hearing officer.

Provisions relating to appeals and language accessibility have been relocated from this rule to 7 CCR 1107-9 and 1107-7, respectively, summarized herein.

Colorado

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

Adopted Oct. 31, 2023

Effective date not available at this time.

The Colorado Division of Family and Medical Leave Insurance has issued a new administrative rule regarding the Paid Family and Medical Leave Insurance Act (FAMLI Act) to establish new procedures for appeals from determinations of the divisions related to claims for benefits or private plan approvals. 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. A determination or redetermination means an administrative decision or a private plan decision that is designated as a determination or redetermination or is a decision that:

- Explicitly or effectively denies all or part of a FAMLI claim for benefits.
- Imposes fines, fees or penalties.
- Identifies an overpayment or requires repayment of benefits.
- Awards damages or other remedies.
- Makes an ultimate finding on an accepted grievance or complaint.
- Withdraws the approval of a private plan or finds that a private plan committed a violation of the FAMLI Act or its implementing regulations.

Under the new rule, for an appeal to be valid it must:

- Be timely filed with the division.
- Include a copy of the determination or redetermination at issue or sufficiently identify the determination or redetermination appealed and the date of issuance.
- Be signed by the individual or an authorized representative of the individual.

To be timely filed, the appeal must be filed within 45 days of the date the division issued the determination or redetermination. However, if there is good cause for delay, the division may allow an extension of time of up to 35 days to file an appeal. An extension beyond 35 days requires extraordinary circumstances. Appeals are "filed" with

the division when the appeal is sent by U.S. first-class mail or electronically. An appeal is considered "signed," if it has either an ink signature, a scanned signature, an electronically drawn or generated signature, a unique mark belonging to a specific person or a typed name entered by the party or authorized representative in the signature area. Deadlines may be extended up to 42 days for good cause and up to 91 days for extraordinary circumstances unless otherwise specified.

If an appeal is not procedurally valid, the division will send a notice of the procedural deficiency that gives the appellant five days to respond to the notice of deficiency. An untimely appeal may be dismissed. For good cause, an extension of time up to 14 days for a response to the notice of deficiency may be granted. The filing of an appeal does not suspend or terminate a FAMLI claim award unless the hearing officer modifies or overturns a determination at issue in the appeal.

Once an appeal is determined to be procedurally valid, a case will be opened and a notice will be sent to the appellant, the division and any person who received a notice of a determination or claim that is the subject of an appeal. A hearing officer will be assigned to oversee the appeal, including scheduling, and send a notice of any necessary hearings.

The rule requires that when a party files any documents with the division, the party must also send the documents simultaneously to all parties of record, which means the appellant, the division, parties listed on a notice of hearing, and any person permitted to join the proceedings after a notice of hearing is issued. The new rule also sets forth the procedures and conduct of the hearing, including what evidence may be considered and the burden of proof for the appellant.

The hearing officer’s decision may be appealed by any party to the administrative proceeding by commencing an action for judicial review in a district court within 35 days after the date the decision was sent to the party. In the event the division or a court reverses or modifies a denial of a FAMLI claim, the division or private plan will pay the benefits as soon as practicable but no later than five business days after the order awarding benefits.

District of Columbia

B 390 (short-term disability insurance benefit protection)

Enacted Oct. 11, 2023

Effective following approval by the Mayor, a 30-day Congressional review, and publication in the DC Register

The District of Columbia has amended the Universal Paid Leave Act regarding the Act's effect on insurance benefits. On July 26, 2023, the District of Columbia passed an emergency measure (summarized in the July 2023 report) that prohibits private disability insurance providers from reducing short-term disability benefits based on actual or estimated paid leave benefits. The emergency measure will expire 90 days after its approval by the Mayor. This temporary measure extends the effective period of the short-term disability insurance benefit provisions and makes no substantive changes. The temporary measure will expire 225 days after the law takes effect.

District of Columbia

B 496 (short-term disability insurance benefit protection)

Enacted Oct. 26, 2023

Effective Oct. 26, 2023

The District of Columbia has amended the Universal Paid Leave Act regarding the Act's effect on insurance benefits. On July 26, 2023, the District of Columbia passed an emergency measure (summarized in the July 2023 report) that prohibits private disability insurance providers from reducing short-term disability benefits based on actual or estimated paid leave benefits. On Oct. 11, 2023, D.C. passed a temporary measure, summarized above, extending the effective period. As the temporary measure is not yet in effect, D.C. has enacted another emergency measure to immediately put the measure in effect.

Massachusetts

HB 4053 (paid family and medical leave benefit payments)

Enacted Oct. 17, 2023

Effective Nov. 1, 2023

Massachusetts has amended its paid family and medical leave law. Under the law, employees and employers contribute to the state fund, which enables employees to receive a weekly benefit while on leave for covered reasons.

An employee may receive payments from a variety of sources while on leave:

- An employer's temporary disability policy or program.
- An employer's paid family or medical leave policy.
- Wages received from another employer or through self-employment.

An employee's weekly benefit amount cannot be reduced by the wage replacements that the worker receives from these sources unless the payments would cause the employee to exceed their average weekly wage.

The amended law adds employer-provided accrued sick, vacation or other paid leave to this list, permitting employees to use these leaves without reducing their weekly benefit amount as well, unless the payment would cause the employee to exceed their average weekly wage.

Minnesota: St. Paul

Ordinance No. 23-48 (paid sick and safe time ordinance amendments)

Enacted Oct. 23, 2023

Effective Jan. 1, 2024

Informational only – Sedgwick does not administer

In May 2023, Minnesota enacted a new paid sick and safe time law set to take effect on Jan. 1, 2024. St. Paul, Minnesota, has amended its paid sick and safe time ordinance, which pre-existed the new statewide law, to align it with the statewide law. The amended law changes a number of key definitions, alters the manner in which sick and safe time can be accrued and used, clarifies obligations of employees and employers with respect to notice and documentation regarding sick and safe time use, and provides new notice and posting instructions for employers.

The amended law makes several significant changes to the definitions of terms as used in the ordinance. *"Earned sick and safe time"* must be paid at the same hourly rate as the employee earns from employment, but the hourly rate may not be less than the applicable minimum wage rate. *"Employee"* does not include airline flight deck or cabin crew members who meet certain qualifications established in the amended law. The amended definition clarifies who is deemed the *"Employer"* in a temporary or leased employee situation.

Finally, *"Family member"* is expanded 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.
- A child of a sibling of the employee.
- A sibling of the parents of the employee.
- A child-in-law or sibling-in-law as well as any of the listed family members of a spouse.

The definition also includes any other individual related by blood or whose close association with the employee is the equivalent of a family relationship and up to one individual annually designated by the employee.

Existing law provided that employers were not required to permit carryover of accrued but unused sick and safe time if they frontloaded employees at least 48 hours of earned sick and safe time during the first year and 80 hours of earned sick and safe time at the beginning of each subsequent year. The amended law provides a new alternative to the carryover requirement that allows an employer to provide its employees with earned sick and safe time for the year that meets or exceeds the law's requirements and that is available for employees' immediate use at the beginning of subsequent years as follows: (A) 48 hours, if an employer pays an employee for accrued but unused sick and safe time at the end of a year at the same hourly rate as the employee earns from employment; or (B) 80 hours, if an employer does not pay an employee for accrued but unused sick and safe time at the end of a year at the same or greater hourly rate as the employee earns from employment. An employer choosing this compliance alternative must apply the same method of compliance to all employees, and the amended law eliminates the previous provision allowing for modification of the method of compliance during the year.

Existing law required a 90-day waiting period before an employee was entitled to use accrued sick and safe time. The amended law eliminates the waiting period and clarifies how employees are entitled to use their sick and safe time as it is accrued.

Employees are permitted to use sick and safe time for the following reasons:

1. An employee's own mental or physical health care.
2. Care of a family member's mental or physical health care needs.
3. Absence due to domestic abuse, sexual assault or stalking of the employee or employee's family member, provided the absence meets one of the amended law's listed requirements.
4. Closure of the employee's place of business or a family member's school or place of care due to weather or other public emergency.
5. The employee's inability to work or telework because the employee is: (a) prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency to which the employee has been exposed; or (b) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency, provided that the employer requested the test or diagnosis.
6. When a competent health authority or professional has determined that the presence of the employee or employee's family member in the community would jeopardize the health of others because of the exposure of the employee or employee's family member to a communicable disease, regardless of whether the employee or family member has contracted the disease.

The amended law specifies that during any use of earned sick and safe time leave, the employer must maintain group insurance or health care coverage for the employee and any dependents. Upon return from leave, the employee is entitled to return to employment with all pre-leave benefits and seniority as if there had been no interruption in service, and at the same rate of pay, as well as with any automatic adjustments in the employee's pay scale that occurred during the leave period.

Existing law required that earned sick and safe time must be provided upon the employee's request and only required the employee to comply with the employer's usual and customary notice and procedural requirements for absences or requesting leave. The amended law details new notice and documentation requirements.

First, if the need for leave is foreseeable, the employer may require up to seven days' advance notice of the leave. If the leave is unforeseeable, notice may be required as soon as practicable. If the employer requires notice, the employer must provide the employee with a written policy containing reasonable procedures for providing notice of the need to use earned sick and safe time.

Next, the amended law stipulates that when an employee uses earned sick and safe time for more than three consecutive days, an employer may require reasonable documentation that the use of the time is for a covered reason.

For earned sick and safe time pursuant to reasons 1, 2, 5 or 6 above, reasonable documentation may include a signed statement by a healthcare professional indicating the need for the use of the time. However, if the employee or family member did not receive services from a healthcare professional or if documentation cannot be obtained in a reasonable time or without additional cost, then reasonable documentation may include a written statement from the employee indicating the employee is using the time for a qualifying purpose.

For use of earned sick and safe time under reason 3 above, an employer must accept a court record or documentation signed by a volunteer or employee of a victim services organization, an attorney, police officer, or an antiviolence counselor as reasonable documentation. For use of earned sick and safe time to care for a family member under reason 4 above, an employer must accept as reasonable documentation a written statement from the employee indicating the time is being used for a qualifying purpose.

Further, an employer must not require disclosure of details relating to domestic abuse, sexual assault, or stalking, or the details of an employee's or an employee's family member's medical condition as related to an employee's request to use earned sick and safe time under the ordinance.

Lastly, the amended law specifies that written statements by employees regarding the reason for their use of earned sick and safe time may be written in the employee's first language and need not be notarized or in any particular format. In addition, any records or documentation provided to support earned sick and safe time leave must be maintained as confidential medical records separate from personnel files and may not be used to discriminate against any employee.

Existing law required the employer to provide notice of the employee's rights and responsibilities with respect to earned sick and safe time, which could be done by posting the Department's model notice in a conspicuous and accessible place. The amended law adds to the information required in the model notice and requires that the notice be provided in English and the primary language of the employee, as identified by the employee, at the commencement of employment or the effective date of the amended law, whichever is later. The amended law also allows the employer to provide the notice to employees by any means that are at least as effective as the following options: (a) posting a copy of the notice at each location where employees perform work and where the notice must be readily observed and easily reviewed by all employees performing work; (b) providing a paper or electronic copy of the notice to employees; or (c) a conspicuous posting in a web-based or app-based platform through which an employee performs work.

Finally, the amendment mandates that when there is a separation from employment and the employee is rehired within 180 days of separation by the same employer, any of the employee's previously accrued sick and safe time that had not been used or paid out must be reinstated. Prior to the amendment, this requirement only extended to employees rehired within 90 days of separation.

North Carolina

HB 259 (preemption of local employment regulation)

Enacted Oct. 3, 2023

Effective Jul. 1, 2023

North Carolina has enacted a new law to prohibit local regulation of certain employment conditions. The new law preempts or supersedes any ordinance, regulation, resolution, or policy by a unit of local government or other political subdivision that regulates or imposes any requirement on an employer regarding compensation, including wages, hours of labor, payment of earned wages, benefits, leave or the well-being of minors in the workforce. However, the preemption provision does not apply to the following:

- A local government regulating, compensating or controlling its own employees.
- Specified state economic development incentives.
- Economic development incentives awarded for certain local development purposes.
- A requirement of federal community development block grants.
- Certain programs established for community development.

Puerto Rico

PC 452 (military leave amendments)

Enacted Aug. 8, 2023

Effective Aug. 8, 2023

Puerto Rico has enacted the Puerto Rican Military Code of the 21st Century ("Military Code"). This new law supersedes the Military Code of Puerto Rico from 1969. The new Military Code specifically defines the armed forces of Puerto Rico as including the PR National Guard and its Army and Airforce subdivisions, the Office of the Adjutant General of PR, the PR State Guard and the Youth Programs of the PR National Guard. This new law addresses an armed forces member's entitlement to protected military leave and reinstatement rights.

Under the Military Code, private employees who are members of the armed forces and who are asked to serve are eligible for unpaid leave for the duration of service, provided certain law requirements are met. The leave may be used for military training, such as drills or battle assembly, as well as courses or seminars ordered as part of military training. Leave must be provided without any effect on the employee's seniority or efficiency rating.

Prior to the enactment of the new Military Code, an employee had 40 days to request reemployment after leave. Pursuant to the new Military Code, members of the National Guard who are asked to serve and are eventually honorably discharged from their service may request reemployment within the following guidelines:

- For military service lasting 30 days or less, the member must report to their workplace at the beginning of their work shift after eight hours of rest.
- For military service lasting 31 to 180 days, the member must request reemployment no later than 14 days after completion of service.
- For military service lasting more than 181 days, the member must apply for reemployment no later than 90 days after completion of service.

Private employees must be reemployed to a position similar in ranking, status and pay, unless the employer's business situation has changed to a degree in which doing so would be impossible or unreasonable. In such cases, the employer bears the burden of proof. Private employers should also be aware that the Bill of Rights of the Puerto Rican Veteran of the 21st Century also provides and specifically recognizes the right to reemployment for members of the armed forces working for private employers. That law also specifies that members of the armed forces who are asked to serve retain all employment rights and privileges, including seniority and additional rights or benefits they may have acquired if they had continued their employment without any interruption. The Military Code similarly provides for reemployment rights following the veteran's return from active duty in the armed forces.

The Information contained within this document is intended to provide summary level information on proposed or enacted laws related to family and medical leave. It is not intended to provide guidance on the application of these legal requirements or as an update to your Company's attendance and/or leave policies. We recommend you consult with Legal Counsel to determine what changes, if any, should be applied to Company Policy.

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800.625.6588
Sedgwick@sedgwick.com
SEDGWICK.COM