

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | August 2023

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Colorado

7 CCR 1107-1 (final rule re: FAMLI program premiums)

Adopted Aug. 11, 2023

Effective Jan. 1, 2024

Colorado has amended its regulations implementing and enforcing the Paid Family and Medical Leave Insurance program (FAMLI). The FAMLI program provides for paid family and medical leave benefits and is funded through employer and employee premium contributions. An employer must submit wage reports and remit premium payments to the Division of Family and Medical Leave Insurance on a quarterly basis. [This amendment](#) creates a fine if an employer fails to remit premiums by the due dates. The division may impose a fine of up to \$50 per individual whose premiums were not timely paid.

The amendment also clarifies the definition of “wages” as used in the FAMLI statute and its implementing regulations. Under the amendment, “wages” means “gross wages,” and includes monetary compensation, employer-provided paid leave, and leave from a separate bank of time off solely for the purpose of paid family and medical leave if such leave is paid to the employee by the employer and not by a third party. However, “wages” does not include certain compensation types or any non-monetary payment, except for the portion of any non-monetary payment used as credit toward the minimum wage.

Finally, the amendment clarifies the calculation of employer size for purpose of determining liability for premiums. Under the FAMLI program, employers of ten or more employees must pay the employer contribution to the program, but employers of nine or fewer employees are only required to deduct and remit employee contributions. An employee counts toward the total number of employees if the employee is employed during 20 or more workweeks in the preceding calendar year. The amendments clarify that the employee must be employed in any U.S. state, the District of Columbia, or any U.S. territory or possession.

A person is considered “employed” during a workweek for the purpose of determining premium liability if: (1) the person performs any work for the employer during the workweek or (2) the person is on any type of paid or unpaid leave during the workweek and the employer has a reasonable expectation that the employee will later return to active employment. The amendments clarify that paid or unpaid leave includes leave taken under the federal Uniformed Services Employment and Reemployment Rights Act.

Delaware

SB 178 (appeal of denial of private plan approval)

Enacted Aug. 31, 2023

Effective Aug. 31, 2023

Benefits begin Jan. 1, 2026

Delaware has amended its paid family and medical leave law, the Healthy Delaware Families Act (HDFA), to allow employers to appeal denials of private benefit applications. Under the HDFA, covered employers must participate in the state's paid leave program or opt to use a private benefits plan. An employer must have their private plan approved by the Delaware Department of Labor before opting out of the state program.

This [amendment](#) allows an employer to appeal in the event the Department of Labor denies approval of the employer's private plan application. If an employer's application is denied, it will have 30 days from the date of the determination to file an appeal with the Department of Labor. The Secretary of Labor will conduct appeal hearings and issue binding decisions. An employer may also appeal the Secretary of Labor's decision to the state Superior Court within 30 days of the decision.

Illinois

HB 3516 (paid organ donation leave)

Enacted Aug. 4, 2023

Effective Jan. 1, 2024

Informational only – Sedgwick does not administer

Illinois has amended its Employee Blood Donation Leave Act to expand its coverage to include leave for organ donation in addition to blood donation. The law applies to employers that have 51 or more employees. An eligible employee is a full-time employee who has been employed by a covered employer for a period of six months or more and who donates blood or an organ.

The [amended law](#) provides that, upon request, a participating employee may be entitled to leave with pay to donate blood or an organ. An employee may use up to ten days of paid leave in any 12-month period to serve as an organ donor. The law defines “organ” to mean any biological tissue of the human body that may be donated by a living donor, including, but not limited to, the kidney, liver, lung, pancreas, intestine, bone and skin or any subpart thereof. Although Sedgwick will not be globally administering this paid leave, Sedgwick has and will continue to administer the already-existing unpaid leave that provides up to 30 days of unpaid leave for the donation of an organ.

Illinois

SB 2034 (Child Extended Bereavement Leave Act)

Enacted Aug. 4, 2023

Effective Jan. 1, 2024

Illinois has enacted the [Child Extended Bereavement Leave Act](#), which amends the state's bereavement leave under the Family Bereavement Act to allow employees to take bereavement leave under additional circumstances. The act entitles employees who experience the loss of their child by suicide or homicide to take unpaid leave from work to grieve the loss of that child. "Child" includes an employee's biological, adopted, foster, or stepchild, legal ward, or a child of a person standing in *loco parentis*. All full-time employees who have worked for their employer for at least two weeks are eligible for bereavement leave under the act. Sedgwick administers the Family Bereavement Act and will be administering this extended provision as well.

The act applies to all employers with at least 50 full-time employees in Illinois. However, the length of the leave entitlement differs based on whether the employer is considered a "large" or "small" employer. A "large" employer employs 250 or more full-time employees in Illinois. Eligible employees of large employers are entitled to use up to 12 weeks of unpaid leave following the loss of their child by suicide or homicide. A "small" employer employs at least 50, but fewer than 250 full-time employees, in Illinois. Eligible employees of small employers are entitled to use up to six weeks of unpaid leave following the loss of their child.

Employees may take bereavement leave in a single continuous period or intermittently in increments of at least four hours. Unlike the Family Bereavement Act, which requires that leave be taken within 60 days after the employee receives notice of the death of a family member, leave under the Child Extended Bereavement Leave Act may be taken within one year after the employee notifies the employer of the loss.

An employer may require that employees provide reasonable advance notice of the intention to take leave unless such notice would be unreasonable or impracticable. An employer may require an employee to provide reasonable documentation to verify that the employee is taking leave for a permissible reason. Acceptable documentation includes a death certificate, published obituary, or written verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or government agency. The employer may require that the documentation include a cause of death.

Employees may elect to substitute any paid or unpaid leave (e.g., family, sick or personal leave) for an equivalent period of leave under the act. The act does not extend the maximum period of leave that employees are entitled

under the federal Family and Medical Leave Act or any other paid or unpaid leave provided under federal, state, local law, a collective bargaining agreement or an employment benefits plan. Moreover, employees who take leave under the act are not entitled to take additional leave under the Illinois Family Bereavement Act for the death of the same child.

New Jersey

NJAC 12:21 (final rule re: family leave insurance benefits)

Adopted Aug. 21, 2023

Effective Aug. 21, 2023

New Jersey has amended its rules to conform to its family leave insurance law. Under the law, employees may take 26 weeks of leave for their own temporary disability or 12 weeks of leave for a family member's temporary disability.

The rules update several definitions to match the definitions under the law. The definition of family leave now provides more detail. Family leave covers:

- Providing care to family members with a serious health condition;
- Caring for a child in the first 12 months after their birth or placement;
- Reasons related to the New Jersey Security and Financial Empowerment Act (NJ SAFE Act) for victims of domestic violence or sexually violent offenses; or
- When a state of emergency has been declared by the governor or is indicated by the state health department due to an epidemic of a communicable disease where the individual or family member must receive in-home care or treatment.

[The amended rules](#) clarify that an employee may take leave intermittently for purposes related to the SAFE Act. The employee should provide written notice to the employer as far in advance as possible of the leave if the leave is foreseeable. The state may require the employee to provide certification to support the absence, whether the employer has requested it or not.

Under the law, employers must provide notice to employees of their rights under the law. The amended rules specify that an employer must provide notice of the benefits provided by a private insurance plan:

- By posting, including posting on an internet or intranet site with access for all employees;
- Individually when the private plan is established, including via email;
- At the time of hiring, including via email; and

- Within three business days of when it knows or should know that an employee may need disability benefits, including via email. The state has not provided a model form for this purpose to date.

The amended rules also describe the employee consent needed to establish a private plan for employees subject to a collective bargaining agreement.

Oregon

OAR Ch. 471 (temporary rule re: FMLA benefits, assistant grants, and confidentiality)

Adopted Aug. 9, 2023

Effective Aug. 9, 2023

Oregon has adopted [a temporary rule](#) that amends definitions related to benefits, confidentiality, and assistance grants related to the Paid Family and Medical Leave Insurance Program (PFMLI). The temporary rule expires on Feb. 4, 2024.

The Oregon Family Leave Act and the PFMLI allow an employee to use leave to care for a family member or a person related by affinity to the employee. The temporary rule adds a definition for “affinity,” outlining the characteristics of a family relationship to determine if an affinity relationship exists. The relationship must have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and the bond must be demonstrated by certain factors, with no single factor being determinative. The rule provides a non-exhaustive list of factors that may be considered.

The temporary rule adds certain definitions related to confidentiality. “Customer information” means information related to the individual or a business entity seeking services from the PFMLI program. This includes data that pertains to an individual business or person, aggregations of data about businesses in which there are fewer than three business or in which any one business accounts for more than 80% of the data, and aggregations of data about persons in which there are fewer than three persons. “Need to know” is defined as the access to, possession of, or other use of customer information that is essential to carry out official duties.

The temporary rule clarifies the definition of “first year” after the child’s birth foster placement or adoption for use with family leave. The first year 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. The definition of a “health care provider” is clarified as someone other than the claimant or the person for whom the claimant is providing care. The temporary rule lists out acceptable healthcare providers.

The temporary rule provides 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 the claimant by exchanging information with the PFMLI program on behalf of the claimant. The temporary rule lists the information that the representative is authorized to provide and receive with the PFMLI

program. The temporary rule also provides procedures regarding how a claimant appoints a claimant designated representative, when a claimant may revoke authorization and the requirements that claimant designated representatives must abide by.

The temporary rule clarifies 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:

- Is liable for the remaining contributions required under the law; and
- 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:

- Maintains liability for any remaining employer contributions required under the law; and
- Maintains their respective grant history of the partial acquired business.

Oregon

OAR 471-070-1000 & 471-070-1330 (temporary rules re: paid leave Oregon benefits and job protection)

Adopted Aug. 9, 2023

Effective Aug. 9, 2023

Oregon has enacted [temporary rules](#) regarding the Paid Leave Oregon program, under which eligible employees may take paid family and medical leave beginning Sept. 3, 2023. The 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. Additionally, the rules create definitions for key terms and clarify procedures for reinstating employees after leave. The temporary rules expire on Feb. 4, 2024.

Under the law, 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 rules define “affinity” as a relationship that contains a significant personal bond like a family relationship. The rules provide a non-exhaustive list of factors to consider.

Employees have reinstatement rights under the law when they return from paid leave. The rules clarify that reinstatement rights apply only to employees that have been employed for at least 90 consecutive calendar days before taking leave. The rules provide that employees must be restored to the position they formerly held, even if a replacement worker is currently performing their duties. If an employee notifies the employer that they are ready to return to work earlier than predicted, they must be given the opportunity to work the hours that their replacement is working on the second business day after notifying the employer of their return.

If an employee’s position has been eliminated while the employee was on leave, the employer must restore the employee to any available equivalent position that the employee is qualified for within a 50-mile radius of their former job site.

Seniority rights and other rights an employee accrued before starting leave must be restored upon their return. However, employees are generally not entitled to accrue benefits while they are on leave, such as production bonuses or other non-healthcare-related benefits that accrue while the employee is working.

Employers must continue health care benefits while the employee is on leave but may require that the employee pay their share of premium costs. Additional rules apply if the employee does not pay their share of the premium

costs. If the employee does not return to work after the leave, unless it is because of a serious health condition, safe leave or another circumstance outside the employee's control, the employer can recover the share of the employee's health insurance premiums that it paid on the employee's behalf.

Oregon

OAR 839-007-000; 839-007-0020; & 839-007-0045 (temporary rules re: Oregon family leave act and sick leave)

Adopted Aug. 23, 2023

Effective Sept. 3, 2023

Oregon has amended its administrative rules related to the state paid sick leave and family leave laws. The temporary rules expire on Feb. 29, 2024. Employees may take sick time for a variety of reasons under state law. The [amended rules](#) clarify that sick time may also be taken for any of the purposes authorized under Paid Leave Oregon. As a reminder, Sedgwick does not administer paid sick leave, including Oregon's paid sick leave program.

The amended rule clarifies the definition previously included in the paid sick leave rules to include an individual related by affinity to the employee or who is the employee's:

- Spouse or domestic partner;
- Child, or child's spouse or domestic partner;
- Parent, or parent's spouse or domestic partner (this includes a biological, adoptive, or step-parent, current or former foster parent, or person who was or is the employee's legal guardian or serves or served in *loco parentis*; it also includes the parent of an employee's spouse or domestic partner);
- Sibling or stepsibling, or the sibling or stepsibling's spouse or domestic partner;
- Grandparent, or grandparent's spouse or domestic partner; or
- Grandchild, or grandchild's spouse or domestic partner.

An employee may use sick time to care for a person related by affinity to the employee. "Affinity" is defined in the same way as it is under the family leave law, as described below. The amended rules state that an employer may require an employee to provide a written attestation about their relationship. Specifically, the employee must state that the employee and the person receiving care have a significant personal bond that is like a family relationship under the totality of the circumstances.

An employee may also use Oregon Family Leave Act (OFLA) leave to care for an individual related to the employee by affinity. The amended rules define “affinity” to mean a relationship where there is a significant personal bond that is like a family relationship under the totality of the circumstances. An employee may establish this relationship by showing:

- Shared personal financial responsibility, such as leases, ownership of property, joint liability for bills or beneficiary designations;
- Emergency contact designations;
- Expectation to provide care because of the relationship or prior providing of care;
- Cohabitation;
- Geographic proximity; and
- Any other factors that demonstrate a family-like relationship.

The amended rules state that an employer may require an employee to provide a written attestation about the relationship. Specifically, the employee must state that the employee and the person receiving care have a significant personal bond is like a family relationship under the totality of the circumstances.

An employee may take OFLA leave to care for their child under various circumstances. The amended rules clarify that for purposes of parental and sick child leave only, the child must be under age 18 or substantially limited by a physical or mental impairment.

Puerto Rico

PC 1108 (schedule changes for informal caregivers)

Enacted Aug. 8, 2023

Effective Aug. 8, 2023

Informational only – Sedgwick does not administer

Puerto Rico has enacted the [Informal Caregiver Public Policy Act](#) (ICPPA), which creates public policy that recognizes and defines the role of the informal caregiver, declares the rights of the informal caregiver and establishes a registry of informal caregivers in Puerto Rico.

The ICPPA sets forth the Informal Caregiver Bill of Rights, which includes the right of informal caregivers to be recognized in their role in the provision of care for the people they serve, the right to receive training in care-related issues, the right to receive information on the condition of the care recipient from the recipient's health care providers, the right to access to information on good practices for providing optimal care, the right to request a work-life balance between caregiving and the right to be heard in the context of the development of public policies aimed at the protection of informal caregivers. The law defines "informal caregiver" as a natural person who assists and supports a person in one or more of the essential activities of daily life without receiving financial remuneration. However, this definition does not apply to parents or legal guardians taking care of minors whose necessities coincide with those normally associated with their developmental stage, nor does it apply to legal entities such as businesses and non-profits.

Of interest to employers, with respect to the right to request a work-life balance, the ICPPA explicitly specifies that informal caregivers will be protected in the use of sick leave for the care of those care recipients in their charge, subject to the provisions of the Puerto Rico Vacation and Sick Leave Act.

Further, the ICPPA requires an employer to consider an informal caregiver's request for a work schedule change without meeting some of the threshold requirements otherwise required by law. The ICPPA amends existing Puerto Rico law concerning "the working day," which allowed employees meeting specified conditions the right to request a change in their work schedule, the number of hours or the place where the work must be performed. Previously, the right to request a schedule change was only available to employees that regularly work 30 or more hours a week and who have worked for the employer for at least one year. The amendment exempts registered informal caregivers from the 30 hours a week and one year of employment requirements.

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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