

LEAVE AND DISABILITY REGULATORY COMPLIANCE

Summary of legislative and regulatory changes

Private employer sector | December 2021

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Colorado

Final Rule 7 CCR 1107-1 (paid family and medical leave)

Enacted Nov. 24, 2021

Effective Jan. 1, 2022

Colorado has [issued rules](#) regarding the collection of premiums to fund the state's paid family medical leave insurance program (PFML). The law provides 12 weeks of paid family and medical leave funded through a payroll tax paid 50/50 by employers and employees. An additional four weeks of paid leave are available for pregnancy or childbirth complications, bringing the maximum potential amount of paid leave to 16 weeks.

For the first two years of the PFML program, 2023 and 2024, the payroll tax is set at 0.9% of the employee's wage, with 0.45% paid by the employer and 0.45% paid by the employee. Employers have the option of paying a larger percentage of the cost up to the entire cost. In 2025, and in each subsequent year, the law will adjust premiums so that the total amount of premium contributions to the program equals 135% of the previous year's claims and 100% of the administration costs, up to a cap of 1.2% of each employee's wages. The new rules require employers to submit their premiums to the Division at least quarterly, due the last day of the month immediately following the end of the quarter in which the premiums accrued.

The rules make it clear that employers may only deduct the amount necessary to pay the employee's share of the premium. If an employer deducts less than the amount necessary to make the premium payment, the Division will deem the employer to have elected to pay the additional portion of the employee's share. The employer may not deduct the difference from the employee's pay in a future paycheck. Employers may not deduct the premium amount when there are insufficient employee wages to cover the premium for that pay period.

The PFML law applies to any employer that has at least one employee in Colorado. However, the law lessens the cost burden on smaller employers, defined as those with fewer than 10 employees. Smaller employers do not have to pay the employer's share of the premium, although they still must withhold and pay the employees' contribution into the fund.

The new rules make it clear that the rules for counting employees in order to determine whether an employer is covered under the federal Family and Medical Leave Act also apply to determining whether an employer is covered under the PFML law.

Under the law, employers must submit premiums on the wages of employees for services performed within the state, and for services performed inside and outside of the state where the out-of-state activity is incidental to the in-state activity, such as if it is temporary. Additional rules apply when the employee's service is not localized in any state, but some services are performed in Colorado.

District of Columbia

B 405 (COVID-19-related leave)

Enacted Dec. 27, 2021

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

On Nov. 18, 2021, the District of Columbia enacted the [COVID Vaccination Leave Temporary Amendment Act of 2021](#). The Act provided for paid time off for COVID-19 vaccinations, as well as unpaid time off to accommodate employees and their family members affected by COVID-19. This enactment extends the effective period of these paid and unpaid leave provisions and makes no substantive changes. The temporary measure will expire 225 days after taking effect.

District of Columbia

B 484 (Universal Paid Leave Act)

Enacted Dec. 13, 2021

Effective Dec. 13, 2021

On Aug. 23, 2021, the District of Columbia enacted an emergency measure that sets forth the District's budget for FY2022. Of interest to employers, the bill makes amendments to the Universal Paid Leave Act and sets an operative date for the Ban on Non-Compete Agreements Amendment Act of 2020. This new law, [the Fiscal Year 2022 Budget Support Congressional Review Emergency Amendment Act of 2021](#), enacts the same provisions in order to extend their effective period.

Illinois

HB 106 (Employee Sick Leave Act)

Enacted Dec. 10, 2021

Effective Dec. 10, 2021

Informational only — Sedgwick does not administer

The Illinois Employee Sick Leave Act permits employees to use any employer-provided personal sick leave benefits for absences due to an illness, injury or medical appointment of a covered family member of the employee. “Covered family member” includes an employee’s child, stepchild, spouse, domestic partner, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent. The law exempted employees of employers who are subject to the provisions of Title II of the Railway Labor Act. [This amendment](#) repeals the latter provision, so employees of employers that are subject to the provisions of the Railway Labor Act are now entitled to the leave provided by the Illinois Sick Leave Act.

New York

Final Rule 12 NYCRR Part 196 (paid sick leave)

Enacted Dec. 22, 2021

Effective Dec. 22, 2021

Informational only — Sedgwick does not administer

The New York Department of Labor (“Department”) has issued a [final rule](#) to clarify sick leave requirements, setting forth rules for what supporting documentation employees must submit, providing guidance for employers for counting their employees to determine leave accrual entitlements, and clarifying how time off accrues where work is performed in intervals other than precise 30-hour units.

Except where prohibited by law, an employer may request documentation where the employee uses leave for three or more consecutive or previously scheduled workdays or shifts. Employers cannot require an employee or person providing documentation, including medical professionals, to disclose the reason for leave, except as required by law. Requests for documentation must be limited to either: an attestation from a licensed medical provider supporting the existence of a need for sick leave, the amount of leave needed, and a date that the employee may return to work; or an attestation from an employee of their eligibility to leave. The final rule provides that an employer may not require an employee to provide medical or other supporting documentation in connection with sick leave that lasts less than three consecutive, previously scheduled workdays or shifts.

Accrued leave must account for all time worked, regardless of whether time worked is less than a 30-hour increment. Employers may round accrued leave to the nearest five minutes, or the nearest one-tenth or quarter of an hour, provided that it will not result in a failure to provide the proper accrual of leave to employees for all the time they have actually worked.

The number of employees employed by an employer during a calendar year is determined by counting the highest total number of employees concurrently employed at any point during the calendar year to date. Employees on paid or unpaid leave (including sick leave, leaves of absence, suspension or other temporary absences) are counted as long as the employer has a reasonable expectation that the employee will return to active employment. Part-time employees are considered to be employed each working day of the calendar week. Further, employees that are jointly employed by more than one employer must be counted by each employer, regardless if they are on the employer’s payroll records. Employers that reduce the number of employees below any threshold cannot reduce leave entitlements until the following calendar year.

New York

New York City Int. No. 2448-2021 (vaccination leave)

Enacted Dec. 24, 2021

Effective Dec. 24, 2021

Informational only — Sedgwick does not administer

New York City has [enacted a law](#) requiring employers to provide paid leave for employees who accompany their children to get a COVID-19 vaccination. Under the law, an employee with a child under the age of 18 or the parent of an older child who is incapable of self-care because of disability is entitled to four hours of COVID-19 vaccination leave per vaccine injection, for each child. The leave may be used to take the child to the vaccination appointment or to care for a child who is suffering temporary side effects from the vaccine. The leave will be paid at the employee's regularly rate of pay.

Employers may require employees to provide reasonable documentation that the child received the COVID-19 vaccination. Employers, however, may not require an employee to work additional hours to make up for the hours the employee was away accompanying their child.

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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