



ABSENCE ADVISORY

REGULATORY UPDATES FROM
AFLAC'S LIFE, ABSENCE AND
DISABILITY SOLUTIONS DIVISION



JUNE 2023

We are pleased to share the June 2023 Absence Advisory, along with information related to state and other paid leave legislation.

TOP NEWS INSIDE

- State/other paid leave legislation: [Alabama and Florida](#); [Minnesota](#).
- State/other leave legislation: [FMLA](#) and [PWFA](#).



STATE/OTHER PAID LEAVE LEGISLATION

ALABAMA AND FLORIDA

Alabama and Florida adopt voluntary paid family and medical leave

As reported in previous issues of this newsletter, multiple states are proposing paid family medical leave (PFML) benefits. While mandatory PFML is the most common program design, in May 2023, the governors of Alabama and Florida, Kay Ivey and Ron DeSantis, each signed legislation creating a voluntary PFML insurance product for carriers to offer to employers. The laws create a new line of family leave insurance that may be written as an amendment or rider to a group disability income insurance policy, or as a separate group insurance policy purchased by an employer. It also means that private employers may voluntarily choose to offer a PFML policy to their employees but are not obligated to do so.

For more information, please see:

Alabama: <https://arc-sos.state.al.us/ucp/L1251642.A1.pdf>.

Florida: <https://flsenate.gov/Session/Bill/2023/721/ByCategory/?Tab=BillHistory>.

MINNESOTA

Minnesota Paid Family Medical Leave

On May 25, 2023, Minnesota Governor Timothy Walz signed a bill that will bring Paid Family Medical Leave (PFML) to the state.

Claims administration, as well as employee and employer contributions, will begin on Jan. 1, 2026, and the program would provide for up to 20 weeks of paid family and medical leave and be funded by 0.7% of an employee's weekly pay, split evenly by the employee and employer. A wage exclusion may apply for employers with fewer than 30 employees.

Most employers in Minnesota will be a covered employer with very few exceptions. Employees who have earned at least 5.3% of the state average annual wage in total over the base period, which is a 12 month period prior to the start of leave, will be eligible for benefits. In addition, MN PFML benefits are "portable," meaning that an employee's income earned across all covered Minnesota employers in the base period counts toward eligibility.

The MN PFML program will allow workers time off for up to 12 weeks a year with wage replacement to care for a newborn or a sick family member, and up to 12 weeks to recover from their own serious illness. Benefits will be capped at 20 weeks a year for employees who take advantage of both. Other leave reasons include military exigency and a safe leave. Employees could receive up to a 90% wage replacement benefit; although, the max benefit will equal the state's average weekly wage, which is reviewed annually.

For more information, please see: <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/59/>.

STATE/OTHER LEAVE LEGISLATION

FMLA

DOL Opinion Letter 2023-2-A

On May 30, 2023, the U.S. Department of Labor (DOL) published an opinion letter for the Family and Medical Leave Act (FMLA) that addressed the calculation of time taken when a holiday falls during the absence. In addition, it also discusses how and if holidays count against the employee's entitlement.

The DOL opinion letter, [2023_05_30_02_FMLA.pdf \(dol.gov\)](#), reiterates that if a holiday occurs during a workweek where the employee both works and uses FMLA leave, the holiday will not be deducted from the employee's FMLA entitlement unless the employee was scheduled and expected to work on the holiday. The DOL opinion letter also reminds employers that the employee's normal workweek determines the amount leave that decreases the FMLA balance.

For demonstration, with July Fourth right around the corner, there are many companies that observe the holiday and close. The following is how an office closure could impact a person who has an approved FMLA leave:

Leora is a full-time employee with a normal workweek of Monday through Friday, 8 hours a day. Leora is approved for intermittent leave for their own serious health condition. During the week of July 2-8, Leora takes FMLA leave from July 3-5, and then works July 6-7.

Leora was not scheduled to work on July Fourth, so that day would not count toward the entitlement. For calculation purposes, since her normal workweek week is five days (Monday through Friday), the time used is two days (or 2/5) of a FMLA week.

However, if Leora used FMLA leave July 3-7, a full week, then they will have used a full week of FMLA, despite not being scheduled to work the holiday.

It is common for many industries, such as hospitals, the food industry and or retail, etc., to remain open during holidays such as July Fourth. This would mean employees would work on the holiday. In that scenario, the example shifts:

If Leora was scheduled and expected to work July Fourth and missed July 3-5, then worked July 6-7, the time missed on the holiday would count and the FMLA usage would be three days (or 3/5) of a FMLA week.

For more DOL Opinions Letters: [Final Rulings and Opinion Letters | U.S. Department of Labor \(dol.gov\)](#).

Updated FMLA posters

On April 23, 2023, the U.S. Department of Labor (DOL) released their updated FMLA poster. Covered employers, as defined by the FMLA <https://www.ecfr.gov/current/title-29/section-825.104>, are required to display a FMLA poster in a prominently visible and accessible place for employees and applicants for employment to view it.

While the last update to the poster was seven years ago in April 2016, the DOL has advised that the April 2016 poster as well as the February 2013 poster continue to fulfill the poster requirements.

The poster summarizes the major provisions of the FMLA, which includes providing information concerning the procedures to file complaints with the Wage and Hour Division.

Important reminders:

- Posters are required to be displayed at all locations, even if there are no eligible employees working at the location.
- Electronic posting is sufficient to meet the posting requirements provided it meets all the requirements outlined in <https://www.ecfr.gov/current/title-29/section-825.300>.
- A civil money penalty, not to exceed \$204 for each offense, may be assessed by the Wage and Hour Division for an employer that willfully violates the posting requirement.

The FMLA poster is available for employers at: [fmlaen.pdf \(dol.gov\)](#).



PWFA

Pregnant Workers Fairness Act

June is upon us and the Pregnant Workers Fairness Act that was signed into law by President Biden on Dec. 29, 2022, will be in effect as of June 27, 2023. The act requires employers to provide reasonable accommodation to qualified employees (including applicants) with known limitations related to pregnancy, childbirth or related medical conditions of a qualified employee.

The act makes it unlawful to:

- Not make reasonable accommodations for a qualified employee unless the covered entity can demonstrate undue hardship on the operation of the business.
- Require an employee to accept an accommodation other than any reasonable accommodation that is arrived at through the interactive process.
- Require an employee to take leave (paid or unpaid) if another reasonable accommodation can be provided.
- Take adverse action in terms, condition or privileges of employment against a qualified employee who has requested or is using a reasonable accommodation.
- Deny employment opportunities to a qualified employee if the denial is based on the need to reasonably accommodate the employee.

Terms to know:

- **Known limitation:** A physical or mental condition related to, affected by or arising out of pregnancy, childbirth or related medical conditions that the employee or employee's representative has communicated to the employer whether or not such condition meets the definition of disability specified in Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).
- **Qualified employee:** An employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position, except that an employee or applicant shall be considered qualified if:
 - o Any inability to perform an essential function is for a temporary period.
 - o The essential function could be performed in the near future.
 - o The inability to perform the essential function can be reasonably accommodated.
- **Reasonable accommodation and undue hardship** have the meanings given such terms in Section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111), and shall be construed as such terms are construed under the act, and as set forth in the regulations required by this division, including with regard to the interactive process that will typically be used to determine an appropriate reasonable accommodation.

EEOC rulemaking is expected to be issued no later than December 2023.

To review contents of the Pregnant Workers Fairness Act, please visit: [Text - H.R.2617 - 117th Congress \(2021-2022\): Consolidated Appropriations Act, 2023 | Congress.gov | Library of Congress.](#)

Aflac leave clients: Aflac will be implementing the applicable changes effective June 27, 2023, as part of our Workplace Accommodation Solutions.



These are educational materials only. Employers should consult their own counsel for obligations for state-mandated leave and disability programs. Products and services are provided by Continental American Insurance Company. In California, coverage is offered by Continental American Life Insurance Company. In New York, products and services are provided by American Family Life Assurance Company of New York. Products may not be available in all states and may vary depending on state law.

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