



ABSENCE ADVISORY

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



NOVEMBER 2023

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

TOP NEWS INSIDE

- State/other leave legislative updates:
 - [Massachusetts](#).
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- Paid Leave:
 - [California Senate Bill 848](#).
- Other legislation:
 - [New Mexico 9.1.1.NMAC amendments](#).



Massachusetts paid family and medical leave program legislative change

For applications filed on or after Nov. 1, 2023, employers may top off the benefit amount employees are receiving from Paid Family and Medical Leave (PFML). “Topping off” means that the employer may supplement an employee’s weekly benefit with accrued PTO, vacation or sick leave. However, the combined sum of PFML and an employer-paid benefit cannot exceed more than the employee’s average weekly wage. Employers are responsible for monitoring and ensuring that the combined weekly sum the employee receives does not exceed the employee’s average weekly wage.

For example, if an employee’s average weekly wage equals \$2,000, and the employee has an approved PFML claim that pays \$1,100 per week, the employer may allow the employee to “top off” that amount with PTO up to \$900 per week (if available to the employee).

While employers may allow employees to “top off” their PFML benefit, employers cannot force employees to use their accrued time off.

For more information, please [click here](#).

Connecticut paid leave private plan changes

The Connecticut Paid Leave Authority recently voted to approve changes and updates to the private plan requirements. The revisions generally refreshed the process by removing out-of-date sections, clarifying requirements and organizing the checklist and documents to be more user-friendly. The changes also strengthened existing rules by covering topics such as the denial of a new private plan application due to lack of compliance in the past, requiring employer contact information to be up to date, and assessing penalties for continuing submission of contributions to the state despite having an approved private plan.

The changes to the policy officially became effective Oct. 12, 2023. However, for documents such as the Plain Language Guide, private plan applicants will continue to use the older version(s) for applications that will become effective on Jan. 1, 2024.

For more information, please [click here](#).

Oregon paid leave updates

Employers and private plan administrators should be aware that the Oregon Paid Leave claim system, FRANCES, did not account for carrier takeover of transitioning state plan claims in their system. This means that employees with an open claim with the state and are moving to a carrier-administered plan, may find the transition to be bumpy. The Oregon Employment Department is actively working on interim solutions until they can have FRANCES coded to run out claims originally approved under the public plan.

Employers should also be aware that Oregon Paid Leave is a voluntary program meaning that employers cannot require an employee to apply for paid leave benefits. Additionally, in a recent webinar held by the Oregon Bureau of Labor & Industries (BOLI), they shared that the amount of Family Medical Leave Act (FMLA) or Oregon Family Leave Act (OFLA) taken by an eligible employee prior to the commencement of an Oregon paid leave benefit year does not diminish the employee's entitlement under the paid leave program if they apply for paid leave benefits later. This is commonly known as "stacking" of leaves. Thus, if an employee, who is eligible for paid leave, chooses not to apply for paid leave benefits, the employer will not be able to count the three leaves (FMLA, OFLA and Oregon Paid Leave) concurrently. Conversely, any leave taken under Oregon Paid Leave must be taken concurrently with any leave taken by an eligible employee under OFLA or under FMLA for the same purposes.

To watch a replay of the webinar or to register to attend a webinar, please [click here](#).

Option available for Delaware employer with private paid leave programs

If you are an employer that offers a private paid leave benefit that is comparable to Delaware Paid Leave, you can apply to opt out of the Delaware Paid Leave plan so that your existing paid leave benefit is grandfathered. To qualify for grandfathering, your benefit program must:

- Be in writing and have been in place before the Healthy Delaware Families Act was signed into law.
- Not cost employees more than Delaware Paid Leave.
- Be within 10% of the main benefit provisions of Delaware Paid Leave.
- Have any parental leave cover all employees regardless of sex, gender or marital status.
- The state's grandfathering portal will walk employers through the application process.

If you have between 10 and 24 employees, you can reduce your employees' maximum Parental Leave benefit duration from the normally required 12 weeks to anywhere between six and 11 weeks. You can do this through the same online application process.

For more information or to apply for the opt-out, please [click here](#).



PAID LEAVE

CALIFORNIA

California Senate Bill 848

On Oct. 10, 2023, California Governor Gavin Newsom signed CA SB 848 into law. Effective Jan. 1, 2024, eligible employees may take unpaid leave when they experience a reproductive loss event that includes:

- Failed surrogacy.
- Miscarriage.
- Stillbirth.
- Unsuccessful assisted reproduction.
- Failed adoption.

COVERED EMPLOYEES

California employees who have worked for their employer for 30 days preceding the start date of leave.

COVERED EMPLOYERS

California employers with five or more employees.

Leave details

- Eligible employees are eligible for up to five days. When the employee experiences multiple losses, the Act provides a cumulative total of 20 days within a 12-month period.
- The leave must be taken within three months of the reproductive loss event.
- Leave may be taken on a continuous or intermittent basis.
- Employees may opt to use accrued sick time or other paid time off.

Aflac is assessing for systemic and process impacts. We also encourage employers to review and update their internal policies, procedures, and provide appropriate updates/training to their management. To review additional details of CA SB 848, please [click here](#).

OTHER LEGISLATION

NEW MEXICO

9.1.1 NMAC amendments

The New Mexico Human Rights Act, enacted in 1969, is a state law that protects individuals from discrimination for variety of reasons that include disability and pregnancy, childbirth or related conditions. Effective Oct. 10, 2023, New Mexico has published an amendment that removes or changes multiple defined terms to the Human Rights Act.

Among the changes are revised definitions of “reasonable accommodation” and “pregnancy, childbirth or related condition.”

“Reasonable accommodation” now includes modification of work schedule and work rules, and further defines that a reasonable accommodation should be “reached through good faith efforts to explore less restrictive or less expensive alternatives.”

In addition, the definition for “pregnancy, childbirth or related condition” was updated to reflect a “means,” for example, of “current, past, potential or intended pregnancy issues related to reproductive risk, choosing to have or not to have an abortion, use of contraception, fertility treatment or medical conditions related to pregnancy or childbirth including breastfeeding or lactation.”

To review additional details of the amendment to 9.1.1 NMAC, please [click here](#).

We encourage employers to review and update their internal policies, and provide timely and appropriate updates/training to management to implement changes as it applies to your company.



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 New York, products and services are provided by American Family Life Assurance Company of New York. In California, coverage is offered by Continental American Life Insurance Company. Products may not be available in all states and may vary depending on state law.

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