



PLADS

LEGISLATIVE ADVISORY

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



AUGUST 2022

We are pleased to share the August 2022 **PLADS Legislative Advisory**, information related to our upcoming webinar in September, paid and unpaid leave legislation as well as other regulatory updates.

TOP NEWS INSIDE

- Save the date: [Life insurance webinar](#).
- State/Other paid leave legislation: [Reminder on suspected fraud on paid leaves](#), [Massachusetts lessons learned](#), [Vermont](#) and [Washington, D.C.](#) regulatory updates.
- State/other leave legislation: [New Mexico](#).

SAVE THE DATE: LIFE INSURANCE WEBINAR

What do these three things have in common: physical health, mental health and life insurance? Join us from 1 p.m.- 2 p.m. ET, September 14 to find out!

With more than 71% of employees say uncertainty about money is the biggest stress they face in the workplace, while 20% admit they have skipped work in the last year to deal with financial-related stress. The connection between financial security, health and productivity is something all businesses need to address.

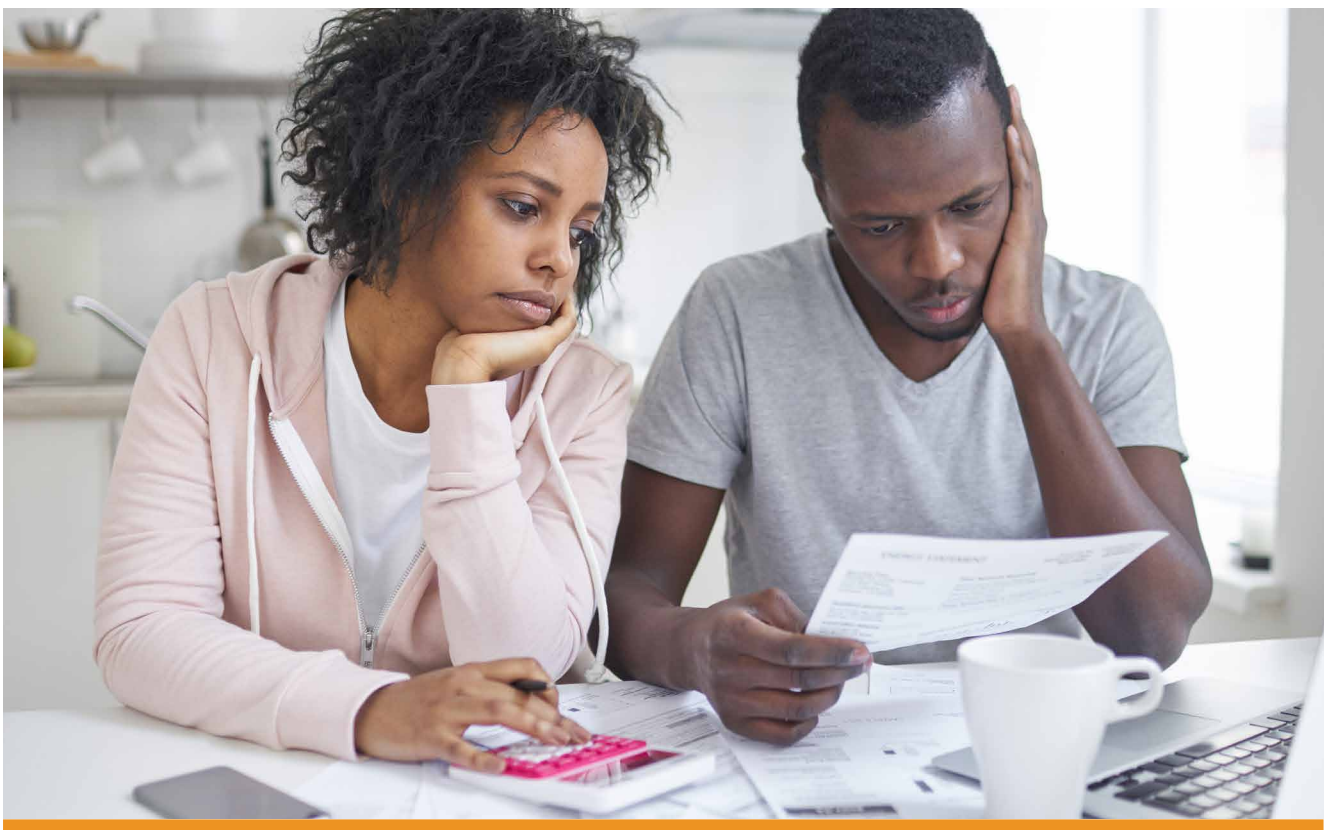
This is further complicated by the impact on loved ones when a wage-earning family member is no longer here. We have an opportunity during Life Insurance Awareness Month to help educate workers and ultimately increase financial security and peace of mind.

During the webinar, we will:

- Dispel myths about life insurance.
- Connect the dots with mental and physical health, financial security and how life insurance can create peace of mind.
- Provide tools to determine the right amount and type of life insurance employees will benefit most from.
- Offer guidance on what employers can do during open enrollment to increase participation and ultimately close the financial gap many families experience when a loved one passes away.

Join us as we facilitate a conversation that will supply you with a few tangible actions you can take immediately. You can register for the webinar [here](#).

Each registration link is unique and will only allow one user to access.



STATE/OTHER PAID LEAVE LEGISLATION

REMINDER ON SUSPECTED FRAUD OF STATE LEAVES

Employers play a key role in preventing fraud. If an employer receives a state or carrier form requesting information regarding an employee's hours worked or wages earned among other elements, but has not received notice that an employee is taking a leave or planning to take a leave, be sure to confirm the leave with the employee or employee's manager. This helps public and private administrators verify that an employee is eligible for the benefits.

State agencies also are continuing to strengthen fraud detection methods and applying those methods to new and existing claims by validating the identity of individuals. Many states require claimants to upload identification as part of the application process. Another way they are combating fraud is to send requests for information through the mail or online portals in which the employee can set up dual authentication.

That said, employers and employees alike should avoid clicking on links in unsolicited emails and be wary of email attachments, even from sources that appear to be legitimate. Malicious actors may be sending phishing e-mails designed to appear as if they are coming from government agencies, the U.S. Centers for Disease Control and employers, all with seemingly urgent requests for information and health information. It's important to remember to never include personal, health or financial information in an email.

If any payments were made in an employee's name as a result of identity fraud and associated with a claim the employee did not file, it should not be recognized as income to the employee at the end of the calendar year. In addition, the fraudulent claim should not impact the employee's ability to collect paid leave benefits in the future. If you have an employee who is a victim of identity fraud in connection with paid leave benefits, it is essential that that you contact the appropriate authorities and agency, immediately.

If you, or an employee, need to report fraud about a paid leave claim, we have provided contact information below. However, the employee should also file a police report with the local police department, obtain a copy of the report and provide that report to creditors and credit agencies as well as changing passwords on email, bank and other personal accounts.

STATE	CONTACT INFORMATION	PHONE NUMBER
California	https://askedd.edd.ca.gov/ and select the Report Fraud category or visit https://www.edd.ca.gov/about_edd/fraud.htm .	1.866.401.2849
Connecticut	For employer fraud: https://ctpaidleave.org/s/contactus?language=en_US . In the drop-down menu, select Report Suspected Fraud.	877.499.8606
Hawaii	Hawaii District Office State Office Building 75 Aupuni St., Room 108 Hilo, HI 96720	808.586.8947 or 808.586.9200
Massachusetts	https://www.mass.gov/info-details/reporting-paid-family-and-medical-leave-benefits-fraud#if-you-believe-you-are-a-victim-of-fraud	857.366.7201
New Jersey	https://www.myleavebenefits.nj.gov/labor/myleavebenefits/help/contact/ and click on the link to report fraud	609.292.7060

STATE	CONTACT INFORMATION	PHONE NUMBER
New York	https://paidfamilyleave.ny.gov/handling-requests	800.367.4448
Puerto Rico	Department of Labor and Human Resources PO Box 195540 San Juan, PR 00919-5540	787.754.5850
Rhode Island	Email: DLT.uitdifraud@dlt.ri.gov	401.462.1522
Washington	https://paidleave.wa.gov/app/uploads/2020/05/FraudComplaintForm_FINAL_032520.pdf or email: paidleave@esd.wa.gov	833.717.2273
Washington, D.C.	Email: does.opfl@dc.gov	1.202.899.3700

MASSACHUSETTS

Paid Family Medical Leave lessons learned

In a series of articles, we will look at paid statutory leaves implemented around the country and provide some lessons learned from each one.

State website	https://www.mass.gov/info-details/paid-family-and-medical-leave-pfml-overview-and-benefits
Covered employer	Private employers with one or more employees are subject to the MA PFML law.
Eligible employees	<ul style="list-style-type: none"> • Employees must have earned at least \$5,400 in the last 4 calendar quarters prior to the leave application (financial eligibility test). • There is no eligibility distinction for part-time versus full-time employees. • Once an employee meets earnings requirements, they are eligible. • Location of employment impacts employee eligibility (i.e., must work in Mass.).
Leave reasons	<ul style="list-style-type: none"> • Employee's own serious health condition. • Bonding with a newly born, adopted or fostered child. • Care for a family member with a serious health condition. • Assist loved ones when a family member is deployed abroad or on active military service (military exigency). • Care for a military member injured during active duty or for other reasons.
Covered family members	Spouse, domestic partner, child, parent, in loco parentis, sibling, grandparents, grandchild.
Duration	<ul style="list-style-type: none"> • Medical leave: payable for up to 20 weeks. • Family leave: payable for up to 12 weeks. • Combined family and medical leave per benefit year: up to 26 weeks. • Care of a covered service member: payable for up to 26 weeks.

Funding	0.68% of employee’s eligible wages. Contributions are split between employees and employers.
Wage replacement	80% of employee average weekly wage (AWW) up to 50% of the state average weekly wage (SAWW), plus 50% of the employee’s AWW that is greater than 50% subject to the annual max benefit.
How coverage is provided	State plan or self-funded voluntary plan (private plan exemption).

On Jan. 1, 2021, Massachusetts Paid Family Medical Leave (MA PFML) began to administer claims, and like Washington Paid Family Medical Leave (WA PFML) that was reviewed here last month, employers could choose between the public/state claims administration or a private plan purchased through a carrier. Unlike WA PFML, Massachusetts Department of Family and Medical Leave (MA DFML) allows an employer to choose between a self-funded private plan funded by an employer, but it may be managed by a third-party administrator or a fully insured plan offered by an insurance carrier licensed by the Division of Insurance.

Another difference between MA PFML and WA PFML, is their interaction with the federal Family and Medical Leave Act (FMLA). In Washington, an employee’s use of FMLA or other available leave does not diminish their available WA PFML benefit. It is possible for an employee to use multiple leave options consecutively. However in Massachusetts, if the leave qualifies for FMLA leave and leave under the MA PFML program, the leave used counts against the employee’s entitlement under both programs. <https://www.mass.gov/info-details/employer-role-in-reviewing-paid-family-and-medical-leave-applications>.

Additionally, an employee cannot save, or “stack,” MA PFML leave for later. Under the state plan, when an employee applies for MA PFML benefits, the employer will receive an email that asks among other things, whether the employee has taken any other types of leave in the previous benefit year in order to confirm that the employee has not used more time than what they are eligible for. Also under the MA PFML regulations, if a period of leave is MA PFML qualifying, even if the employee does not file an application for benefits, that leave will run concurrently with MA PFML. <https://www.mass.gov/doc/employer-toolkit-for-paid-family-and-medical-leave/download>.

The lesson learned: The state attempted to reduce employer and employee confusion by considering the need to have leaves run concurrently with each other. While other programs have allowed for a degree of ambiguity, MA PFML is clear that even if the employee does not apply for the benefit, if the employee has taken a leave for a MA PFML qualifying reason, the time will be counted as used along with whatever leave the employee did apply for.

Next month’s lessons learned article will focus on Washington, D.C. Universal Paid Leave.

VERMONT

Voluntary Paid Family and Medical Leave

In July, the Vermont Human Resources Department issued a request for proposal searching for a carrier to offer its paid family medical leave insurance benefits. Vermont’s RFP is very much like New Hampshire’s Granite State Paid Family Leave law in that the programs offer paid family medical leave benefits on a voluntary basis. However, Vermont will offer it in the first phase to state employees and then to private employers and individuals. Another difference between Vermont’s Family Medical Leave Insurance (VT FMLI) and the Granite State program is

Vermont's benefit was not created through legislation the way other states have done, but instead by issuing an RFP.

The winning carrier will contract directly with the state: first for its State of Vermont employees (Phase 1); second, other private and public employers with 10 or more employees (Phase 2); third small employers with fewer than 10 employees; and finally eligible individual employees including self-employed individuals (Phase 3). The RFP also indicates that the state is open to having a competitive marketplace for voluntary FMLI so other carriers can offer coverage to eligible employers and employees even if those carriers do not cover the State of Vermont employees. In this way, the position Vermont is taking with its FMLI benefit is comparable to Virginia's, allowing carriers to offer private paid family leave policies.

Proposals were due August 19. Benefit administration for state employees is slated to begin July 1, 2023, with Phase 2 starting no later than July 1, 2024, and Phase 3 no later than July 1, 2025.

For more information, please visit: <http://www.vermontbusinessregistry.com/bidAttachments/56122/State%20of%20Vermont%20FMLI%20RFP.pdf>.

WASHINGTON, D.C.

UPL coordination with short-term disability benefits

The Council of the District of Columbia has passed an additional, temporary resolution when it comes to offsetting the Washington, D.C. Universal Paid Leave (DC UPL) benefit from short-term disability (STD) payments. The council has consistently stated that it never intended for DC UPL benefits to reduce or limit workers' access to STD benefits. As a result of the resolution, fully Insured STD plans cannot offset DC UPL from the STD benefit. This of course becomes problematic because the employee may receive more than 100% of their average weekly wage while out of work. On the other hand, a self-funded STD plan can take the offset for DC UPL from their STD plans. https://lms.dccouncil.us/downloads/LIMS/46898/Signed_Act/B24-0185-Signed_Act.pdf.

The resolution goes on to say, "The Department of Insurance, Securities, and Banking's (DISB) ability to enforce the anti-offsetting law, as intended, is hampered by the fact that the agency's enforcement authority is typically limited to insurance policies that were written or issued in the district. Thus, DISB is likely unable to take enforcement action against an insurer for unlawfully offsetting UPL benefits for district-based employees because the employer's short-term disability policy was written or delivered outside the district." The intent of the resolution is to strengthen DISB's enforcement authority by including an extraterritoriality clause that requires application of the DC UPL law regardless of the jurisdiction in which the STD insurance policy was written or issued.

The resolution is effective immediately. For more information, please see: <https://lms.dccouncil.us/Legislation/PR24-0863>.

STATE/OTHER LEAVE LEGISLATION

NEW MEXICO

New Mexico Healthy Workplaces Act (NMAC 11.1.6)

In June, we provided information around the state of New Mexico enactment of the Healthy Workplaces Act (HWA) that became effective July 1, 2022. It requires all private employers to provide paid leave to employees. Employees are entitled to accrue at least one hour of paid leave for every 30 hours worked. Since that time, New Mexico has released clarification around accruals along with other information.

Accruals: Employees are entitled to accrue at least one hour of paid leave for every 30 hours worked.

- Paid time taken such as vacation would not be included in the accrual consideration as the accrual is based on time worked.
- If the employee does not work 30 hours, the accrual would be representative of the time worked. For example:
 - A part-time employee who works 20 hours would accrue .67 hours of paid sick leave per week.
 - A part-time employee who works 10 hours would accrue .33 hours of paid sick leave per week.
- Employers may impose an annual cap for the use of time to 64 hours.
- Employers may not place an annual cap on an employee's accrual, as per the FAQ that N.M. Department of Workforce Solutions published: [HWA_FAQs.pdf \(state.nm.us\)](#).
- Employers may limit the amount of accrued time that is carried into the next year at 64 hours of unused time.

Reminders

- An employer may not require an employee to use other paid leave before they use their HWA leave.
- **Notices:** Employers are required to give written or electronic notice to employees when employment begins. The notice must include:
 - The right to paid leave.
 - The method in which leave accrues and is calculated.
 - The terms of leave use under the Act.
 - The Act's anti-retaliation provisions.
 - The right to file a complaint with the state labor department if the employer denies leave or retaliates against an employee.
 - The means of enforcing violations of the law.

In addition, employers must display a poster that contains information in the mandatory notice in a visible and accessible place in each establishment where employees are employed.

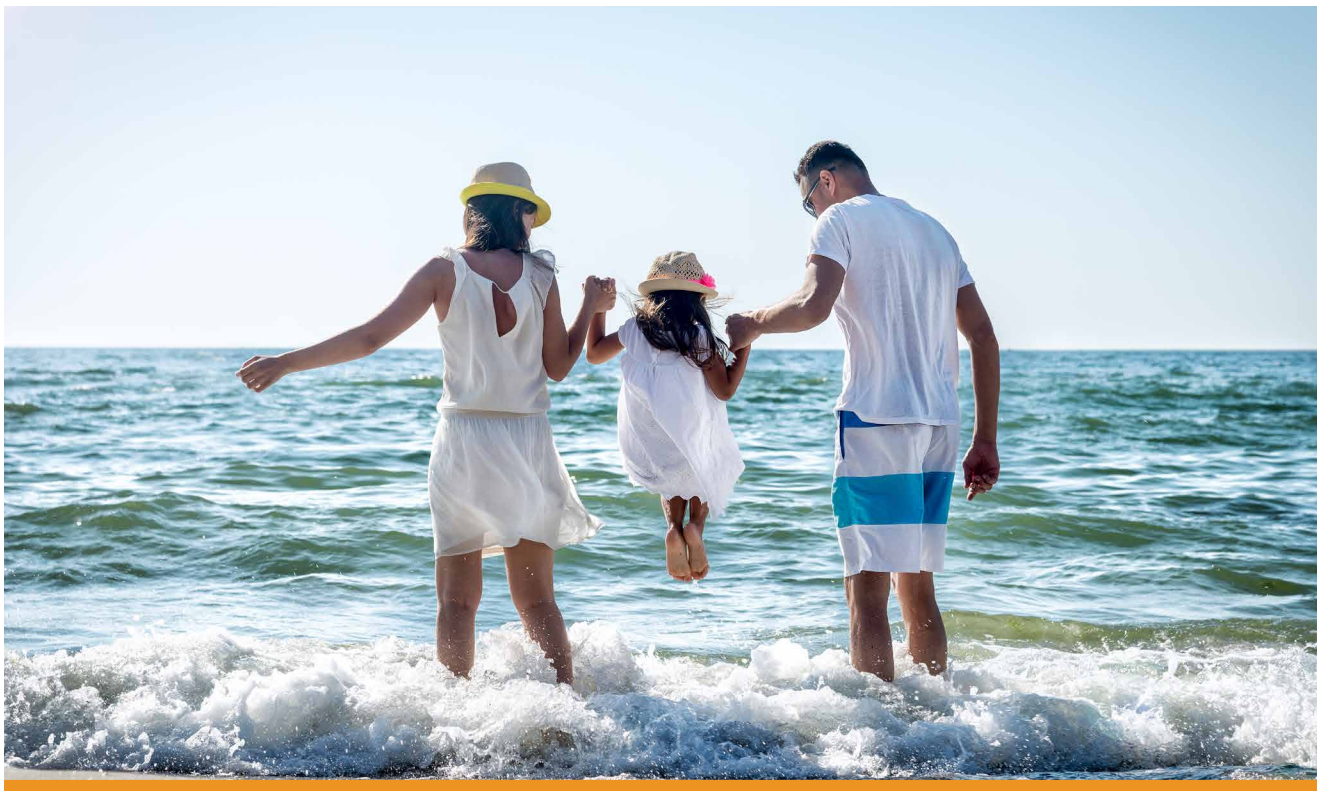
Posters are available for employers at: [New Mexico Department of Workforce Solutions > Labor Relations > Labor Information > New Mexico Paid Sick Leave \(state.nm.us\)](#).

Guide: [Reference_Guide_June_2022.pdf \(state.nm.us\)](#).

HWA compliance checklist: [HWA Checklist \(state.nm.us\)](#).

Internal policies must meet or exceed the same terms and conditions as the law requires. For example, generally, existing paid time policies do not include per diem employees. Under HWA, per diem employees should accrue paid time.

While Aflac PLADS does not administer paid time programs based on accruals, on behalf of clients, we encourage employers to review and update their internal policies and provide appropriate updates/training to management.



These are educational materials only. Employers should consult their own counsel for obligations for state-mandated leave and disability programs. Products and services are administered by Continental American Insurance Company. In New York, products and services are administered 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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