PLADS

LEGISLATIVE ADVISORY

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

OCTOBER 2022

We are pleased to share the October 2022 **PLADS Legislative Advisory**, featuring information about our upcoming webinar on addressing the unique needs of military caregivers, plus the latest paid and unpaid leave legislation as well as other regulatory updates.

TOP NEWS INSIDE

- Nov. 30 webinar: Addressing the unique needs of military caregivers.
- State/other paid leave legislation: Massachusetts, Oregon and Washington.
- State/other leave legislation: California and New Jersey.
- Using Social Security for paid leaves.

UPCOMING WEBINAR: ADDRESSING THE UNIQUE NEEDS OF MILITARY CAREGIVERS

On Wednesday, Nov. 30, Aflac will present a webinar through DMEC's 2022 Tools and Tactics session. We will explore trends in military caregiving demographics – from who provides the care to the common situations leading to the need for caregiving and its duration. Our presenters will dive into the distinctive challenges caregivers confront and practical steps your organization can take to provide support and alleviate difficulties. You will learn about resources available to service member caregivers and emerging trends and issues facing all caregivers.

Join our webinar as we:

- Understand the distinctive qualities of caring for military/service members.
- Learn what employers can do to support military caregiver challenges.
- Explore how to proactively address the mental health and wellbeing caregivers need.

Featured panelists:

JENNIFER PLATZ-ALFONSO, LMHC

Director, Care Managers

Aflac

MATT MICLETTE, MPH, MS, RN

VP Clinical Operations

NeuroFlow

JENNIFER OLSEN, MPH, DR. P.H.

CEO

Roslyn Carter Institute for Caregivers

FREE registration when you use coupon code: **22AFLAC1**.

Register Now

STATE/OTHER PAID LEAVE LEGISLATION

MASSACHUSETTS

2023 changes to Massachusetts Paid Family Medical Leave

Massachusetts Paid Family Medical Leave (MA PFML) contribution rates have been released for 2023 from the Massachusetts Department of Family and Medical Leave. In 2023, the contribution rate for MA PFML will decrease from 0.68% of eligible wages to 0.63% of an employee's eligible wages capped at the Social Security contribution limit.

The maximum weekly benefit will be $1,129.82, an increase from $1,084.31 in 2022.

For more information, please see: https://www.mass.gov/orgs/department-of-family-and-medical-leave.

OREGON

Paid leave lessons learned

On Sept. 3, 2023, Oregon Paid Leave (OR PL) will begin to administer claims. OR PL was set to originally begin paying out benefits on Jan. 1, 2023, but due to COVID-19 and a monumental number of unemployment claims, the Oregon Paid Family Medical Leave Insurance Advisory Board recommended, and was granted, a delay in the payment of benefits until Sept. 3, 2023. While also delayed, OR PL contributions are expected to begin on Jan. 1, 2023 and will be 1% of an employee's wages up to a maximum based on the Social Security wage index.

Employees will cover 60% of the contribution rate while employers with 25 or more employees will pay 40% of the contribution rate. Employers with fewer than 25 employees will not be required to contribute. Employers who prefer to provide paid leave benefits themselves can apply for approval of an equivalent plan, which must offer benefits equal to or greater than the state program.

State website	https://paidleave.oregon.gov/
Covered employer	OR PL covers almost every Oregon employer including small and large employers, nonprofits, charities and faith-based organizations.
Eligible employees	Employees must work in Oregon and have earned $1,000 or more in the year before applying for OR PL.
Leave reasons	• Family leave – Bonding, to care for a family member with a serious health condition • Medical leave – To care for the employee's own serious health condition. • Safe leave – For survivors of sexual assaults, domestic violence, harassment or stalking.
Covered family members	Any person related by blood, or whose relationship with the employee is like family.

Duration	• 12 weeks per year. • Up to an additional two weeks for limitations related to pregnancy.
Funding	No more than 1% of employees' wages. Employees pay 60% of the contribution rate while employers with 25 or more employees pay 40% of the contribution rate.
Wage replacement	100% of wages up to 65% of the state average weekly wage. If an employee's average weekly wage is greater than 65% of the state average weekly wage, then 65% of the state average weekly wage and 50% of the employee's average weekly wage that is greater than 65%. Max benefit $1,469.
How coverage is provided	Public and private plans.

Carriers offering private plans in the multitude of states creating Paid Family Medical Leave (PFML) benefits are in a unique position to provide insight into what has worked and not worked in other states when it comes to rules and regulations that will govern the equivalent plan and claims administration processes. For example, employers, especially those with employee populations across multiple states, rely on carriers' experience, expertise and knowledge of federal, state and multiple leave laws to understand where laws overlap and where they have different (and sometimes competing) eligibility rules, leave entitlements and administrative requirements.

In the case of OR PL, eligible employees are those who earned at least $1,000 in wages in the base year. However, to be eligible for Oregon Family Leave Act (OFLA), an employee must have been employed by a covered employer and worked an average of 25 or more hours within 180 days of employment.* It becomes a bit more complicated when we take job protection into account. Under OR PL, an employee needs only to have been employed for 90 days to receive job protection whereas, under OFLA, the employee must hit that 180 day mark. OR PL and OFLA also have different leave reasons that could further complicate administration and the duration of time an employee can take for leave albeit some paid and some unpaid.

The interesting lesson coming out of Oregon is whether legislators will take another look at the OR PL or OFLA benefit regulations so that they better align. Employers should review their leave policies and handbooks to ensure the materials align correctly with both OR PL and OFLA .

For additional information, please see: https://paidleave.oregon.gov/Pages/default.aspx.

*Exceptions to OFLA eligibility include employees who:

- Are eligible for parental leave if they've been employed for at least 180 days, regardless of the number of hours worked.
- Are eligible for Oregon Military Family Leave if they have worked an average of 20-plus hours/week, regardless of the employment duration.
- Had a workers' compensation case that resulted in a denied and then accepted claim. The exception also applies to some accepted compensation claims involving multiple employers. https://www.employerpass.com/employer-insights/oregon-family-leave-act-ofla.

WASHINGTON

Washington Paid Family and Medical Leave collective bargaining expiration

When WA PFML was first adopted, the statute allowed employees subject to a collective bargaining agreement (CBA) to be exempt from WA PFML until the agreement was: a) reopened; b) renegotiated; or c) employees subject to the agreement elected to participate in the program. Under the new changes, the collective bargaining agreement exemption will expire on Dec. 31, 2023.

What does this mean for employers? According to the WA PFML website:

If the CBA was in effect on Oct. 19, 2017, and the expiration date has passed, your covered employees are included in Paid Family and Medical Leave. This is true even if the expiration date was extended after Oct. 19, 2017. In addition, if the CBA has been reopened or renegotiated in its entirety after Oct. 19, 2017, then these covered employees must participate in Paid Family and Medical Leave.

For the purposes of Paid Family and Medical Leave, only CBAs that have been renegotiated in their entirety meet the definition of reopened, renegotiated or expired. A memorandum of understanding covering a narrow or specific section of a CBA does not constitute a reopening or renegotiation. https://paidleave.wa.gov/help-center/employers/collective-bargaining-agreements/.

Employers wondering how to manage CBA-covered employees who are excluded from WA PFML should continue as they have:

- Do not withhold premiums from these employees.
- Do not pay the employer share of the premium for these employees.
- Do not include these employees on your quarterly reports.

However, when the CBA is reopened, renegotiated or expired, employers should do all of the following:

- Inform the EDD or private plan carrier immediately upon the reopening, renegotiation or expiration of a CBA that was in effect prior to Oct. 19, 2017.
- Either begin withholding premiums from covered employees or choose to pay some or all of the premium on their behalf (remitting payments to the EDD or private plan carrier).
- Begin including covered employees in quarterly reporting.

For more information, please see https://paidleave.wa.gov/help-center/employers/collective-bargaining-agreements/.

STATE/OTHER LEAVE LEGISLATION

CALIFORNIA

Amendment to California Family Right Act

Section 245.5 of the Labor Code

On Sept. 29, 2022, California Governor Gavin Newson approved the amendment to section 245.5 of California's Labor Code to include the definition of a designated person. It was chaptered by the Secretary of State, Chapter 748, Statutes of 2022, the same day.

The amendment will expand the class of people for whom an employee may take leave to care for to include a designated person. "Designated person" is defined to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship. The amendment authorizes a designated person to be identified at the time the employee requests the leave. The employer is authorized to limit an employee to one designated person per 12-month period.

In addition, the Healthy Workplaces, Healthy Families Act of 2014 generally entitles an employee who works in California for the same employer for 30 or more days within a year to be paid sick days, as specified, including the use of paid sick days for diagnosis, care or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. "Family member" is defined as an individual who shares a prescribed relationship with the employee. The amendment expands the definition of the term "family member" to include a designated person, which, for purposes of these provisions, would mean a person identified by the employee at the time the employee requests paid sick days, subject to limitation by the employer, as prescribed.

For additional information, visit: Bill Text - AB-1041 Employment: leave. (ca.gov).

NEW JERSEY

New Jersey final rule-posting and Notice of Rights

Codified at Chapter 13, Sections 8-1.2 and 2.2 of the New Jersey Administrative Code

On Aug. 1, 2022, the New Jersey Division of Civil Rights adopted new and amended regulations that address the display of official posters of the Division on Civil Rights. It expands the required locations for posters and the facility types in which employers would be apprised of their rights. The changes also impact housing providers and places of public accommodation. For purposes of this article, the focus will be on all employers, labor organizations and employment agencies covered under NJ Law Against Discrimination (N.J.S.A 10:5-et seq.). Employers must display both the NJLAD notice of rights and the New Jersey Family Leave Act (NJFLA) notice of rights in an easily visible place to all employees and applicants.

When?

Annually, on or before Dec. 31 of each year, employers must provide each employee with a written copy of the NJLAD notice of rights and the NJFLA notice no matter if the employer has eligible employees or not. In addition, the notice must be given to an individual employee upon their first request for a copy of the notice.

Notification

Acceptable methods of notification can include printed material such as paycheck inserts, new hire welcome/informational packets or employee handbooks. Electronic delivery can include email or through the employer's intranet or intranet site, as long as all employees have access and it is within the employer's routine to post notices affecting employees on this site.

Posters are available in English and Spanish through Required Posters – New Jersey Office of Attorney General (njoag.gov) or at any of the Division's offices. Any poster printed from the division's website must be printed no smaller than letter size paper (8 ½ by 11 inches) and contain text that is fully legible and large enough to be easily read.

USING SOCIAL SECURITY FOR PAID LEAVES

In 2019, Senator Marco Rubio and Senator Mitt Romney proposed a plan, the New Parents Act, in which parental leave would be funded by Social Security. Under the proposal, new parents could use up to three months of parental leave benefits that would draw funds from their Social Security retirement benefits. Parents who choose to take parental leave would then later pay it back by either increasing their Social Security full retirement age (which is 67 under current law) by three to six months or by receiving a propitiate reduction in monthly retirement benefits during their first five years of retirement.

Reports indicate that after the overturn of Roe v. Wade, the debate over parental leave again heated up and Senator Rubio reintroduced his New Parents Act into a broader bill. In its creation, Social Security was believed to be insurance against the loss of wages. President Franklin Roosevelt even considered including short-term disability in the Social Security Act of 1935, but ultimately decided against it. (https://www.thinkadvisor.com/2022/09/08/should-social-security-be-used-to-fund-parental-leave/).

However, the Act has drawn criticism on a variety of fronts. Concerns range from financial repayment to setting different retirement ages based on choices regarding parental leave-taking:

> "Parents with moderate incomes would receive about $5,300 in benefits on average for each three months of parental leave they take — but would then lose about $15,100 in lifetime retirement benefits (measured in 2018 dollars) for those three months of leave, according to the Urban Institute.
>
> All told, this amounts to losing about 3% to 4% of lifetime Social Security retirement benefits for each three months of leave. So parents who take three periods of parental leave (after three births or adoptions) would lose roughly one-tenth of their lifetime Social Security retirement benefits." (https://www.cbpp.org/blog/rubio-parental-leave-proposal-would-weaken-social-security).

Mercatus Center senior fellows Veronique de Rugy and Charles Blahous have stated, "It is bad to set multiple retirement ages for different Social Security participants on the basis of their choices regarding parental leave-taking," The New Parents Act would also "reverse the traditional order of Social Security contributions and benefits. Although in practice Social Security is an income-transfer program, ostensibly, participants must still earn benefit entitlements; workers pay payroll taxes over their entire career, which makes them eligible for benefits later in retirement. Contributions come first, then benefits." https://www.thinkadvisor.com/2022/09/08/should-social-security-be-used-to-fund-parental-leave/.

Any change to Social Security requires 60 votes in the Senate. As a result, it is unclear whether the bill will move anytime soon. https://www.thinkadvisor.com/2022/09/08/should-social-security-be-used-to-fund-parental-leave/.

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. Products may not be available in all states and may vary depending on state law.

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