



November 2020 Compliance Report

November 17, 2020

Family and Medical Leave, Benefit and Contribution Rates, Sick Leave and In the News

Family and Medical Leave

Massachusetts

November 2020

As a reminder, employers with a fully-insured PFML private plan exemption that is expiring on December 31, 2020 must renew their exemption on or before this date by submitting a renewal application in MassTaxConnect. The application renewal period is open from November 30, 2020 through December 31, 2020. A revised Insurance Declaration Document (IDD) is required to accompany the exemption renewal. Lincoln will provide updated IDD's for all impacted clients by early December. If the exemption is not renewed, the DFML will pursue the collection of retroactive contributions using the surety bond submitted as well as any other allowable collections actions.

Connecticut

November 1, 2020

The Connecticut Paid Family and Medical Leave Insurance Authority launched its PFML portal where businesses covered under PFML will need to register with the CT Paid Leave Authority to establish their account. Business registration is necessary to prepare to remit employee payroll deductions to the CT Paid Leave Authority, which are set to begin January 1, 2021. Businesses must complete their registration before December 31, 2020. This process will also allow for third-party administrator registrations and will include the ability to apply for a private plan. For more information, please see the [CT PFML website](#).

Private plan application process: Employers must decide whether their private plan will be fully-insured or self-insured; the documentation requirements for each will vary. In either case, employers must hold a vote before submitting a private plan application and submit a Plain Language Guide describing the plan. For fully-insured plans: employers must provide a copy of employer's insurer's Declaration of Insurance. For self-insured plans: employers must provide a Self-Insurance Declaration Document, and a surety bond in an amount equal to the estimated total yearly contributions that would otherwise be owed by the employer's employees to the Connecticut Paid Leave Trust Fund. The declarations are only allowed until 60 days following CT Insurance Department issuing policy filing guidance. Beyond this timeframe, an approved fully-insured policy or approved self-insurance plan document, whichever is

applicable, must be supplied. During the application process, the employer must also attest that the plan has been approved by a majority vote and that the vote complied with CT Paid Leave Authority requirements, and that voting requirements were followed. Employers must also attest to comply and direct insurer or TPA (as applicable) to comply with the CT Paid Leave Authority's reporting requirements, comply with claims administration mandates, and provide timely and complete responses to CT Paid Leave Authority. Applications are accepted on a rolling basis and must be approved no later than 30 days before the end of the quarter in which they go into effect.

District of Columbia

November 1, 2020:

Self-employed individuals interested in paid family leave coverage may opt into DC's PFL program during open enrollment from November 1 to December 31, 2020. Self-employed individuals can only opt into PFL every November and December (starting in 2020), or within 60 days of the commencement of their self-employment in DC. The rate for self-employed individuals will be the same as those for covered employers: a 0.62% flat tax rate on their total gross earnings from all their self-employed businesses that they perform work for at least 50% of the time in DC. Self-employed individuals who did not opt in when they were first eligible for the program cannot opt out for 3 years after joining. For more information, please see the [DC PFL website](#).

California

September 30, 2020:

California Governor Gavin Newsom signed legislation (AB 2399) that made amendments to definitions under California Paid Family Leave (PFL). These amendments were made to better align the law with legislation that was passed in 2018 (SB 1123), which added qualifying exigency as a new leave reason effective January 1, 2021. The recent legislation (AB 2399) changed the definitions for family care leave, care recipient, and care provider, to include qualifying exigency. The new legislation also added the definition for military member which includes a child, spouse, domestic partner, or parent of the employee who is called to or on active duty with the Armed forces of the United States. These changes are also effective January 1, 2021.

Colorado

August 25, 2020:

Colorado voters approved a paid family and medical leave program on the general election ballot (Proposition 118). A new paid family and medical leave division in the Colorado Department of Labor and Employment will oversee the program and create rules and regulations to govern the program, with initial program rules and regulations targeted for adoption in January 2022. The PFML program will provide covered individuals with up to 12 weeks of PFML benefits over a 12-month period, with an additional four weeks of benefits for a serious health condition related to pregnancy or childbirth complications. All private employers must provide PFML benefits to covered individuals through the state-run program or a private plan. Employers may opt out of the state-run program by having an approved private plan for the payment of benefits. Premiums will be equally shared by the employer and their employees, with the initial premium amount is set in the measure at 0.90% of wages per employee in the program's first two years. Assessment and collection of contributions for covered individuals will begin on January 1, 2023, with payment of benefits commencing by January 1, 2024.

Benefit and Contribution Rates

California

November 2020:

California released their 2021 Disability Insurance (DI) Contribution Rate and Assessment Rate updates. Please see below.

2021 California Plan Updates:

Maximum Weekly Benefit Amount:	\$1,357 (up from \$1,300)
52-Week Maximum Benefit Amount:	\$70,564 (up from \$67,600)
EDD Assessment Rate:	0.168% (up from 0.14%)
Employee Contribution Rate:	1.2% (up from 1.0%)
Yearly Taxable Wage Ceiling Per Employee:	\$128,298 (up from \$122,909)
Yearly Maximum Contribution Per Employee:	\$1539.58 (up from \$1,229.09)
State Average Weekly Wage for Q1 2021:	\$1,383 (up from \$1,325)

Washington

November 2020:

There will be no change to the premium rate (0.4%) effective January 1, 2021. Premiums are capped at the Social Security Wage Base, which will increase for 2021 to \$142,800.

District of Columbia

November 2020:

There will be no changes to the employer contribution (0.62%) or the maximum benefit amount (\$1,000) effective January 1, 2021. The next increase to the maximum benefit amount will be effective on October 1, 2021.

Upcoming: Updated Statutory Disability and Paid Family Leave Guide

The benefit and contribution rates of state mandatory disability and paid family programs are established annually and are typically released in Q4 of the preceding year. Once the program updates are published by states' regulatory authorities, Lincoln will update our Statutory Disability and Paid Family Leave Reference Guide. We encourage you to talk to your Lincoln representative to learn more.

Sick Leave

New York

October 2020:

New York issued new guidance, including a Frequently Asked Questions document, for their new paid sick leave program. Under New York's newly enacted paid sick leave program, employees accrue paid sick leave at a rate of one hour for every 30 hours worked beginning on September 30, 2020, but employees may not use any accrued sick leave until January 1, 2021. If an employer, including those covered by a collective bargaining agreement, has an existing leave policy (sick leave or other time off) that meets or exceeds the accrual, carryover, and use requirements, the PSL law does not present any further obligations on that employer. For more information, please see the [NYS Paid Sick Leave website](#). Please note that this new law is separate from legislation implemented by the state on March 18, 2020 to provide quarantine-related paid sick leave due to COVID-19.

Coordination of benefits: The NY PSL guidance provides that an employee can only choose to use sick leave during PFL if the employer allows it. Taking sick leave at the same time as PFL may allow the employee to receive their full salary for all or part of the leave. However, an employee cannot receive more than their full wages while receiving PFL benefits. Employers should consult with their employment counsel on how to structure its paid sick leave or company-provided leave to wrap around statutory NY benefits.

Accommodation

August 5, 2020

The U.S. Equal Employment Opportunity Commission (EEOC) released guidance surrounding Opioid Use and Addiction as it relates to the Americans with Disabilities Act (ADA). Below are relevant summaries of topics discussed in each piece of guidance:

1) [Use of Codeine, Oxycodone, and Other Opioids: Information for Employees](#)

- **Disqualification from a Job**
 - Clarifies that under the ADA, current or past illegal opioid use can be the basis of automatic disqualification or adverse employment action. However, legal opioid use, such as directed by a Medication Assisted Treatment (MAT) program, can't be used as a basis for automatic job disqualification because employers need to consider whether the job can be performed effectively and safely.
- **Performance and Safety**
 - Clarifies that those using opioids who are not disqualified for a job under federal law and/or use opioids legally can request a reasonable accommodation. Certain circumstances, such as a disability under the ADA where opioids may be a treatment or a disability related to opioid addiction, can warrant an accommodation. Opioid addiction itself may be an ADA disability, but an employer may still deny an accommodation if opioids are used illegally. Once a reasonable accommodation is requested an employer

may request information from an employee to show how work is affected by the disability, and from their health care provider confirming the disability and explaining why an accommodation is needed. Qualifying instances where an accommodation can help an employee perform job duties effectively and safely, without undue expense or difficulty on the employer's part, must be provided.

2) How Health Care Providers Can Help Current and Former Patients Who Have Used Opioids Stay Employed

- **Background Information About Reasonable Accommodation**
 - Provides examples for health care providers of reasonable accommodations, such as altering breaks/work schedules, moving to a different shift, or temporarily changing positions. Reasonable accommodations do not require employers to change performance standards for a job or take job functions away. This guidance also provides some opioid-related scenarios where patients may be able to request a reasonable accommodation, such as those legally taking opioids to treat pain for disabilities under the ADA, patients with opioid use disorder, patients who no longer have an opioid addiction but require treatment to avoid relapse, or for disabilities related to opioid addiction. There are some exceptions to these scenarios related to illegal use of opioids where employers may still deny accommodation requests or employment action. If patients are unable to return to work with an accommodation then other leaves, such as FMLA, may be an option.
- **Helping Patients Seek Reasonable Accommodation**
 - Patients who request a reasonable accommodation may need health care providers to provide employers with relevant documentation. This documentation should explain the health care provider's qualifications and relationship to patient, nature of the medical condition, any functional limitations as a result of the disability without treatment, the need for an accommodation, and suggestions for accommodating the patient/employee in the workplace.

In the News

September 23, 2020:

The EEOC announced that Ralphs Grocery Company has agreed to pay a \$30,000 settlement in an employment discrimination lawsuit alleging that a pregnant employee was denied a request for a schedule change as an accommodation which forced the employee to quit. In addition to monetary relief, the company must update their policies and procedures on discrimination, train employees and managers on national anti-discrimination laws that place importance on pregnancy discrimination issues and accommodation requests. The company must also keep records of such actions to show they complied with the terms of the settlement.

October 1, 2020:

The EEOC announced that PML Services, LLC, which operates the IHG Army Hotel at Fort McCoy, has agreed to pay a \$60,000 settlement in an employment discrimination lawsuit alleging that an employee who had been with the company for a few months was terminated due to disability-related absences. The employee had epilepsy and experienced an episode outside of work hours but requested two days off from work to recover from the episode. The company then terminated the employee for the disability-related absences stating it was because they occurred within the probationary period. In addition to monetary relief, the company is prohibited from further discriminatory and retaliatory actions against employees with disabilities and must consider reasonable accommodations. They must also conduct ADA training for employees, notify the EEOC of any reasonable accommodation requests they receive, and update their policy to clarify that newly hired employees with disabilities may have medical leave available to them as a reasonable accommodation.

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LCN-3325245-111020

DOC 11/20 Z01