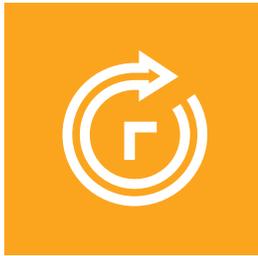


April 2021

Lincoln Absence Advisor: Compliance report



Lincoln's monthly compliance report provides you with a summary of all the recent compliance news that may affect your business. We aim to keep you informed and updated on the latest news, from federal to state, courtroom to news.

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Updated as of April 26, 2021

Family and Medical Leave

Washington

April 16, 2021:

Governor Inslee signed a bill (HB 1087) clarifying the continuity of employee family and medical leave rights. The bill specifies that the Family Leave Act (FLA) applies to valid claims prior to January 1, 2020, and the paid family and medical leave (PFML) law applies to claims after that date. This bill is a technical fix to state law whereby employers have argued successfully in court that claims under the prior FLA were barred because the legislature sunsetted the FLA – and employees' rights under the FLA – with the passage of the PFML law. This bill would allow a cause of action based on employee and employer conduct occurring on or before December 31, 2019 to remain available within the FLA's applicable statute of limitations.

Massachusetts

April 1, 2021:

Governor Baker signed a bill (H 90), which directed, among others, the study of the expansion of the Massachusetts PFML program to cover public health emergencies. The bill directed the Department of Family and Medical Leave (DFML) to conduct an analysis on the expansion of the existing PFML program to provide coverage for future communicable illnesses related to a public health emergency. The DFML was directed to issue a report with its findings, including any legislative recommendations, if any, to the Massachusetts legislature not later than December 31, 2022.

Virginia

March 31, 2021:

Governor Northam signed a bill (SB 1219) to study the sale of private PFML insurance plans, as part of a statewide PFML program administered by the Commonwealth. The recommendations of the "Paid Family and Medical Leave Study", published by the Commonwealth in September 2020, included the suggestion that the Commonwealth consider exemptions for businesses who currently have equal or more generous paid leave policies. Under this bill, the Bureau of Insurance (Bureau) was directed to convene a stakeholder group, which will include representatives from the insurance industry, the business community, including small and mid-size businesses that have had difficulty purchasing private insurance in the past, labor organizations, advocates for paid family leave and medical leave, and other interested parties. The Bureau was directed to report its findings and recommendations to the Senate Committees on Commerce and Labor and Finance and Appropriations and the House Committees on Labor and Commerce and Appropriations by November 30, 2021.

Connecticut

April 30, 2021:

As a reminder, contributions for companies on the Connecticut PFML state plan must be remitted quarterly to the state. According to the [CT PFML Authority FAQs](#), there is a one-month grace period for remitting CT PFML contributions for the first quarter ending March 31, 2021. First quarter contributions are due to the state on April 30, 2021

Sick Leave

New Mexico

April 7, 2021:

Governor Lujan signed a bill (HB 20) that mandates paid sick leave for workers in the state of New Mexico. The "Healthy Workplaces Act" requires all private sector employers to provide all employees (including part-time, seasonal or temporary employees) with paid sick leave at the same wage rate and same benefits, including health care benefits, as the employee normally earns. Employees will accrue one hour of PSL for every 30 hours worked, but employees are not entitled to accrue or use more than 64 hours of PSL per year. The law takes effect July 1, 2022. More information on the New Mexico paid sick leave law can be found on the [Governor's website](#).

Dallas, Texas

March 30, 2021:

The U.S. District Court for the Eastern District of Texas issued a permanent injunction that enjoins the City of Dallas from enforcing their paid sick leave ordinance. Initially, the City of Dallas, Texas enacted a paid sick leave ordinance which would have requiring all private sector employers to provide employees with paid sick leave effective on April 1, 2020. Employers filed suit challenging the validity of the ordinance, and a preliminary injunction was granted in March 2020. In granting the permanent injunction, the court adhered to the decisions of the Third and Fourth Courts of Appeals, which considered similar paid sick leave ordinances enacted by the City of Austin and the City of San Antonio and held that the ordinances were preempted by the Texas Minimum Wage Act and therefore violated the Texas Constitution.

From the courts

March 24, 2021

The case: An employee was diagnosed with cancer, and her employer granted her FMLA for her treatments and recovery period. She exhausted her FMLA leave, but she still had not provided her employer with the required clearance from her doctor permitting her to return to work. Her employer extended her a personal leave of absence. At the conclusion of her personal leave, she did not submit a clearance permitting her to return to work and told the office manager that she was still unable to work. The employee was subsequently terminated. The employee filed suit against her employer for FMLA retaliation and for not providing her with reasonable accommodations for her medical condition.

The ruling: The Third Circuit ruled that a reasonable factfinder could not conclude that the employee's termination was a retaliatory action by the employer because she failed to provide the employer with proof that she was able to return to work, which was required from the outset of her health issues. In addition, the employee was not a qualified individual under the ADA or PHRA because it is undisputed that she was unable to return to work. A qualified individual is one "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds." The employee did not have clearance to return to work, and no accommodation has been shown that would have allowed her to work. Therefore, she could not perform the essential functions of her employment with or without reasonable accommodation. The district court held in favor of the employer, and the Third Circuit affirmed. (Williams v. Pinnacle Health Family Care Middletown, No. 20-2737, 2021 U.S. App. LEXIS 8550 (3d Cir. Mar. 24, 2021))

April 6, 2021

The case: An employee seriously injured her knee while at work. The employer did not inform her of her rights under the FMLA. Instead, the employer handled the injury solely as a workers' compensation claim and required the employee to use sick leave to cover her absence between the date of her accident and her return to work in a light-duty position. The employee was subsequently terminated. Prior to her termination, the employer never advised her of her rights under the FMLA or provided her an opportunity to take twelve uninterrupted weeks of leave to recover from her injury even though the FMLA entitled her to that relief. The employee filed suit for FMLA interference.

The ruling: The Eleventh Circuit ruled that providing workers' compensation benefits cannot absolve an employer of all obligations under the FMLA. The FMLA regulations specify that "the workers' compensation absence and FMLA leave may run concurrently." Because the employer did not give the employee any FMLA notice whatsoever, it did not satisfy its FMLA notice obligations under the regulations, and therefore denied her a leave benefit under the FMLA. Although the district court held in favor of the employer, the Eleventh Circuit disagreed and remanded the case for trial due to unresolved material factual issues. (Ramji v. Hosp. Housekeeping Sys., LLC, No. 19-13461, 2021 U.S. App. LEXIS 9836 (11th Cir. Apr. 6, 2021))

April 8, 2021

The case: An employee who became legally blind could no longer drive herself to work (a 120-mile round trip). She requested that her employer agree to flexible work schedule so she could secure rides to work. The employer agreed to this arrangement, but it subsequently became a problem. She asked to telecommute full-time, but her employer denied the request because, at a minimum, her position required over four hours of in-person face-to-face interactions per day, and the request to telecommute full-time would eliminate all in-person face-to-face interactions. The employee sued the employer for failure to accommodate her disability, failure to engage in the interactive process, and retaliation against her after reporting discrimination.

The ruling: The Tenth Circuit ruled that the employee's requested accommodation—a flexible schedule without a set schedule—was unreasonable and constituted a request to be relieved from an essential function of her position. Under the specific facts of this case, an essential job function of the employee's position is physical presence at the hospital on a set and predictable schedule, and the employee could not perform this essential job function with or without reasonable accommodation. Transportation to and from work is not an essential function of the position, nor is it a privilege of employment, so the employer was under no legal obligation to accommodate her transportation barrier. The district court held in favor of the employer, and the Tenth Circuit affirmed. (Unrein v. PHC-Fort Morgan, Inc., No. 20-1219, 2021 U.S. App. LEXIS 10145 (10th Cir. Apr. 8, 2021))

In the news

March 1, 2021:

The EEOC announced that Allied Universal has agreed to pay a \$110,000 settlement in an employment discrimination lawsuit alleging that the employee was terminated due to pregnancy. After the company was aware the employee, a security guard, was pregnant, she was transferred to work at a more strenuous post. The employee notified the company that the new post caused her pain, so they required her to get a doctor's note. Once she provided the note, she was put on involuntary leave. The company advised her that to return to work she would need to provide another doctor's note releasing her. After providing the release note, she was kept on leave and subsequently terminated. In addition to monetary relief, the company must conduct training and report regularly to the EEOC.

March 12, 2021:

The EEOC announced that Valley Tool, Inc. has agreed to pay a \$32,500 settlement in an employment discrimination lawsuit alleging that an employee was terminated due to a disability. The employee had sickle cell disease and requested occasional days off when incapacitated by the condition. The employee was instead removed from the work schedule and placed on involuntary leave of absence. They were subsequently terminated due to the disability, and for filing a complaint against their supervisor for making comments about the disability. In addition to monetary relief, Valley Tool supervisors, managers, and owners must be trained how to spot and respond to disability discrimination situations. The company is also required to report disability discrimination complaints they receive to the EEOC, and post a notice regarding ADA obligations and employee rights to reach out to the EEOC for assistance with disability discrimination.

March 24, 2021:

The EEOC announced that Lucy's Cantina Royale and Restaurant Group has agreed to pay a \$45,000 settlement in an employment discrimination lawsuit alleging that the employee was terminated due to pregnancy. After the employee had multiple pregnancy-related medical issues on the job, and the company was made aware the employee was pregnant, she was suddenly terminated. In addition to monetary relief, the company must revise their anti-discrimination policies and trainings and undergo a monitoring and reporting period with the EEOC.

In the Spotlight: COVID-19

Lincoln Financial is here to help you remain confident and prepared during this evolving situation. We're continuously monitoring the latest news, information from the Centers for Disease Control and Prevention and other regulatory and medical experts to offer targeted guidance and support.

Federal

April 21, 2021:

The Internal Revenue Service (IRS) issued a fact sheet on tax credits for providing paid leave under the American Rescue Plan (ARP) to employees who take time off related to COVID-19 vaccinations. The ARP added new leave reasons for which tax credits can be claimed under voluntary paid sick and family leave to include leave while waiting for test results or a medical diagnosis of COVID-19 after exposure, while waiting for COVID-19 test results that the employee's employer requested, to get a COVID-19 vaccination, or to recover from side effects of a COVID-19 vaccination. The fact sheet can be found on the [IRS website](#).

Washington

April 21, 2021:

Governor Inslee signed legislation (HB 1073) which provides for pandemic leave assistance employee and employer grants. Generally, employees are eligible for PFML benefits after working for at least 820 hours during the qualifying period. However, this law allows PFML-ineligible employees who have not met the hours worked requirement to apply for a pandemic leave assistance employee grant. Based on the language in HB 1073, the pandemic leave assistance employee grant is a new employee benefit that is funded through the federal American Rescue Plan Act, and is administered by the state for all Washington employees. For claims with a start date of January 1, 2021 through March 31, 2021 filed by employees who do not meet the hours worked threshold for eligibility for PFML benefits, they may apply for a pandemic leave assistance employee grant. Employees may file a claim with the ESD beginning August 1, 2021. In addition, the law also provides a pandemic leave assistance employer grant to help offset small business employers' costs related to employees on leave who are receiving a pandemic leave assistance employee grant.

Updates and upcoming events with Lincoln

New episodes of the *Lincoln Absence Advisor* podcast

Explore the latest episodes of *Lincoln Absence Advisor*: [Episode 5, Vaccination, leave and ADA requirements](#). Listen to a group discussion on maternity and return-to-work experiences, as well as how the post-maternity period should be viewed by the employer. To listen, subscribe at Apple, Spotify, or wherever you listen to podcasts.

Introducing our new *Absence Advisor* hub

We've put all our great *Lincoln Absence Advisor* resources in one place. [Visit lfg.com/AbsenceAdvisor](https://lfg.com/AbsenceAdvisor) for our latest podcast episodes, webinars, compliance report, and more. We will be updating regularly with the latest news, conversations, and findings.

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