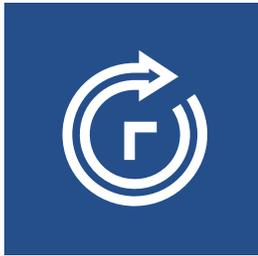


May 2021

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 May 21, 2021

Family and Medical Leave

Federal

April 27, 2021:

On April 27, 2021, the House Ways and Means Committee Chairman Richard E. Neal released the "[Building an Economy for Families Act](#)", which included proposals to provide paid family and medical leave, to guarantee access to child care, and to permanently extend employee and family-related refundable tax credits from the American Rescue Plan. One day later, President Biden released the "[American Families Plan](#)" (AFP). The AFP includes a proposal to provide a national comprehensive paid family and medical leave program, as well as calling for Congress to pass the Healthy Families Act, which would require employers nationwide to provide paid sick leave to their workers.

Note: To date, it is unclear what a final federal paid family and medical leave program will look like as these proposals are still subject to review, negotiation, and agreement by both legislative chambers and executive signature.

Washington

May 10, 2021:

Governor Inslee signed a bill (SB 5097) which makes amendments to the Washington PFML law, effective on July 25, 2021. The definition of "family member" is expanded to include any individual who regularly

resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. However, it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual. The bill also requires the Employment Security Department (ESD) to collect and analyze disaggregated data and submit reports to the legislature. The ESD will conduct rulemaking for SB 5097 and the recently-passed HB 1073 at a later date (TBD).

Massachusetts

May 11, 2021:

The Department of Family and Medical Leave (DFML) will require state plan employers to authenticate their account through information contained in their quarterly contributions return filed with the Massachusetts Department of Revenue (DOR). The verification process only applies to employers using the state program for paid family and/or medical leave. It does not impact employers who have private plan exemptions. To verify their account and approve claims in the MassTaxConnect system, employers will need to have filed a return and remitted contributions. If their account currently has a \$0 balance, the employer can file a partial amount with the DOR in order to activate their account for verification. For more information, please visit the [DFML website](#).

Accommodations

Indiana

April 21, 2021:

Governor Holcomb signed a bill (HB 1309) that creates a process for employees who work for employers with 15 or more employees to request accommodations related to pregnancy, childbirth, and other related medical conditions. Employees must request an accommodation for any of these reasons in writing and their employer must respond to their request within a reasonable amount of time. Please note that unless required by existing federal or state laws, an accommodation request does not require an employer to provide the accommodation, and it does not obligate the employer to provide an accommodation or an exception to employer policies. Employers cannot discipline, terminate, or retaliate against employees for requesting or using an accommodation under this law. This new law also does not limit, diminish, or affect any other state or federal anti-discrimination laws regarding sex, pregnancy, family medical leave, disability or childbirth discrimination. This law is effective July 1, 2021.

Other leaves

Montana

April 29, 2021:

Governor Gianforte signed a bill (HB 362) that clarifies that the number of service months requirement for the paid military leave for public employees only needs to be met once. This means that public employees

who have met this 6-month service requirement are then eligible for 120 hours of paid military leave every year.

From the courts

May 4, 2021

The case: An employee, the sole office assistant at a worksite of the employer, was diagnosed with a chronic autoimmune disease. The employee took intermittent FMLA leave on numerous occasions, but there were days she was denied FMLA leave for exceeding frequency and therefore received points for unexcused absences. The employee was subsequently terminated for violating the employer's attendance policy. The employee filed suit against her employer for FMLA retaliation and for violating the ADA by not providing her with reasonable accommodations.

The ruling: The Eighth Circuit ruled on the employee's claims as follows:

1. ADA claims: The employee cannot establish that more FMLA leave or a part-time schedule would have been a reasonable accommodation because her daily job duties required her regular and reliable physical presence at the office. Considering that an accommodation would leave the employee unable to perform an essential job function (regular attendance), there was no failure to accommodate under the ADA.
2. FMLA claims: The employee failed to follow the employer's two-step call-in procedure requiring an employee to inform both her supervisor and human resources before taking leave. The employee also never mentioned that her absences were related to her FMLA leave or to her chronic illness; the employer was not required to guess whether the employee needed FMLA leave when she called in – calling in "sick" without providing more information will not be considered sufficient notice to trigger an employer's obligations under the FMLA. In addition, the employee exceeded her monthly allotment of intermittent FMLA leave based on her doctor's medical certifications. The employer sent the doctor a new FMLA form asking him to recertify the frequency and duration of Evans's condition so it could determine whether she needed additional leave; the doctor returned the form directing the employer to "Refer to prior FMLA form" for the frequency and duration. The doctor was provided the opportunity to adjust his estimate but did not do so.

The district court held in favor of the employer, and the Eighth Circuit affirmed. (Evans v. Coop. Response Ctr., Inc., No. 19-2483, 2021 U.S. App. LEXIS 13180 (8th Cir. May 4, 2021))

In the news

April 23, 2021:

The EEOC announced that Design and Integration, Inc. has agreed to pay a \$25,000 settlement in an employment discrimination lawsuit alleging that an employee was terminated due to their disability. The

employee requested to telework one day a week for just a few weeks as a reasonable accommodation for their depression and anxiety. Despite this employee being able to perform their job remotely, and that the company already permitting other employees to telework, the company denied the accommodation request and subsequently fired the employee stating they wouldn't have hired her if they knew about these conditions. In addition to monetary relief, the company is prohibited from violating the ADA, and must consider telework as a reasonable accommodation. The company must also develop an ADA policy, disseminate the policy to employees, conduct ADA training, post EEOC posters, post notice of this settlement, and report back to the EEOC regarding these actions and new accommodation requests they receive.

Updates and upcoming events with Lincoln

New episode of the *Lincoln Absence Advisor* podcast

Explore the latest episode of *Lincoln Absence Advisor*. [Episode 6: Disability through the HR lens](#). Listen as we dive into common questions HR hears and their suggestions for employers when it comes to this important benefit.

Webinar: *A new focus: mental health, disability and the whole employee*

On June 8 and 10, we will be hosting our second quarterly webinar of the year. We have a lot in store as we discuss a new focus on mental health, its impact on absenteeism and productivity, and how employers can help employees in the right way. [Registration is now open!](#)

Lincoln Absence Advisor hub

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

Please note: This alert is provided for informational purposes only and should not be considered legal advice. This information is being provided to Lincoln Financial Group clients so they may conduct any necessary internal evaluation of their policies and procedures. This alert is designed to provide informative and current information as of the date of the alert. Please contact your legal advisor with any questions regarding the laws discussed in this communication. Lincoln continually monitors activity related to family and medical leave laws and as laws pass, we will determine any impacts to our suite of products. Lincoln does not currently administer or track paid sick leave. The information contained herein includes information on major cities and counties and is not all inclusive of all city and county laws.

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