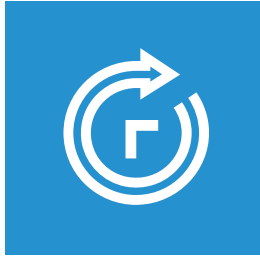


June 2021

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 June 18, 2021

Family and Medical Leave

Massachusetts

May 2021:

The Massachusetts Department of Family and Medical Leave (DFML) published informal guidance on their website on handling school breaks/vacation time for educators, in the "[Paid family and medical leave \(PFML\) benefit reductions](#)" page, as follows:

School breaks/vacation time for educators

For eligible educators, paid family and medical leave benefits will not be paid during school break/vacation periods because teachers are not scheduled to work during these timeframes. Accordingly, if the break/vacation time occurs during a planned leave, it will not count against an educator's leave allotment.

Educators will need to report this as part of their application and when discussing their leave schedule with their employer.

This means that if a school employee is not scheduled to work during the summer break, the state will not pay out MA PFML benefits. Employers with an approved private plan should refer to their administrator and the approved exemption for questions on benefit administration.

June 2021:

The DFML has updated its Certification for an Employee's Serious Health Condition. Covered individuals applying for medical leave due to their own serious health condition will need to submit a Certification of a Serious Health Condition form, completed by a healthcare provider, as part of their application with the DFML. The DFML has stated that employees can submit the already-completed old form as part of their application. The updated Certification of a Serious Health Condition form is available [here](#).

Effective July 1, 2021:

Employees may apply for paid family leave benefits to care for a family member with a serious health condition starting on July 1, 2021. Employees may take up to 12 workweeks of family leave per benefit year to care for a family member with a serious health condition, subject to a maximum of 26 workweeks for leave for a combination of family and medical leave reasons. Covered individuals applying for family leave to care for a family member with serious health condition will need to submit a Certification of an Employee's Family Member's Serious Health Condition form, completed by a healthcare provider, as part of their application with the DFML. The DFML has stated they will make this new certification form available on June 25, 2021.

Washington

June 11, 2021:

The Washington Employment Security Department (ESD) announced they will hold a stakeholder meeting on the draft proposed regulations on proration and backdating. The stakeholder meeting is scheduled on June 17, 2021. The meeting information and the full text

of the draft regulations can be found on the [WA PFML rulemaking website](#).

Connecticut

Ends June 30, 2021:

As a reminder, employers in the Connecticut PFML state plan that are taking additional catch up deductions have until June 30, 2021 to complete taking these deductions and remit them to the state. According to the [CT PFML Authority FAQs](#), after July 2021, employers will only be allowed to continue catch up deductions with express authorization from the Labor Commissioner.

Pennsylvania

May 30, 2021:

Governor Wolf signed a bill (H 203) that extends federal FMLA entitlement to eligible employees for purposes of organ or tissue donation. It requires employers subject to FMLA to provide this leave to an eligible employee for preparation and recovery from surgery related to organ or tissue donation. An employee can use this type of leave when they, or their spouse, parent, or child, are the donor or receiver. To be eligible an employee must meet the same requirements as under the federal FMLA: 1,250 hours worked in the last 12 months, have 12 months of service, and be at a location with 50 or more employees in a 75-mile radius. Employers can require documentation regarding preparation and recovery necessary for surgery. The Department of Health is required by statute to create informational materials explaining the protections granted to a living organ donor under this act, which will be posted on their website. This new law is effective June 26, 2021.

Disability

District of Columbia

May 26, 2021:

On May 26, 2021, emergency legislation (Bill 24-185) went into effect in the District of Columbia (DC) that prohibits the offsetting of DC paid family leave benefits from insured temporary or short-term disability benefits based on the employee's estimated or actual paid leave benefits. This emergency legislation does not impact self-insured employers or insurers that act as a third-party administrator for self-insured employers. This emergency legislation will expire August 24, 2021, but another bill (Bill 24-186) would extend the prohibition of offsetting and is currently in a 30-day Congressional review before becoming effective for 225 days.

Sick leave

Nevada

May 29, 2021:

Governor Sisolak signed a bill (A 190) to allow an employee to use accrued sick leave for an absence due to an illness, injury, medical appointment or other authorized medical need of a member of the employee's immediate family. This does not impose a new leave mandate; this applies if an employer provides paid or unpaid sick leave for the use of his or her employees. An employer may limit the amount of sick leave that an employee may use to an amount which is equal to not less than the amount of sick leave that the employee accrues during a 6-month period. If an employee is covered under a valid collective bargaining agreement, the employer is exempted from the provisions of this law. This new law is effective October 1, 2021.

Accommodation

Connecticut

June 4, 2021:

Governor Lamont signed a bill (H 5158) that amends existing law on accommodating employees who express breast milk or breastfeed on site at their workplace during their meal or break period. Existing law required an employer to make reasonable efforts to provide a room or other location, near the work area, other than a toilet stall, where the employee can express their milk in private. The new law, provided there is no undue hardship to the employer, requires the room or other location to: (1) be

private and shielded from the public, (2) include or be situated near a refrigerator for breast milk storage, and (3) include access to an electrical outlet. This new law is effective October 1, 2021,

Other Leaves

Oklahoma

April 2021:

Governor Stitt signed two bills on military service.

The “Oklahoma Uniformed Services Employment and Reemployment Rights Act” (HB 2545) provides that any person whose absence from employment is necessitated by reason of service in state military forces shall be entitled to reemployment, provided that the person has given advance notice to their employer, is not absent for a cumulative length of more than 5 years, and reports or submits a reemployment application to their employer. The other bill, HB 2508, is an omnibus bill on state military forces which among others, modifies leave of absence procedures for state employees to include members of state military forces on state active duty. If the leave of absence exceeds the 30 regularly scheduled work days for which state employees should receive their full regular pay, the employing state agency is required to pay the difference between their full salary pay and their military base pay, and this calculation shall exclude untaxed military allowances and entitlements.

Oregon

May 21, 2021:

Governor Brown signed a bill (HB 2231) that exempts uniformed overseas voluntary service and domestic voluntary service in response to a declaration of emergency or disaster by local, state or federal government, from the five-year limit that would otherwise apply to calculations

of eligibility for reemployment rights. Current Oregon military service law provides that a member of the uniformed services has the right to return to their civilian job without penalty or discrimination as long as their cumulative voluntary military service does not exceed five years.

May 30, 2021:

Governor Reynolds signed a bill (S 336) that added blood donation to the bone marrow and organ donation leave that is available to state employees who are donors. This blood donation leave provides for up to two consecutive hours in a workday for an employee to donate blood, platelets, or plasma. The employer can require in writing from the employee’s physician or the donation facility that the employee is out to serve as a voluntary blood donor. Employees can request this type of leave up to 4 times per year.

Iowa

May 30, 2021:

Governor Reynolds signed a bill (IA S 336) that added blood donation to the bone marrow and organ donation leave that is available to state employees who are donors. This blood donation leave provides for up to two consecutive hours in a workday for an employee to donate blood, platelets, or plasma. The employer can require in writing from the employee’s physician or the donation facility that the employee is out to serve as a voluntary blood donor. Employees can request this type of leave up to 4 times per year.

In the news

May 7, 2021:

The EEOC announced that Lake States Lumbar, Inc. has agreed to pay a \$100,000 settlement in an employment discrimination lawsuit alleging that they terminated an employee due to their disability. The employee was released to return to work without restrictions following a heart surgery. Despite this, managers put restrictions on the employee's job functions, put them in a different job position, and subsequently terminated the employee a few days later. In addition to monetary relief, the company must remove the requirement that employees be released without restrictions before returning to work, provide ADA training to managers and employees, and report disability discrimination complaints to the EEOC.

May 20, 2021:

The EEOC announced that American Addictions Centers has agreed to pay a \$146,613 settlement in an employment discrimination lawsuit alleging that an employee was terminated due to time needed to recover from childbirth. The employer provided a 30-day leave for childbirth, however the employee's doctor stated the employee needed 8 weeks off from work to recover from a c-section. Despite making exceptions to the 30-day rule in the past for other employees out for reasons unrelated to pregnancy, the employer stated they could not hold her position after the 30-days, and they subsequently terminated the employee. In addition to monetary relief, the company must conduct annual training on discrimination, including pregnancy discrimination, and take disciplinary action on managers who discriminate, or allow those under their supervision to, based on pregnancy. The EEOC noted that the company has since created a paid parental leave and general leave policy and updated their personal leave policy to allow for leaves more than 30-days.

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

May 28, 2021:

The U.S. Equal Employment Opportunity Commission (EEOC) updated their technical assistance questions and answers document "[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)" to provide additional guidance on COVID-19 vaccinations. A new Q&A on COVID-19 vaccinations as related to disability accommodation is reproduced below:

K.2. What are some examples of reasonable accommodations or modifications that employers may have to provide to employees who do not get vaccinated due to disability; religious beliefs, practices, or observance; or pregnancy? (5/28/21)

An employee who does not get vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice, or observance (covered by Title VII) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. For example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.

Employees who are not vaccinated because of pregnancy may be entitled (under Title VII) to adjustments to keep working, if the employer makes modifications or exceptions for other employees. These modifications may be the same as the accommodations made for an employee based on disability or religion.

June 11, 2021:

The Internal Revenue Service (IRS) issued guidance on frequently asked questions (FAQs) on COVID-19-related tax credits under the American Rescue Plan Act of 2021 ("ARP"). The FAQs address the tax credits available under the ARP by employers with fewer than 500 employees and certain governmental employers for qualified paid sick and family leave wages for leave taken by employees from April 1, 2021, through September 30, 2021. This is in addition to the guidance issued last January 2021 on COVID-19-related tax credits for small and midsize businesses under the COVID-related Tax Relief Act of 2020 or the "Tax Relief Act". The full text of the FAQs can be found on the [IRS website](#).

District of Columbia

Effective until June 15, 2021 (may be extended):

The DC Council enacted emergency legislation DC Act No. 24-30, an omnibus bill on DC residents' health, welfare and safety, which provided reauthorized DC COVID-19 FMLA. The substantive provisions of the DC COVID-19 FMLA leave remain unchanged. The DC COVID-19 FMLA provisions apply while the declaration of public emergency is in effect, or the expiration of the emergency legislation, whichever comes first. Pursuant to the DC Mayor's Order No. 2021-069, the Declaration of Public Health Emergency was extended for so long as DC law extends the emergency, which at present is until July 25, 2021 (DC Act 24-79). However, the underlying law which provides DC COVID-19 FMLA (DC Act No. 24-30) is only effective until June 15, 2021. Employers should note that this law may be extended further should additional temporary legislation be enacted by the DC Council.

Massachusetts

May 28, 2021:

Governor Baker signed legislation (H 3702) which provides employees with COVID-19 Emergency Paid Sick Leave. The commonwealth will reimburse employers for providing this paid leave to their employees from

the COVID-19 Emergency Paid Sick Leave Fund. The amount of COVID-19 Emergency Paid Sick Leave depends on the employee's work schedule, with a maximum of 40 hours for an employee who works 40 hours or more per week. An employee may take COVID-19 emergency paid sick leave for the following reasons:

1. An employee's need to: (i) self-isolate due to a COVID-19 diagnosis; (ii) seek or obtain medical diagnosis, care or treatment for COVID-19 symptoms; or (iii) get vaccinated for COVID-19 or recovery from an injury, disability, illness or condition related to the vaccination;
2. An employee's need to care for a family member who: (i) is self-isolating due to a COVID-19 diagnosis; or (ii) needs medical diagnosis, care or treatment for COVID-19 symptoms;
3. A quarantine order, or other determination by a local, state or federal public official, a health authority having jurisdiction, the employee's employer or a health care provider that the employee's exposure to COVID-19 or exhibiting of symptoms, regardless of whether the employee has been diagnosed with COVID-19, would jeopardize others;
4. An employee's need to care for a family member due to a quarantine order, or other determination by a local, state or federal public official, a health authority having jurisdiction, the family member's employer or a health care provider that the family member's exposure to COVID-19, regardless of whether the family member has been diagnosed with COVID-19, would jeopardize others; or
5. An employee's inability to telework because the employee has been diagnosed with COVID-19 and the symptoms inhibit the ability of the employee to telework.

The law is effective immediately. COVID-19 emergency paid sick leave is available to employees until: (i) the COVID-19 Emergency Paid Sick Leave Fund is exhausted; (ii) notification that the Commonwealth reasonably anticipates funds will no longer be available for reimbursement; or (iii) September 30, 2021, whichever is first. For more information, please visit the [Commonwealth website](#). According to the Commonwealth, further additional guidance will be issued via their website, including information on how to apply for reimbursement. For questions regarding the COVID-19 Temporary Emergency Paid Sick Leave Program, employers can email CovidSickLeave@mass.gov.

Washington

May 11, 2021:

Governor Inslee signed the Health Emergency Labor Standards Act (SB 5115), an omnibus bill that established health emergency labor standards for employees, particularly high risk and frontline employees. Among others, the new law provides that during a public health emergency, an employer cannot discharge, permanently replace, or in any manner discriminate against a high risk employee who either requests an accommodation that protects them from the risk of exposure, or, if no accommodation is reasonable, utilizing all available leave options, including but not limited to leave without pay and unemployment insurance. In addition, the new law provides that if leave or similar benefits are paid to a frontline employee as part of a federal or state program for these employees during the public health emergency, temporary total disability benefits (under Worker's Compensation) are not payable for the same period covered by the federal or state program. The law is effective immediately.

Maryland

June 1, 2021:

The Maryland Essential Workers' Protection Act (HB 581) became law even without the Governor's signature. HB 581 is an emergency omnibus bill that establishes benefits and protections for essential workers during a catastrophic health emergency. Among others, the new law provides that an essential employer must provide an essential worker with paid public health emergency leave when federal or State funding is made available for that purpose. The public health emergency leave is in addition to any other leave or benefit, including earned sick and safe leave. Due to the declaration of a state of emergency by the Governor related to the COVID-19 pandemic, each essential employer shall provide public health emergency paid leave to each essential worker on the date that federal or State funding for the public health emergency leave is made available to the employer. Currently, there is no federal or State funding for public health emergency leave.

Oregon

June 9, 2021:

Governor Brown signed a bill (H 2474) that amends the Oregon Family Leave Act (OFLA), effective January 1, 2022. The new law makes three major amendments to OFLA:

1. During a period covered by a public health emergency, all employees of a covered employer are eligible for OFLA if they have been employed at least 30 days and worked at least 25 hours per week in the 30 days leading up to the leave.
2. A reemployed or returning employee is eligible for OFLA if they met the eligibility requirements at the time of separation or temporary cessation of work and have been or returned within 180 days of separation or temporary cessation of work.
3. Eligible employees may take leave to care for their child who does not have a serious health condition but requires home care due to the closure of the child's school or child care provider as a result of a public health emergency.

Updates with Lincoln

New episodes of the *Lincoln Absence Advisor* podcast

Explore the latest episodes of [Lincoln Absence Advisor on our podcast series page](#):

- *Episode 7: Sorting out California's paid leave alphabet soup* – In this episode, we explore commonly asked questions regarding California's paid leave programs and share our insights on paid family leave, state disability insurance, and voluntary disability insurance.
- *Episode 8: Defining maternal mental health* – In this discussion, we share three points of view on maternal mental health as it relates to multiple facets of pregnancy, other ways of becoming a caregiver, and sensitivity in the workplace.

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.

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