

# July 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 developments, from federal to state, courtroom to news.

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Updated as of July 20, 2021

## Family and Medical Leave

### Massachusetts

#### 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 a 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 Certification of an Employee's Family Member's Serious Health Condition form is available [here](#).

### Washington

#### July 27, 2021:

The Washington Employment Security Department (ESD) announced they will hold a rulemaking meeting on the draft of proposed regulations on HB 1073 (pandemic leave assistance) and SB 5097 (expanded family relationship). The rulemaking meeting is scheduled on July 27, 2021. The meeting information and the full text of the draft regulations can be found on the [WA PFML rulemaking website](#).

## Connecticut

### July 31, 2021:

As a reminder, employers in the Connecticut PFML state plan that are taking additional catch-up deductions now have until July 31, 2021 to complete taking these deductions and remit them to the state. According to the [CT PFML Authority FAQs](#) and [website pop-up](#), after July 31, 2021 employers will only be allowed to continue catch-up deductions with express authorization from the Labor Commissioner.

## Colorado

### June 14, 2021:

Governor Polis signed a bill (S 251) that appropriates a loan from the state's General Fund for the Division of Family and Medical Leave Insurance for the purpose of implementing the state's PFML program. To recap: the Colorado 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. Assessment and collection of contributions for covered individuals will begin on January 1, 2023, with payment of benefits commencing by January 1, 2024.

## New Hampshire

### June 25, 2021:

Governor Sununu signed a budget bill (NH H 2) which included the establishment of the Granite State Paid Family Leave Plan to provide Family and Medical Leave Insurance (FMLI) coverage to employees and create an individual pool. The Granite State Paid Family Leave Plan will provide mandatory FMLI benefits to state employees, which includes a six week per year family and medical leave entitlement that is paid at 60% of the employee's average weekly wage. Wages used to determine this amount will be capped at the Social Security taxable wage maximum. State employees can use these FMLI benefits when taking time off from work for: the birth of a child, adoption/foster care placement of a child, to care for a family member with a serious health condition, and for qualifying exigency.

Private employers and non-state public employers in New Hampshire can voluntarily opt to provide FMLI benefits. Please note that these FMLI benefits are also up to six weeks of family and medical leave per year, paid at the same rate and for the same reasons listed above for state employees. These employers are not required to purchase FMLI benefits to cover their employees; however, employers can receive a tax credit equal to 50% of premium paid by an employer if they do opt into the Granite State Paid Family Leave Plan.

Depending on employer size, individuals whose employers do not opt to provide at least equivalent FMLI benefits can purchase FMLI coverage under the Granite State Paid Family Leave Plan or individual pool.

Please note that these FMLI benefits are also up to six weeks of family and medical leave per year, paid at the same rate and for the same reasons listed above, with the addition of an employee's own serious health condition. This coverage would not be applicable to work-related conditions and would not be available to employers who offer short-term-disability insurance to their employees. Coverage under the individual pool will have a 7-month waiting period, one-week elimination period, a 60-day annual open enrollment period, and individual pool premiums that cannot exceed \$5 per week.

The law gives the Commissioner of the New Hampshire Department of Employment Security the authority to adopt rules to implement the Granite State Paid Family Leave Plan, FMLI coverage provided by other employers, and the individual pool. The commissioner will issue request for proposals for the Granite State Paid Family Leave Plan FMLI benefits for state employees, employers who opt into the state plan, and the individual pool no later than March 31, 2022. FMLI coverage must be in place for state employees and available for purchase by private employers, non-state public employers, and individuals, by January 1, 2023.

Note: The state has yet to issue regulations and/or guidance to carry out these changes, and these matters may be subject to subsequent regulatory interpretation and program implementation timelines. Lincoln is working to identify the impacts to our products and services and will continue to share updates about changes.

## Maine

**June 14, 2021:**

**Governor Mills signed a bill (HP 27) which added grandchildren as a qualifying family member under the unpaid Maine Family and Medical Leave Act (ME FMLA).** The amendment will allow employees to request family medical leave for their grandchild or their domestic partner's grandchild, along with other covered family members, with a serious health condition. This law is effective June 28, 2021.

## Accommodation

### Louisiana

**June 17, 2021:**

**Governor Edwards signed a bill (LA S 215) that included amendments to the state's pregnancy anti-discrimination law.** This law provides protections, leave, and now accommodations, to employees for pregnancy, childbirth, and related conditions. The legislation added a definition for a reasonable period of time to take leave, which confirmed that employees would be granted six weeks of leave for normal pregnancy/childbirth, and if an employee is disabled due to pregnancy, childbirth, or related conditions this period of time cannot exceed four months.

The legislation also added a definition of “related medical condition.” This new definition provides that this term includes but is not limited to 1) lactation or need to express breast milk for up to one year after the child’s birth; and 2) medical conditions related to pregnancy and childbirth. An employee must be disabled on account of the pregnancy, childbirth, or related medical conditions in order to be granted leave for a reasonable period of time.

The legislation also added a definition of “reasonable accommodation” and adds a requirement for employers to provide such accommodation to employees for pregnancy, childbirth, and related medical conditions. Examples of accommodations include but are not limited to:

- Having an accessible place to express breast milk aside from a bathroom
- Allowing for longer breaks and/or frequent bathroom breaks
- Modifying the food/drink policy
- Providing seating for job
- Accommodating work restrictions (i.e. lifting)
- Temporarily transferring to a less strenuous or safer job
- Restructuring job for light duty
- Getting or modifying equipment necessary to perform job functions
- Modifying an employee’s work schedule

Employers cannot fail to or refuse to make an accommodation unless it creates undue hardship on business operations, as defined by the Federal Americans with Disabilities Act of 1990 (ADA). However, the legislation also provides an employer is not required to make two types of accommodations, for pregnancy, childbirth, and related conditions, as long as the employer does not make these types of accommodations for other employees. Specifically, the employer is not required to: 1) create any additional employment opportunity or any new position, including a light duty position; or 2) discharge an employee, transfer any employee with more seniority, or promote another employee who is not qualified to perform the job to accommodate the pregnant employee.

Lastly, the legislation added a provision that requires employers to provide employees with a written notice of their rights under the law. Employers are required to provide notice to all new employees when they start working, and to current employees, as of December 1, 2021. Employers must also post notice on the premises in an area accessible to employees. This law is effective August 1, 2021.

## Connecticut

### June 30, 2021:

**Governor Walz signed the state budget (S 9) into law, which included provisions requiring employers to provide reasonable accommodations for pregnancy or childbirth and break times for lactation.** Employers must provide reasonable break times each day to an employee who needs to express breast milk for her infant child during the twelve months following the birth of the child, but would not be required to do so if it would unduly disrupt the operations of the employer. Employers must also make reasonable efforts to provide a room or other private location where the employee can express their milk. In addition, an employer must provide reasonable accommodations to an employee for health conditions related to

pregnancy or childbirth upon request, with the advice of a licensed health care provider or certified doula, unless the employer demonstrates that the accommodation would impose an undue hardship on the operation of the employer's business. An employer shall not require an employee to take a leave or accept an accommodation. The provision on break times for lactation applies to all employers with at least one employee; the provision on break times for lactation applies to all employers with fifteen or more employees. The law is effective on January 1, 2022.

## Other Leaves

### Maryland

**May 30, 2021:**

**Governor Hogan signed a bill (MD H 56) that allows employees to use leave with pay for bereavement leave reasons.** Leave with pay includes sick leave, vacation time, paid time off, and compensatory time; employees working for an employer in Maryland can now use these leave banks to receive pay for periods of bereavement leave due to the death of a child, spouse, or parent. This is effective October 1, 2021.

### Texas

**June 15, 2021:**

**Governor Abbott signed a bill (TX H 2063) that created a state employee family leave pool.** This pool allows state employees to contribute at least one day of their earned sick or vacation leave. An eligible state employee can apply for permission to use time from the family leave pool if they have exhausted their other sick and vacation leave because of the following reasons: birth of a child, foster placement or adoption of child under 18, placement of an adult requiring guardianship, serious illness of an immediate family member (including pandemic-related illness), extenuating circumstances due to an ongoing pandemic (including essential care of a family member), or because they previously donated to the pool. Documentation is required to substantiate the need to withdraw from the family leave pool for these reasons. The amount of time a state employee can withdraw from the family leave pool is at the discretion of the pool administrator, limited to an amount that exceeds the lesser of 1/3 of the total time in the pool or 90 days. The state employee family leave pool becomes effective September 1, 2021.

**June 18, 2021:**

**Governor Abbott signed a bill (HB 2231) that provides public employees paid leave for military service in response to a disaster.** A public officer or employee called to state active duty by the governor or another appropriate authority in response to a disaster is entitled to a paid leave of absence from the person's duties for each day the person is called to active duty during the disaster, not to exceed seven workdays in a fiscal year. This is in addition to the paid military service leave that public officers or employees receive under current Texas military service law. The law is effective on September 1, 2021.

## Connecticut

### June 23, 2021:

Governor Lamont signed the state budget (S 1202) into law, which included a provision requiring employers to provide two hours of unpaid leave to employees for purposes of voting. The law applies to all employees during state elections, or employees who are electors in the case of any special election for United States senator, representative in Congress, state senator or state representative. The employee must give the employer notice of leave not less than two working days before the day of the election. The law is effective immediately until June 30, 2024.

## In the news

### June 8, 2021:

The EEOC announced that Treehouse Foods, Inc. / Treehouse Foods Private Brands, Inc. has agreed to pay a \$50,000 settlement in an employment discrimination lawsuit alleging that they terminated an employee for absences related to their disability. The employee requested intermittent unpaid leave as an accommodation for treatment of her disability. This request was denied, without engaging in the interactive accommodation process, and the company applied their strict attendance policy. Even though the employee provided medical excuses for the absences, and the company's leave administrator eventually approved the leave request, the employee was terminated due to the absences. In addition to monetary relief, the employee will receive full pension and retirement benefits. The company must also provide regular reporting, monitoring and training, and revise and disseminate ADA policies, including posting appropriate notices.

### June 28, 2021:

The EEOC announced that National Spine & Pain Centers, LLC has agreed to pay a \$75,000 settlement in an employment discrimination lawsuit alleging that they terminated an employee for absences related to their disability. An employee with breast cancer requested a continuous leave for lumpectomy surgery. The company denied the leave request, stating the employee wasn't eligible for FMLA leave. They did not consider leave entitlement under the ADA, and subsequently terminated her. In addition to monetary relief, the company must revise their ADA accommodation policy to include the interactive process so that leave as accommodation requests are considered. The company must also conduct ADA training that addresses reasonable accommodation requests, and report back to the EEOC on adhering to these terms.

### June 29, 2021:

The EEOC announced that Agri-AFC, LLC has agreed to pay a \$40,000 settlement in an employment discrimination lawsuit alleging that they terminated an employee due to their disability. Within a few months of being hired, the employee told their manager that they were taking medication for a military service-related back injury. The company then required that the employee provide them a list of their medications. They subsequently terminated the employee, citing concerns of liability if the injury

worsened. In addition to monetary relief, the company must train employees on related laws, and create, enforce, and maintain anti-discrimination and anti-retaliation policies. Going forward, the company cannot discriminate or retaliate against employees because of a disability, and they must post notice of an employee's right to report discrimination or retaliation to the EEOC.

**June 30, 2021:**

**The U.S. DOL announced that as a result of an investigation, Precoat Metals must pay a former employee \$45,014 in back wages and benefits for terminating them without notice while they were on protected FMLA leave.** The employee decided to not seek reinstatement as part of the investigation.

## **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.

### **District of Columbia**

**June 24, 2021:**

**The DC Council enacted temporary legislation DC Act No. 24-62, 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 temporary legislation on February 4, 2022, 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) and may be extended.

### **Washington**

**Available August 1, 2021:**

**Employees who do not meet the PFML hours worked eligibility requirement may apply to the state for pandemic leave assistance employee 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. These employees may apply for a pandemic leave assistance employee grant for claims with a start date of January 1, 2021 through March 31, 2022. This includes employees who work for an employer with an approved voluntary plan, and who do not meet the hours worked requirement. Employees eligible for pandemic leave assistance who work for an employer with an approved voluntary plan may apply to the state for benefits. Employees may file a claim with the ESD on [paidleave.wa.gov](https://paidleave.wa.gov) beginning August 1, 2021.

## Maine

**June 29, 2021:**

**Governor Mills signed a bill (ME H 731) that requires public school employees affected by COVID-19 be provided 15 days of paid sick leave.** Public school employees can use this paid sick leave if they were 1) subject to federal, state or local quarantine related to COVID-19, 2) advised by a health care provider to self-quarantine related to COVID-19, 3) had COVID-19 symptoms and sought a diagnosis, 4) care for someone subject to federal, state or local quarantine related to COVID-19, or 5) are a parent/guardian of a child whose school or child care was closed due to COVID-19. This law is effective retroactively back to January 1, 2021.

## New York

**July 1, 2021:**

**Governor Cuomo signed a bill (S 4201) that prohibits public employers from retaliating against public employees for absences related to COVID-19.** The new law amended the civil service law to prohibit a public employer from dismissing or taking other disciplinary or other adverse personnel action against a public employee, including designating the employee as chronically absent, because the employee uses sick leave or compensatory time to quarantine, convalesce, seek medical treatment, or engage in other activities related to a COVID-19 diagnosis or contact. This law took effect immediately as of July 1, 2021 and was deemed to have been in full force and effect on and after March 1, 2020.

## Updates with Lincoln

### Join us at DMEC's 2021 Annual Conference

Lincoln will be hosting a session at this year's DMEC annual conference called "Returning to the workplace - While avoiding mental health challenges"

The pandemic has shifted over 70 million American workers from the office to home. This dramatic change produced positive results — reduced commuting, more family time, lower risk of infection, and improved productivity. But for many, there were significant obstacles — ineffective technology, role conflicts, poor communication, isolation, and less collaboration. As a result, stress, burnout, and mental health problems became more common.

In this presentation, we'll discuss the reasons that working from home was not always successful, and how some of the challenges may resurface as employees transition back to the office. We will outline



specific steps that employers can take to improve the process of returning to the workplace; to improve the quality of work life for those who will still be working at home; and to avoid the problems that may lead to stress, burnout, and mental health issues in teleworkers.

[Register today](#) so you don't miss out on this great information!

### **New episodes of the *Lincoln Absence Advisor* podcast**

In our latest episodes we dive into questions we received in our latest webinar, *A new focus: mental health, disability, and the whole employee*. Explore the latest episodes of [Lincoln Absence Advisor on our podcast series page](#):

- *Episode 9: Accommodating mental health* – Many of the questions we received focused on which accommodations work best for mental health and how to handle such a sensitive subject with your employees. In this episode, we discuss elements of the Americans with Disability Act (ADA), accommodations we've seen used for mental health needs, and various processes and perspectives that employers should consider on this subject.
- *Episode 10: Exploring the "Assistance" of an EAP* – Another area our webinar audience showed interest was the benefit of an Employee Assistance Program (EAP). More specifically, how could an EAP help someone who may be experiencing mental health related issues when transitioning back into the office? During this episode, we tackle this question as well as explore all the other assistance areas an EAP can help with.

### ***Lincoln Absence Advisor* hub**

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