

August 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 August 13, 2021

Family and Medical Leave

Oregon

July 27, 2021:

Governor Brown signed legislation (HB 3398) delaying the implementation of the Oregon Paid Family and Medical Leave (PFML) program. Originally, contributions were to begin January 1, 2022, and benefits to be paid starting Jan. 1, 2023. The rules were supposed to be finalized by September 1, 2021. HB 3398 implements the following changes: (1) extended the deadline for the Oregon Employment Department to adopt rules by September 1, 2022, (2) changed the start date for employer and employee contributions to January 1, 2023, and (3) changed the start date for benefit payments to September 3, 2023. There are no other changes to the Oregon PFML program, i.e., to the employee eligibility requirements, the contribution rate cap and percentage split, benefit amounts, and other program elements. The contribution rate is still forthcoming from the state but will not be more than 1% of the employee's wages, with employers and employees sharing the cost.

Rhode Island

July 6, 2021:

Governor McKee signed legislation (S 688) that increases temporary caregiver benefits (TCI) beginning January 1, 2022. Prior to this amendment, TCI provided eligible claimants up to 4 weeks of caregiver benefits to care for a seriously ill child, spouse, domestic partner, parent, parent-in-law, or grandparent or to bond with a newborn child, new adopted child, or new foster-care child. The amendment will increase TCI caregiver benefits to a maximum of 5 weeks in a benefit year beginning January 1, 2022, and will increase again to a maximum of 6 weeks in a benefit year beginning January 1, 2023.

Connecticut

July 29, 2021:

Governor Lamont announced Aflac was selected as the claims administrator for the CT PFML state plan. Aflac will accept applications, determine eligibility, and administer benefits for paid leave for employers covered by the state plan. More information on this announcement can be found on the [Governor's website](#).

September 30, 2021:

As a reminder, employers in the Connecticut PFML state plan that are taking additional catch up deductions now have until September 30, 2021 to complete taking these deductions and remit them to the state. Please note this is the second time this date has been extended on the [CT PFML website pop-up](#). According to the most current information available on the [CT PFML Authority FAQs](#), after September 30, 2021 employers will only be allowed to continue catch up deductions with express authorization from the Labor Commissioner.

Maine

July 22, 2021:

Governor Mills signed legislation (S 501 a) that establishes a commission to study and develop a plan to implement a paid family and medical leave benefits program (PFML). The commission will study the PFML benefits programs in other states, solicit and consider public comment on the administration and establishment of a PFML benefits program, consult with other states that have established PFML benefits programs, cause an actuarial study of the planned PFML program, and, based on the actuarial study and other factors, make recommendations to implement a PFML benefits program, including any necessary legislation. The commission was directed to submit a report that includes its findings and recommendations, including suggested legislation, no later than January 15, 2022.

Sick Leave

Chicago, Illinois

Effective August 1, 2021:

The Chicago City Council passed an ordinance (No. O2021-2182) that included amendments to the pre-existing Chicago Paid Sick Leave Ordinance. By way of background, this paid sick leave ordinance entitles Chicago employees who work at least 80 hours within any 120-day period to paid sick leave. The leave can be used for an employee's own illness, injury, or work closure due to a public health emergency order or for care of a family member during illness, injury, or order of quarantine. An employee can also use paid sick leave if they, or a member of their family, are a victim of domestic violence or a sex offense. For

every 40 hours worked, these workers accrue 1 hour of paid sick leave. In their first year, they can use up to 40 hours of paid sick leave, after that they can use up to 60 hours. Only half of paid sick leave hours accrued between 12-month periods can be carried over to the next year. The amendments clarify and expand reasons for using this paid sick leave, add penalties for wage theft, and necessitate a revised notice. These amendments and the updated notice are effective August 1, 2021.

Some expanded reasons for paid sick leave now include:

- An employee's own mental or behavioral issues, including substance use disorders
- To care for a family member due to mental or behavioral issues, including substance use disorders
- To care for a family member who is a victim of trafficking
- To care for a family member whose school, class, or place of care is closed
- To follow an order issued by the mayor, governor, Chicago Department of Public Health, or treating provider that requires an employee to stay home to minimize transmission of communicable disease, remain home while experience or sick with symptoms of communicable disease, or obey a quarantine/isolation order

The new ordinance added penalties for Chicago employers who commit wage theft, which is the non-payment of wages for work performed, including under paid sick leave, and contractually required benefits. Pay must be made timely to a covered employee in accordance with the Illinois Wage Payment and Collection Act. Covered employees can file a claim with the Chicago Office of Labor Standards or take civil action. Employers found to have committed wage theft are liable for the underpayments to the covered employee. They're also liable for damages worth 2% of the underpayment amount for each month underpaid, or the amount provided in the Illinois Wage Payment and Collection Act, whichever is greater.

Employers are required to post a notice stating current minimum wage, paid sick leave rights, and information about human trafficking and resources to combat it in a conspicuous place at each facility that has covered employees. They must also provide this notice to covered employees with their first paycheck and annually in their July paycheck to covered employees. The amendments required that the notice be revised to include information about the ability to seek redress for wage theft, the Commissioner of Business Affairs and Consumer Protection recently updated this notice ([link](#)).

Other Leaves

New Mexico

May 30, 2021:

New Mexico amended its administrative regulations applicable to state employees to include domestic partners as a qualifying family relationship for family leave and granted agencies the authority to provide bereavement leave. State employees may now take unpaid leave for the care of their domestic partner

who has a serious health condition, a qualifying exigency arising out of the fact that their domestic partner is on covered active duty, and to care for a covered servicemember (who is their domestic partner). In addition, agencies may grant bereavement leave to employees who have experienced the death of a relation by blood or marriage within the third degree or a person residing in the employee's household.

Missouri

July 14, 2021:

Governor Parson signed a bill (H 432) that created protections for vulnerable persons, including victims of domestic or sexual violence. An employee who is a victim of domestic or sexual violence or related to a family or household member who is a victim of domestic or sexual violence may take unpaid leave from work to address such violence. These provisions apply to an employer that employs at least 50 employees, who must grant their employees a total of two workweeks of domestic violence leave during any 12-month period. The employee can take this leave intermittently or on a reduced work schedule. While the employee is out on domestic violence leave, the employer must maintain coverage for the employee and any family or household member under any group health plan for the duration of such leave at the level and under the conditions coverage that would have been provided if the employee had continued in employment continuously for the duration of such that leave. In addition, employers should make reasonable safety accommodations for their employee who is a victim of domestic or sexual violence or a family or household member being a victim of domestic or sexual violence. Examples of reasonable safety accommodations include an adjustment to a job structure, workplace facility, or work requirement, including a transfer, reassignment, modified schedule, leave, a changed telephone number or seating assignment, installation of a lock, implementation of a safety procedure, or assistance in documenting domestic violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic violence. This law is effective on August 28, 2021.

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 and information from the Centers for Disease Control and Prevention and other regulatory and medical experts to offer targeted guidance and support.

Federal

July 26, 2021:

The U.S. Department of Health and Human Services (HHS) and the U.S. Department of Justice (DOJ) published joint guidance on "Long COVID" as a disability under Titles II (state and local government) and III (public accommodations) of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act. The guidance is available on the [HHS website](#) and [DOJ](#)

[website](#). A person's long COVID-19 condition may be considered a disability that "substantially limits" one or more major life activities. As a result, businesses or state or local governments will need to accommodate a person's long COVID-19-related limitations. For example, they must provide additional time on a test for a student who has difficulty concentrating or allow a customer who finds it too tiring to stand in line to announce their presence and sit down without losing their place in line. This guidance is not applicable to reasonable accommodation or nondiscrimination in employment under Title I of the ADA or Section 501 of the Rehabilitation Act. Employment issues related to COVID-19 are discussed in [technical assistance guidance](#) issued by the U.S. Equal Employment Opportunity Commission (EEOC).

July 29, 2021:

The Internal Revenue Service (IRS) issued additional guidance on frequently asked questions (FAQs) on COVID-19 immunization as related to tax credits for small and midsize businesses. The additional guidance clarifies that eligible employers can claim tax credits for providing leave to employees to accompany a family or household member or certain other individuals to obtain immunization for COVID-19 or to care for a family or household member or certain other individuals recovering from immunization. The full text of the FAQs can be found on the [IRS website](#).

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 employees who have not met the hours worked requirement, but are considered covered employees under the PFML program, to apply for a pandemic leave assistance employee grant. This grant only provides benefits for the same leave reasons as the PFML program and is not introducing any new COVID-19-related leave reasons. Employees may qualify for the grant if they were denied PFML benefits due to insufficient hours worked 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 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 beginning August 1, 2021.

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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