

Absence management newsletter

2021 Issue 2

2020		2021	2022		
<p>November 23 Employers can register on the CT Paid Leave website (ctpaidleave.org).</p>	<p>December 31 If utilizing the State plan, inform employees prior to withholding the mandatory payroll deduction.</p>	<p>January 1 Connecticut premium deductions begin.</p> <p>CT PFMLIA has extended the deadline to March 31, but we recommend plan applications are filed well before then. Deadline for private plan applications to be filed to avoid submitting employee contributions to the state. The state will be accepting applications on a rolling basis.</p>	<p>March 31 First Connecticut premium assessment due (due on a quarterly basis).</p>	<p>June 30 End of second quarter, Connecticut premium assessment due. Premium assessment is due quarterly.</p>	<p>January 1 Benefits available for Connecticut Paid Family Leave and Medical claims.</p>

Massachusetts Paid Family and Medical Leave Updates.

On December 21, 2020, the Department of Family and Medical Leave (DFML) issued "Emergency Regulations" incorporating the definitions for personal care attendants and family childcare providers into the existing definitions of Covered Individual, Employee, and Employer.

Additionally, the DFML provided additional guidance on bonding leave and implemented new rules for employees of "Acute Care Hospitals." These are, in part, designed to address staffing capacity issues at Acute Care Hospitals due to the COVID-19 pandemic.

As it was written, an employee could take bonding leave for births, adoptions, and foster care placements that occurred in 2020, but the leave must be completed during the first 12 months after the child's birth, adoption, or foster care placement.

In this edition

Massachusetts Paid Family and Medical Leave Updates	1
Washington Paid Family Medical and Leave Update	2
Oregon Paid Family and Medical Leave	3
Virginia Situs Disability Coverage for Pregnancy	3
Tax Implications, Paid Family and Medical Leave and Telecommuting due to COVID	3
Pending Legislation Watch	4

The update adds:

- **Special Provisions for Bonding Leave for Employees of Acute Care Hospitals:**

- An employee of an acute care hospital who is eligible for bonding leave for an event that occurred in 2020 can request, and the employer may grant, a period

continued on page 2



of family leave for bonding that extends beyond the 12-month limitation, however, the leave cannot extend beyond December 31, 2021.

- An extension of the period for bonding leave may not affect the total amount of leave and benefits available the employee.
- Acute care hospital employers may initiate discussions with employees eligible for the extension to determine if they intend to request the allowable extension. An employer's decision to deny an extension will not constitute retaliation under the law.

The regulations apply to all acute care hospitals, regardless of whether the employer provides benefits through a private plan or the Massachusetts public plan. The regulations impact only bonding leaves for birth, adoption, or foster placement in 2020, and do not apply to any other leave types.

- **Bonding Leave Extensions for non-Acute Care Hospital Employees**

- Employers that are not acute care hospitals seeking to extend the period in which an employee may schedule family bonding leave may submit a written request to the Director of the DFML who will consider the likely effects on public health and safety and the public interest and deny or grant any such request.

The DFML also issued guidance in regard to intermittent and reduced schedule leaves. As it was written, the regulations stated that intermittent leave must be taken in increments consistent with the established policy of the employer or covered business entity uses to account for use of other forms of leave; provided, however, that the DFML will not pay in increments of less than 15 minutes.

The update clarifies and indicates that for intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a family member with a serious health condition, to care for a covered service member with a serious injury or illness, or leave for a qualifying exigency, the minimum increment may not exceed one hour. For employers utilizing the state's plan, the DFML clarifies that increments must be measured in 15-minute multiples and that the DFML will default to 15-minute minimum increments for all employers.

For family bonding leave, intermittent or reduced leave schedule is only allowed if the employer and the employee mutually agree. The employer retains the ability to approve or reject an intermittent or reduced leave schedule.



For more information, go to <https://www.mass.gov/news/latest-guidance-from-the-department-of-family-and-medical-leave>.

Washington Paid Family Medical and Leave Update.

Representatives Berry and Wicks have recommended revisions to WA PFML (2021 WA HB 1073). The bill proposes to revise WA PFML to:

- Include any person related by blood or affinity whose close association with a covered individual is the equivalent of a family member;
- Changes eligibility from an hours requirement to having earned \$1,000 in WA;
- Changes job protection to apply if an employee has worked for the current employer for 90 days or more. And, requires health insurance benefits to be continued for employees who have worked for their employer for 90 days.

The House Committee on Labor and Workplace Standards had a public hearing on the amendments for January 15, 2021.



Oregon Paid Family and Medical Leave.

The Oregon Employment Department's Paid Family and Medical Leave Insurance (PFMLI) team recently gathered stakeholder input for Round 2 of the proposed draft administrative rules. The draft provides proposed administrative rules on the implementation and guidance of the new paid leave program. A meeting was held and it's moving through the legislative process.

We will continue to be informed of Oregon's updates as we're made aware. For more information about the draft of proposed rules, go to <https://www.oregon.gov/employ/PFMLI/Pages/PFMLI-Administrative-Rules.aspx>.

Virginia Situs Disability Coverage for Pregnancy.

Senate Bill 567 was signed into law, amending Virginia Code Ann. §38.2-3407.11:4. Beginning July 1, 2021, insurers that provide short term disability will be required to provide a minimum benefit duration of 12 weeks for a disability due to childbirth.

This is applicable to any policy issued under an individual or group accident and sickness insurance situated in Virginia. It applies only to new business issued in Virginia on or after July 1, 2021.

New York Life Group Benefit Solutions will be making the necessary changes to Virginia situated insured policies in preparation for July.

Tax Implications, Paid Family and Medical Leave and Telecommuting due to COVID.

One of the hottest issues in the statutory paid leave area, and driven by the COVID-19 pandemic, is how to resolve tax implications for thousands of employees who no longer commute over state borders now that employees are able to work from home. As a general rule, employees pay income

tax based on the laws of the state in which they work. For example, if an employee lives in New Hampshire but works in Pennsylvania, the employee's tax liability would be governed by Pennsylvania.

It has been reported that as many as 78,000 Connecticut residents could be in tax limbo if they typically work in Manhattan, but have not set foot there since March 2020 when many offices closed. New York is continuing to collect taxes and leave program contributions on employees who previously commuted into New York, but have remained in their home states of Connecticut or New Jersey telecommuting during the pandemic.

In October 2020, New Hampshire filed suit against Massachusetts because Massachusetts adopted a rule that allowed the state to continue collecting income taxes on workers who live out of state and are now working remotely and no longer commuting to Massachusetts. Several states and organizations have filed amicus briefs in the U.S. Supreme Court. As of January 25, 2021, the U.S. Supreme Court has requested the Acting Solicitor General to file a brief expressing the views of the United States Department of Justice. But what about paid family leave laws and mandatory payroll deductions?

Massachusetts' paid family leave program began paying benefits as of January 1, 2021. It is funded, in part, by a mandatory employee payroll deduction. Prior to COVID-19, many employees regularly commuted to Massachusetts from neighboring states like Rhode Island and New Hampshire, subjecting them to the payroll contributions for paid family leave. Now, for almost a year, those same employees have not set foot in Massachusetts. Should employers still deduct contributions from out of state employee's paychecks? The Massachusetts Department



Employers should consult their counsel before making any tax or leave-related decisions that impact employees.

[Connecticut's new tax commissioner analyzing tax implications for remote workers during pandemic - Hartford Courant](#)

[COVID-19 Telecommuting Tax and Leave Issues for Employers | Mintz - Employment, Labor & Benefits Viewpoints - JDSupra](#)

Pending Legislation Watch.

We understand the challenges of staying on top of the potential legislative changes across the country. Recent activity includes:

Oregon Disability. Oregon Senate Introduces Senate Bill 46 which would enact new claim handling and appeal procedures for individual and group disability income insurance claims. The requirements were modeled after the federal regulations applicable to ERISA disability plan.

Washington House Bill 1073 seeks to amend WA paid leave program's eligibility test to \$1000 from an hours test, the job restoration provisions are changed to 90 days of employment and maintenance of health insurance no longer mimics FMLA requirements.

Utah House Bill 54 is primarily technical in nature but contains potentially impactful changes related to Long Term Disability Insurance products under Utah's Insurance Code. (U.C.A. 1953 § 31A-1-301). It includes changes to grace periods of premium payments, discontinuance, nonrenewal, and changes to groups eligible for group or blanket insurance.

New York Life Insurance's Office of Governmental Affairs will continue to monitor the bills as they move through the legislative process and we'll continue to keep you updated.

of Revenue attempted to address the issue in its July 2020 Technical Information Release: An employee who previously performed services outside of Massachusetts and was not subject to PFML will not become subject to PFML solely because the employee is temporarily working from home in Massachusetts. Likewise, an employee who previously performed services in Massachusetts but is temporarily working from home outside of Massachusetts solely due to COVID-19 continues to be subject to the PFML rules. However, as the pandemic forces employees to remain at home, at what point does the employee's base of operations shift from Massachusetts to the employee's home state and is no longer "temporary"?

As almost a year of telecommuting has revealed, working from home can have both benefits and complications.

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