

# Absence Management

A newsletter from New York Life Group Benefit Solutions

In this sixth issue, we focus on state PFML changes in New York, Connecticut, Delaware, Pennsylvania, and Washington, DC. We also look at other absence-related news and free financial webinars.

## New York Paid Family and Medical Leave intermittent time proposal.



The New York State Workers Compensation Board (WCB) has proposed amendments to section 380-2.5(c) of Title 12 NYCRR and we do not expect final revisions of the bill until August. The proposed update will increase the maximum number of intermittent leave days an employee can take based on the average number of days they work per week, consistent with the statute. This proposal doesn't change the benefit calculation but it will remove the 60 day cap of available intermittent time. This will only impact employees that work an average 6 or 7 days a week. Employees who work 5 days or less per week will not be impacted.

As additional information is published, New York Life Group Benefit Solutions (NYL GBS) will keep you updated.

### In this edition:

New York Paid Family and Medical Leave intermittent time proposal .....	1
Washington Paid Family and Medical Leave (PFML) family member definition change .....	2
Washington DC PFML offset .....	2
Connecticut Family Medical Leave and Paid Family Medical Leave concurrency .....	3
New York Life Group Benefit Solutions disability clients .....	3
Congressman Brady's "Protecting Workers Paychecks and Family Choice Act" .....	4
Free webinars .....	5
Delaware PFML .....	5
Pennsylvania PFML .....	5
Pennsylvania Living Donor Protection Act .....	6
Maine Earned Paid Sick Leave .....	7
Oregon Paid Family and Medical Leave delays .....	8

# Washington Paid Family and Medical Leave (PFML) family member definition change.



**On May 10, 2021**, the Washington Senate expanded the definition of “family member” for the Washington Paid Family Medical Leave program to include:

- › **Any individual who regularly resides in the employee’s home with an expectation that the employee care for the individual.**
- › **Any individual where the relationship creates an expectation that the employee care for the person.**

The language is intended to include any individual who regularly resides in the employee’s home, has a relationship that creates an expectation the employee will care for the person, and depends on the employee for care. Family member does not include an individual who simply resides in the same house with no expectation that the employee will care for the individual.

**The change goes into effect July 25, 2021.**

## Washington DC Universal Paid Leave offset.



An emergency amendment to Washington DC’s Universal Paid Leave legislation, Act 24-90, went into effect on May 26, 2021 and prevents an insurer from offsetting or reducing short-term disability benefits based on the employee’s assumed or actual receipt of Universal Paid Leave benefits. The law does not apply to

self-insured employers or insurers who are acting on behalf of a self-insured employer as a third-party administrator for the self-insured employer. A companion bill, Act 24-97, also passed and this will now remain in effect through January 21, 2022.

# Connecticut Family Medical Leave and Paid Family Medical Leave concurrency.

In order to run concurrently with Connecticut Paid Family Medical Leave (CT PFML) when it begins in January 2022, there will also be changes to Connecticut Family Medical Leave (CT FML).

The chart below highlights the changes to CT FMLA as of January 1, 2022:

Current CT FML	CT FML starting January 1, 2022
Applies to companies with 75 or more employees.	Applies to companies with one or more employees.
Employees must have worked at least 12 months for the employer (can be non-consecutive).  Employees must have worked at least 1,000 hours during the 12 months immediately preceding the date of commencement of CT FMLA leave.	Employees must have been employed for the previous three months.  No hours worked requirement.
Job protection after 12 months.	Job protection after 3 months.
16 weeks of leave in a 24-month period.  26 weeks of leave is available for military caregiver leave.	Up to 12 weeks in a 12-month period for all leave reasons except: - 26 weeks of leave is available for military caregiver leave.  - An additional 2 weeks of leave may be available for incapacitation during pregnancy.
Employer can require employees to use all accrued time for paid time off.	Employer can require employees to use accrued time off but must allow employees to keep up to two weeks of accrued PTO.



## New York Life Group Benefit Solutions disability clients:

We have assessed the legislative impacts and will be making the appropriate adjustments as necessary to our insured disability claims.

# Congressman Brady's "Protecting Workers Paychecks and Family Choice Act."

Congressman Kevin Brady, the top Republican on the Ways and Means Committee, has offered up a different approach to Chairman Richard Neal's initial proposal in regard to paid family medical leave (PFML). Congressman Brady would expand access to PFML benefits in two ways:

1. Modifying the employer tax credit for PFML by permanently putting it in place as a 5-year start-up credit, and making the following modifications to increase the tax credit:
  - › Starts at the beginning of the taxpayer's first taxable year after December 31, 2022.
  - › Expands the credit for small employers with \$25 million or less in gross receipts by allowing a credit ranging from 25% - 50% of wages paid during a leave and allowing some administrative expenses to be part of the credit.
  - › Limits the credit to employers newly offering paid leave plans with a phase out after 5 years.
  - › Grandfathers employers currently claiming the credit through 2025, followed by a phase-out starting in 2026.
  - › Allows multi-state employers operating in mandatory PFML states to claim a credit for wages paid in states without such a mandate.
2. The proposal encourages the use of pooling of small employers through Multiple Employer Welfare Arrangements (MEWAs) and calls for administrative agencies to make recommendations on encouraging pooling:
  - › Changes Labor and Revenue definition of "employee welfare benefits" by adding reference to "paid family leave" and "paid medical leave" benefits to the definition that currently includes "disability income" benefits to more closely align PFML benefits with traditional disability benefits.
  - › Amends the IRS definition of Voluntary Employee Beneficiary Association (VEBA) to allow that small employers may jointly fund PFML benefits.
  - › Requires Labor and Treasury to issue regulations.



- › Requires Labor and Treasury to make recommendations to the House Education and Labor Committee and the House Ways and Means Committee to identify other regulatory and statutory barriers or changes required to encourage small business pooling for delivery of PFML benefits.

The path forward for a federal PFML solution remains uncertain. We will continue to keep you updated as additional information is provided.



## Free webinars for NYL GBS clients.



As a reminder, every month My Secure Advantage (MSA), hosts financial wellness webinars\* which are free for most New York Life Group Benefit Solutions clients.

The webinars are presented the second Tuesday at 12:00 PM ET (9:00 AM PT) and the fourth Thursday at 3:00 PM ET 12:00 PM PT. The upcoming webinars include:

**Thursday, June 24**

**#Adulting: Money Matters »**

<https://register.gotowebinar.com/rt/4744030245640490254?source=CSM>

Heading out into the world, whether graduating high school or college, you may be faced with financial decisions you don't feel prepared to make. The purpose of this class\*\* is to review the most common and important financial decisions. You will learn the importance of budgeting, saving for goals and monitoring your credit, as well as the potential challenges of taking on too much debt. We'll also review the resources available to you (like apps) that can help you take control of your finances and your future.

\*\*This class is geared toward dependents of employees: young adults ages 17-25.

**Tuesday, July 13**

**Retirement Planning: Getting Started »**

<https://register.gotowebinar.com/rt/3217389136799179790?source=CSM>

When it comes to getting started on a retirement plan, we believe everyone will benefit from this class – whether you are at the beginning or near the end of your career. We will emphasize the importance of starting with a plan as early as possible in order to allow your savings to grow. There are many competing needs or wants for the dollars you save, so we will talk about how you can use goal-setting strategies to stay on track with funding whatever lifestyle or timeline you envision for retirement.

If you also have Group Benefit Solutions' Life Assistance Program (LAP), ask your Account Manager to provide you with the quarterly calendar of LAP webinars, which also includes the MSA webinars.

\*Seminars are provided through a third party vendor who is solely responsible for their products and services. Terms and conditions are contained in the client program description, and are subject to change. Program availability may vary by plan type and location, and is not available where prohibited by law.

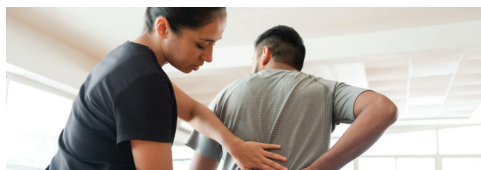


## Delaware PFML.

On May 5, 2021, Senator Sarah McBride filed and introduced Senate Bill 1 which calls for a Paid Family Medical Leave (PFML) program. Known as the Healthy Delaware Families Act, the bill would create a statewide PFML benefit for certain life events such as serious illness, a new child or adjusting to military deployment. Covered individuals would receive up to 80% of their average weekly wages. The program would be funded by less than 1% of an employee's weekly pay, split evenly by the employee and employer. Collection of contributions would begin in 2023 with benefits beginning in 2024.

Employees could receive benefits for up to 16 weeks for paid medical and family leave and the proposal would cover employers of all sizes as well as allow self-employed individuals to participate in program. The bill also allows for employers to satisfy the requirements of the legislation through private plans offered by insurers.

The Delaware Department of Labor would be required to administer the PFML fund and adopt regulations. The sponsor of the bill will continue to work with major stakeholders to discuss concerns during the summer/fall prior to the 2022 legislative session.



## Pennsylvania PFML.

The Family Care Act has been introduced in both legislative chambers of Pennsylvania. The proposals are nearly identical to legislation introduced in 2020 which received a committee hearing but no additional action. The bills would allow eligible employees to take leave and collect benefits for the birth or adoption of a child, to care for a family member with a serious health condition, or because the employee has a serious health condition. Employees would receive up to 20 weeks for birth, adoption, placement of a child and bonding. Up to 12 weeks would be allowed for an employee's own serious health condition, caring for a family member with a serious health condition or due to a qualifying military exigency. Benefit payments would follow a progressive formula with lower income earners receiving up to 90% of their average weekly wage and higher wage earners receiving a lower benefit. The bill requires contributions of 0.588% of an individual's wages to fund the public program and does not outline any private plan options.

# Pennsylvania Living Donor Protection Act.

On April 27, 2021, Tom Wolf, Governor of Pennsylvania enacted [House Bill 203](#), the Living Donor Protection Act which goes into effect at the end of June 2021.



We have included highlights of the law below:

<b>Coverage:</b>	Eligible employees as defined by FMLA.
<b>Covered leave reasons:</b>	An employer must provide the same leave to an eligible employee when they are unable to work because of a serious health condition related to the preparation and recovery necessary related to organ or tissue donation by or for the eligible employee or the eligible employee's spouse, child or parent.
<b>Leave entitlement/period:</b>	12 weeks.
<b>Pay/benefit during leave:</b>	Unpaid.
<b>Notification requirements:</b>	The employee must provide 30 days' advance notice or as soon as it becomes practicable.
<b>Certification requirements:</b>	An employer may require an eligible employee to submit written documentation regarding the preparation and recovery necessary for surgery.
<b>Job protection/reinstatement:</b>	Same as FMLA.

Pennsylvania's position is consistent with DOL's written opinion from 2018, which can be found at [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2018\\_08\\_28\\_2A\\_FMLA.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2018_08_28_2A_FMLA.pdf).

The other component of the bill prohibits insurers who provide health or life coverage from discriminating against an individual solely based on their status as a living donor.

For New York Life Group Benefit Solutions leave clients: NYL GBS is assessing the law and will be reviewing our current leave offering to determine any necessary changes.

# Maine Earned Paid Sick Leave.

The following was previously communicated on June 2019, but we're republishing as a reminder to impacted employers.

On May 28, 2019, Governor Janet Mills of Maine signed the "Act Authorizing Earned Employee Leave" into law. This law, effective January 1, 2021, requires covered employers to provide their employees with up to 40 hours of paid leave during each calendar year. Maine's law is the first to allow employees to use earned paid leave for any reason, including personal, non-medical purposes.

Below are some other highlights of the legislation that went into effect earlier this year:



<b>Coverage:</b>	An employer with ten or more employees must provide 40 hours of earned paid leave at the employee's regular rate of pay.
<b>Covered leave reasons:</b>	An employee can take leave for any reason at all.
<b>Accrual:</b>	An employee earns one hour of paid leave from a single employer for every 40 hours worked, up to 40 hours in one year of employment. Accrual of leave begins at the start of employment, but the employer is not required to permit use of the leave before the employee has been employed by that employer for 120 days during a one-year period.
<b>Leave entitlement/period:</b>	40 hours per year.
<b>Pay/benefit during leave:</b>	An employee must be paid at least the same base rate of pay that the employee received immediately prior to taking earned leave and must receive the same benefits as those provided under established policies of the employer pertaining to other types of paid leave.
<b>Concurrency with other laws:</b>	May run concurrent with FMLA if the leave reason is qualifying.
<b>Notification requirements:</b>	Absent an emergency, illness or other sudden necessity for taking earned leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use earned leave. Use of leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer.
<b>Certification requirements:</b>	None.
<b>Job protection/reinstatement:</b>	The taking of earned leave under this section may not result in the loss of any employee benefits accrued before the date on which the leave commenced and may not affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees.

This law is unique insofar as it is not tied to an event such as one's own serious health condition, a serious health condition for a family member, baby bonding, domestic violence/safe leave, etc. This leave can be used for any reason at all, including a personal vacation. There may be instances where it overlaps with family and medical leave or a short-term disability policy or plan and thus, that benefit may be offset depending on the language in the policy.

# Oregon Paid Family and Medical Leave delays.

As we previously reported, the Oregon Paid Family Medical Leave Insurance (PFMLI) Advisory Committee submitted a bill, HB 3398, to Oregon legislature recommending an amendment that would push out the Paid Family Medical Leave benefit timeline. If approved, the bill would have Oregon PFML contributions beginning January 1, 2023 instead of January 1, 2022. Benefits would be initiated nine months later in September 2023 as opposed to January 2023.

On June 8, 2021, the Oregon House passed the bill. The Senate will need to also pass the bill by adjournment, currently scheduled for late June, to be eligible to become law this legislative session. As more information is available, we will keep you updated.



## Pending legislation watch.

We understand the challenges of staying on top of the potential legislative changes across the country.

### Recent activity includes:

› **New Hampshire House Bill 2:** It will not mandate coverage to be provided by employers to their employees, but the proposal establishes a marketplace in the state for reasonably priced PFML wage replacement benefits.

We will continue to update you as we receive new information.

This newsletter and its content is being provided for informational and educational purposes only. Any information or discussion of legislation or regulation is provided for informational purposes only and not intended as legal guidance. For specifics, please review the applicable links or consult with your own legal professional before making any decisions. New York Life Insurance Company, its subsidiaries, affiliates, and employees, are not in the business of providing legal advice, and none is intended nor should be inferred from the foregoing information. Clients are advised to seek the counsel of their own legal advisors who must form their own independent opinions on these matters based on their independent knowledge and research.

New York Life Group Benefit Solutions products and services are provided by Life Insurance Company of North America and New York Life Group Insurance Company of NY, subsidiaries of New York Life Insurance Company.

## New York Life Insurance Company

51 Madison Avenue  
New York, NY 10010

© 2021, New York Life Insurance Company. All rights reserved. NEW YORK LIFE, and the NEW YORK LIFE Box Logo are trademarks of New York Life Insurance Company.

123527 a 0621 SMRU 1902736 Exp. Date 06.30.2022