

Compliance Webinar: State Leave Updates

November 19, 2020





Our Speaker

James Venable, JD, SPHR

Vice President,
Absence and Accommodation Compliance

720.440.6984

james.venable@reedgroup.com

Legal Disclaimer

Not Legal Advice

This presentation is designed to provide accurate information in regard to the subject matter covered. It is provided with the understanding that ReedGroup is not engaged in rendering legal or other professional services. If legal advice or other expert assistance is required, the services of a competent attorney or other professional person should be sought. Due to the numerous factual issues which arise in any human resource, leave of absence, or employment question, each specific matter should be discussed with your attorney.

AGENDA

California Family Rights Act (CFRA) amendment

California Victim Leave Law amendment

Hawaii Family Leave Law amendment

Hawaii Victims Leave for Domestic or Sexual Violence amendment

New York Paid Sick Leave Law

Tennessee Pregnant Workers Fairness Act

Virginia Pregnancy Accommodation Law

Puerto Rico Working Mothers Protection Act amendment

Colorado Paid Family and Medical Leave Ballot Initiative Passes

New State Disability and Paid Family Leave Rates announced for 2021

California Family Rights Act (CFRA) amendment

Effective January 1, 2021

- Expands employer coverage under the CFRA to include all private employers with 5+ employees
- Amendment permits leave to care for domestic partners, grandparents, grandchildren, siblings, and children of domestic partners with a serious health condition
- Adds military exigencies as qualifying leave reason (Military member must be spouse, domestic partner, child, or parent)
- Leave permitted to care for child with a serious health condition regardless of child's age
- Eliminates "key employee" exception
- Requires employers of both parents to provide full entitlement of leave to each parent of a new child for birth or placement
- Repeals the California New Parent Leave Act (NPLA) effective 1/1/21



California Victim Leave Law amendment

Effective January 1, 2021



- Cal Labor Code § 230: prohibits employers from discriminating against or discharging victim of domestic violence, sexual assault, or stalking for absence from work to obtain relief (e.g., restraining order) for safety of victim or victim's child
 - CA A 2992 expands job protection to victims of any misdemeanor or felony that caused (a) physical injury, or (b) mental injury and a threat of physical injury
 - CA A 2992 also provides job protection to employees whose immediate family member is deceased as a direct result of a crime
- Cal Labor Code § 230.1: prohibits employers with 25+ employees from discriminating or retaliating against victim of domestic violence, sexual assault or stalking for absence to seek medical attention for injuries, obtain services from a domestic violence shelter, program or rape crisis center, to obtain psychological counseling, or to participate in safety planning
 - CA A 2992 expands job protection to victims of any misdemeanor or felony that caused (a) physical injury, or (b) mental injury and a threat of physical injury (and employees whose immediate family member is deceased as a direct result of a crime)
 - CA A 2992 expands leave reasons to include seeking services from a victim services organization or agency or to obtain mental health services related to the crime or abuse

California Victim Leave Law amendment

Effective January 1, 2021



- CA A 2992 alters certification that can be required to support victim's need for unscheduled crime victim leave
- Amendment deems sufficient any "documentation that reasonably verifies that the crime or abuse occurred, including but not limited to, a written statement signed by the employee, or an individual acting on the employee's behalf, certifying that the absence is for a[n authorized] purpose"
- Police report, court order, or documentation from a licensed medical professional, healthcare provider, counselor, or victim advocate also constitute sufficient certification

Hawaii Family Leave Law amendment

Effective July 1, 2020 (signed September 15, 2020)

- Hawaii Family Leave Law:
 - Applies to employers with 100+ employees
 - 4 weeks of unpaid leave during any 12-month period
 - Leave for birth/adoption of a child; caring for employee's child, spouse, reciprocal beneficiary, sibling, or parent with a serious health condition
- HB 2148 amends the Hawaii Family Leave Law to:
 - Allow eligible employees to take leave to care for the employee's grandchild with a serious health condition
 - Add definition of sibling: "an individual who is a biological, adopted, or foster brother or sister; or a stepbrother or stepsister of an employee"



Polling Question

How many U.S. jurisdictions now have paid family leave?

- A. 6
- B. 12
- C. 20



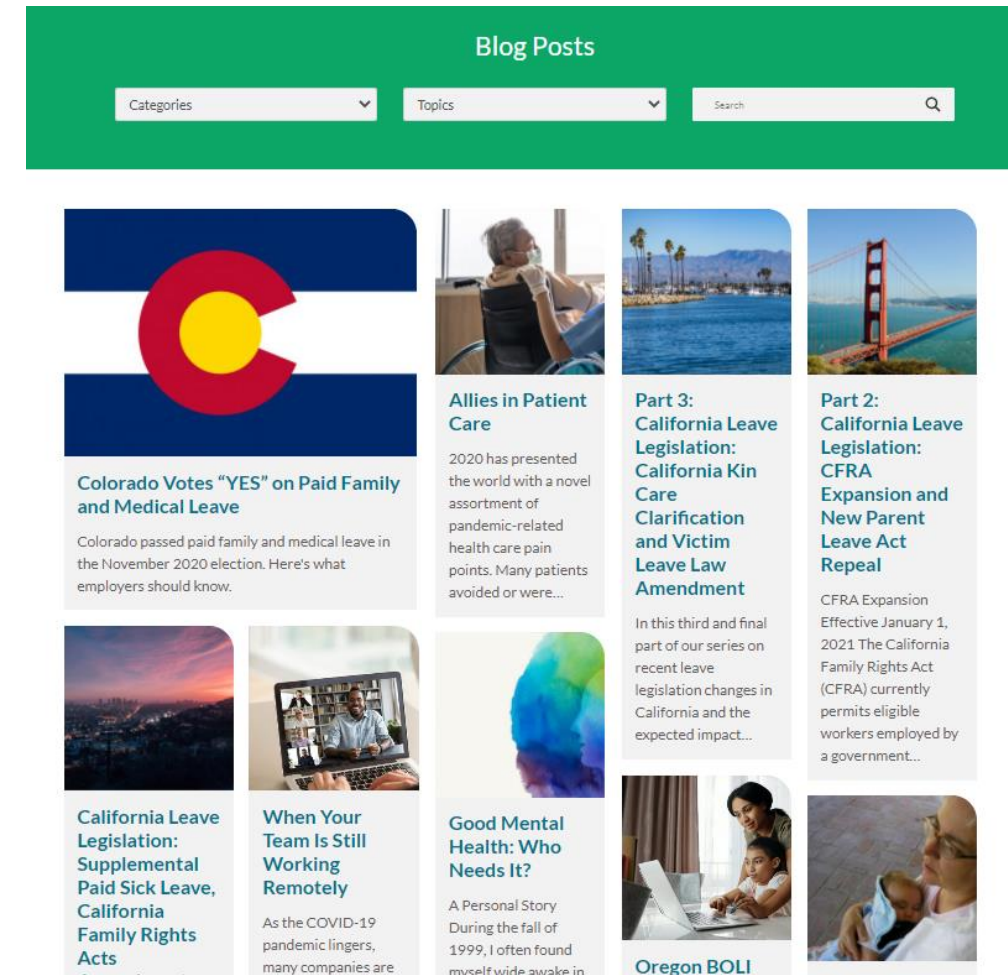
Polling Answer

How many U.S. jurisdictions now have paid family leave?

A. 6

B. **12**

C. 20



<https://www.reedgroup.com/blog/>

Hawaii Victims Leave for Domestic or Sexual Violence amendment

Effective January 1, 2021

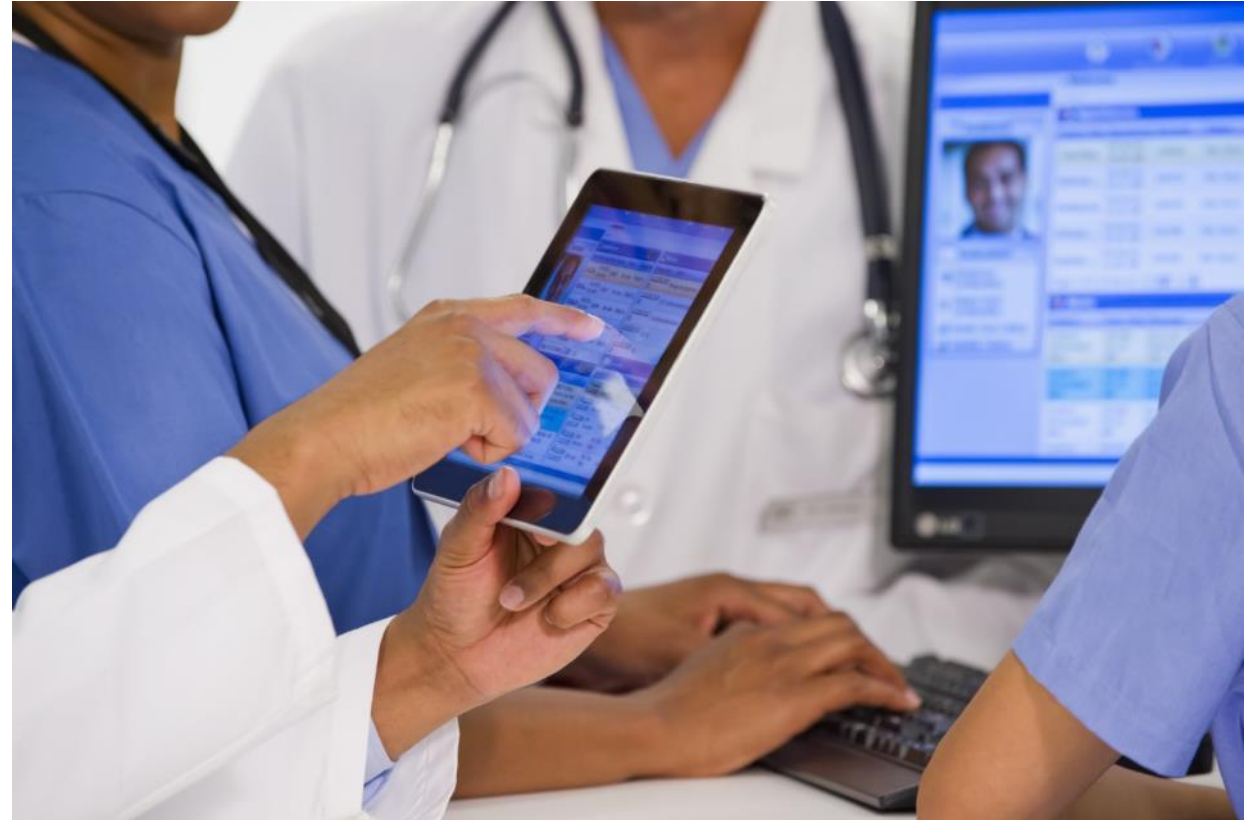


- Law provides reasonable period of leave to victims of domestic or sexual violence or stalking
 - 50+ employees: up to 30 days per calendar year
 - < 50 employees: up to 5 days per calendar year
- SB 2638 replaces current forms of certification for leaves exceeding 5 days per calendar year with the following:
 - Certified or exemplified restraining orders, injunctions against harassment, and documents from criminal cases;
 - Documentation from victim services organization or domestic or sexual violence program, agency, or facility, including a shelter or safe house
 - Documentation from medical professional, mental health care provider, attorney, advocate, social worker, or member of the clergy from whom victim has sought assistance in relation to domestic or sexual violence

New York Paid Sick Leave Law

Accrual began September 30, 2020

- On September 30, 2020, New York employees began accruing paid sick leave under law enacted in April 2020
- Accrual rate: at least 1 hour of sick leave per 30 hours worked
- Annual accrual = no less than:
 - 40 hours of unpaid sick leave, if employer has 4 or fewer employees and a net income of \$1 million or less
 - 40 hours of paid sick leave, if the employer has:
 - 4 or fewer employees and net income of >\$1 million; or
 - Between 5 and 99 employees
 - 56 hours of paid sick leave, if the employer has 100 or more employees



New York Paid Sick Leave Law

Accrued leave use begins January 1, 2021



Paid sick leave can be used:

- For a mental or physical illness, injury, or health condition of the employee or a family member
- For the diagnosis, care, or treatment of the employee's or family member's mental/physical illness, injury, or health condition
- For preventive care for the employee or a family member
- When the employee or a family member is a victim of domestic violence, stalking, human trafficking, or a sexual/family offense
- Covered family members include child, spouse, domestic partner, parent, sibling, grandchild or grandparent, and child or parent of spouse or domestic partner

If existing policy meets or exceeds requirements, not required to provide additional leave or change policy

Tennessee Pregnant Workers Fairness Act

Effective October 1, 2020

- Covers TN employers with 15+ employees
- Requires reasonable accommodations related to applicant's or employee's pregnancy, childbirth, or related conditions
- Must engage in good faith interactive process (undue hardship analysis may apply)
- No "forced" leave
- Certification can be required if accommodation involves:
 - temporary transfer to a vacant position
 - job restructuring
 - light duty
 - time away from work
- Prohibits discrimination and retaliation
- Significant penalties for noncompliance



Virginia Pregnancy Accommodation law notification requirement

Must provide notification of rights to all employees by October 29, 2020

- Amended Virginia Human Rights Act effective July 1, 2020
 - Applies to employers with 5+ employees
- Requires reasonable accommodations related to pregnancy, childbirth, or related conditions absent undue hardship
- Notification of rights under the law ("notice") must be provided to all existing employees by October 29, 2020. Must also be:
 - Posted in a conspicuous location and included in handbook/policies
 - Provided to new hires at the start of employment
 - Provided to pregnant employees w/in 10 days of notification of pregnancy
- Model notice from Virginia Department of Labor & Industry?



Puerto Rico Working Mothers Protection Act amendment

Effective August 8, 2020



- Covers all private employers in Puerto Rico
- Adds 5 weeks of paid leave for female employees who adopt a minor child age 6 or older (but under 18)
- Leave entitlement begins to run on date child is received by employee's family
- Full benefits and pay for duration of leave

Colorado Paid Family and Medical Leave Ballot Initiative Passes

Proposition 118



- 12 weeks of paid leave benefits
 - Additional 4 weeks if serious health condition is related to pregnancy or childbirth complications
- Employee eligibility
 - Worked ≥ 180 days for current employer for job protection
 - Earned $\geq \$2,500$ in wages during specified base period
- Employer coverage
 - State employees/employers are covered
 - Federal employees/employers are excluded
 - Local government employers may decline participation (but their individual employees may opt-in)
 - Self-employed individuals may opt-in

Colorado Paid Family and Medical Leave Ballot Initiative Passes

Proposition 118

Leave reasons include:

- Employee's serious health condition
- Caring for a newborn, adopted child, or child placed through foster care for the first year after birth/placement
- Caring for a family member with a serious health condition
- Qualifying exigency leave
- Safe leave

Note: Family member = any person related to the employee by blood, marriage, domestic partnership, civil union, or adoption, or any individual with whom the covered individual has a significant personal bond that is like a family relationship



Colorado Paid Family and Medical Leave Ballot Initiative Passes

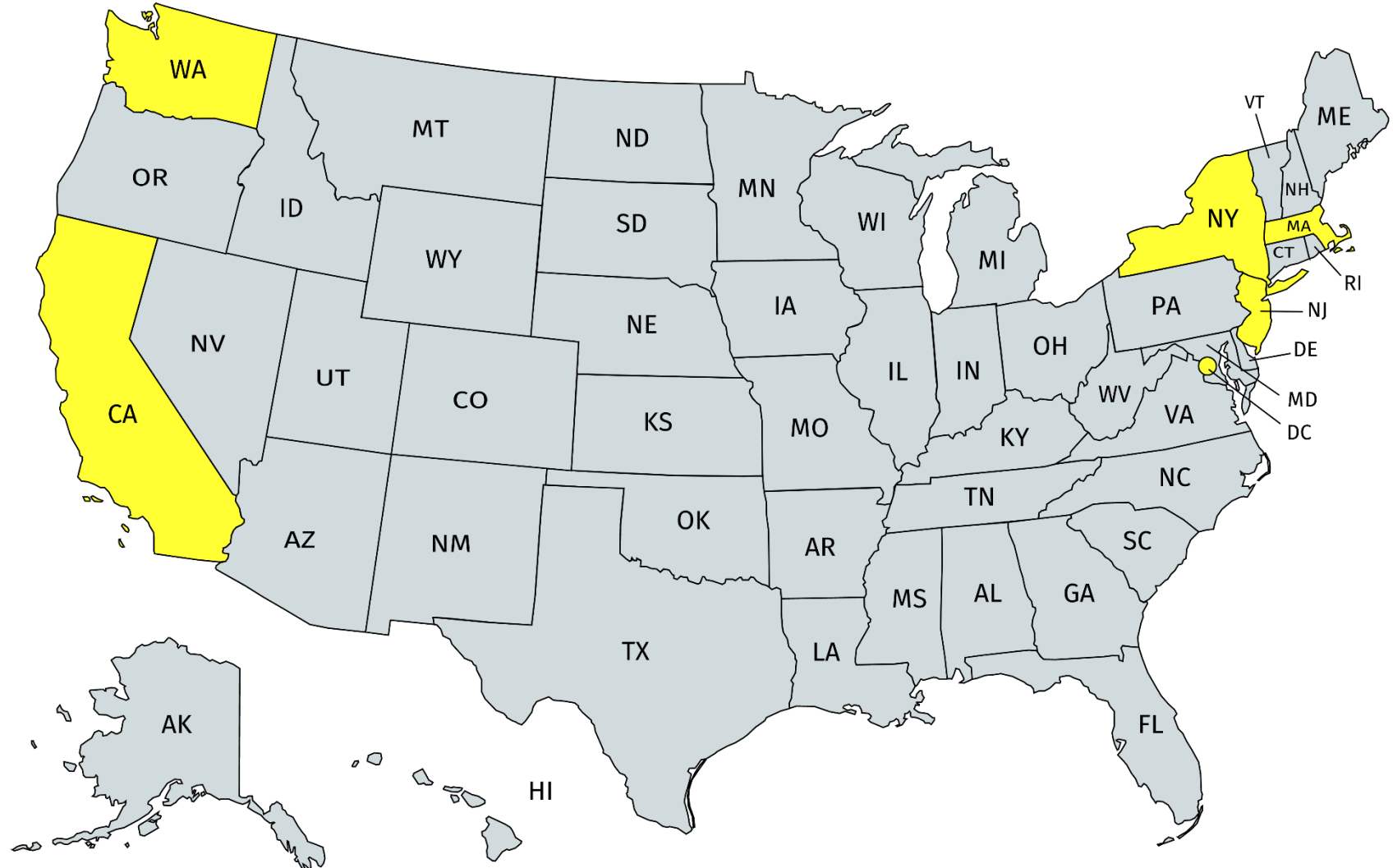
Proposition 118



- Contributions/premiums will begin 1/1/2023
 - Premium rate = 0.9% of employees wages up to 80% of social security cap
 - Employees pay no more than 50% (state-administered plan premium is 50/50 employer/employee split)
 - Employers with <10 employees are exempt from making the employer premium contributions
- Benefits will begin 1/1/2024
 - Benefit rate = 90% of weekly wage for wages that are less than 50% of the state average weekly wage (AWW) and 50% of wages that equal or exceed 50% of the AWW
 - Maximum weekly benefit of \$1,100 in 2021
- Private plans will be permitted (must be approved)

New State Disability & Paid Family Leave Rates Announced for 2021

- California
- District of Columbia
- Massachusetts
- New Jersey
- New York
- Washington



Click [here](#) for the State-Mandated Disability (SDI/TDI) and Paid Family and Medical Leave RATES for 2021

Thank you.



James Venable, JD, SPHR

VP, Absence and Accommodation Compliance

James Venable provides expertise in the areas of absence management compliance and employee relations counseling. Mr. Venable has more than 20 years of experience across senior roles in Legal, Human Resources, and Compliance from several Fortune 500 companies.



If you have any questions, please email us at
reedgroupmarketing@reedgroup.com