

4th Quarter Compliance Webinar: Are You Ready for 2021?

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Our Speakers



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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

PFML Updates: 2021 Rate Changes and New Program Implementations

FFCRA: Expiration and Potential Extension

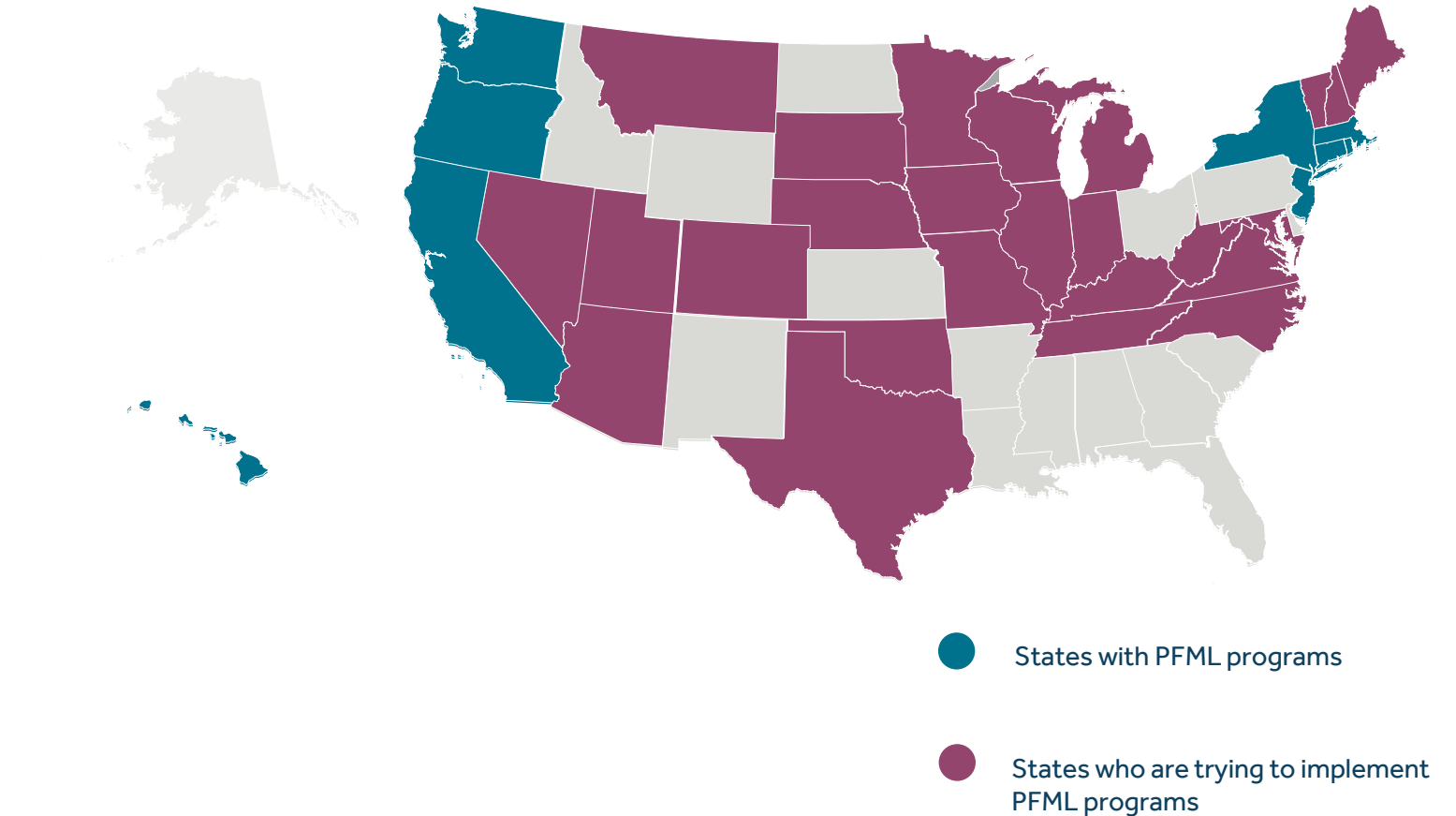
COVID-19 Updates: New Rules and Other Developments

PFML Updates: 2021 Rate Changes and New Program Implementations

- 144 million U.S. employees with over 100 reasons to miss work¹
- 43.5 million caregivers have provided care to an adult or a child in the last 12 months²
- 6 in 10 caregivers experience at least one change in their employment due to caregiving²

• Sources: ¹BLS, ²DMEC

State Paid Family & Medical Leave Laws



Paid Sick and Family Leave

Bipartisan interest in providing reasonable PFML

- Current view given the election
- Policy differences
 - Size of the benefit
 - Mandates vs. incentives
 - Administration and funding
- Family Act vs. Child Tax Credit vs. Social Security
- Effort by largest policyholders
 - Preserve private options
 - Deconflict state and federal programs



New PFML Program Implementations

Massachusetts Benefits Pay Beginning 1/1/21; Connecticut Withholdings Begin 1/1/21

Massachusetts PFML

- Benefits become available 1/1/21
- Employee's serious health condition, bonding/placement of new child, military exigency, care for servicemember w/ serious health condition
- NOT care for family member with serious health condition (7/1/21)
- State promulgated [certification form](#) for serious health condition

Connecticut PFML

- Employers begin withholding employee contributions to the CT Paid Leave Authority Trust Fund on 1/1/21
- CT DOL allowing limited "catch-up" period of no longer than the first two quarters of 2021
- Employer cannot withhold >1% of employee's pay per paycheck during "catch up" period

PFML Program Changes Effective 1/1/21

California PFL Expansion Effective 1/1/21; New York PFL Benefit Entitlement Increases 1/1/21

California PFL

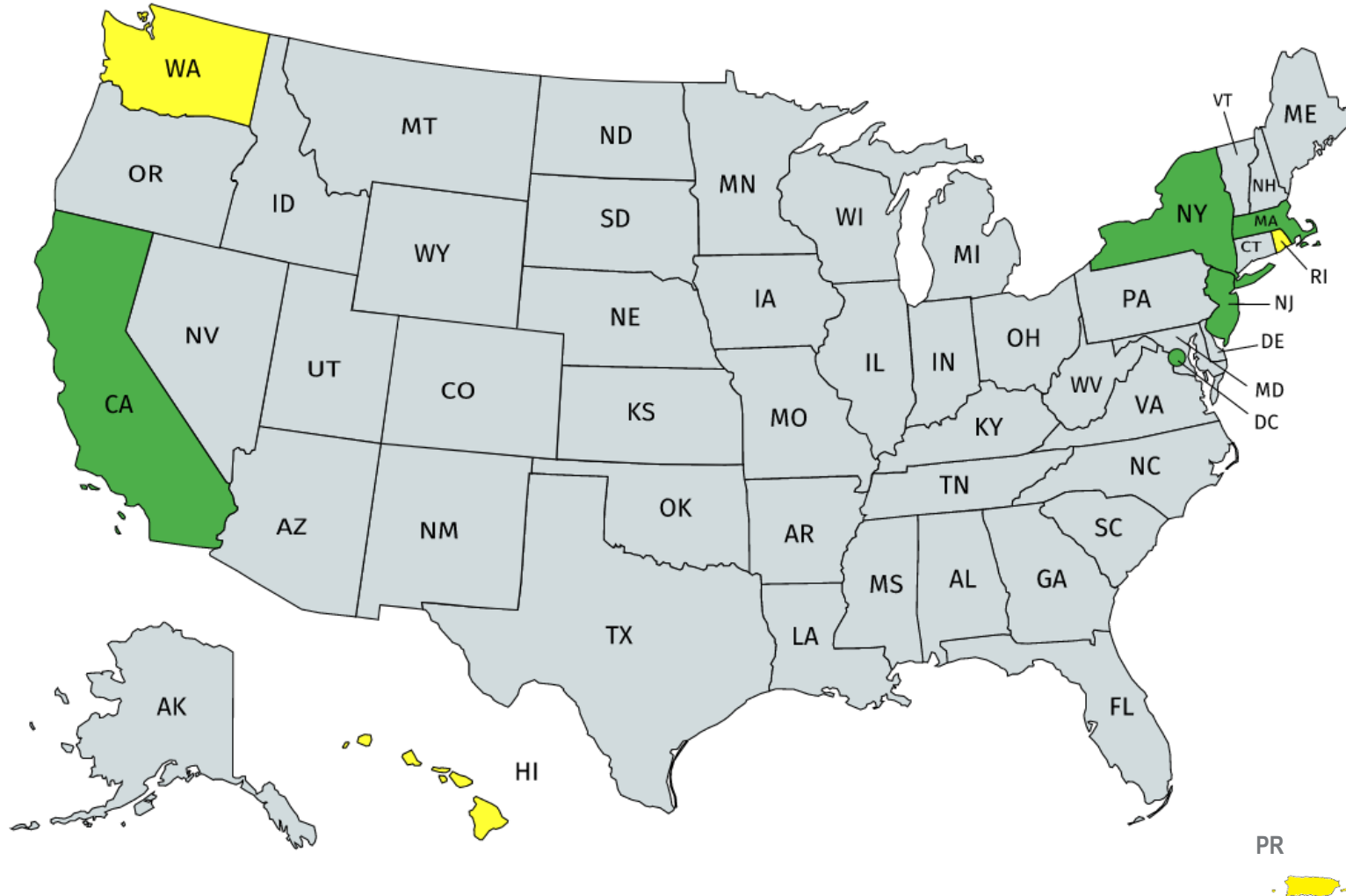
- Effective 1/1/21, California PFL will expand to include eligibility for employees who take time off work due to a “qualifying military event” arising out of the overseas deployment of the employee’s family member
- Reminder: CFRA expansion (including addition of military exigency leave) and NPLA repeal effective 1/1/21

New York PFL

- Increase in benefit entitlement from 10 to 12 weeks
- Increase in weekly benefits for employees on qualifying leave from 60% to 67% of employee’s average weekly wage
 - Not to exceed \$971.61/week for 2021

Disability and PFML Rate Updates for 2021

Taxable wage base, premium/contribution rates, and weekly benefit amounts



- Puerto Rico: no change for 1/1/21
- Rhode Island: pending 1/1/21 updates
- Hawaii
 - Weekly wage base decreased to \$1,102.90 (max deduction \$5.51/week)
 - Maximum weekly benefit amount decreased to \$640/week
- Washington State
 - Taxable wage base increased to \$142,800
 - Maximum weekly benefit amount increased to \$1,206
 - No change to premium rate

FFCRA: Expiration and Potential Extension

FFCRA - Overview

Effective April 1, 2020 through December 31, 2020
Employers with <500 employees and public entities

	FFCRA (EPSLA) SICK LEAVE	FFCRA (EFMLA) EXPANDED PAID FAMILY LEAVE
Eligible employees	<ul style="list-style-type: none"> FT & PT employees, no minimum hours 	<ul style="list-style-type: none"> FT & PT employees, 30 calendar days
Total leave available	<ul style="list-style-type: none"> Full Time: 80 hours Part Time: # of hours employee works avg over 2-week period 	<ul style="list-style-type: none"> First two weeks: unpaid Weeks 3-12: paid
Benefit amount	<ul style="list-style-type: none"> \$511 cap per day/\$5,110 aggregate \$200 per day/\$2,000 aggregate depending on leave reason 	<ul style="list-style-type: none"> 2/3 of employee's regular rate of pay capped at \$200 per day and \$10,000 in aggregate


Quick BENEFITS TIPS FROM DOL

How much paid leave can employees take?

In general, applies to you if you are an employee of either a private employer with fewer than 500 employees or a covered public sector employer





You are following a federal, state, or local quarantine or stay-at-home order or are quarantined by a health care provider

OR

You have COVID-19 symptoms and are seeking a diagnosis

TIME OFF

Up to two weeks or 80 hours of paid sick leave at higher of regular rate or minimum wage*



You must care for someone under a federal, state, or local quarantine or stay-at-home order or are quarantined by a health care provider

OR

You must care for your child whose school, child care provider, or place of care is unavailable due to COVID-19

TIME OFF

Up to two weeks or 80 hours of paid sick leave at higher of 2/3 regular rate or minimum wage*



You must care for your child whose school, child care provider, or place of care is unavailable due to COVID-19

AND

You've been employed at least 30 calendar days

TIME OFF

Up to 10 additional weeks of family leave paid at 2/3 regular rate*

*Paid leave is capped at specific maximum amounts per worker

Learn more at dol.gov/FFCRA



FFCRA – Will It Be Extended?

Coronavirus Relief Negotiations Continue in Washington, D.C.

- FFCRA extension is second-tier issue for legislators in negotiations
 - Republicans focused on COVID-19 related liability immunity for employers operating during pandemic
 - Democrats focused on funding for state and local governments and enhanced unemployment benefits
- Democrats now supporting scaled back bipartisan plan; unclear whether FFCRA extension is included
- California Assembly is lobbying Congress to extend FFCRA, emphasizing:
 - 80 million workers could be left without emergency paid leave while the pandemic continues to escalate
 - FFCRA leave has been shown to prevent more than 15,000 COVID cases nationwide per day
 - Ending FFCRA leave will impose new costs on workers and businesses

EMPLOYER TIP

Employers should open a dialogue with employees on approved FFCRA leave, clearly communicate impending cessation of paid leave benefits, and discuss plans for return-to-work, alternative leave options, or potential eligibility for unemployment benefits (as applicable).

Polling Question

Job Protection for Preventive Care

An employee requests time off from work to get COVID-19 vaccine. Under which law does the employee's absence qualify for job protection?

- A. Family and Medical Leave Act (FMLA)
- B. Families First Coronavirus Response Act (FFCRA) – Emergency Paid Sick Leave
- C. Families First Coronavirus Response Act (FFCRA) – Emergency FMLA
- D. None of the above

COVID-19 Updates: New Rules and Other Developments

Impact of COVID-19

Changing policies to reflect emerging needs

77% of employers say the pandemic heightened leadership awareness of leave management issues

Changes prompted by COVID-19

	2020 All Employers
Created new/separate COVID-19 policies	87%
Expand definitions within current policies	86%
Increase benefit levels	78%
Waive waiting or elimination periods	78%
Change existing unpaid policies to be paid	77%
Increase benefit durations	77%

Source: Guardian Absence Management Activity Index & Study (2020 Preview)



Organization Impacts

	All Employers
Furlough employees	42%
Elimination of benefits	9%
Reduced contribution	13%

Leave and the Future of COVID-19

The pandemic isn't over, how should we handle leave?

- Ongoing School Closures
 - What leaves are available
 - Do we need separate policies
 - What about flexible work arrangements
- Temporary policies and leaves
- Moving to a more business as usual
 - Policies that align
 - Adjust how you work
 - What additional information needs to be considered



ADA Accommodations

What impact will COVID-19 have on accommodation requests?

- High risk individuals
- Equipment
- New types accommodations
- COVID-19 and the undue hardship analysis
- COVID-19 poses a unique challenge when determining the appropriate accommodation response
- Typical accommodations may be more difficult to obtain



Leave Policies Should Follow the Science

- Quarantine period (duration) should follow CDC guidelines
- Testing and treatment should follow guidelines:
- American College of Occupational and Environmental Medicine (ACOEM) COVID-19 guidelines made available by [MDGuidelines](#)
- Vaccine comparison coming December 2020
- Masking policies that are appropriate



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ENVIRONMENTAL MEDICINE



Plan for the Various Scenarios

- Build matrices for how to handle the common claim scenarios. Examples:
 - Exposed cannot get test
 - Exposed, tested, waiting on results
 - Exposed and tested positive
- Standardizes intake and claims management
 - Is there a state offset pay?
 - What leave benefit applies?
- Make clear the return-to-work process



State OSHA – Rules and Regs Requiring Employee Exclusion

- In addition to state laws prohibiting retaliation against employees who are absent for COVID-19 related reasons, and executive orders requiring accommodations for vulnerable persons and/or those who reside with them
- Onus is on employer to exclude from workplace those who present health risk to employees and others



Employers should anticipate an increase in safety complaints and enforcement of workplace safety and health standards as COVID-19 cases surge this winter.



State - OSHA Rules and Regs Requiring Exclusion

Cal/OSHA's COVID-19 Prevention Program

- [Title 8 CCR Section 3205 through 3205.4](#)
- Employers must exclude from the workplace employees who have COVID-19 symptoms, have tested positive for COVID-19, were ordered to isolate or quarantine due to COVID-19, or were exposed to COVID-19
- If employee is able and available to work, employer must continue to provide pay and benefits
- Sets forth return-to-work criteria for excluded employees
- Effective November 30, 2020 through May 29, 2021



State - OSHA Rules and Regs Requiring Exclusion

Oregon OSHA Temporary COVID-19 Rule

- [OAR 437-001-0744](#)
- Employer must remove employee from the workplace when employee is subject to recommendation of isolation or quarantine for COVID-19 from Oregon Health Authority, local public health agency, or medical provider
- “Removed” employees must be permitted to telework if suitable work is available and employee’s condition allows
- “Removed” employees entitled to job restoration if job still available and without any adverse action
- Effective November 16, 2020 through May 4, 2021

Additional Resources

Coronavirus Resource Center

 Solutions ▾ Resources ▾ Who We Are Careers Contact Blog

Managing Employees' Leave of Absence During the Coronavirus Pandemic

The Coronavirus pandemic has created new, urgent challenges for employers. Below, we've documented some of the current leave of absence practices that our clients are using to help manage during this pandemic, as well as an FAQ based on our work with our clients.

UPDATED: ACOEM® COVID-19 Guidance for Employers and Businesses

Quarantined or Virus Exposed Employee FAQs

Commonly Asked Questions by Employees

Policy & Regulation Impacts

Latest Statutory Guideline Changes

Miscellaneous Leave of Absence Questions

UPDATED: ACOEM® COVID-19 Guidance for Employers and Businesses

Additional Coronavirus Leave of Absence Resources


Quarantined or Virus Exposed Employee FAQs

Compliance Webinars & Podcasts

ReedGroup Blog


<https://www.reedgroup.com/managing-employees-during-the-coronavirus-pandemic/>

Blog




EEOC Updates Guidance for Veterans with Disabilities and Their Current and Prospective Employers

The EEOC recently issued three revised guidance documents addressing the application of the Americans with Disabilities Act (ADA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA) to the employment of veterans with disabilities: (1) EEOC Efforts for Veterans with Disabilities, (2) Understanding Your Employment Rights Under the Americans with Disabilities Act: A Guide ... Continued




Four HR policies that may increase absenteeism... and how to fix them

HR leaders create policies that they believe will support a healthy and productive workplace. Sometimes, however, those policies can backfire...




Colorado Votes "YES" on Paid Family and Medical Leave

Colorado passed paid family and medical leave in the November 2020 election. Here's what employers should know.




Allies in Patient Care

2020 has presented the world with a novel assortment of pandemic-related health care pain points. Many patients avoided or were...




Part 2: California Leave Legislation: CFRA Expansion and New Parent Leave Act Repeal

CFRA Expansion Effective January 1, 2021 The California Family Rights Act (CFRA) currently permits eligible




Part 3: California Leave Legislation: California Kin Care Clarification and Victim Leave Law Amendment

In this third and final part of our series on recent leave legislation changes in California and the expected impact...




When Your Team Is Still Working Remotely

As the COVID-19 pandemic lingers, many companies are extending remote work for their



Good Mental Health: Who Needs It?

A Personal Story During the fall of 1999, I often found myself wide awake in the middle of the night



California Leave Legislation: Supplemental Paid Sick Leave, California Family Rights Acts Amendments, New Parent Leave Act

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

Thank you.



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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. Mr. Venable joined ReedGroup in April 2018 after serving as Vice President of Human Resources, Employee Relations, Labor Relations, Compliance and Environmental Health and Safety for Comcast, where he was responsible for engagement and labor relations activities for the company's West Division Business Unit.



Sarah Wisor, JD

Senior Compliance Counsel

Sarah Wisor, Senior Compliance Counsel, provides legal advice and business support related to leave of absence administration, accommodation management, legislative tracking and analysis, and compliance risk management. Ms. Wisor joined ReedGroup in March 2020, following a decade as a labor and employment defense litigator representing employers before federal and state courts and administrative tribunals. Ms. Wisor is licensed to practice law in Colorado and has been recognized as a Colorado Super Lawyers® Rising Star, Employment & Labor, from 2014-2019.



If you have any questions, please email us at
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