

1st Quarter Compliance Webinar: Where Do We Go From Here?

February 26, 2021



Our Speakers



Sheri Pullen

Senior Compliance Manager

Sheri Pullen, Senior Compliance Manager, provides compliance expertise, analysis, and direction regarding leave of absence, accommodation, and disability. Her areas of expertise include the Family and Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), state leave laws and disability programs, and ERISA as it relates to disability plans. Ms. Pullen has a strong compliance-focused background comprised of more than 20 years of experience in absence management and human resources outsourcing administration. In prior roles, Ms. Pullen provided best practice consultation, wrote and edited web and print content across a variety of platforms, and led software implementations.



Carla O'Sullivan

Senior Compliance Manager

Carla O'Sullivan, Senior Compliance Manager, has over 20 year's experience in the leave of absence space providing compliance analysis and direction to employers, carriers, and third-party administrators. She has specialized in designing and operationalizing all intricacies of the varying leave laws. Ms. O'Sullivan has in-depth knowledge of integrating disability programs with the Family and Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), and state leave laws, making her an integral part of the ReedGroup Compliance division and an asset to their clients. In addition to writing multiple absence-focused blogs and industry white papers, she was one of the originating authors of the DMEC CLMS certification program.

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

Pending Legislation

Updated COVID-Related Legislation

Other Legislative & Regulatory Developments

Case Law/Agency Actions

Pending Legislation

Federal Legislative Activity

Family and Medical Leave Insurance Act (FAMILY Act)



- Reintroduced by Democratic lawmakers in February
- Aims to create a federal PFML program funded by employee and employer contributions
- Expected to mirror versions of bill introduced in prior years
- Would provide up to 12 weeks of paid leave benefits for leave due to:
 - Employee's own serious health condition, including pregnancy and childbirth recovery
 - Caring for a family member with a serious health condition (child, parent, spouse or domestic partner)
 - The birth or adoption of a child
 - Specific military caregiving and exigency leave purposes

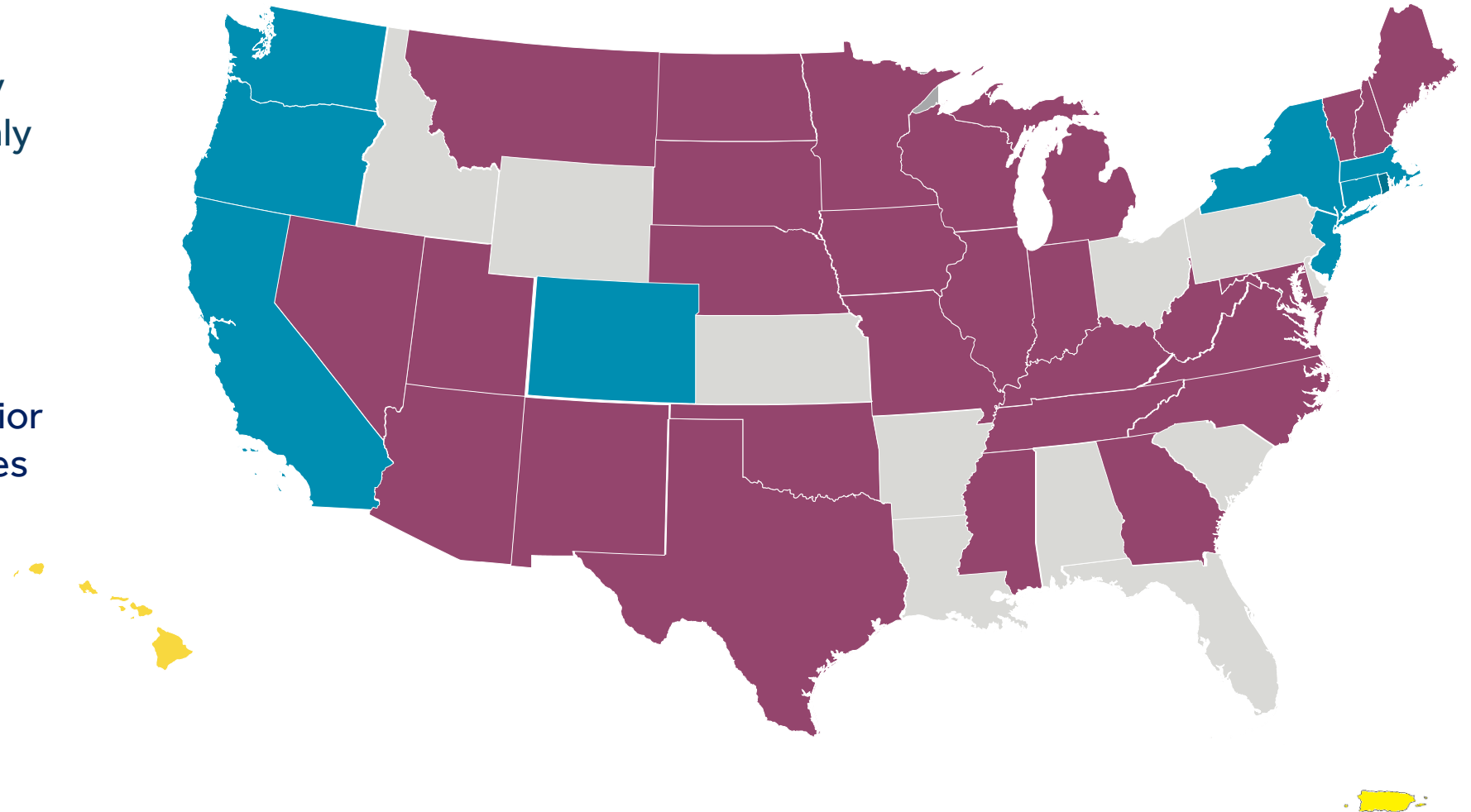
EMPLOYER TIP

IRC § 45S – the Fischer tax credit for employers providing paid family and medical leave was extended for 5 years, through December 31, 2025.

State Legislative Activity

State-Mandated Disability Insurance and PFML

- Jurisdictions with mandatory temporary disability insurance only
- Jurisdictions with PFML programs
- States with pending PFML legislation or prior unsuccessful initiatives



State Legislative Activity

Pending State-Mandated Disability Insurance and PFML



Enacting New

- Illinois
- Indiana
- Kentucky
- Maine
- Maryland
- Mississippi
- Missouri
- Montana
- Nebraska
- New Mexico
- North Dakota
- Oklahoma
- Texas
- Virginia
- Vermont

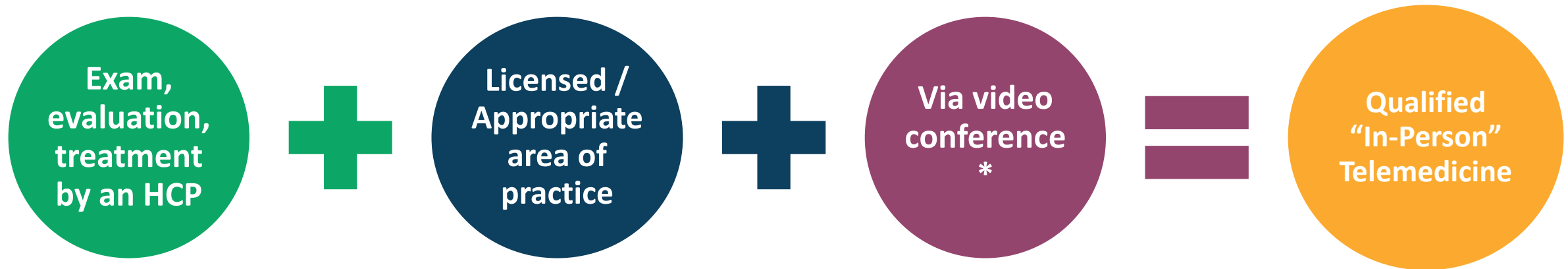
Expand Existing

- Hawaii
- New York
- Washington

COVID-19 Related Developments

Telemedicine Visits – The New Normal

One silver lining to a global pandemic



* If video conference is unavailable due to rural / environmental circumstances, this should be assessed on a case-by-case basis.

Additional Resources:

https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab_2020_8.pdf

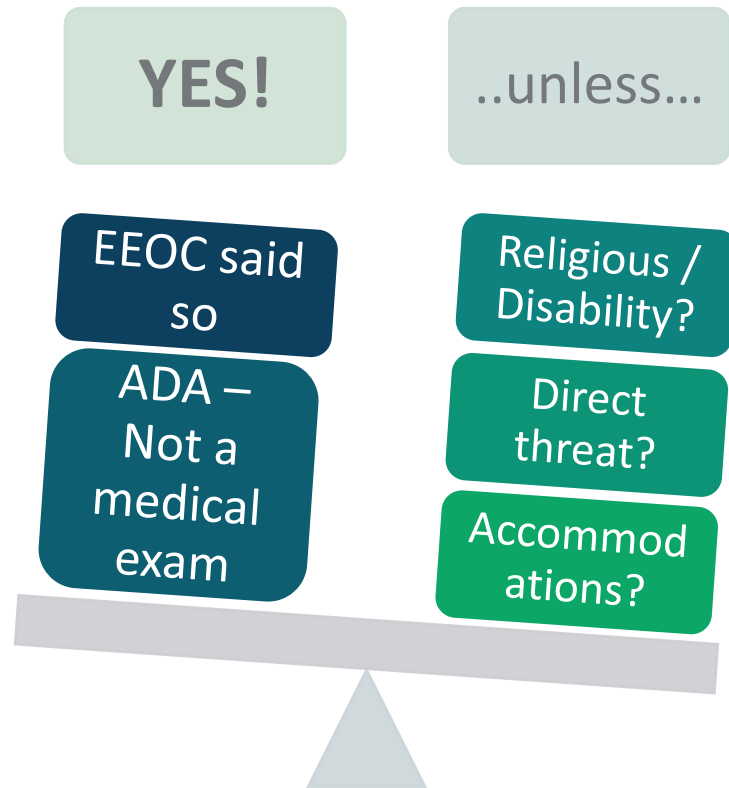
<https://www.reedgroup.com/2020/12/31/dol-solidifies-position-that-telemedicine-appointments-qualify-as-in-person-visits-under-fmla/>

EMPLOYER TIP

Have open communication with your employees so everybody understands the rules.
Confirm state requirements, as they may differ from the federal direction.

No Shoes, No Shirt, No Vaccination....No Employment???

Can an employer require employees to get the Covid-19 vaccine?



Additional Resources:

<https://www.reedgroup.com/2021/01/06/can-employers-mandate-employees-get-vaccinated/>

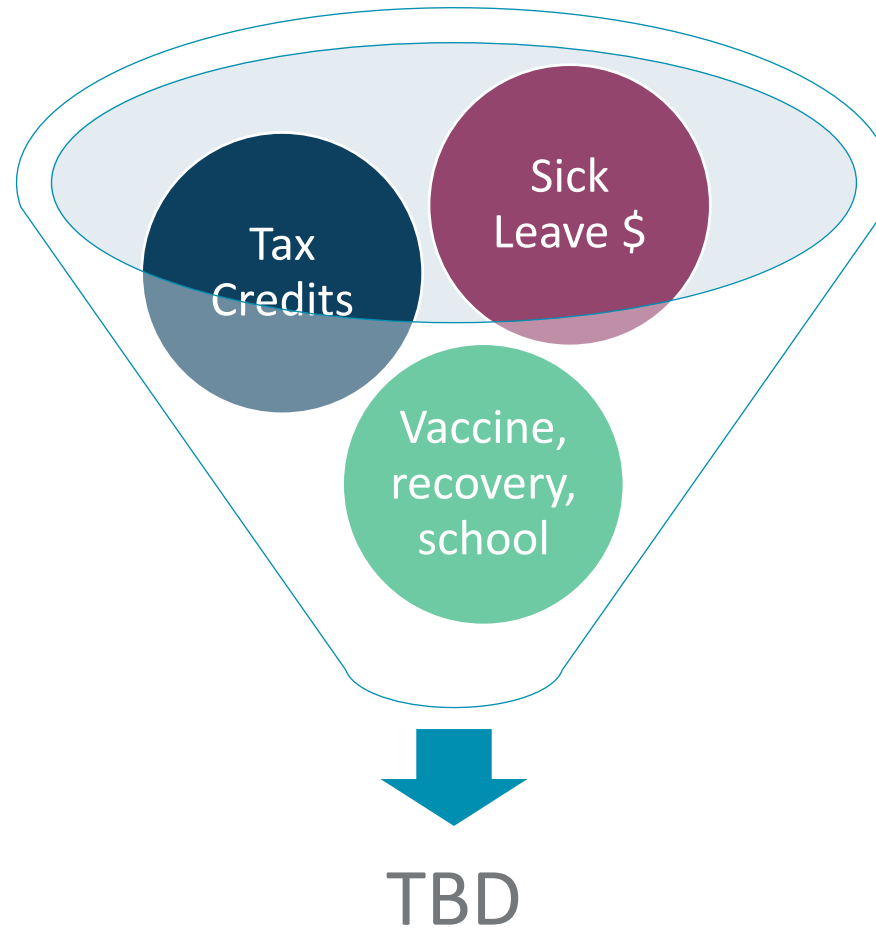
<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

EMPLOYER TIP

Review current policies. Treat any employee without a vaccine as an individual case under the ADA, providing careful consideration throughout the interactive process. One size does not fit all.

The FFCRA: in for a check-up or on life support?

At least six more weeks sitting in the waiting room....



New Jersey COVID-19 Regulations

Not just another day at the Jersey shore...



Additional Resources:

<https://www.reedgroup.com/2020/04/22/nj-revises-covid-19-amendments-to-family-leave-act-and-temporary-disability-benefits-law/>

<https://www.reedgroup.com/2020/04/01/new-jersey-expands-earned-sick-leave-and-temporary-disability-benefits-laws-to-clarify-coronavirus-related-eligibility/>

D.C. COVID-19

"The best thing about the future is that it comes one day at a time."

- Abraham Lincoln



COVID-19 Leave during Public Health Emergency

- Temporary "COVID-19" Leave under DC Family and Medical Leave Act (DCFMLA) Workplace Poster- Updated February 1, 2021

THIS NOTICE APPLIES TO EMPLOYERS OF ANY SIZE WITH ONE OR MORE EMPLOYEES IN THE DISTRICT OF COLUMBIA.

Effective Dates: March 11, 2020 through May 22, 2021 (or the end of the public health emergency, if sooner)

KEY PROVISIONS OF TEMPORARY COVID-19 LEAVE UNDER DCFMLA

1. COVID-19 Leave (D.C. Code § 32-502.01): During a declared state of public health emergency, an employee who has worked for 30 days for an employer of any size may use up to 16 weeks of

On March 17, 2020, the Mayor signed the COVID-19 Response Emergency Amendment Act (CREA), which temporarily amends the D.C. Family and Medical Leave Act (DCFMLA) to expand leave coverage during a public health emergency for employees working in the District of Columbia. The amendments take effect from March 17, 2020 to June 15, 2020.

KEY PROVISIONS OF THE AMENDMENTS TO THE DCFMLA

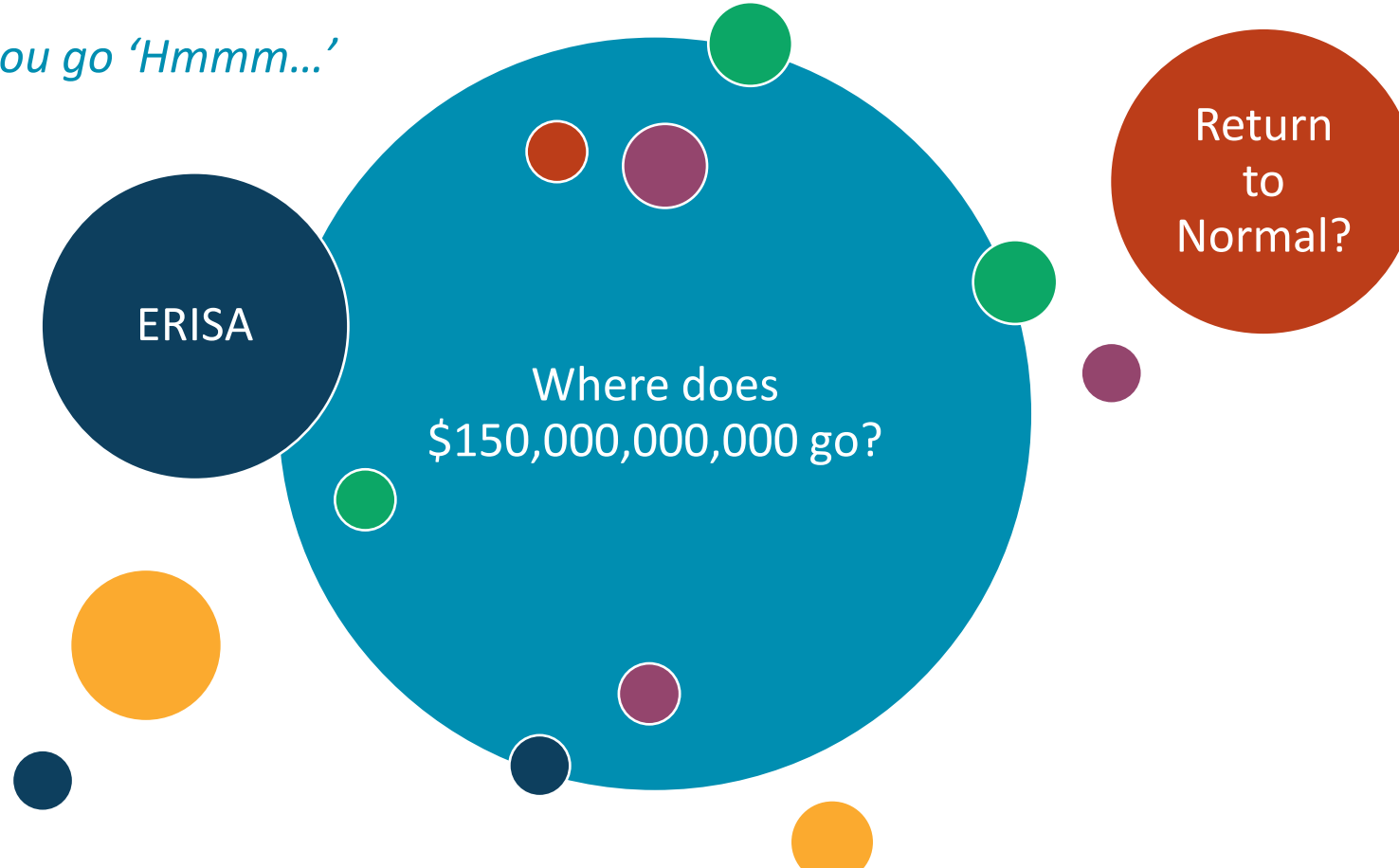
VII. EXTENSION OF THE PUBLIC EMERGENCY AND PUBLIC HEALTH EMERGENCY

By this Order, the Public Emergency and Public Health Emergency declared by Mayor's Orders 2020-045 and 2020-046, respectively, and extended by Mayor's Orders 2020-050, 2020-063, 2020-066, 2020-067, 2020-079, and 2020-103 are further extended through March 31, 2021.

- A. The restrictions imposed by Section III of this Order shall be effective at 10:00 p.m. on Wednesday, December 23, 2020, and shall continue to be in effect until 5 a.m. on Friday, January 15, 2021.

Other COVID-19 facts....

Things that make you go 'Hmmm...'



Additional Resources:

<https://app.powerbi.com/viewr=eyJrIjojMTcyNGQ5ZmUtNTY3Mi00YjVlTGyNjMtZjk1NzVkYTUyZGUzliwidCI6IjM4MmZiOGlwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9&pageName=ReportSection>
<https://www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected>
<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>
<https://www.reedgroup.com/managing-employees-during-the-coronavirus-pandemic/#1585860163276-cca4e674-d926>

Other Legislative & Regulatory Updates



Oregon PFMLI Draft Rules

- Tax contributions start January 2022
- Benefits begin January 2023 for leave to care for a family member or to bond with new child
- Topics in Round 2 Proposal included:
 - Contribution Rate Period
 - Maximum Employee Wages
 - Various definitions
 - Employer equivalent plan information
- Public comments were open during January and Oregon expects to publish additional rules for public comment in the coming months

Additional Resources:

<https://www.reedgroup.com/2021/01/05/oregon-paid-family-and-medical-leave/>
<https://www.oregon.gov/employ/PFMLI/Pages/PFMLI-Administrative-Rules.aspx>

Connecticut PFML—Compliance Check

- Payroll deductions should have started with the first pay cycle on or after 1/1/2021
- Employers should be registered
- CT PFML Authority Toolkit published
- Connecticut allowing brief catch-up period
- Private Plan applications must be submitted to the Authority at least 10 business days before 3/31/2021 to avoid remitting contributions



Additional Resources:

<https://www.reedgroup.com/2021/01/20/are-you-complying-with-the-connecticut-paid-family-and-medical-leave-act-heres-a-tool-and-some-recommendations-to-help/>

https://portal.ct.gov/-/media/DDS/Self_Determination/Employer_Toolkit.pdf

MA PFML Intermittent Leave Guidance Issued



- Clarifies definition of intermittent leave and reduced scheduled leave
- Explains that, for state administered claims, the Department will default to 15-minute minimum increments for all employers
- For leave for non-bonding reasons, employers may not impose minimum increment of more than one hour
- Leaves for bonding are not impacted; employers can designate a minimum increment and intermittent or reduced schedule leave can only be taken when employee and employer agree on a schedule

EMPLOYER TIP

For employer-administered leaves, employers should clearly indicate the minimum time increment for leaves via company policy

MA PFML for Family Member With Serious Health Condition Available July 1

- 12-week entitlement
- Employee can take both family leave and medical leave in a benefit year, but combined total cannot exceed 26 weeks
- Max benefit amount for 2021 is \$850
- Qualifying family members include:
 - Spouse, domestic partner
 - Parent, including the parent of the employee's spouse or domestic partner, or a guardian who legally acted as a parent when the employee was a minor
 - Child
 - Grandchild
 - Grandparent
 - Sibling



EMPLOYER TIP

July might seem far away, but it's never too early for employers and administrators to plan ahead. Make sure you have a plan in place to update your software and policies to account for this leave reason.

California Notice/Poster Updates

- [Your Rights and Obligations as a Pregnant Employee \(DFEH-E09P-ENG \)](#)
- [Family Care & Medical Leave & Pregnancy Disability Leave \(DFEH-100-21\)](#)
- [Disability Insurance Provisions \(DE 2515\)](#)
- [Paid Family Leave Brochure \(DE 2511\)](#)



Employers and administrators should update their posters and notices accordingly.

Washington ESD Publishes Rulemaking Agenda

Notable proposed updates include:

- Definition of "illegal act"
- Clarification of employment restoration requirements
- Updated proposed rules around appeals



Public hearing was held 2/9 and final rule is expected today, 2/26

Additional Resources:

<https://www.reedgroup.com/2021/02/12/washington-esd-outlines-plans-for-2021-pfml-rulemaking/>

<https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/rule-making/rulemaking-agenda-in-wa-state-register.pdf>

Case Law/Agency Actions

Horvath v. City of Leander

No. 18-51011 (5th cir., Jan. 2020)

- Fire dept. employee refused mandatory TDAP vaccine due to a religious accommodation request
- Employer provided choice of 2 accommodations:
 1. Reassignment and ‘offered same pay and benefits’ with no required vaccine; or
 2. Remain in current position if he agreed to wear PPE on duty, submit to testing for possible diseases when conditions justified, and logging temperature.
- Employee and employer could not agree on an accommodation and Horvath was terminated after an investigation into the discrimination claim
- 5th Cir. Affirmed employer’s position stating that a “reasonable” accommodation does not need to be the employee’s preferred accommodation



**EMPLOYER
TIP**

Employers should take note of the decision in *Horvath* when analyzing accommodation requests related to COVID-19 vaccinations. Remember to engage in the interactive process and offer accommodations that are ‘reasonable’ and ‘effective’!



Scalia v. State of Alaska

No. 19-35824 (9th Cir. 2021) 1/15/2021

- Department of Labor alleged, and District Court agreed, that State of Alaska miscalculated FMLA entitlement for employees working a rotating schedule of one-week-on, one-week-off
- DOL's definition of "workweek" is specific to the employee's actual scheduled hours
- Ninth Circuit disagreed; maintaining the definition of workweek is defined by the employer, not a particular employee's schedule

McAllister v. Innovation Ventures, LLC

No. 20-1779 (7th Cir., Dec. 30, 2020)

- Employee (assembly worker) injured after car accident
- Granted 2 ½ mos leave of absence under short-term disability and FMLA
- Employee's anticipated RTW extended 'many times'
- Provider indicated employee would not be able to 'return in any capacity'
- Court held not a 'qualified individual' under ADA and re-affirmed [Severson](#) analysis for a 'reasonable accommodation'



EMPLOYER TIP

Employers should engage in the interactive process with employees to understand their need for leave extensions beyond FMLA. Be cautious of the affirmation of *Severson* as other courts are split and continue to evaluate requests on a case-by-case basis.



Snyder v. E.I. DuPont de Nemours, Inc. and Company

No. 18-1266 (U.S. Dist. Ct. Del. Feb 2021)

- Snyder worked as tech for 19 years, taking approximately 20 FMLA/STD leaves of absence, which were all granted and she was returned to same/similar position with benefits
- EE injured in March 2016 and underwent surgery on left foot, physician recommended 10 weeks recovery following surgery
- EE approved FMLA and STD leave for approximately 3 months
- Through investigation and video surveillance after co-worker tip, employer confirmed that Snyder was able to perform activities including the use of her left foot
- Snyder was fired in September 2016 and filed suit in 2018
- Because EE gave false info, failed to follow doctor's treatment plan, and did not behave consistent with her recovery, the court dismissed her claim for retaliation after termination

DOL Wage and Hour Division

Employers – Pay Attention or Pay Cash

Lenovo, Inc. Pays \$108K for FMLA Violation

- Employer offered an employee to apply for other open positions, rather than to reinstate her to same or equivalent position following FMLA leave
- When employee was not hired into another position, employer terminated her

Emergency Paid Sick Leave

- Shirley's Crawfish Pad (Marksville, LA)
 - \$42,900 to 55 employees
- Men's T Clinic (Pasadena, TX)
 - \$3,432 to one employee
- Dunkin (Suwannee, GA)
 - \$1040 to one employee

Emergency Family and Medical Leave Expansion Act

- Lamar Ferrell Chevrolet Inc. (Decatur, GA)
 - \$7,880 to one employee
- Atlantic Housing Foundation (Savannah, GA)
 - \$3,290 to one employee
- Barrday Corp. (Charlotte, NC)
 - \$2,606 to one employee



The WHD reminds employers to take advantage of the [resources](#) they offer employers to help them comply with the FMLA.

Questions?

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


Quarantined or Virus Exposed Employee FAQs

Additional Coronavirus Leave of Absence Resources

Compliance Webinars & Podcasts
ReedGroup Blog


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

Blog




Paid Leave Checkup: To Pay or Not to Pay, That Is the Question!

In the ever-changing landscape of mandated paid leave, required minimum wage increases, what is federal leave versus what is state leave, comparing U.S. benefits with international offerings, and the moving target of managing a workforce during a national pandemic.... if you don't have questions, you likely don't work in HR. Absence management is a complex ... Continued




Washington State Employment Security Department Outlines Plans for 2021 PFML Rulemaking

Rule makers in Washington State are busy preparing for changes in 2021 to rules governing its Paid Family and Medical...




IRS Publishes Updated FAQs on Federal Tax Credits for Emergency Paid Leave Taken in Q1 2021

On January 28, 2021, the IRS published updated FAQs to address the availability of federal tax credits as reimbursement for...




American Rescue Plan Aims to Resuscitate FFCRA Emergency Paid Leave Mandate


President Biden has unveiled his proposed framework for additional federal COVID-19 relief legislation, named the "American Rescue Plan." The American...




ReedGroup Teams Up With CorVel To Offer Integrated Disability Management




Are You Complying with the Connecticut Paid Family and Medical Leave Act? Here's A Tool/And



Can Employers Mandate Employees Get Vaccinated Against COVID-19?



DOL Solidifies Position That Telemedicine



Your Chance to Make History! Oregon Paid Family

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

Thank You



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