# Edging up

*Short takes on emerging industry issues – government compliance updates, new paid parental leave laws and new Medicare set-asides*

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# The alphabet soup of government compliance

CONTRIBUTORS

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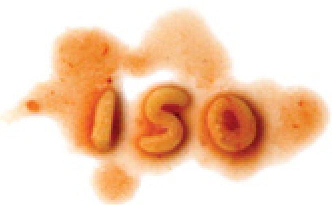
There are many recent industry-related changes and others on the horizon that could have a significant impact on employer programs. Some of these legislative updates and rule changes occurred during 2016 and will become effective soon; others were announced more recently and are still pending final approval.

## WORKERS' COMPENSATION



### ISO ClaimSearch enhancement

As of February 1, 2017, the per-claimant submission rate for an index bureau report increased from $9.20 to $9.50 to support product development and enhancements. All workers' compensation indexes search the entire ISO database regardless of the age of the claim.

The ISO ClaimSearch index system is a valuable investigation tool that satisfies multiple statutory and regulatory requirements such as:

- Individual state mandatory and voluntary child support requirements – When an index is submitted, ISO ClaimSearch searches the Child Support Lien Network and the federal Office of Child Support Enforcement databases. If our claim matches a record in the database, the state child support enforcement agency will receive the match information. If the agency decides to place a lien on a claim, the agency will notify your company directly.
- Medicaid reporting – The ISO ClaimSearch Medicaid Reporting Service keeps us in compliance with the Medicaid reporting and verification requirements in Rhode Island.
- Auto line of business – Reporting to the ISO ClaimSearch system satisfies the auto reporting requirements for theft and salvage claims in six states and for Regulation 64 of New York. It also fulfills reporting requirements of auto insurance and auto accident reporting in New Jersey and Pennsylvania.

An initial index search using the ISO ClaimSearch database service provides a historical look back on claim history, as well as the following defined period of updates:

- Casualty – One year of continuous updates; claims are searched for a five-year period from date received
- Property – 60 days of continuous updates
- Vehicle – 30 days of continuous updates; claims with VINs are searched back to 1981 when they became 17 digits

### New WCIRB reporting requirement for first aid claims

On January 1, 2017, all insured employers within the state of California were required to begin reporting all claims for which medical treatment costs are incurred. The Workers' Compensation

Rating Bureau of California (WCIRB) amended the California Workers' Compensation Uniform Statistical Reporting Plan-1995 clarifying the requirement to report first aid and small medical only claims regardless of whether the cost of medical treatment is paid by an employer or the insurer. The WCIRB Bulletin No. 2016-25 summarizes these changes. To comply, insured employers paying medical costs for first aid medical treatment must report those claims and the related medical costs to Sedgwick. We will create a medical only claim file and report it to the insurance carrier. Physicians must send copies of the Doctor's First Report of Occupational Injury or Illness to the insurance carrier or employer within five days of the initial examination. The insurer or employer must submit the physician's report with the Department of Industrial Relations within five days of receipt. Any employer or physician who fails to comply may be assessed a penalty.

**ERISA and FMLA compliance**

The U.S. Department of Labor (DOL) continues to increase their compliance reviews on Family and Medical Leave Act (FMLA) and Employee Retirement Income Security Act (ERISA) plans. The DOL can perform compliance reviews for the FMLA and the ERISA without a formal complaint or cause. Sedgwick monitors legislative changes related to the FMLA, ERISA and other industry programs; and we continue to provide information on major changes that impact our clients. For DOL updates, please see the DOL website.

**OSHA reporting requirements**

The Occupational Safety and Health Administration (OSHA) introduced a new requirement for U.S. employers to submit records electronically. The final rule, published on May 12, 2016, includes the following reporting deadlines for employers:

*2016 reporting year*

- Employers that have establishments with a headcount of 20–249 employees and/or a headcount of at least 250 employees must submit their 300A reports by July 1, 2017

*2017 reporting year*

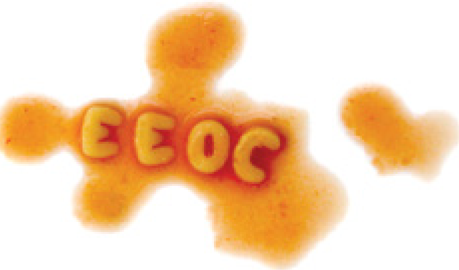
- Employers that have establishments with a headcount of at least 250 employees must submit their OSHA 300A along with certain elements of their OSHA 300 and 301 by July 1, 2018
- Employers that have establishments with a headcount of 20–249 employees must submit their 300A by July 1, 2018

*2018 reporting year*

- Employers that have establishments with a headcount of at least 250 employees must submit their OSHA 300A along with certain elements of their OSHA 300 and 301 by March 2, 2019
- Employers that have establishments with a headcount of 20–249 employees must submit their OSHA 300A by March 2, 2019

Sedgwick will be able to submit reports on behalf of customers that utilize our OSHA services to meet this electronic reporting requirement. However, employers will ultimately be responsible for the completeness and accuracy of the data. For more information on the format of the files to be prepared for submission, please contact your client services director.

## DISABILITY AND LEAVE



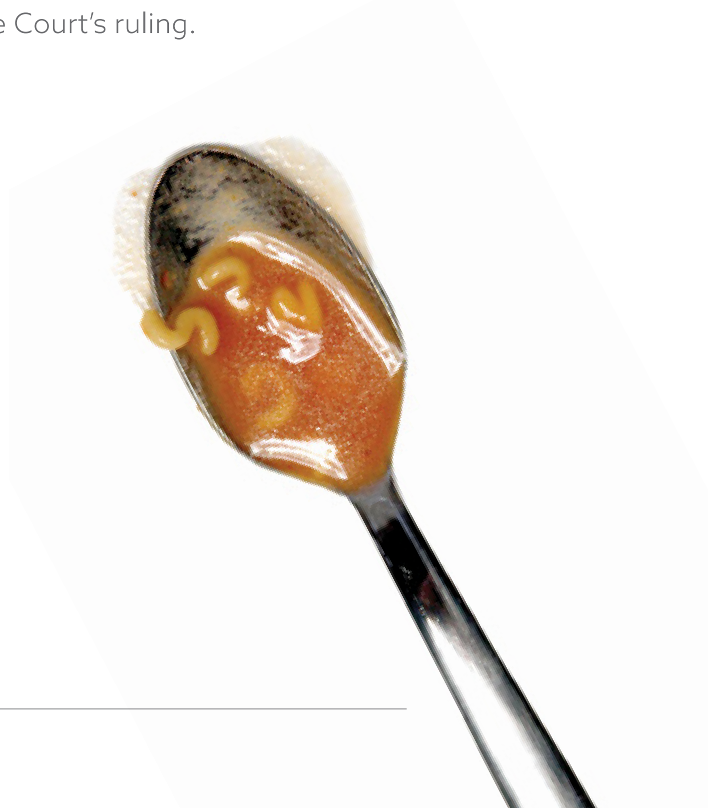

**EEOC compliance**

Recently, the U.S. Equal Employment Opportunity Commission (EEOC) issued a Strategic Enforcement Plan (SEP) for Fiscal Years 2017–2021. For compliance purposes, the EEOC narrows its focus on the Americans with Disabilities Act (ADA) to issues related to qualification standards and inflexible leave policies that discriminate against individuals with disabilities. Additional areas include accommodating pregnancy-related limitations under the ADA and the Pregnancy Discrimination Act.

## PROPERTY

**Florida Supreme Court decision impacts property loss claims**

A recent opinion of the Florida Supreme Court on property insurance coverage dramatically impacted future cases related to coverages in circumstances where several causes result in property damages, and at least one or more is covered by insurance and others are specifically excluded or not covered. With the *Sebo* Florida Supreme Court decision on December 1, 2016, Florida has adopted the "concurrent cause" doctrine when analyzing property insurance coverages and losses. If at least one of several independent causes constitute, in part, a concurrent cause of the overall loss, and that cause is covered by insurance, the entire claim should be covered. In the *Sebo* decision, the combination of wind-driven rain during a hurricane (which was covered under the insurance policy) and defective construction or workmanship on an $8 million mansion on the Florida coast (which was specifically excluded under the policy) caused the total loss of the entire residence. The insurance company had denied coverage based on the defective workmanship exclusion. The company lost the case as a result of the Florida Supreme Court's ruling.



# New paid leave laws introduced

BY **SHARON ANDRUS**

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Paid family leave and paid parental leave are currently key topics for employers as they look to expand benefits for their employees. Recently, San Francisco introduced a paid parental leave ordinance and New York announced a new paid family leave benefits law. Below is a brief summary on each of these.

**San Francisco**

The San Francisco paid parental leave ordinance (SF PPLO) impacts all San Francisco-based employers with more than 50 employees nationwide. For example, a company with 1,000 employees across the U.S. and 25 working in San Francisco would be required to provide benefits to their San Francisco team as of January 1, 2017. Employers with 35 or more employees are required to comply beginning July 1, 2017 and employers with 20 or more employees on January 1, 2018.

The law requires employers to provide six weeks of supplemental paid parental leave to employees working in San Francisco for the birth of a child, and the placement of a child for adoption or foster care. Employers must provide up to 45% of supplemental pay so that, when combined with California paid family leave (CA PFL) benefits, employees will receive up to 100% of their normal gross weekly wages (subject to CA PFL maximums). The leave must be completed in the first 12 months after the birth or placement of the child.

Eligibility requirements:

- Employee commenced employment with the covered employer at least 180 days before the start of the leave
- The employee performs at least eight hours per week of work in San Francisco for the employer
- At least 40% of the employee's total weekly hours for that employer are in San Francisco
- Employee must be eligible for and receiving CA PFL for baby bonding

One way that employers can comply with (or be exempt from) the SF PPLO is by providing equivalent benefits under their existing paid parental leave policy. Employers should review their policy to be sure it satisfies the following minimum requirements of the SF PPLO:

- Applies to all employees regardless of (for example):
  - Full-time/part-time status
  - Salaried/hourly
  - Union/non-union
  - Exempt/non-exempt
- Provides 100% of pay up to six weeks for bonding with a newborn, an adopted child or a foster child
- Eligibility for leave cannot be greater than 180 days of employment prior to the start of the leave
- Applies equally to mothers and fathers
- Applies equally to primary and secondary caregivers

Another way employers can comply with the SF PPLO is by handling it under their California Voluntary Disability/Paid Family leave plan.

The following items would need to be taken into consideration before determining if this is a viable solution:

- Perform a feasibility study if the voluntary plan is funded with employee contributions
- Amend the CA voluntary plan to include a separate class for SF employees that would pay 100% benefit
- Provide written notice to all employees of plan change; including the option to opt out of voluntary plan
- File revised plan document and employee notice to EDD for approval

If employers are not able to cover the SF PPLO obligation under their existing paid parental leave policy or CA voluntary plan, then they must create a separate policy and process to comply with the ordinance.

For more information on benefits, eligibility, supplemental payments and intermittent leave, along with frequently asked questions, please see the Paid Parental Leave Ordinance on the City and County of San Francisco website.

The benefit details and compliance requirements of new paid leave laws can be complex. If your company has questions or concerns related to the new San Francisco ordinance, please contact your Sedgwick client services director.

**New York**

On February 22, 2017, regulations for the New York Paid Family Leave Benefits Law (NY PFLBL) were released. Employers, unions, carriers and third party claims administrators can provide feedback and ask questions during a 45-day period before the regulations are finalized.

The NY PFLBL will become effective on January 1, 2018 and employees will receive benefits to:

- Care for the serious health condition of a family member, including a spouse or domestic partner, child (biological, adopted, foster or in loco parentis), parent, grandparent and grandchild
- Bond with a new child during the first 12 months after birth, adoption or foster care placement
- Care for a spouse, parent or child as a result of military exigency

The weekly benefit is scheduled to gradually increase in subsequent years and is based on a percentage of New York's statewide average weekly wage (AWW). Below are the percentages for the weekly benefit:

- January 1, 2018: 50% of weekly wage for 8 weeks
- January 1, 2019: 50% of weekly wage for 10 weeks
- January 1, 2020: 60% of weekly wage for 10 weeks
- January 1, 2021: 67% of weekly wage for 12 weeks

The benefits are designed to be fully funded by employee contributions, which will be deducted from the employees' pay. Full-time employees are eligible after 26 consecutive weeks of covered New York employment and part-time employees are eligible after 175 days of covered New York employment. When an employee returns to work, they must be restored to the same or a comparable position that they had prior to taking PFLBL.

Sedgwick is prepared to support customers for whom we administer statutory disability claims in New York to help them comply with the PFLBL. Pending the release of the final regulations, we recommend that employers:

- Evaluate their employee demographics to determine whether any employees meet the eligibility criteria
- Engage with a benefits consultant and/or legal counsel for guidance on policy/plan development including updating employee handbooks or leave material to include the PFLBL
- Prepare their payroll functions to add another deduction for the PFLBL
- Prepare to maintain the employees' existing health coverage for the duration of the PFLBL

For additional information on eligibility and benefits, please see New York's paid family leave program on the New York State website.

**RESOURCES**

**Paid Parental Leave Ordinance. Office of Labor Standards Enforcement. City and County of San Francisco website.**
http://sfgov.org/olse/paid-parental-leave-ordinance

**New York's paid family leave program. New York State website.**
https://www.ny.gov/new-york-state-paid-family-leave/paid-family-leave-how-it-works

# It is happening: LMSAs (and NFMSAs) are almost here

BY **MICHAEL R. MERLINO II, ESQ.**

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The Centers for Medicare & Medicaid Services (CMS) recently released a communication to providers, physicians and suppliers announcing that liability Medicare set-aside arrangements (LMSAs) and no-fault Medicare set-aside arrangements (NFMSAs) will be implemented on October 2, 2017.

The article did not contain any particulars about how the new set-asides are going to work, only noting that new processes and procedures would be forthcoming. Until more details become available, stakeholders are left wondering how the set-asides will affect their liability and no-fault claims. Here are some primary questions and concerns to consider:

- How are we going to address liability cases with grave injuries, but low liability? Will CMS see these cases as zero LMSA situations because clearly there was no future medical taken into consideration for the settlement?
- How is CMS going to price MSAs? Is it going to assume that the parties have accepted the responsibility for lifetime medical expense, as in workers' compensation? Will CMS recognize there is nothing in the law that indicates that the defendant is responsible for lifetime medical expenses when litigating or settling a liability case?
- What medical records is CMS going to require? Unlike workers' compensation, there are no payment histories in liability, so how is CMS going to verify what drugs and treatments are related to the liability case?
- How will CMS determine the relevant body parts in a liability setting? In workers' compensation, there are forms and processes for only litigating a relatively narrow list of body parts. In liability, we have broad injury allegations coupled with medical records that are alleged to relate to the incident. But how are these medical records going to be interpreted to determine the reality from the plaintiff's claims? Will CMS accept deposition testimony, expert witness testimony, interrogatories, etc. to disprove some of the medical treatment?

Our list of questions will grow as Sedgwick continues to evaluate the requirements and create best practices to drive optimal outcomes for customers and consumers.

We will monitor the situation and work with our customers, carriers and industry partners to provide additional analysis and revise our best practices. Our team will also watch CMS for additional details and continue to share information and recommendations in this area.

**RESOURCE**

MLN Matters, Medicare Learning Network, CMS, Department of Health and Human Services, February 3, 2017.