



State PFML programs bring benefits and challenges for employers

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With all of the different state and federal leave of absence laws, it is getting increasingly more complex for employers operating in multiple states — and even in single states — to effectively manage the various employee benefits. This year, a significant number of paid family leave programs and regulations have been introduced in many states. In fact, more than 70 bills were introduced in January 2019 that have components impacting paid leave benefits, such as changes or additions to the people who are included or the reasons that the leave time can be used.

More than 70
PFLML bills
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January 2019



The biggest challenge is incorporating all of the new paid leave laws at the state and municipal level with existing leave of absence rights and employer policies. While most state programs are aligned with the qualification standards in the federal Family and Medical Leave Act (FMLA), some include different relationships, like siblings and domestic partners, different types of paid leave and more than the 12 weeks allowed in the FMLA entitlement. When this benefit is added to other time off benefits like sick time, vacation or parental leave, it can

be a complicated process for employers to stay in compliance with state and federal laws, as well as their own internal policies.

Some state programs do allow for exceptions for employers that have existing paid programs, but they may require them to be more generous than what the state offers. In those situations, the employer must present a private or voluntary plan to the state and it must be approved.

There are different rules associated with the financial aspects of these programs and each state is different.

KEY CONSIDERATIONS

It can be difficult for employers to keep up with what is happening at the state level, and how these programs intersect with their existing leave benefits and FMLA rules. Employers should partner with disability and absence experts or lawyers specializing in employment benefits who can interpret the impact based on the employer's existing programs.

UPDATES ON NEW STATE PROGRAMS

Below are some of the newest programs enacted in Massachusetts, New York and Washington, along with changes to New Jersey's program.

MASSACHUSETTS

On January 23, 2019, the Massachusetts Department of Family and Medical Leave published the first draft regulations for the Paid Family and Medical Leave (PFML) program, which was an important part of the legislation signed by Governor Charlie Baker on June 28, 2018. Employers that are already providing paid leave benefits may be eligible to receive an exemption and approved plan applications will be available on April 29, 2019. The Department will publish final regulations by July 1, 2019. For more key dates, see the timeline on the Commonwealth of Massachusetts website.

The law sets the initial premium rate at 0.63% on the first \$128,400 of wages beginning on July 1, 2019; contribution rates are adjusted annually by the Department. Employers may deduct from the employees'

wages 100% of the premiums due for family leave and up to 40% of the premiums due for the medical leave portion. The employer is responsible for 60% of the medical leave premium. An employer may also elect to pay all of the premiums. Payments are required on a quarterly basis. A chart showing the contribution structure is available on the Department's website.

BELOW ARE THE REQUIRED NOTICES

- **Employer** – Beginning July 1, 2019, employers must provide notice to employees of the MA PFML law via a posting and a written notice. This notice must be issued no more than 30 days from the beginning of their employment.
- **Employee** – An employee filing a leave claim must provide the employer with at least 30 days' notice of the anticipated start date, length, type, and date of return. If 30 days' notice is not feasible, for reasons outside the employee's control, the employee must provide notice as soon as practicable
- **Department** – The Department must notify the employer not more than five business days after an employee has

filed a claim. The notice will provide the employee's name, type of leave requested, expected duration, continuous or intermittent, and other information necessary to verify the claim.

NEW JERSEY

On February 19, 2019, New Jersey Governor Phil Murphy signed a bill boosting the New Jersey Family Leave Insurance (NJ FLI) and New Jersey Temporary Disability Insurance (NJ TDI) programs. These changes position the NJ FLI program to be one of the most generous in the country when completely effective on July 1, 2020. The bill also includes changes to modify the New Jersey Family Leave Act (NJ FLA) and the NJ SAFE Act to align with NJ FLI.

The following program changes took place immediately. Sedgwick's service offering has been updated to include these modifications:

- Expands eligibility for NJ FLA, NJ FLI and NJ SAFE to include siblings, grandparents, grandchildren, parents-in-law and the equivalent of a family member

The two main differences between state and federal leave laws include



and



The relationships for whom employees can take time off

The amount of time they can take

New Jersey FLI
benefits will double from



6 weeks to 12 weeks

- Allows employees to receive up to 20 days per year of NJ FLI benefits to care for eligible family members who are victims of domestic and sexual violence
- Enacts anti-retaliatory measures
- Employers will be restricted from requiring employees to use all their paid leave (up to two weeks) before the payment of NJ FLI benefits
- July 1, 2019 – Removes the one-week waiting period preceding NJ FLI benefits
- The threshold at and above which employers must grant unpaid family leave will be lowered from 50 to 30 employees; this is capped at 12 weeks in a 24-month period

RECOMMENDATIONS FOR EMPLOYERS

- Examine company policies and modify language as necessary
- Monitor the State of New Jersey Department of Labor website to obtain updated notices and posting requirements
- If you have a private plan, prepare for updates to plan language, which will need to be sent to and approved by New Jersey Private Plan Operations (NJ PPO); NJ PPO will send information on this process to private plans of record

The changes below will become effective on July 1, 2020. Sedgwick’s services will be updated in advance to incorporate these benefit changes:

- Weekly NJ FLI and NJ TDI benefits will increase from two-thirds of the average weekly wage to 85% of that wage; this is capped at 70% of the statewide average weekly wage (\$860 in 2019)
- NJ FLI benefits will double from six to 12 weeks during any one-year period and the maximum intermittent leave will increase from 42 to 56 days

NEW YORK

The New York paid family leave (NYPFL) law that went into effect on January 1, 2018 included contribution and benefits changes planned for subsequent years beginning in 2019. By 2021, eligible New York employees will receive up to 12 weeks of paid family leave annually under the program 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 benefits are fully funded by employee contributions, which will be deducted from the employees’ pay. Full-time employees are eligible for coverage after 26 consecutive weeks of covered New York employment and part-time employees working less than five days per week are eligible after 175 days of covered

employment. The weekly benefit is based on a percentage of the employee's average weekly wage. The current weekly benefit is 55% of the weekly wage for 10 weeks; it will increase to 60% of the weekly wage for 10 weeks on January 1, 2020.

Many employers have overlapping benefit programs and leave rights. To prevent benefit stacking, the following recommendations should be considered:

- Concurrency of leave and benefits
- NYPFL and leave under FMLA will run concurrently where the leave reason is covered under both and the employee is otherwise eligible for the leaves
- If the employee does not request NYPFL for a qualifying event or refuses to request NYPFL, any time approved for FMLA will be deducted from the NYPFL benefit entitlement and the employee will not receive monetary compensation for this period

The following restrictions are designed to prevent duplicate payments. Benefits are not payable in the circumstances below:

- Employees may not use disability and NYPFL benefits at the same time
- When the need for NYPFL is foreseeable, employees must provide the employer with a notice 30 days in advance
- The employee must use FMLA and NYPFL concurrently, if eligible
- No employee may receive more than 12 weeks of NYPFL benefits or 26 weeks of a combination of disability and NYPFL benefits within any 52-week period
- When the employee is currently receiving paid time off or sick pay from the employer
- When the employee works at least part of the day during the same working hours that they are claiming NYPFL benefits
- When the employee is on an administrative leave from their employer or is not employed

WASHINGTON

The state of Washington has enacted a PFML plan, which will provide benefits to employees beginning January 1, 2020.

The program, administered by the Employment Security Department, will be funded through premiums paid by both employees and employers. The plan will provide employees with the paid leave benefits listed below.

- Up to 12 weeks for:
 - The birth or placement of a new child
 - If the employee has a serious illness or injury
 - To care for a family member
 - Certain military events
- Additional provisions for serious health conditions relating to pregnancy

Although benefits will not be provided until 2020, premium collections began on January 1, 2019. Employers with 50 or more employees could elect to withhold up to 63% of the total premium from their employee's paycheck and they are required to pay the remaining amount. Premiums are 0.4% of total gross wages.

To assist employers with the implementation of the leave benefit and premium collections, the state has several tools on its PFML website including an employer toolkit with step-by-step guides for implementing the new requirements, frequently asked questions and a series of webinars.

WE ARE HERE TO HELP

Sedgwick helps clients comply with statutory disability and leave laws and ongoing changes. Recently, new bills for various types of paid family and medical leave benefits have been proposed in multiple states. For additional information, see our monthly leave law summaries available on our website. If you have questions about state leave programs or proposed legislation, please contact your client services representative or consult with your corporate legal counsel.

RESOURCES

Massachusetts Paid Family and Medical Leave

<https://www.mass.gov/info-details/timeline-of-paid-family-and-medical-leave-contributions-and-benefits>

State of New Jersey
Department of Labor

<https://www.nj.gov/labor/>

New York Paid Family Leave Program

<https://paidfamilyleave.ny.gov/2019>

Washington Paid Family and Medical Leave Program

<https://paidleave.wa.gov/employers>

Out Front Ideas webinar replay: Impact of Expanding Leave of Absence Regulations

https://goto.webcasts.com/starthere.jsp?ei=1228332&tp_key=a7ca3e4864

Equal Employment
Opportunity Commission

<https://www.eeoc.gov/>

U.S. Department of Labor

<https://www.dol.gov/>

Job Accommodation Network

<https://askjan.org/>

Disability Management
Employer Coalition

<http://dmec.org/>

Society for Human
Resource Management

<https://www.shrm.org/>