



Employee Benefits Compliance Update

USI Insurance Services Employee Benefits Compliance Practice

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New Arizona Mini-COBRA Law

On April 10, 2018, Arizona Governor Doug Ducey signed S.B. 1217 into law, creating a COBRA-like state continuation law, effective for the policy year beginning in 2019. Arizona's law applies to small employers who are not otherwise subject to federal COBRA that provide insured group medical plan coverage to its employees. There are many aspects of this law that follow the structure and administration of the federal COBRA law, although there are some differences.

According to the new law, a small employer (one not subject to COBRA, with an average of 20 or fewer eligible employees during the preceding year) must make available the opportunity to continue an insured group medical plan following certain losses of eligibility (qualifying events) at 105% the total cost of coverage. Note that, unlike COBRA, the 20-employee threshold is based on employees eligible for the Arizona plan and not total employees. Further note that continuation applies to medical plans and not stand-alone dental or vision plans.

A qualifying event is the date coverage ends due to:

- Termination of employment or reduction in hours;
- Divorce; or
- Death.

Continued coverage ends upon occurrence of the earliest of the following:

- Eighteen months;
- Non-payment of premium by the enrollee;
- Enrollment in any other health plan coverage; and
- Termination of the policy (with no replacement plan).

The coverage period can be extended for an additional 11 months in the case of disability, and may be extended by qualified dependents for 18 additional months in certain multiple qualifying event situations.

Small employers have a notice obligation. The Arizona Department of Insurance will make available on its website a Sample Notice of Coverage Continuation Form.

Employers to whom the law is applicable will need to begin offering this state continuation as of their first health benefits plan issuance or renewal after December 31, 2018.

For the chaptered version of the bill, visit: <https://www.azleg.gov/legtext/53leg/2R/laws/0164.pdf>.

DC Paid Family and Medical Leave

Background and General Requirements

The Washington, DC Universal Paid Leave Amendment Act of 2016 (UPLAA) will guarantee certain periods of paid family and medical leave to private-sector employees as of July 1, 2020. All private-sector employers (except for those exempt from taxes in DC by federal law or treaty), regardless of size, with employees who perform services at least fifty percent (50%) of their time in Washington, DC must contribute to the government-run paid leave program. Payments will be funded by an additional 0.62% employer payroll tax that Washington, DC will collect from private-sector employees beginning July 1, 2019.

Use and Duration of Leave

An employee must have performed services for a covered employer at any point in the 52 calendar weeks immediately preceding the need for leave to receive benefits. After a one-week waiting period, an eligible employee may receive 90% of his or her first \$900 in weekly salary, then 50% of his or her remaining weekly salary, up to a maximum of \$1,000 per week. Employees may receive a maximum of eight (8) weeks of paid family leave in a 52-week period. The duration of paid leave benefits will depend on the reason for the leave, as follows: (i) employees will receive a maximum of six (6) weeks for a qualifying family leave; (ii) employees will receive a maximum of eight (8) weeks for a qualifying parental leave; and (iii) employees will receive a maximum of two (2) weeks for a qualifying medical leave for the individual's own health condition. Intermittent days of paid leave are available, so paid leave need not be taken on consecutive workdays.

The class of family members for whom leave can be taken under UPLAA includes the following individuals with serious health conditions:

- A person to whom the employee is related by blood, legal custody or marriage;
- A child who lives with an employee who exercises parental responsibility;
- An individual with whom the employee lives and is in a "committed relationship";
- A legal ward;
- A son or daughter of a domestic partner; and
- A person "who stood in loco parentis" to the employee when he or she was a child.

UPLAA also includes a variety of provisions aimed at protecting employees from retaliation for exercising or seeking to exercise their new rights to paid leave. For example, an employer is expressly forbidden by UPLAA from retaliating by reporting, or threatening to report, an employee's "actual or suspected citizenship or immigration status" to federal, state or local agencies.

For more information see: <https://code.dccouncil.us/dc/council/laws/21-264.html>

DC Accrued Sick and Safe Leave

Background and General Requirements

Washington, DC's Accrued Sick and Safe Leave Act of 2008, as amended in 2014 (the "Act") affects most employers with employees in Washington, DC. The Act applies to all covered employers with employees performing services in Washington, DC. Covered employers under the Act include "any entity that directly or indirectly employs or exercises control over a worker's wages, hours, or working conditions." The Act covers all "employees" whose wages, hours, or working conditions are controlled by another entity. Under this definition of "employee," even contractors and temporary workers (who are not technically employees of the company) are considered "employees" under the Act.

The Act, however, specifically excludes the following types of workers:

- Independent contractors who choose to participate in a premium pay program;
- Students who choose to participate in a premium pay program;
- Health care workers who choose to participate in a premium pay program; and
- Employees in the construction industry who are covered by a bona fide collective bargaining agreement that clearly and unambiguously waives the paid leave requirements.

Use and Accrual of Leave

The Act requires all covered employers to provide each employee with some amount of paid sick and/or safe leave depending on the employer's size. Employees begin to accrue sick leave on their dates of hire, though an employer may require employees to wait at least 90 days prior to using accrued leave. Sick leave for employees accrues as follows:

- Employers with 100 or more employees must provide each employee at least 1 hour of paid leave for every 37 hours worked, capped at 7 days of leave per year.
- Employers with 25 to 99 employees must provide each employee at least 1 hour of paid leave for every 43 hours worked, capped at 5 days of leave per year.
- Employers with 24 or less employees must provide each employee at least 1 hour of paid leave for every 87 hours worked, capped at 3 days of leave per year.

Notice Requirements

Employers who are covered by the Act must post the Act's Official Notice in a conspicuous location where it can be easily read by employees.

The Official Notice can be accessed online at: [Accrued Sick and Safe Leave Act of 2008 – Revised 2014 Poster](#).

For more information see <http://dcwagelaw.com/wp-content/uploads/04-assla-pdf-version.pdf>

Massachusetts Establishes Paid Family and Medical Leave Act

On June 28, 2018, Massachusetts Governor Charlie Baker signed into law [a bill](#) that provides for Paid Family and Medical Leave. The bill includes paid family and medical leave, a multi-year phase-in to \$15 per hour minimum wage, and an annual sales tax holiday. The Paid Family and Medical Leave Act has rolling effective dates for various provisions of the Act, the first becoming effective as of July 1, 2019.

Employer Coverage

The Act requires all private employers, who employ one or more employees in Massachusetts, to provide paid family and medical leave. Any other employer not subject to the law, such as municipalities and local political subdivisions, may choose to become covered. A "covered individual" is defined as (1) a current employee of a Massachusetts employer, (2) a self-employed individual who elects coverage under the Act, and (3) a former employee, who has been separated from employment for not more than 26 weeks at the start of the former employee's family or medical leave. The definitions of employee and employer in this context is generally the same as that under Massachusetts unemployment law. (Employers should seek local employment law counsel regarding appropriate worker classifications).

Types of Leave

There are two types of leave outlined in the Act, paid family leave and paid medical leave.

A covered individual is entitled to 12 weeks of paid family leave per benefit year (with a benefit year defined as the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that job-protected leave under the Act commences for the covered individual). Paid family leave is available:

- To bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;
- Because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or
- In order to care for a family member who is a covered servicemember.

A covered individual is entitled to 20 weeks of paid medical leave in a benefit year. Paid medical leave is available to any covered individual with a serious health condition (defined as an illness, injury, impairment, or physical or mental condition that involves (i) inpatient care in a hospital, hospice, or residential medical facility; or (ii) continuing treatment by a health care provider).

A covered individual may not take more than 26 weeks, in the aggregate, of paid family and medical leave per benefit year. A 7-day waiting period must be satisfied before a covered individual can use paid family and medical leave. The waiting period is not required in a situation where a covered individual takes a medical leave during pregnancy or recovery from childbirth if supported by documentation by a health care provider that is immediately followed by paid family leave. An employee may use vacation leave, sick leave, or any other paid leave during the waiting period.

The Act allows for intermittent leave or a reduced leave schedule for all reasons covered under the Act except for bonding with a child which requires the employee and employer mutually agree to the leave.

Employee Restoration After Leave

An employee who has taken family or medical leave is restored to the employee's previous position, or to an equivalent position, with the same status, pay, employment benefits, length of service credit, and seniority as of the date of leave. An employer is not required to restore an employee who has taken family or medical leave to the previous or to an equivalent position if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave; provided, however, that the employee who has taken leave retains any preferential consideration for another position to which the employee was entitled as of the date of leave.

The taking of family or medical leave does not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length of service credit, or other employment benefits, plans, or programs. During the duration of an employee's family or medical leave, the employer must continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave.

Funding the Benefit

The Act creates a new agency, the Department of Family and Medical Leave (the "Department"). The Department will create the Family and Employment Security Trust Fund (the "Fund") which will receive all contributions under the Act. Contributions are funded through a mandatory payroll tax, starting at 0.63% of wages, but the Director of the Department can adjust the contribution rate annually by October 1 for the next calendar year. The payroll tax is split approximately evenly between employees and employers. However, employers with fewer than 25 employees are not required to contribute to the fund, but their employees will still be required to contribute.

Amount of Benefit

The weekly benefit amount for employees and self-employed individuals on family or medical leave is determined as follows:

- The portion of an employee's or self-employed individual's average weekly wage that is equal to or less

than 50 percent of the state average weekly wage is replaced at a rate of 80 percent; and

- The portion of an employee's or self-employed individual's average weekly wage that is more than 50 percent of the state average weekly wage is replaced at a rate of 50 percent.

The maximum benefit amount is capped at \$850.00 per week. The Director of the Department can adjust the weekly benefit amount annually by October 1, to be 64% percent of the state average weekly wage, for the next calendar year.

The weekly benefit amount is reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on family or medical leave:

- Any government program or law, including but not limited to workers' compensation, other than for permanent partial disability incurred prior to the family or medical leave claim, or under other state or federal temporary or permanent disability benefits law, or
- A permanent disability policy or program of an employer.

The weekly benefit amount is not reduced by the amount of wage replacement that an employee receives while on family or medical leave under any of the following conditions, unless the aggregate amount an employee would receive would exceed the employee's average weekly wage:

- A temporary disability policy or program of an employer; or
- A paid family, or medical leave policy of an employer.

If an employer makes payments to an employee during any period of family or medical leave that are equal to or more than the amount required, the employer will be reimbursed out of any benefits due or to become due from the Fund for that employee covering the same period of time as the payments made by the employer.

Employers Already Providing Required Amount of Leave

Employers may apply to the Department for approval to meet their obligations under the Act through a private plan. A private plan must confer all the same rights, protections, and benefits provided to employees under the Act.

Employer Notification

Employers are required to post a workplace notice prepared or approved by the Department providing notice of paid family and medical leave in a conspicuous place on each of the employer's premises. The required workplace notice must be in English and each other language other than English which is the primary language of 5 or more employees or self-employed individuals of that workplace, if such notice is available from the Department.

Employers are required to issue to each employee not more than 30 days from the beginning date of the employee's employment, the following written information provided or approved by the Department in the employee's primary language:

- An explanation of the availability of family and medical leave benefits, including rights to reinstatement and continuation of health insurance;
- The employee's contribution amount and obligations;
- The employer's contribution amount and obligations;
- The name and mailing address of the employer;
- The identification number assigned to the employer by the Department;
- Instructions on how to file a claim for family and medical leave benefits;
- The mailing address, email address and telephone number of the Department; and
- Any other information deemed necessary by the Department.

An employer that fails to comply with the above notification will pay a \$50 civil penalty per employee for the first violation and \$300 per employee for each subsequent violation. The employer has the burden of demonstrating compliance with employer notification requirements.

Employee Notice to Employer

The employee must provide at least 30 days' notice to the employer of the anticipated starting date of the leave, the anticipated length of the leave, and the expected date of return, or must provide notice as soon as practicable if the delay is for reasons beyond the employee's control.

Interaction with Other Policies and Leave Laws

The Act will not obviate an employer's obligations to comply with any company policy, law, or collective bargaining agreement that provides for greater or additional leave rights. Leave taken under the Act runs concurrently with leave taken under the Massachusetts Parental Leave Law or Family and Medical Leave Act (FMLA).

Enforcement

The Act specifies it is unlawful for any employer to retaliate against an employee for exercising their rights under the Act. Any negative change in status or an adverse employment action during the 6-month period following an employee's leave or restoration to a position, or of an employee who has participated in proceedings or inquiries within 6 months of the termination of proceedings related to the Act is presumed to be retaliation. Per the Act, the employer can only rebut this presumption by clear and convincing evidence that the employer's action was not retaliation, but was based on some other reason unrelated to the Act.

Additional Guidance and Key Applicability Dates

The Act requires the Department to propose regulations necessary to implement and enforce the law.

Key Applicability Dates

- March 31, 2019: The Department is required to publish proposed regulations for public comment.
- July 1, 2019: The Department must promulgate all regulations; commence collection of contributions; employer notification posting; and employer notification to employees.
- January 1, 2021: All leave is available except family leave to care for a family member with a serious health condition.
- July 1, 2021: Family leave is available to care for a family member with a serious health condition.

Employer Next Steps

Employers should work with labor counsel and payroll processors to review their leave policies and procedures to make sure they are compliant with the Act by July 1, 2019. In addition, employers should monitor the [Commonwealth's website](#) for additional guidance and regulations.

New Jersey Enacts Paid Sick Leave

On May 2, 2018, New Jersey Governor Phil Murphy signed [legislation](#) (A.B. 1827) enacting a statewide paid sick leave law, becoming the 10th state nationwide to do so. When the law takes effect on October 29, 2018, it will preempt the 13 local paid leave ordinances currently in force in New Jersey.

Coverage

The law will apply to any employer, regardless of size, that employs employees in the State. Public employers that are required to provide employees with sick leave with full pay pursuant to any other law, rule, or regulation of the State are not subject to this provision. The definition of "Employee" does not include: an employee performing service in the construction industry that is under contract pursuant to a collective bargaining agreement, a per diem health care employee (as defined in the law), or a public employee who is provided with sick leave with full pay pursuant to any other law, rule, or regulation of the State.

Accrual

The law allows employees to accrue 1 hour of earned sick leave for every 30 hours worked, up to 40 hours each year. Employers also have the option to "front-load" the full benefit on the first day of the benefit year. Current employees begin accruing sick leave on the effective date of the Act; employees hired after the effective date of the Act begin accruing sick leave on their first day of employment. Employees may begin using the paid sick leave on the 120th calendar day after an employee begins employment (unless the employer agrees to an earlier date). From that point on, an employee may use earned sick leave as soon as it is accrued. Employers are not required to allow employees to use more than 40 hours of sick leave in a benefit year.

Employers should be aware that if they already provide a paid PTO policy that includes, but is not limited to personal days, vacation days and sick days, which may be used for the permitted purposes described in the act, and is accrued at a rate equal to or greater than the rate described in the Act, their policy will comply.

Permissible Uses

An employee may use paid sick leave for:

- Diagnosis, treatment, or recovery from a mental or physical illness or injury, or preventive care, for self or a family member

- Obtaining services if the employee or a family member is a victim of domestic or sexual violence
- Circumstances arising from a public health emergency
- A school-related meeting or event regarding the employee's child

Notice to Take Leave

If an employee's need to use earned sick leave is foreseeable, an employer may require advance notice of up to 7 calendar days. The employee must make a reasonable effort to schedule the use of earned sick leave in a manner that does not unduly disrupt the operations of the employer. If the reason for the leave is not foreseeable, an employer may require an employee to give notice of the intention as soon as practicable. Employers may prohibit employees from using foreseeable earned sick leave on certain dates and require reasonable documentation if sick leave that is not foreseeable is used during those dates. For earned sick leave of 3 or more consecutive days, an employer may require reasonable documentation that the leave is being taken for a permitted purpose. Examples of what constitutes reasonable documentation are provided in the law.

Optional Payout

The law allows an employer to make an optional payout offer, in the final month of the benefit year, to employees for unused earned sick leave. The employee must choose, no later than 10 calendar days from the date of the employer's offer, whether to accept a payment or decline a payment. If the employee agrees to receive a payment, the employee must choose a payment for the full amount of unused earned sick leave or for 50 percent of the amount of unused earned sick leave. The payment amount must be based on the same rate of pay that the employee earns at the time of the payment. If the employee declines a payment for unused earned sick leave, or agrees to a payment for 50 percent of the amount of unused sick leave, the employee must be entitled to carry forward any unused or unpaid earned sick leave to the proceeding benefit year. If the employee agrees to a payment for the full amount of unused earned sick leave, the employee is not entitled to carry forward any earned sick leave to the proceeding benefit year.

If the employer "front-loads" the benefit, then the employer must either provide to the employee a payment for the full amount of unused earned sick leave in the final month of the employer's benefit year or carry forward any unused sick leave to the next benefit year.

Transfer, Separation, or Reinstatement

If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, then the employee is entitled to all earned sick leave accrued at the prior division, entity, or location, and is entitled to use the accrued earned sick leave as provided in this act.

An employee is not entitled to payment of unused earned sick leave upon the employee's separation from employment unless an employer policy or collective bargaining agreement provides for such payment.

If an employee is terminated, laid off, furloughed, or otherwise separated from employment with the employer, any unused accrued earned sick leave is reinstated upon the re-hiring or reinstatement of the employee to that employment, within 6 months of termination, being laid off or furloughed, or separation, and prior employment with the employer is counted towards meeting the eligibility requirements set forth in this act.

Anti-Retaliation

An employer may not take retaliatory personnel action or discriminate against an employee because the employee requests or uses earned sick leave either in accordance with this act or the employer's own earned sick leave policy, files a complaint with the Commissioner of Labor and Workforce Development ("Commissioner") alleging the employer's violation of any provision of this act, or informs any other person of their rights under this act.

Recordkeeping

Employers must retain records documenting hours worked by employees and earned sick leave taken by employees, for a period of 5 years.

Notification

Employers must provide notification, in a form issued by the Commissioner, to employees of their rights under this act, including the amount of earned sick leave to which they are entitled and the terms of its use, and remedies provided by this act to employees if an employer fails to provide the required benefits or retaliates against employees exercising their rights under this act. Each covered employer must conspicuously post the notification in a place or places accessible to all employees in each of the employer's workplaces. The employer must also provide each employee employed by the employer with a written copy of the notification: not later than 30 days after the form of the

notification is issued; at the time of the employee's hiring, if the employee is hired after the issuance; and at any time, when first requested by the employee.

Employer Next Steps

Employers should review their PTO and sick leave policies with their legal counsel. As the State releases regulations prior to the effective date, employers should update their policies and procedures to comply with the law.

New York Paid Family Leave Benefit to Increase in 2019

In 2019, New York will enter its second year of the New York Paid Family Leave benefit. Starting January 1, 2019, the number of weeks eligible employees may take under the benefit and the wage replacement benefit will increase, as the state continues its four-year phase in.

Overview

New York Paid Family Leave (NYPFL) law is a wage replacement program fully funded by employees to bond with a child, care for a close relative with a serious health condition, or ease family obligations when a family member is called into active military service. Each year, the state releases the New York State Average Weekly Wage (SAWW) which will determine the maximum benefit provided to employees.

In 2018, an employee will be able to receive benefits at 50% of his/her average statewide weekly wage. By 2021, an employee will receive 67% of his/her average weekly wages, capped at 67% of the average statewide weekly wage.

NYPFL 2019 Benefits

Starting January 1, 2019, the number of weeks eligible employees may take to bond with a new child, care for a sick family member, or assist loved ones when a family member is deployed abroad on active military service increases from 8 weeks to 10 weeks.

In 2019, employees wishing to take Paid Family Leave will receive 55% of their average weekly wage, up to a cap of 55% the current SAWW of \$1,357.11. The maximum weekly benefit is therefore capped at \$746.41.

NYPFL 2019 Maximum Contributions

NYPFL may be funded by employees via payroll deductions. In 2019, the contribution is capped at 0.153% of an employee's gross wages each pay period. The maximum annual contribution is \$107.97. Employees earning less than the SAWW of \$1,357.11 will contribute less than the annual maximum of \$107.97, consistent with their wages.

Employer Next Steps

Employers should review their obligations related to NYPFL and ensure that proper policies and procedures are in place.

For more information and FAQs on New York Paid Family Leave, please visit: <https://paidfamilyleave.ny.gov/new-york-paid-family-leave-updates-2019>

Oregon Law Protects Against Surprise Medical Bills

Following a recent trend in state insurance legislation, Oregon's new law prohibiting some surprise medical bills took effect March 1, 2018.

Briefly, the law prohibits out-of-network health care providers from balance billing a patient covered by a health benefit plan or health care service contract for emergency services or other inpatient or outpatient services provided at an in-network health care facility, except:

- Applicable coinsurance, copayments, or deductible amounts that apply to services provided by an in-network provider; or
- Services, other than emergency services, provided to enrollees who choose to receive services from an out-of-network provider.

This prohibition appears limited to individuals with coverage under insurance contracts (including group insurance contracts) written in Oregon. It may also extend to self-funded arrangements that are not preempted by ERISA (e.g., government plans, self-funded MEWAs).

Individuals who receive services from an out-of-network provider in an in-network facility may contact the Division of Financial Regulations who will assist those who believe they have been improperly balanced billed.

For more information discuss with your carrier and visit: <http://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=2612>.

Washington Paid Family and Medical Leave – New Voluntary Plan Information

In July 2017, Washington state enacted legislation to create a statewide Paid Family and Medical Leave program providing benefits beginning January 1, 2020.

With limited exception, all employers with employees in Washington will be required to provide paid family and medical leave benefits to their employees through:

- The state program; or
- An approved voluntary program.

If providing benefits through the state program, employers will begin to remit premium payments to the state with the employees' first pay check in January 2019.

Employers may opt to provide a voluntary plan to employees. These arrangements must be approved by the state's Employment Security Department (ESD). If the employer secures approval on or before December 31, 2018, the employer will not be required to contribute to the state program beginning January 2019.

The application process for voluntary programs is not yet available. ESD anticipates the application form will be available in September 2018 and the agency will be able to approve programs soon thereafter.

ESD also issued a Voluntary Plan Guide that may be helpful to employers as they determine whether to participate in the state program or offer an approved voluntary plan.

We will continue to update you as guidance in this area develops. For further information see:

- Washington State's [ESD Voluntary Plans](#) page
- A copy of the [Voluntary Plan Guidebook](#)
- For more information on WA Paid Family and Medical Leave, visit: <https://esd.wa.gov/paid-family-medical-leave>

How can we help?

To learn more about current compliance issues, please contact your local USI Benefits Consultant, or visit us at www.usi.com.

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