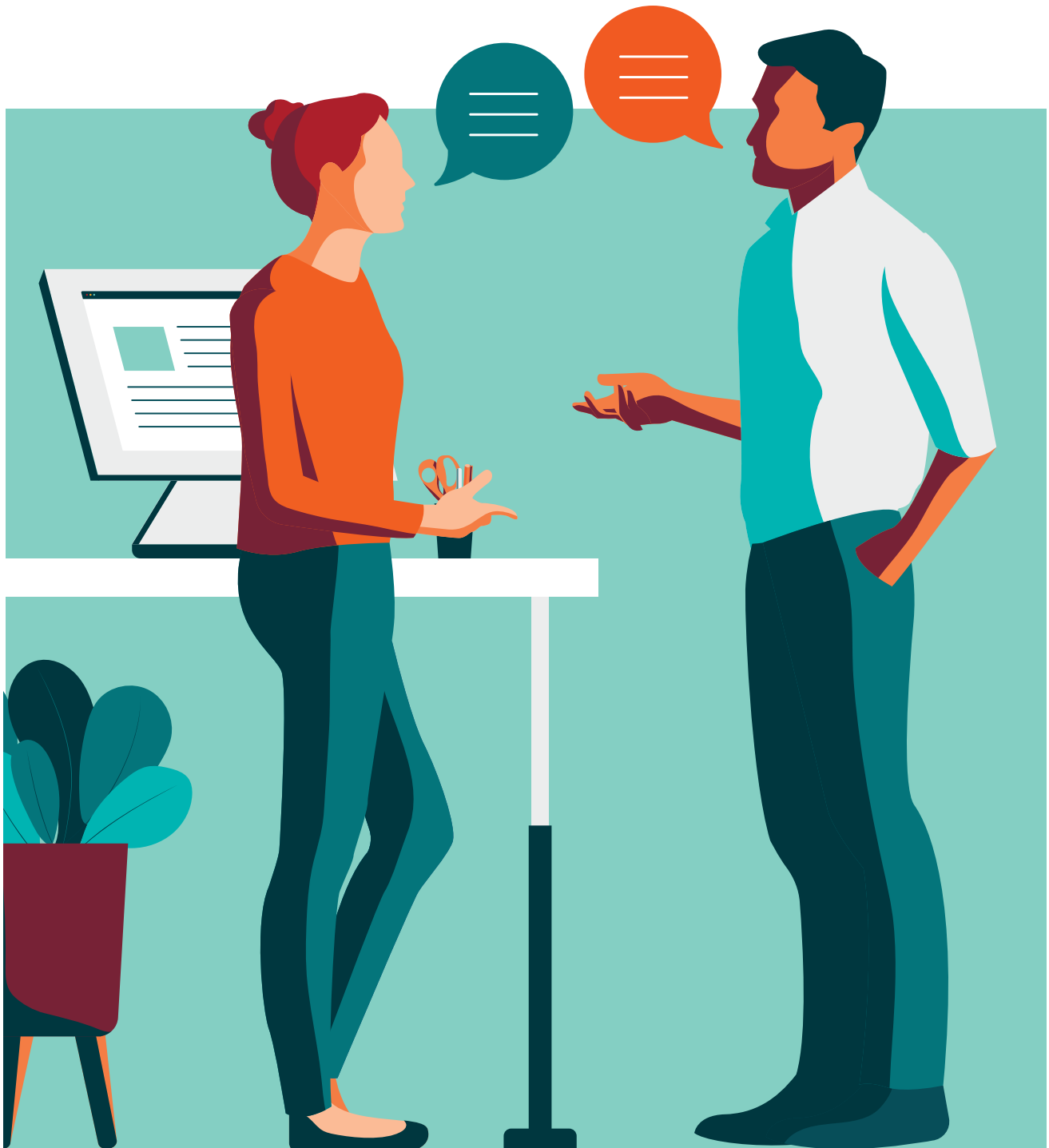


April 2022

Lincoln Absence Advisor
Compliance report

COMPLIANCE NEWS & UPDATES





April 2022

Lincoln's monthly compliance report provides you with a summary of all the recent compliance news that may affect your business. We aim to keep you informed and updated on the latest updates, from federal to state, courtroom to news desk.

In April report:

Updated April 18, 2022

[Family and Medical Leave \(page. 2\)](#)

[In the news \(page. 8\)](#)

[Accommodations \(page. 6\)](#)

[In the spotlight: COVID-19 \(page. 8\)](#)

[Sick leave \(page. 6\)](#)

[What should you do with this information? \(page. 9\)](#)

[Other leave \(page. 7\)](#)

[From Lincoln \(page. 10\)](#)

Family and Medical Leave

Federal

April 1, 2022:

The Office of Personnel Management released formal guidance on the new paid parental bereavement leave benefit for federal employees. The new paid leave entitlement was created by the National Defense Authorization Act for Fiscal Year 2022 for most federal civilian employees, effective December 27, 2021. Federal employees are entitled to two workweeks of parental bereavement leave in connection with the death of an employee's child. Executive departments and agencies will be directly responsible for administering the paid parental bereavement leave benefit for their respective employees.

Connecticut

March 22, 2022:

The Connecticut Department of Labor (DOL) published updated draft rules for the Connecticut Family and Medical Leave Act (CT FMLA), which are pending approval by the attorney general and the Legislative Regulation Review Committee. The regulations were amended to take into consideration the amendments to the CT FMLA law that became effective January 1, 2022. The full text of the updated draft regulations can be found on the [Connecticut rulemaking \(eRegulations\) website](#).



Washington

March 30, 2022:

Governor Inslee signed legislation (SB 5649) that amends the Washington Paid Family and Medical Leave (WA PFML) law, effective June 9, 2022. Here is a summary of the amendments:

- Employees may take family leave during the seven calendar days following the death of the family member for whom the employee would have qualified to take medical leave for the birth of their child or would have qualified for family leave (bonding).
- Leave taken by certain employees in the postnatal period, or the first six weeks after giving birth, must be medical leave unless the employee chooses to use family leave. A certification of a serious health condition form is not required for paid leave benefits used in the postnatal period by an employee eligible for benefits based on a period of incapacity due to pregnancy or for prenatal care.
- The collective bargaining agreement (CBA) exception in the PFML program expires on December 31, 2023. Previously, employees who were covered by a CBA in existence as of October 19, 2017, that had not been reopened, renegotiated, or expired, were not required to participate in the WA PFML program. The expiration of the CBA exception means that employers will have to withhold premiums from the previously CBA-covered employees, pay the employer share of the premium for these employees, and include these employees in their quarterly reports.
- The Employment Security Department (ESD) must publish on its website a current list of all employers that have approved voluntary plans.
- Beginning July 1, 2022, and until 12 months after the end of the state of emergency declared by the governor due to COVID-19, the ESD must ask the employee applicant whether their family or medical leave is related to the COVID-19 pandemic. This information is needed for monitoring potential impacts on the solvency and stability of the family and medical leave insurance account.
- An Office of Actuarial Services is established within the ESD. This office is required to provide annual reports on the status of the family and medical leave insurance account and the lowest future premium rates necessary to maintain the solvency of the family and medical leave insurance account. In addition, the law authorizes the ESD to immediately contract with a third-party actuary to review and provide a report on the status of the family and medical leave insurance account and recommendations for the long-term-stability and solvency of the account. This report is due to the legislature by October 1, 2022.
- Beginning October 1, 2023, the ESD is required to provide quarterly reports to the advisory committee on premium collections, benefit payments, the family and medical leave insurance account balance, and other program expenditures.
- The new law also establishes a legislative task force on paid family and medical leave insurance premiums, which is tasked with reviewing reports and making recommendations for legislative modifications to ensure the lowest future premium rates necessary to maintain solvency of the family and medical leave insurance account. The final report of the task force is due on December 30, 2022.
- The law also mandates the joint legislative audit and review committee to conduct a performance audit analyzing the implementation of the WA PFML program. The final report of the joint legislative audit and review committee is due on October 1, 2024, with an interim progress report due on October 1, 2023.
- If specific funding for the purposes of this law is not provided by June 30, 2022, in the Omnibus Appropriations Act, this law is null and void.

April 5, 2022:

The Washington ESD held a rulemaking hearing on proposed draft regulations on the PFML waiting period, proration and weekly claim hours, and petitions for review. The meeting full text of those draft regulations can be found on the [WA PFML rulemaking website](#).

New Hampshire

March 28, 2022:

New Hampshire released a request for proposal (RFP) for an insurance carrier to fully insure and administer the Granite State PFML Plan. Proposals are due on or before May 9, 2022, at 10 a.m. Eastern. The contract for the winning carrier will begin upon approval by the governor and executive council through December 31, 2027, and may be extended for up to two additional years. The Granite State PFML Plan creates a mandatory wage replacement benefit for state employees, as well as allowing private employers and non-state public employers to offer voluntary PFML coverage to their employees effective January 1, 2023. The Plan also creates a pool through which individuals can purchase their own PFML coverage if their employer does not provide it to them. The full text of the RFP (RFP No. 2571-22) can be accessed via the [Statewide Bids and Proposals portal](#).

Maryland

April 9, 2022:

Senate Bill No. 275, also known as the Time to Care Act of 2022, became law when the Maryland legislature overrode the Governor's veto. The law established the Family and Medical Leave Insurance Program within the Maryland Department of Labor. Here is a summary of the new law:

When does Maryland paid family and medical leave program become effective?

Assessment and collection of contributions will begin on October 1, 2023, with payment of benefits commencing by January 1, 2025.

What are the anticipated contribution rates for this benefit?

The state will be conducting an actuarial study to determine the total contribution rate as well as the percentages to be allocated to employees and employers. The Secretary of Labor will announce the rate and percentages on or before June 1, 2023. The rate will be adjusted every 24 months with new rates announced on or before June 1 for the period beginning the following January 1. Contributions will be capped at the Social Security wage base.

Which employers must comply?

Most employers and governmental entities that employ at least one individual in the state must provide paid family and medical leave to covered employees through the state-run program or a private plan. The sole owner of a sole proprietorship, limited liability company, C corporation, or S corporation; and the sole individual employed by a sole proprietorship, limited liability company, C corporation, or S corporation are excluded.

What is the private plan option?

Employers may opt out of the state-run program by having an approved private plan that may be self-insured or fully insured. The benefits, leave durations, and protections provided to covered employees must be equivalent to or greater than the benefits to which their covered employees are entitled under the state's family and medical leave program.

Who is eligible?

Covered individuals include covered employees and self-employed individuals who have opted into the program. Covered employees are employees who have worked at least 680 hours over the 12-month period immediately preceding the date on which leave is to begin.

What are the qualified leave reasons?

Family leave may be taken to care for a family member with a serious health condition, to bond with a child within first year after birth or in cases of adoption, foster or kinship care, within the first twelve months after placement or adoption, to attend to a qualifying military exigency, or to care for a family member who is a covered servicemember. Medical leave may be taken to attend to a covered individual's own serious health condition.

How much time will covered individuals be able to take?

The law will provide covered individuals up to 12 weeks of paid family and medical leave, with an additional 12 weeks if the covered individual needs to take both medical leave and family leave for bonding in an application year. Leave may be taken on a continuous or intermittent basis. For intermittent leave, the minimum increment is 4 hours.

How much will covered individuals receive?

Covered individuals will receive a weekly benefit that will vary depending on income. The portion of an individual's average weekly wage that is less than or equal to 65% of the state average weekly wage will be replaced at a rate of 90%, plus an additional 50% of the portion of an individual's average weekly wage that is more than 65% of the state average weekly wage. The minimum weekly benefit amount will be \$50. Benefits will be capped at \$1,000 per week until December 31, 2025. Subsequently, the Secretary of Labor shall adjust the maximum weekly benefit amount, which will be announced on September 1, 2025 and will be effective as of January 1, 2026.

How does this law interact with FMLA and other existing leave entitlements?

If a covered individual's need for leave also qualifies for protections under federal FMLA, their paid leave under the new law will run concurrently with their FMLA absence. In addition, they will be required to exhaust all employer-provided leave before receiving their PFML benefits.

Virginia

April 7, 2022:

Virginia's Governor signed legislation (SB 15 and HB 1156) which amend the insurance code to establish family leave insurance as a new class of insurance, effective on July 1, 2022. Family leave insurance is a voluntary private insurance product carriers may offer to employers. This is not a state-mandated paid family leave program.

"Family leave insurance" is defined as an insurance policy issued to an employer related to a benefit program provided to an employee to pay for the employee's income loss due to (i) the birth of a child or adoption of a child by the employee; (ii) placement of a child with the employee for foster care; (iii) care of a family member of the employee who has a serious health condition; or (iv) circumstances arising out of the fact that the employee's family member who is a service member is on active duty or has been notified of an impending call or order to active duty.

Family leave insurance may be written as an amendment or rider to a group disability income policy, included in a group disability income policy, or written as a separate group insurance policy.

Carriers may not deliver or issue a family leave insurance policy unless a copy of the form and the rate manual have been filed with the State Corporation Commission. The bill prohibits an individual certificate and enrollment form from being used in connection with a group family leave insurance policy unless the form for the certificate and enrollment form have been filed with the Commission.

Accommodations

Federal

April 5, 2022:

The United States Department of Justice, Civil Rights Division, released guidance on opioid use disorder (OUD) and the Americans with Disabilities Act (ADA). The guidance speaks to topics such as OUD as a disability under the ADA, protection of individuals with past history of OUD, and information about filing a discrimination complaint related to OUD. Regarding when OUD is considered a disability under the ADA, the guidance provides that an individual in treatment or recovery from OUD would have a disability under the ADA unless they engaged in current illegal use of drugs. Which is further defined as the use of illegal drugs recent enough to reasonably believe that such continued use is real and an ongoing problem. Individuals with a past history of OUD are also protected under the ADA so long as they no longer illegally use drugs. Additionally, the guidance provides information on how employees can file an ADA complaint with the Department of Justice's Civil Rights Division, Equal Employment Opportunity Commission (EEOC), and if regarding state or local government's programs or services the Department of Health and Human Services Office for Civil Rights (HHS OCR). For more information, please refer to the [guidance](#).



Sick Leave

Oregon

Effective April 1, 2022:

The Oregon Bureau of Labor and Industry (BOLI) updated its rules to permit an employee to use sick time for certain public health emergencies, unless the employee is a first responder. Employees may use sick time for an emergency evacuation order of level 2 (SET) or level 3 (GO) issued by a public official with the authority to do so if the affected area subject to the order includes either the location of the employer's place of business or the employee's home address, or a determination by a public official with the authority to do so that the air quality index or heat index are at a level where continued exposure to such levels would jeopardize the health of the employee. The full text of the updated regulations can be found on the [BOLI website](#).



Other leave

Federal

March 24, 2022:

The U.S. Office of Personnel Management (OPM) announced that federal employees may receive up to four hours of administrative leave to vote in federal, state, local, tribal, and territorial elections and up to four hours of administrative leave per year to serve as nonpartisan poll workers or observers. The employee's leave request is subject to the determination by the agency that there is no significant impairment of mission-essential operations, although agencies should strive to accommodate leave requests by making necessary operational adjustments. The OPM issued this guidance to implement recommendations contained in Executive Order No. 14019, which promotes access to voting, issued on March 7, 2021.

Utah

March 22, 2022:

Governor Cox signed legislation (H 449/S 63) which requires that the Utah Board of Higher Education and the human resources bodies of state, county, and municipal governments to provide bereavement leave for employees suffering the loss of a child due to miscarriage or stillbirth. These governing bodies must adopt rules that provide their employees at least three work days of paid bereavement leave for this reason and make such leave available to both parents.

March 24, 2022:

Governor Cox signed new legislation (UT S 100) requiring certain state employers to offer paid parental leave. Under the new modifications certain employees will have access to paid parental leave.

- The time taken must be upon the birth of the employee's child, the adoption of a minor child, or the appointment of legal guardianship of a minor child or incapacitated adult.
- Parental leave will be up to three weeks within a single 12-month period.
- A parental leave eligible employee may not use more than three work weeks of paid parental leave within a single 12-month period regardless of becoming parent of more than one child through either birth, adoption, or guardianship.
- The time may not be used intermittently unless a mutual written agreement is provided between the state employer and the employee or unless a medical health care provider certifies that intermittent leave is medical necessary due to a serious health condition for the child.
- This time will run concurrent to any leave authorized under FMLA.

The bill will go into effect July 1, 2022. This benefit will be administered through the state Department of Human Resource Management.



In the News

February 24, 2022:

The EEOC announced that TrueBlue and PeopleReady agreed to pay \$125,000 to settle a disability discrimination and retaliation suit. TrueBlue, Inc. and PeopleReady, Inc., labor sourcing companies with offices across the United States, will pay \$125,000 and furnish significant equitable relief to resolve a federal disability discrimination suit filed by the EEOC. According to the suit, the companies fired an employee because of their psychiatric disability. The employee, who worked at the Manassas, Virginia, office of TrueBlue's subsidiary, PeopleReady, was not permitted to return to work after being medically cleared to do so following a hospitalization for their disability. The suit further alleged that the companies terminated the employee because they required future intermittent leave for outpatient medical appointments. In addition to providing the former employee \$125,000 in monetary relief, the EEOC issued a two-year consent decree settling the suit and providing for programmatic relief intended to prevent further disability discrimination.



In the Spotlight: COVID-19

Lincoln Financial is here to help you remain confident and prepared during this evolving situation. We're continuously monitoring the latest news, information from the Centers for Disease Control and Prevention, and other regulatory and medical experts to offer targeted guidance and support.

Federal

March 14, 2022:

The U.S. Equal Employment Opportunity Commission (EEOC) issued a technical assistance document on [“The COVID-19 Pandemic and Caregiver Discrimination Under Federal Employment Discrimination Laws”](#) to provide additional guidance on what constitutes discrimination against applicants and employees with pandemic caregiving responsibilities. Eighteen Q&As on caregiver discrimination based on a characteristic protected by federal employment discrimination laws, or the intersection of two or more characteristics, are discussed in this document. The EEOC pointed out that discrimination based on caregiving may arise, often connected to gender-based stereotypes about caregiving responsibilities or roles. Examples include refusing to hire or promote a female employee based on assumptions that she would be primarily focused on caring for her children and/or other family members or refusing to provide leave or permission to work a flexible schedule for male employees if the employer grants such requests when made by similarly situated women. In addition, discrimination may also arise based on pandemic-related caregiving responsibilities for an individual with a disability — for example, refusing to promote an employee who is the primary caregiver of a child with a mental health disability that worsened during the pandemic based on the employer's assumption that the employee would not be fully available to colleagues and clients or committed to the job because of the employee's caregiving obligations for the child with a disability. Lastly, while employers are not required to excuse poor performance if it results from employees' caregiving responsibilities during the pandemic, the EEOC urged employers to consider how adjustments can be made to work-related tasks or events to enable employees to balance work and personal obligations without impairing performance or productivity.

Illinois

April 5, 2022:

Governor J.B. Pritzker signed legislation (HB 1167) that provides for COVID-19 paid administrative leave for school district employees who are fully vaccinated against COVID-19 and restores sick leave used during the 2021–2022 school year to teachers and employees who are fully vaccinated against COVID-19, effective immediately. This also includes hourly school employees such as bus drivers, food service providers, and administrative personnel. This legislation was signed pursuant to the compromise agreement announced in January 2022 between the governor and educational employee organizations to provide vaccinated school employees with COVID-19 paid sick leave. More information on this new law is available on the [governor's website](#).



What should you do with this information?

To-do list for employers:

- ☐ Review and potentially revise internal policies, communications, and training
- ☐ Engage appropriate personnel (Human Resources, Legal, Benefits, etc.) on the updates
- ☐ Train managers
- ☐ Provide leave as required
- ☐ Reach out to your Lincoln benefits professional with questions

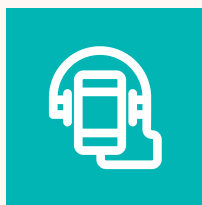
To-do list for Lincoln:

- ☐ Continue to monitor these developing trends
- ☐ Assess impacts and communicate to customers and partners



From Lincoln

There are three podcast episodes to catch up with:



Episode 47: “Compliance News and Updates: March 2022” — did you miss last month’s report? This quick catch-up covers the top stories.

Episode 48: “The FMLA: A Cornerstone of Job Protection” focuses on a key aspect of the FMLA — job protection. Listen as three Lincoln absence and leave professionals discuss what job protection means under the FMLA, along with common viewpoints and misunderstandings from both an employer and employee point of view. We’re all hearing more about the importance of employee benefits and flexible work arrangements; our discussion focuses on what that means to the significance of the FMLA as a cornerstone of employee leave and job protection.

Episode 49: “Compliance News and Updates: April 2022” continues our compliance news and leave conversation with this month’s top stories. If you don’t have time to read the whole report, take a listen to this short episode.

Listen to our episodes on the [Lincoln Absence Advisor hub](#), [Apple Podcasts](#), [Spotify](#), or wherever you get your podcasts.

Note: All updates in this report align with a Lincoln offering and/or impact your company specifically. If you have questions about how they may impact the benefits you manage through Lincoln, reach out to your Lincoln benefits professional. We’re here to help you navigate this complex landscape.

©2022 Lincoln National Corporation

[LincolnFinancial.com](#)

Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates.

Affiliates are separately responsible for their own financial and contractual obligations.

LCN-4666675-040822

4/22 **Z01**

Order code: AM-APRCU-FLI001



Please note: This alert is provided for informational purposes only and should not be considered legal advice. This information is being provided to Lincoln Financial Group clients so they may conduct any necessary internal evaluation of their policies and procedures. This alert is designed to provide informative and current information as of the date of the alert. Please contact your legal adviser with any questions regarding the laws discussed in this communication. Lincoln continually monitors activity related to family and medical leave laws and as laws pass, we will determine any impacts to our suite of products. Lincoln does not currently administer or track paid sick leave. The information contained herein includes information on major cities and counties and is not all inclusive of all city and county laws.