



May 2022

Lincoln Absence Advisor
Compliance report

COMPLIANCE NEWS & UPDATES





May 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.

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Updated May 10, 2022

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Family and Medical Leave

Delaware

May 10, 2022:

Governor Carney signed legislation (Substitute Senate Bill No. 1, also known as the Healthy Delaware Families Act) which creates a mandatory wage replacement benefit for covered individuals and establishes the Family and Medical Leave Insurance Program within the Delaware Department of Labor. Here is a brief summary of the Delaware PFML program:

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

Assessment and collection of contributions will begin on January 1, 2025, with payment of benefits commencing by January 1, 2026.

Which employers must comply?

Employers with at least ten employees must provide coverage through the state-run program or a private plan, as follows:

- Employers with 10 to 24 employees during the previous 12 months are subject to only parental leave
- Employers with 25 or more employees during the previous 12 months are subject to parental, family caregiving, and medical leave

The federal government, employers with less than 10 employees in the state during the previous 12 months, and any business that is closed in its entirety for 30 consecutive days or more per year are excluded. However, small businesses may opt in.

What are the anticipated contribution rates for this benefit?

For 2025 and 2026, the rates are as follows:

- Parental leave: 0.32%
- Medical leave: 0.40%
- Family caregiving leave: 0.08%

An employer may deduct from the wages of each employee up to 50% of the contribution required.

The contribution rate will be adjusted annually for 2027 and subsequent years. If the Department determines that the contribution rate would exceed 1.00%, the Department shall reduce the benefit calculation necessary to compute a contribution rate that does not exceed 1.00%.

An employee and employer may opt to file a waiver of contributions when an employee's work schedule or length of employment with the employer is not expected to meet the requirements for eligibility for family and medical leave benefits.

What are the qualified leave reasons?

Parental leave may be taken to care for a child within first year after birth, adoption, or placement. Medical leave may be taken to attend to a covered individual's own serious health condition. Family caregiving leave may be taken to care for a family member with a serious health condition, or to attend to a qualifying military exigency.

Who is eligible?

Employees who have been employed for at least 12 months by their current employer, and have been employed for at least 1,250 hours of service with their employer during the previous 12-month period are eligible.

Individuals primarily reporting for work at a worksite in the state are employees unless otherwise excluded. Individuals primarily reporting for work at a worksite outside the state are not considered employees unless the employer elects to classify them as such. Employers may reclassify an employee as primarily reporting for work at a worksite in another state through the duration of that individual's tenure at the out-of-state worksite.



How much time will employees be able to take?

The law will provide employees up to 12 weeks of family and medical leave in an application year. Employees may take up to 12 weeks of parental leave in an application year. The maximum aggregate number of weeks during which medical leave and family caregiving leave benefits in an application year is 6 weeks in any 24-month period.

An employer may limit aggregate leave entitlement for parents who work for the same employer. The Department may also adopt regulations limiting aggregate family caregiving leave claimed by multiple family members for the same qualifying event.

Except for parental leave benefits, an employee is eligible for PFML benefits not more than once in a 24-month period.

Leave may be taken on a continuous or intermittent basis. For intermittent leave, the minimum increment is 1 workday.

How much will employees receive?

Employees will receive 80% of their average weekly wage during the 12 months prior to submission of their application for leave. The minimum weekly benefit amount will be \$100, except that if their average weekly wage is less than \$100 a week, the weekly benefit must be the employee's full wage. Benefits will be capped at \$900 per week until December 31, 2027. Subsequently, the Secretary of Labor shall annually adjust the maximum weekly benefit amount.

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.

Employer-provided benefits in existence on May 10, 2022 that the Department deems to be comparable to the PFML program may qualify as a private plan for a period of five years from the start of contribution payments (2025). An employer seeking to qualify as a comparable private plan must notify the Department before January 1, 2024.

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, an employer may require that PFML benefits run concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. An employer may also require the use of unused accrued paid time off before accessing family and medical leave benefits, and the use of accrued paid time off may count toward the total length of leave provided, if the employee is not required to exhaust all paid time off. An employee may not access family and medical leave benefits if the use of family and medical leave benefits results in the covered individual receiving more than 100% of the covered individual's weekly wages.

Connecticut

April 14, 2022:

The comment period for the updated consolidated policies for Connecticut Paid Family and Medical Leave (CT PFML) closed on March 25, 2022. The CT PFML Board of Directors approved the updated consolidated policies as drafted with no revisions. The consolidated policies that the CT PFML Board of Directors approved are available on the Authority's [website](#) under the Resources page. As new policies are approved, these updates are expected to be available on this page.

May 3, 2022:

The CT PFML Authority posted several other updated consolidated policies related to concurrent government benefits and private plan contributions for public comment. These updated consolidated policies were posted in the CT Law Journal, and the public has until June 3, 2022 to submit comments on these consolidated policies.

New Jersey

March 21, 2022:

The New Jersey Division on Civil Rights (DCR) published draft rules for the posting requirements pursuant to the New Jersey Family Leave Act (NJFLA) to consider work-from-home or remote employees, among others. The proposed amendments would allow employers with internet or intranet site access for employees to satisfy the poster display rules by posting DCR's official employment and NJFLA posters on such internet or intranet sites. The proposed amendments would also require that covered employers provide each employee with written copies of official employment and NJFLA posters at least once a year. More information on the proposed rules can be found on the [NJ DCR website](#).

New Mexico

February 14, 2022:

The New Mexico Senate issued a memorial (NM SM 1) requesting the Department of Workforce Solutions to convene a task force to develop recommendations for the enactment and implementation of a paid family and medical leave program and present its report and recommendations by October 1, 2022. A memorial is a formal expression of legislative desire in the form of a petition or declaration of intent and does not have the force of law.



Alabama

April 14, 2022:

Governor Ivey signed the Adoption Promotion Act (AL S 31), which allows state employees to use donated leave time for adoption-related reasons and requires employers subject to federal FMLA to also provide birth and bonding leave to eligible employees. These new leave provisions, effective July 1, 2022, include:

State employee adoption donated leave time

- Entitlement: The maximum amount of donated annual, sick, or compensatory leave a state employee can use for adoption is up to two weeks per adoption. Please note this is just a new leave reason under the already existing donated leave program that is available to state employees.

Birth and bonding leave

- Entitlement: The act requires covered employers to provide eligible employees 12 weeks of unpaid leave for birth and bonding reasons. This leave can be taken intermittently only if the employer agrees.
- Leave reasons: This leave can be used for the birth and care of a newborn child during the child's first year from birth, or for adoption during the first year of the child's placement with the employee.
- Covered employers: Employers subject to federal FMLA are required to provide this leave to eligible employees. Such covered employers include those that employ 50 or more employees each workday during 20 or more calendar weeks in the current or preceding calendar year.
- Eligible employee: Employees who work in Alabama and are eligible under federal FMLA are also eligible for this leave. This means they need to have 12 months of service, 1,250 hours worked in the last 12 months with the employer, and work at a location with 50 employees in a 75-mile radius.
- Employee notice: When the need for the adoption leave reason is foreseeable, the employee shall provide the employer 30 days advance notice of the need for leave, or as soon as practicable.
- Paid leave: Employers that provide paid leave for the birth of a child must also provide the lesser of either equivalent paid leave or two weeks' paid leave for adoption reasons. Such paid leave for adoption only has to be provided to one of the eligible employees if both parents are employed by the same company.

District of Columbia

April 8, 2022:

Mayor Bowser signed temporary legislation (DC B 609) that provides district government employees bereavement leave when the employee suffers a stillbirth at 20 weeks' gestation or later or when a child under 21 years old passes away. The term child applies to biological, adoptive, or stepchildren of the employee. The leave can be up to 10 days without loss of pay, leave, or service credit. This leave must be taken within 60 days of the child's passing. This leave is effective starting February 17, 2022, and expires on November 19, 2022, unless otherwise extended.

Houston, Texas

April 13, 2022:

The city of Houston announced new paid parental leave for pre- and post-natal care. The new policy will provide up to 12 weeks of leave to new parents who work for the city and have at least six months of continuous employment with the city. The leave policy will allow up to 160 hours of prenatal appointments and 40 hours of infant wellness leave for the first year, with the remaining entitlement for bonding post-delivery. The program will begin May 14, 2022. It initially provides 320 hours of leave, which will be expanded to 420 hours starting September 1, 2023. For more information, please read the [press release](#) from the office of the mayor.



Other leave

Maine

April 7, 2022:

Governor Mills signed legislation (ME H 1356) that clarifies how certain Maine Earned Paid Leave law violations can be addressed. The legislation clarifies that although the Bureau of Labor Standards generally has regulatory authority to administer Maine's Earned Paid Leave law, the parties to a collective bargaining agreement (CBA) may agree to address violations of this law through the dispute resolution process addressed in the CBA.





In the News

April 4, 2022

Heart of Cardon has agreed to pay \$115,000 to settle an EEOC disability discrimination suit.

The Indiana-based senior living community determined an employee could no longer perform the essential functions of their certified nursing assistant job due to lifting restrictions resulting from a work injury. Though the employee expressed interest in several jobs they could have performed without violating their lifting restrictions, the employer refused to accommodate them by transferring them to a vacant position for which they were qualified. Such alleged conduct violated the Americans with Disabilities Act (ADA), which prohibits employers from failing to consider reasonable accommodations for employees with a disability. In addition to monetary compensation, the consent decree also mandated the company to assign a human resources manager to work with employees who can no longer perform their job duties because of a disability to evaluate transfer as a reasonable accommodation. The decree also required training on the ADA, posting of notices regarding the settlement, and periodic reporting to the EEOC of accommodation requests received during the duration of the decree.

April 5, 2022

Cassone Leasing has agreed to pay \$85,000 to settle an EEOC pregnancy discrimination case. The employer summarily dismissed an employee upon learning that she was pregnant. At the time of employment, the employee was approximately 12 weeks pregnant and not visible, and she did not disclose it. Despite rating her performance positively at the 30-day review, Cassone terminated the employee one week after a pregnancy-related absence and less than one week after she disclosed her pregnancy to human resources. Such alleged conduct violated Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, which prohibits discrimination because of pregnancy. In addition to the monetary relief, the two-year consent decree resolving the suit requires Cassone to provide anti-discrimination and harassment training; revise its equal employment opportunity policies to include a more robust complaint and investigation procedure, as well as a new provision on pregnancy-related accommodations; and report complaints of sex discrimination, including pregnancy and harassment, to the EEOC. The EEOC will monitor Cassone's compliance with these obligations for the next two years.



What should you do with this information?

To-do list for employers:

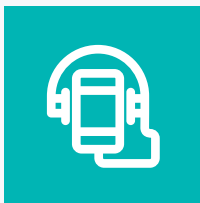
- ☐ Review and potentially revise internal policies, communications, and training
- ☐ Engage appropriate personnel (Human Resources, Legal, Benefits, etc.) on the updates
- ☐ Train managers
- ☐ Provide leave as required
- ☐ Reach out to your Lincoln benefits professional with questions

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 49: “Compliance News and Updates: April 2022” — Did you miss last month’s report? This quick catch-up covers the top stories.

Episode 50: “First Point of Contact, First Point of Support” focuses on the manager’s role when an employee is absent from work. Get first-hand experience from Lincoln absence professionals on the importance of the manager’s role before, during, and after leave.

Episode 51: “Compliance News and Updates: May 2022” — We talk about the latest top stories, ranging from Delaware’s new paid family and medical leave program to Alabama’s new Adoption Promotion Act.

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



You’re invited to our next webinar:

On June 15, we’ll be hosting a webinar called “Layers of Leave,” in which we’ll discuss benefit coordination and the multitude of challenges, requirements, and experiences employees have when they’re absent from work. [Register today!](#)

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.

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LCN-4740275-051222

5/22 **Z01**

Order code: AM-MAYCU-FLI001



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