

November/December 2021

Lincoln Absence Advisor: Compliance report



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

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Updated as of December 2, 2021

Family and medical leave

Connecticut

November 10, 2021:

The CT PFML Board approved the final private plan policy filing guidance, policy and procedures, and policy filing checklist documents. With the final guidance, there are several key dates that employers with private plan provisional approvals should be aware of:

- By December 15, 2021, employers with a provisional approval for a self-insured private plan must supplement their application with an approved plan document.
- By the later of December 1, 2021, or 60 days following the date the CID approves the carriers' policy filing, employers with a provisional approval for a fully insured private plan must supplement their application with the face sheet of the insurance policy, which includes the certified policy form number and the unique policy number for the employer.
- Any employer expecting to have a private plan beginning January 1, 2022 must have a provisional approval from the CT Paid Leave Authority no later than December 1, 2021.

Also, as a reminder, employers desiring to move from the state plan to a private plan in 2022 and beyond must be approved no later than 30 calendar days before the end of the quarter before the quarter in which the approval takes effect. In other words, the following will apply.

<u>Desired Plan Effective Date</u>	<u>Private Plan Application Approval Date</u>
January 1 st	December 1 st
April 1 st	March 1 st
July 1 st	June 1 st
October 1 st	September 1 st

November 1, 2021:

The Connecticut DOL closed the public comment period on the proposed regulations on PFML insurance appeal procedures. Once approved, the regulations will dictate CT PFML claims appeals and hearing procedures.

Massachusetts

November 9, 2021:

The DFML published updated workplace posters and notifications with 2022 contribution rates and benefit amounts on their [website](#). Employers are required to give notice of the 2022 contribution changes to their employees 30 days in advance of the change. This notice is required even if the employer provided original notice and is expected to be an ongoing responsibility as the state changes contributions. Citing M.G.L. c. 175M sec. 4, the DFML requires employers and covered business entities to provide written notice to their current workforce of PFML benefits, contribution rates, and other provisions. Additionally, the DFML sent an email communication to employers on November 5, 2021, advising that employers are not required to collect employee signature for this notice reason.

New York

November 1, 2021:

Governor Hochul signed legislation (S-2928) which amends the PFL law expanding the definition of "family member" to include siblings. This amendment means employees can take PFL to care for a sibling with a serious health condition. Sibling means a biological or adopted sibling, a half-sibling, or stepsibling. This is effective January 1, 2023.

Oregon

October 29, 2021:

The Oregon Employment Department published a Notice of Proposed Rulemaking on the first and second batch of PFML's proposed administrative rules. The Department will be holding public rulemaking hearings on the first batch of proposed rules on contributions, small employers and assistance grants,

self-employed eligibility, and the PFML program's outreach plan on November 30th and December 9th, with a public comment period open until December 20, 2021. Registration instructions for the public hearings are available on the [OR PFML website](#). The second batch of proposed rules on wage definitions and equivalent plans will hold rulemaking advisory committee (RAC) meetings on December 2nd and 7th. RAC meetings provide PFML Advisory Committee Members an opportunity to discuss input and suggestions and is open to public comment if time allows. Information on the RAC hearings are also available on the [OR PFML website](#).

Colorado

November 10, 2021:

The Colorado Division of Family and Medical Leave Insurance (FAMLI) adopted final rules on the establishment, collection, and administration of premium collections. FAMLI held a public rulemaking hearing on these rules on November 3, 2021. The full text of the rules is available on the [CO FAMLI website](#).

Washington

November 2, 2021:

The Washington Employment Security Department announced it will consider additional rulemaking. The Department will consider new or amended rules related to waiting period requirements, reportable hours and documentation requirements for applications and weekly benefit claims, premium assessment and application deadline for small business assistance grants, definition of employer, filing a petition for review, designated representative, and other clarifying guidance as needed. The preproposal notice of rulemaking can be found on the [Washington PFML rulemaking website](#).

New Jersey

October 18, 2021:

The New Jersey Division on Civil Rights (DCR) adopted amendments to its rules on the New Jersey Family Leave Act (NJ FLA). The amendments present no new legal obligations and only update the NJ FLA rules to codify legislative changes that were enacted in 2014, 2019, and 2020.

In addition, the DCR also has created a new NJ FLA poster, available on the [DCR's website](#). Covered employers will need to replace their existing NJ FLA posters with the new poster.

A summary of these regulatory amendments prepared by the NJ Attorney General's office is reproduced below:

The rules reflect that the NJ FLA generally allows eligible employees of covered employers to take as many as 12 weeks of job-protected leave during a 24-month period in order to care for, or bond with, a new child or to care for a family member, or someone who is the equivalent of family, with a serious health condition.

As amended, the new rules reflect the Legislature’s recent expansion of the NJ FLA’s definition of job-protected family leave to include, during a state of emergency, leave from employment (1) to care for a family member, or someone who is the equivalent of family, who has been isolated or quarantined due to suspected exposure to a communicable disease or (2) to provide care for a child because the child’s school or place of care has been closed by order of a public official due to an epidemic of a communicable disease or other public health emergency.

Other newly adopted amendments reflect changes to the NJ FLA by:

- Expanding the definition of “covered employer” to include employers with 30 or more employees worldwide, consistent with the 2019 amendments to the NJ FLA. (The pre-amendment regulations covered employers with 50 or more employees. State and local government agencies of any size will continue to be covered employers under the proposal.)
- Updating the definition of “eligible employee” to allow a person to count—in applying the eligibility threshold—up to 90 days during which the person was laid off or furloughed due to that employer curtailing operations because of a state of emergency, including the COVID-19 emergency.
- Broadening the definition of “family member” to include not only an employee’s child, parent, spouse, or partner in a domestic union, but also an employee’s parent-in-law, sibling, grandparent, grandchild, or domestic partner; an employee’s other blood relatives; and any other individual with whom an employee can show a close association equivalent to a family relationship.
- Clarifying that the definitions of “parent” and “child” include any parent-child relationship resulting from a valid written agreement with a gestational carrier, to more clearly secure the rights of many families, including LGBTQ+ families.
- Eliminating employers’ discretion to deny family leave requests from their highest-paid employees when the employee’s request is related to a declared public health emergency involving an epidemic of a communicable disease.
- Clarifying that employees may provide their employers with less than 30 days’ advance notice of their intent to take family leave in some situations, including when the employee is seeking family leave to provide care for a family member due to a communicable disease epidemic.

District of Columbia

November 13, 2021:

The Council of the District of Columbia enacted permanent budget legislation (B24-0285) which, among others, amends the District of Columbia Paid Family Leave program (DC PFL). This legislation makes permanent the emergency legislation (B24-0186) prohibiting the reduction (offsetting) of short-term disability (STD) benefits based on actual or estimated DC paid family leave (PFL) benefits. This offset prohibition only impacts fully insured STD and does not impact self-insured STD.

The DC PFL amendment also makes permanent the revisions introduced by the emergency legislation (B24-0373) enacted by the DC Council. More information on the expansion can be found on the [DC PFL website](#).

Additionally, the Department of Employment Services will provide an updated PFL poster, which will be made available to all employers on the District's [website](#) by the late fall of 2021. Every covered employer subject to the provisions of the DC PFL law must post the updated poster by February 1, 2022.

Here is a brief overview of the changes to the DC PFL program:

Additional qualifying leave reasons for receiving PFL benefits

The current DC PFL qualifying leave reasons include a covered individual's own serious health condition (medical leave), care for a family member with a serious health condition (family leave), and bonding with or placement of a child for the first twelve months (parental leave). The amendment grants additional leave that an eligible individual who is pregnant may take for prenatal medical care. This includes routine and specialty appointments, exams, and treatments associated with a pregnancy provided by a health care provider, including prenatal checkups, ultrasounds, treatment for pregnancy complications, bedrest that is required or prescribed by a health care provider, and prenatal physical therapy.

Benefit entitlement

The amendment now provides employees with six weeks of medical leave (up from two weeks) and two weeks of prenatal leave (new entitlement). There were no changes to the entitlement for parental leave (eight weeks) and family leave (six weeks). The amendment applies only to claims filed on or after October 1, 2021, and before October 1, 2022.

Generally, an employee may receive a maximum equivalent to the parental leave duration (eight weeks) for combined paid leave benefits. An employee can still receive prenatal leave (two weeks) in addition to parental leave (eight weeks) in a year. An employee can only receive a combination of prenatal and medical leave that is equivalent to the medical leave duration (six weeks).

The District may increase benefit durations for claims filed on or after October 1, 2022, if the District determines that the increase will not adversely affect the Universal Paid Leave Fund.

Payroll tax amount

The DC PFL payroll tax is wholly employer-paid, amounting to 0.62% payroll tax on covered worker wages. The amendment provides a mechanism for the District to compute a lower contribution rate if the District determines that the increase will not adversely affect the Universal Paid Leave Fund.

Computation of average weekly wage

Generally, the DC PFL law defines average weekly wage as the total wages earned by an eligible individual during the four quarters during which the individual's wages were the highest out of the five quarters immediately preceding the qualifying leave event, divided by 52. The amendment revises the definition for claims filed after October 1, 2021, and before the 365th day after the end of the public health emergency, to mean the total wages for the four quarters during which the individual's wages were the highest out of the 10 quarters immediately preceding the qualifying leave event, divided by 52.

Other changes to claims administration

The emergency legislation also makes changes to the claims administration provisions of the DC PFL program, such as using ICD-10 codes to determine appropriate leave durations, receiving retroactive paid leave benefits, and removing the waiting week for claims filed after October 1, 2021, and before the 365th day after the end of the public health emergency.

November 13, 2021:

The Council of the District of Columbia enacted permanent budget legislation (B24-0285) which, among others, amends the District of Columbia Family and Medical Leave Act (DC FMLA). The amended definition of eligible employee states that the 12-month total period for employee eligibility should consider employment in the past seven years. This makes permanent the revisions introduced by the emergency legislation (B24-0373) enacted by the DC Council.

September 30, 2021:

The D.C. Office of Human Rights (OHR) adopted emergency rules on the OHR's enforcement jurisdiction under the Universal Paid Leave Amendment Act of 2016 (also known as DC PFL). Effective immediately, the OHR will have the authority to hear complaints of interference or retaliation under the DC PFL, other than claim determination and appeals, such as notice violation, retaliation, and interference. Retaliation is any adverse action taken by the employer on an employee for attempting or using the DC PFL benefit. This includes, but is not limited to termination, demotion, shift in primary duties and responsibilities and/or any change to pay, status, or terms of employment. The DC PFL benefits will continue to be administered by the Office of Paid Family Leave within the Department of Employment Services, while appeals of claims determinations are heard by a third agency, the Office of Administrative Hearings. The emergency rule will expire on January 28, 2022; however, the OHR has also indicated their intent to take final rulemaking action on this topic. The full text of the rules is available on the [DC OHR website](#).

Other leaves

New York

October 8, 2021:

Governor Hochul signed legislation (NY A 1414) which creates paid leave for public officers and employees of the state who are members of the United States Air Force Auxiliary Civil Air Patrol or United States Coast Guard Auxiliary Pilots. This leave is available to employees in these branches of service to participate in emergency services during a declared state of emergency when requested by their unit commander. Leave must be approved by the chief administration office of the state agency, department, or bureau where the public employee works. Under this law, the state can provide these employees up to twenty (20) days of paid leave in a calendar year. While using this leave, employees are to be paid at their regular rate of pay and maintain their seniority, compensation, sick leave, vacation leave, and other overtime compensation. This law is effective October 8, 2021.

Benefit and contribution rates

The benefit and contribution rates of state-mandated disability and paid family programs are typically released in Q4 for the following year. Once all program rates are released by states' regulatory authorities, Lincoln will update our Statutory Disability and Paid Family Leave Reference Guide. We encourage you to talk to your Lincoln representative later this year to learn more.

Washington

2022 Washington PFML Plan Updates:

- Maximum weekly benefit: \$1,327 (up from \$1,206)
- Maximum benefit percentage: No change
 - Employees with an average weekly wage less than or equal to 50% of the state average weekly wage will receive a 90% benefit.
 - Employees earning more than 50% of the state average weekly wage will receive the underlying 90% benefit plus an additional 50% of their average weekly wage that exceeds 50% of the state average weekly wage.
- State average weekly wage: \$1,475 (up from \$1,340)
- Maximum contribution rate: 0.60% (up from 0.40%)
 - Employee contribution of 73.22% plus employer contribution of 26.78%
 - Social Security annual wage cap: \$147,000 (up from \$142,800)
 - Maximum employee deduction: \$645.80 (up from \$357.00)

California

2022 California Voluntary Disability Insurance (VDI) and PFL plan updates:

- Employee contribution rate: 1.1% (down from 1.2%)
- Yearly taxable wage ceiling per employee: \$145,600 (up from \$128,298)
- Yearly maximum contribution per employee: \$1,601.60 (up from \$1,539.58)
- Maximum weekly benefit amount (WBA): \$1,540 (up from \$1,357)
- Maximum benefit amount (WBA x 52 weeks) is now \$80,080 (up from \$70,564)
- EDD assessment rate: 0.154% (down from 0.168%)
- State average weekly wage: \$1,570 (up from \$1,383)

Connecticut

2022 CT PFML plan updates:

- Maximum weekly benefit: \$780 (no change)
 - \$780 on January 1, 2022, increasing to \$840 on July 1, 2022
 - 60 times the minimum wage
- Maximum benefit percentage: No change

- Employees with an average weekly wage that is 40 times the minimum fair wage will receive 95% of their base week earnings.
- Employees with an average weekly wage greater than 40 times the minimum fair wage will receive the underlying 95% plus an additional 60% of their base weekly earnings above that amount.
- 40 times the minimum wage: \$520 weekly in January 2022, increasing to \$560 on July 1, 2022
- Social Security wage cap: \$147,000 (up from \$142,800)
- Maximum employee contribution rate: 0.50% (no change)
 - Maximum deduction: \$735 (up from \$714)

Hawaii

2022 Hawaii Temporary Disability Insurance (TDI) Plan Updates:

- Maximum benefit: **\$697** (up from \$640)
- Maximum benefit percentage: **58%** (no change)
- Maximum Employee contribution rate: **\$6.00** (up from \$5.51)
- Maximum Weekly Wage Base: **\$1,200.30** (up from \$1,102.90)

In the news

October 6, 2021:

The U.S. Equal Employment Opportunity Commission (EEOC) announced that Spike Electric and Controls, LLC has agreed to pay a \$85,000 settlement in an employment discrimination lawsuit alleging that they **terminated an employee due to their disability**. The employee revealed to their employer their cancer diagnosis to their employer the need for surgery to remove the tumor. The employer subsequently cut the employee's pay, terminated the employee a month later, and then interfered with the employee's ability to find another job in the industry. In addition to monetary relief, the company must conduct ADA training on disability discrimination, update internal disability accommodation policies, post on site a discrimination in the workplace notice, and report back to the EEOC on future disability discrimination and retaliation complaints.

October 7, 2021:

The EEOC announced that Club Demonstration Services, Inc. has agreed to pay a \$50,000 settlement in an employment discrimination lawsuit alleging that they **denied a reasonable accommodation request for a disability**. The employer told employees they weren't allowed to use the bathroom during their 6.5 hour shift, except for during two scheduled breaks. An employee with a bladder condition quickly submitted a doctor's note stating that she needed additional bathroom breaks. After providing the note and several attempts at communicating her needs, the employee's requests for more bathroom breaks due to her condition were denied. In addition to monetary relief, the company must implement a compliant

reasonable accommodation policy, provide disability and accommodation anti-discrimination training, and report any disability discrimination complaints from Alaska employees to the EEOC for two years.

October 25, 2021:

The EEOC announced that Kaiser Foundation Health Plan of Georgia, Inc. has agreed to pay a \$130,000 settlement in an employment discrimination lawsuit alleging that they denied a reasonable accommodation request for a disability. The employee has disabilities that make it traumatic for them to use revolving doors and requested an accommodation to use non-revolving doors. The accommodation request was denied, and the employee had to use the revolving doors. The court found that the company was liable for violating the ADA, as accommodations are not limited to job duties but extend to the worksite as well.

October 25, 2021:

The EEOC announced that Awon Phie LLC, doing business as Holiday Inn Express North Padre Island, has agreed to pay a \$30,000 settlement in an employment discrimination lawsuit alleging that they denied a reasonable accommodation request for a disability. The employer made a comment to an employee that they noticed their stomach, meaning pregnancy, and subsequently fired the employee claiming they were a liability. In addition to monetary relief, the company must hire an external equal opportunity consultant, update policies and procedures to comply with equal opportunity laws, conduct anti-discrimination training, and post notice regarding this settlement.

November 2, 2021:

The EEOC announced that Employer Solutions Group, LLC (ESG), has agreed to pay a \$95,000 settlement in an employment discrimination lawsuit alleging that they terminated an employee due to a disability. The employee had surgery for a knee injury and required crutches. After attempting to return to work after an approved medical leave, the company said she needed to be completely healed before returning to work and cited the crutches as a reason when they subsequently terminated her. In addition to monetary relief, the company must eliminate policies that require employees to be released to work without restrictions or to be 100% healed. The company must also provide ADA training to management and employees and report future disability discrimination complaints back to the EEOC for the next three years.

In the spotlight: COVID-19

Lincoln 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

October 28, 2021:

The EEOC updated their technical assistance questions and answers document [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) to provide additional guidance on COVID-19 vaccinations. Six new Q&As on Title VII and Religious Objections to COVID-19 Vaccine Mandates were added to section L. The EEOC also provided its internal religious accommodation request form as an example. The EEOC noted that while its internal forms typically are not made public, the form was provided given the extraordinary circumstances facing employers and employees due to the COVID-19 pandemic.

District of Columbia

Retroactive to November 5, 2021:

On November 18, 2021, the DC Mayor approved emergency legislation DC Bill No. 24-0404, which restored the DC COVID-19 FMLA program. In March 2021, the DC Council enacted an omnibus bill (DC B24-0140), which provided COVID-19 leave under the District of Columbia Family and Medical Leave Act (DC FMLA) anew in 2021. This bill was amended by legislation (B24-0345) to state that DC COVID-19 FMLA was only available until November 5, 2021. However, under the latest emergency legislation, the DC COVID-19 FMLA provisions are effective until February 03, 2022, and are retroactive back to November 5, 2021. Please note that this program may be extended should additional pending legislation (DC Bill No. 24-0405) be enacted by the DC Council.

The emergency legislation adds a COVID-19 positive test for the employee or care for a family or household member or who has tested positive for COVID-19 as a qualifying leave reason. In addition, the emergency legislation creates a new 16-week entitlement of DC COVID FMLA leave in the 2- year period beginning on the effective date of this law. Using COVID-19 leave does not count against the traditional 16 weeks of family and 16 weeks of medical leave provided by the DC FMLA.

The emergency legislation also amended DC's paid sick leave law to require all employers to provide paid vaccination and recovery leave. An employee can take leave for themselves or to care for their child receiving COVID-19 vaccination, including booster injections. An employee may receive up to 2 hours per injection for vaccination leave, and up to 8 hours per injection for recovery during the 24-hour period after the 2-hour vaccination leave. An employee can only take up to 48 hours of total leave for these reasons in one year.

New York

October 2021:

The New York Department of Labor (DOL) issued updated guidance for employers and employees on paid vaccination leave during the COVID-19 pandemic. The new guidance clarified prior DOL guidance to expand the protections of the paid vaccination leave law to booster shots. Existing law (S.2588-A/A.3354-B) grants public and private employees time off to receive the COVID-19 vaccination. Employees have up to four hours of excused leave per injection that will not be charged against any other leave the employee has earned or accrued. This law is effective until December 31, 2022. The new guidance is available on the [DOL 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

To-do list for Lincoln:

- ☐ Continue to monitor these developing trends

New from Lincoln

Newest episode of the *Lincoln Absence Advisor* podcast

[Episode 13 - Countdown to Connecticut PFML: Are you ready?](#)

We've been talking about and preparing for Connecticut Paid Family and Medical Leave, or CT PFML, for some time. Now that the program's about to launch, we've taken time to dive into the final policy, identify how it differs from the preliminary information we received, and pinpoint questions that still need to be answered. On the latest Lincoln Absence Advisor podcast, Kristin Hostetter, Lincoln senior product manager, and Alexa Greenberg, Lincoln legal counsel, discuss these important aspects of CT PFML. They'll share relevant dates you need to be aware of and address common questions about CT PFML and STD coordination, employee contributions, and more.

Webinar: *Preparing for 2022*

We dedicate our last webinar of the year to preparing you for the what's ahead when it comes to paid leave. On November 16, we shared information on the newest programs and trends we're seeing. If you missed it, you can check out this valuable information. [Click here](#) for the recoding, a copy of the presentation, and the other resources we shared.

Lincoln Absence Advisor hub

We've put all our great *Lincoln Absence Advisor* resources in one place.

[Visit LincolnFinancial.com/AbsenceAdvisor](https://lincolnfinancial.com/AbsenceAdvisor) for our latest podcast episodes, webinars, compliance reports, and more. We will be updating regularly with the latest news, conversations, and findings.

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