



Timely, topical insights on a variety of payroll and reporting issues.

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## Leave

### California Releases Required Poster and Model Certification for New Parent Leave Act

On October 12, 2017, California Governor Jerry Brown signed into law legislation that expanded parental leave protections to those individuals who work for employers with 20 to 49 employees. Under the law, known as the “New Parent Leave Act,” which took effect on January 1, 2018, employers with at least 20 employees who work within a 75-mile radius of a worksite must allow an employee who has more than 12 months of service with the employer to take up to 12 weeks of parental leave to bond with a new child within one year of the child’s birth, adoption, or foster-care placement. This law expanded the protections afforded under existing law, which had previously applied only to employers with 50 or more employees who have this entitlement under the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA).

Under SB 63, the employer must guarantee, either on or before the commencing of the leave, that the employee will be reinstated to the same or a comparable position. The New Parent Leave Act, like the FMLA and CFRA, applies to employees who have provided at least 12 months of service and who have worked at least 1,250 hours in the preceding 12 months. It is important to note that the New Parent Leave Act does not provide leave for the employee’s own serious health condition or to care for a family member with a serious health condition.

In February 2019, the Department of Fair Employment and Housing (FEH) promulgated regulations regarding the New Parent Leave Act that went into effect on April 1, 2019. The regulations require employers to display a poster regarding the New Parent Leave Act and permits an employer to request a certification from a health-care provider of an employee’s need for leave. It is important to note that employers may also utilize any other certification form, so long as the health-care provider does not disclose the underlying diagnosis of the serious health condition involved without the consent of the patient.

The FEH has now released the required poster. In addition, a model Certification of Health-Care Provider form was released. These documents may be found below.

Poster:

[https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/CFRA\\_PregnancyLeave\\_English.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/CFRA_PregnancyLeave_English.pdf)

Model Health-Care Provider Certification Form:

[https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/CFRA-Certification-Health-Care-Provider\\_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/12/CFRA-Certification-Health-Care-Provider_ENG.pdf)

For a copy of the New Parent Leave Act, now codified as Section 12945.6 of the California Government Code, please click on the link provided below.

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB63](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB63)

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## Massachusetts Provides Paid Leave Notice Templates and Distribution Deadline — Extension Provided

It was previously reported that Governor Charles Baker of Massachusetts on June 28, 2018 signed into law legislation that introduces a new Paid Family and Medical Leave program (PFML). The Massachusetts Department of Family and Medical Leave (Department) will begin to pay benefits on January 1, 2021.

### Background:

The program will provide employees who contribute to the program with the ability to take paid leave for up to 12 weeks per year to care for a family member or bond with a new child; 20 weeks per year to deal with a personal medical issue; and up to 26 weeks per year to deal with an emergency related to deployment of a family member for military service. Weekly benefits amounts will be calculated as a percentage of the employee's average weekly wage, with a maximum weekly benefit of \$850. Self-employed persons may opt into the program. For the law to apply to municipal employees, the city or town involved must vote to accept participation in the program.

The law creates a new payroll income tax effective July 1, 2019. The payroll tax will apply to most Massachusetts employers, including state and municipal government agencies. The tax would also apply to:

- Self-employed individuals who elect to receive benefits; and
- Businesses that employ independent contractors and must report payments for services on federal Form 1099-MISC.

On January 23, 2019, Massachusetts released the "Initial Contribution Rate." The state will collect contributions from employers, employees, and the self-employed at an initial rate of 0.63 percent on the first \$132,900 of an individual's annual earnings. It is important to note that contributions shall not be required for employees' wages or other qualifying earnings or payments above the contribution and base limit established annually by the federal Social Security Administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program limits.

### Template Leave Notices and Distribution Deadlines:

The PFML requires that employers provide to each Massachusetts employee and self-employed 1099-MISC contractor a written notice explaining their rights and obligations under the PFML. Originally the notice was required to be provided electronically or in paper form by May 31, 2019, for all employees or self-employed contractors who are employed or contracted with on or after June 1, 2019; or within 30 days of the first day of employment for new employees; or for self-employed contractors, when entering into a contract for services.

On April 17, 2019, the Department posted template notices that may be used to meet the written notice requirement. In conjunction with the posting of the template notice, the PFML has delayed the deadline for the employer notice to employees from May 31 to June 30, 2019. It is important to note that the notice must be provided in the employee's primary language.

An employer may create their own notice rather than using the template notice provided by the Department. However, such notice must provide the following information:

- An explanation of the availability of family and medical leave benefits;
- Both the employer's and employee's contribution amounts (by percentage) and obligations;
- The employer's name and mailing address;
- The employer's identification number assigned 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.

The notice also must include the opportunity for an employee or self-employed individual to acknowledge receipt or decline to acknowledge receipt of the information. Employers may collect these acknowledgements electronically or in paper form. If an employee or self-employed individual does not acknowledge receipt, an employer or covered business entity can show it fulfilled the notice obligation by establishing that it provided its entire workforce with the notice and the opportunity to acknowledge or decline to acknowledge receipt.

For access to the template notices as provided by the Department, click on the link provided below.

<https://www.mass.gov/info-details/informing-your-workforce-about-paid-family-and-medical-leave#written-notice-requirements->

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## New Hampshire Governor Vetoes Paid Family Leave Bill

On May 9, Governor Chris Sununu vetoed Senate Bill 1 which would have established paid family leave in New Hampshire. In his veto message, Sununu stated in part as follows:

Senate Bill 1 is an income tax that neither I nor the people of New Hampshire will ever support. I have proposed a paid family medical leave plan that will work — one that is voluntary, affordable and income tax free. That is the New Hampshire way.

Senate Bill 1 called for a .5 percent payroll tax that would fund up to 12 weeks of family and medical leave at up to 60 percent of a worker's salary.

It does not appear at this time that there are enough votes in either the House or Senate to override the veto.

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## New Mexico Requires That Sick Leave Policies Also Cover Family Members

New Mexico has enacted legislation that will require employers that provide paid sick leave to allow employees to use the leave to care for covered family members.

Effective June 14, 2019, New Mexico's legislation is referred to as the "Caregiver Leave Act." The Caregiver Leave Act will require employers that provide paid sick leave to allow employees to use the leave to care for covered family members.

The Caregiver Leave Act doesn't require employers to provide paid sick leave. Instead, the law requires employers that do provide paid sick leave to allow their eligible employees to use accrued sick leave to care for their family members, in accordance with the same terms and procedures that the employer imposes for any other sick leave use.

The law defines a family member as an eligible employee's:

- Spouse or domestic partner;
- Parent, grandparent, great-grandparent;
- Child, foster child, grandchild, great-grandchild;
- Brother, sister;
- Niece, nephew, or
- Aunt or uncle.

Employers are prohibited from taking adverse action against an eligible employee because the employee:

- Requests or uses caregiver leave in accordance with the employer's general sick leave policy;
- Files a complaint with the Workforce Solutions Department;
- Cooperates in an investigation or prosecution of an alleged violation of the law; or
- Opposes any policy or practice established under the law.

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## Washington State Amends Paid Family and Medical Leave Program (PFML)

On July 5, 2017, Washington State Governor Jay Inslee signed into law Substitute Senate Bill 5975, which creates the Family and Medical Leave Insurance Program (PFML) making benefits available on January 1, 2020.

### **Background:**

The PFML will provide everyone in the workforce with up to 12 weeks of paid medical leave, and up to 12 weeks paid time off to care for a new child or an ailing family member. That leave is capped at 16 weeks if the employee needs both types of time off in a one-year period. Women who experience pregnancy complications may receive an additional two weeks of leave.

Beginning on January 1, 2019, employers with 50 or more employees and all employees in Washington will be making contributions to the program. The premium for 2019 is 0.4 percent of an employee's gross wages, up to the Social Security taxable wage base of \$132,900. Employers may elect to pay all of their employees' share of the premium, or may split the cost of the program by withholding up to 63.333 percent of the premium from employees' paychecks. The employer is responsible for paying the remaining 37.667 percent, and remitting total premiums to the Washington Employment Security Department (ESD) on a quarterly basis starting in April 2019. Employers with fewer than 50 employees will collect and remit employee premiums through withholding and report employee wages, hours worked, and more on a quarterly basis to the ESD.

Depending on earnings, employees will receive up to 90 percent of their wage or salary, up to \$1,000 per week during their leave. Employees become eligible for the program after working 820 hours or more in the qualifying period. The qualifying period is either:

- The first four of the last five completed calendar quarters; or
- The last four completed calendar quarters.

Businesses with fewer than 50 employees will not be required to pay the employer share of the premium, but those businesses can still opt in. Businesses with fewer than 150 employees, who pay into the program, are eligible for grants of \$1,000 to \$3,000 each to cover the cost of an employee on leave.

### **Amendments to the PFML:**

Recently House Bill 1399 was signed into law amending the PFML **effective July 28, 2019**. Some of the changes are noted below:

#### **Supplemental benefits payments**

The PFML program will provide partial wage replacement to eligible workers beginning in January 2020 for medical leave and family leave. Under the original legislation, employers were not allowed to supplement the PFML pay of an employee on PFML with other forms of paid leave. As amended, PFML permits an employer to offer supplemental benefits payments, such as vacation, sick, or other paid time off, to an employee on leave. The employee may choose whether to receive these supplemental payments. To prevent duplication of benefits for employees who are simultaneously covered by a voluntary plan and the state plan, employees must file a claim under the plan for which they have the most hours in the qualifying period. Individuals cannot work and receive PFML benefits for the same period of time.

## **Wages and remuneration**

Wages for the PFML program are to be defined without referencing State Unemployment Insurance statutes. "Wages" for the purpose of a premium assessment is the remuneration paid by an employer to an employee. For the purpose of payment of benefits, "wages" means remuneration paid by one or more employers to an employee during the qualifying period, but an employee can elect to have wages calculated on the basis of remuneration payable.

"Remuneration" includes all compensation for personal services, previously accrued compensation, and negotiated settlements related to termination or employment agreements. Remuneration does not include tips, supplemental benefits paid by an employer while an employee is collecting PFML benefits, or payments to members of the Armed Forces for duties not exceeding 72 hours (e.g., reserve duties).

## **Waiting Period**

The waiting period under the PFML was amended to mean seven calendar days. Previously PFML provided for a waiting period of seven calendar days of leave.

## **Garnishments**

Effective July 28, 2019, PFML benefits are exempt from garnishments or wage assignments, except for child-support withholding. Any agreements to assign or encumber PFML benefits are void, and the prohibition cannot be waived.

For a copy of House Bill 1399, click on the link provided below:

<http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/House/1399-S.SL.pdf>

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## **Dallas, Texas, Passes Paid Sick Leave Ordinance — But ...**

The Dallas, Texas, City Council passed an ordinance requiring employers to provide paid sick leave beginning as early as August 1, 2019.

It was previously reported that two other cities in Texas, specifically Austin and San Antonio, had enacted paid sick leave ordinances. However, the Austin mandate to be effective October 1, 2018 was struck down in court as violating the Texas Minimum Wage Act. The San Antonio mandate, slated to be effective August 1, 2019, is in doubt as the Texas state legislature is contemplating legislation that would prohibit local jurisdictions from enacting paid sick leave ordinances.

## **Texas Senate Bill 2485**

The Texas Senate has passed Senate Bill 2485 which states in part as follows:

A political subdivision of this state may not adopt or enforce an ordinance, order, rule, regulation, or policy mandating a private employer's terms of employment relating to employment benefits, including health, disability, retirement, profit-sharing, death, and group accidental death and dismemberment benefits.

The measure has now been sent to the Texas House of Representatives where a public hearing was scheduled for May 1, 2019. Should Senate Bill 2485 be enacted into law, it would appear that the Austin, Dallas and San Antonio paid sick leave ordinances will not take effect.

ADP® will continue to monitor and report on future developments.

Highlights of the Dallas mandate are as follows:

### **Employers Subject to the Paid Sick Leave Ordinance:**

- The ordinance applies to all private for-profit and nonprofit employers that have employees working inside the city of Dallas at least 80 hours a year.
- The ordinance does not apply to independent contractors or unpaid interns.

**Effective Date of the Ordinance:**

- The ordinance is scheduled to take effect on August 1, 2019, for all covered employers with five or more employees.
- The effective date is delayed until August 1, 2021, for employers with fewer than five employees at any time in the preceding 12-month period.

**Basic Requirements of the Ordinance:**

- Employees earn one hour of sick time for every 30 hours worked, but there are caps on accrual, depending on the employer's size. An employer that has had 15 or more employees at any time in the preceding 12-month period must provide at least 64 hours of paid sick leave per year, whereas an employer with fewer than 15 employees must provide at least 48 hours of paid sick leave per year.
- Earned sick time is generally available for use as soon as it is accrued. An employer may restrict an employee from using sick time during the first 60 days of employment, if the employer provides the employee with a term of employment that is at least one year.
- Earned sick time carries over to the following year. An employer is not required, however, to allow an employee to use more than the annual cap (either 48 or 64 hours, depending on the employer's size) per year.

**Reasons to Use Paid Sick Leave:**

- Paid sick leave may be used to care for an employee's own physical or mental illness, physical injury, preventative medical or health care, or health condition, or that of the employee's family member.
- An employee may also use this time off to seek medical attention, seek relocation, obtain victim services, or participate in legal action related to domestic abuse, sexual assault, or stalking, involving the employee or a family member of the employee.
- Employees must make a timely request for the use of earned sick time, before their scheduled work time, with potential exceptions for unforeseen emergencies.

**Records Employers Must Maintain, Provide or Display:**

- Employers must provide a monthly statement showing the amount of available earned sick time to each employee. Employers must also keep records to show the amount of sick time accrued by each employee.
- Employers with employee handbooks must include a notice to employees about the contents of the ordinance.
- Once the City of Dallas provides signage on its website, employers must display a sign about the ordinance in English and Spanish in a conspicuous place.

**Miscellaneous Requirements:**

- Employers may not retaliate against employees for exercising their rights under the ordinance. An employer may not transfer, demote, discharge, suspend, reduce hours or directly threaten these actions against an employee for requesting or using earned sick time, reporting a violation of the ordinance, or participating in an investigation or proceeding related to the ordinance. Civil penalties for retaliation may be assessed as early as April 1, 2020.
- Employees, who are rehired within six months following separation, must have their prior sick time reinstated.
- Civil penalties for substantiated violations may be assessed up to \$500 per violation.

For a copy of Texas Senate Bill 2485 as passed by the Senate, click on the link provided below:

<https://capitol.texas.gov/tlodocs/86R/billtext/pdf/SB02485E.pdf#navpanes=0>

## **Injunction That Limited Minneapolis Sick and Safe Time Ordinance to Employers Within City Lifted**

Minneapolis Mayor Betsy Hodges on May 31, 2016, signed into law the Minneapolis Sick and Safe Time Ordinance (Ordinance). The Ordinance requires employers, with six or more employees to provide paid sick and safe time of up to 48 hours per year with a maximum accrual cap of 80 hours. Employers with fewer than six employees are required to provide leave, but the leave may be unpaid. The ordinance has been in effect since July 1, 2017.

With limited exceptions, the Ordinance applies to all employees, including full-time, part-time and temporary employees, who work within Minneapolis for at least 80 hours in a "calendar" year, or approximately 1.5 hours per week. As a result, the Ordinance would have applied to many employers with a limited connection to Minneapolis, including employers based in other cities and with no brick-and-mortar offices or other facilities within Minneapolis city limits.

### **Legal Challenge to Ordinance:**

The Minnesota Chamber of Commerce (the "Chamber") joined other business groups and individual employers to challenge the Ordinance in Minnesota state court, moving for a temporary injunction to stop the Ordinance from going into effect on July 1, 2017. Specifically, the plaintiffs argued that the Ordinance was pre-empted by and conflicted with state law, and that Minneapolis did not have the authority to enforce the Ordinance because it inappropriately extended beyond the geographic borders of Minneapolis.

On January 19, 2017, Hennepin County Judge, Mel Dickstein, issued an order rejecting the Chamber's preemption and conflict arguments. The court, however, granted the motion to enjoin Minneapolis from enforcing the Ordinance against companies "resident outside" of the city.

The court recognized that Minneapolis wanted to prevent "employees who, for lack of available leave time, feel compelled to go to work within the City of Minneapolis even when ill," and noted that that policy "may be a good one." Yet, the court held that "the city is not free to impose its public policy initiative on companies beyond its territorial jurisdiction," because there was not a "sufficient nexus" between the city's goals and applying the Ordinance to "companies located outside Minneapolis' borders."

However, the court provided little guidance regarding the permissible territorial reach of the Ordinance and did not identify the scope of employers to which the Ordinance may apply. The court did hint that the city may still be able to enforce the Ordinance against employers located outside the city. To do so, Minneapolis would have to create a sufficient nexus between the harm the Ordinance is intended to prevent and its reach beyond the city's borders. The court criticized the Ordinance as currently written because it "does not attempt to regulate only those companies whose employees work in Minneapolis full time or substantially full time, or two-thirds time, or half time, or even on a regular part-time basis." Thus, the order suggests that the Ordinance may become enforceable against companies, based outside of Minneapolis, if those companies have employees with a regular presence in the city.

### **Injunction Lifted:**

On April 29, 2019, the Minnesota Court of Appeals ended the injunction, issued by the lower court, that limited the ordinance to employers located within the city of Minneapolis. Now, the ordinance will apply to any employee who works a minimum of 80 hours in a year within Minneapolis, regardless of where the employer is located. In its ruling, the court found that the Ordinance did not operate extra-territorially because it only requires employers to: (1) allow employees to accrue leave during the hours they work in the city, and (2) permit employees to use their leave on days they are scheduled to work in the city.

Although an appeal to the Minnesota Supreme Court may be pursued by the chamber within the next 30 days, the Minneapolis Ordinance now may be applied to any employee who works at least 80 hours in a year within the city, regardless of whether the employer has a physical presence there.

ADP® will continue to monitor and report on future developments.



## Indiana Provides for Overtime Exemption

Indiana has enacted legislation via Senate Bill 512 that provides that the requirement to pay an employee, who works more than 40 hours in a workweek, at least 150 percent of the employee's regular rate for the overtime hours, does not apply to an employee of an air carrier to the extent that the hours worked by the employee during a workweek in excess of 40 hours are not required by the air carrier, but are arranged through a voluntary agreement between employees to trade or reassign their scheduled work hours.

An emergency was declared for this legislation. These provisions became effective on the date of enactment, which was April 18, 2019.

For a copy of Senate Bill 512, click on the link provided below.

<https://legiscan.com/IN/text/SB0512/2019>

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## Washington State Increases Amount Payable to an Estate of a Deceased Employee

On April 19, 2019, Washington State Governor, Jay Inslee, signed into law S5831. It increases the maximum amount of wages payable to the estate of a deceased employee to \$10,000. The current maximum amount is \$2,500.

Effective July 28, 2019, RCW 49.48.120 is amended to read as follows:

If at the time of the death of any person, his or her employer is indebted to him or her for work, labor, and services performed, and no executor or administrator of his or her estate has been appointed, the employer shall upon the request of the surviving spouse pay the indebtedness in an amount as may be due not exceeding the sum of ten thousand dollars, to the surviving spouse, or if the decedent leaves no surviving spouse, then to the decedent's child or children, or if no children, then to the decedent's father or mother.

For a copy of S5831, click on the link provided below:

<http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/5831.SL.pdf#page=1>

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## Long Beach, California, to Increase Minimum Wage for Hotel and Concessionaire Workers

On July 1, 2019, the minimum wage required to be paid to hotel workers in Long Beach, California will increase from \$14.64 per hour to \$14.97 per hour. The minimum wage for concessionaire workers at the Long Beach Airport and Long Beach Convention Center will rise from \$14.37 per hour to \$14.72 per hour.

For workers who are not hotel or concessionaire workers, Long Beach follows the California state minimum wage, which is currently \$12.00 for employers with 26 or more employees and \$11.00 for employers with 25 or fewer employees. These levels are scheduled to increase to \$13.00 and \$12.00 respectively as January 1, 2020.



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## ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP Eye on Washington Web page located at [www.adp.com/regulatorynews](http://www.adp.com/regulatorynews).

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