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## State laws vary on employer obligations toward pregnant employees

by Tammy Binford

The federal Pregnant Workers Fairness Act (PWFA), which took effect in June, has employers focusing on what changes they may need to make in the treatment of their pregnant employees. But federal law isn't the only consideration.

All states have laws offering at least some protections for pregnant workers, but some state laws are more expansive than others.

According to information from the U.S. Department of Labor (DOL), all but two states have laws requiring some type of accommodation for pregnant workers. All but four states have laws aimed at protecting workers against discrimination based on pregnancy, and more than two-thirds of the states have laws related to breastfeeding in the workplace.

Here's a look at the obligations mandated by various state laws.

### PREGNANCY ACCOMMODATIONS

The DOL tracks state laws on employer obligations related to accommodations for pregnant workers. The DOL counts 48 states with at least some kind of law relating to accommodations for certain pregnant workers. Only Florida and Wyoming don't have such laws, according to the DOL.

Some state laws—those in Alabama, Alaska, Arizona, Georgia, and Mississippi—apply only to state government employees, and others don't cover the smallest employers.

A common feature of many state laws is the requirement for employers to treat pregnant employees the same as they treat employees with disabilities. Another common feature is an exception for employers that would experience undue hardship by granting an accommodation.

For example, Illinois's law, which applies to employers with at least one employee, requires employers to provide reasonable accommodations to employees who have work-related limitations stemming from pregnancy, childbirth, or a related condition unless the accommodation would impose an undue hardship on the employer.

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Also, the Illinois law requires employers to treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees similar in their ability or inability to work, including with respect to leave requests.

Maine's law requires all employers upon request to provide a reasonable accommodation to any employee with a pregnancy-related condition unless the employer can demonstrate the accommodation would impose an undue hardship.

The Maine law also notes that reasonable accommodations may include but are not limited to providing more frequent or longer breaks; temporary modification in work schedules, seating, or equipment; temporary relief from lifting requirements; temporary transfer to less strenuous or hazardous work; and provisions for lactation in compliance with state law.

Ohio's law is also similar to many other state laws. For example, it says employers must treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees similar in their ability or inability to work.

The Ohio law also notes that if an employer has no leave policy, it still must allow a reasonable period of leave for childbearing. Following leave, an employee is entitled to return to the same or a similar position. Ohio's law applies to public and private employers.

## **PREGNANCY DISCRIMINATION**

All but four states—Alabama, Indiana, North Carolina, and South Dakota—have laws offering protections against pregnancy discrimination for at least some employees. Sometimes the laws expressly prohibit discrimination based on pregnancy, and other times courts or administrative agencies have interpreted state antidiscrimination laws to include pregnancy-based discrimination.

According to the DOL's count, the following states have laws expressly prohibiting pregnancy-based discrimination: Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Virginia, Wisconsin, and Wyoming.

The DOL counts 10 states with antidiscrimination laws that don't expressly cover pregnancy but have been interpreted to include pregnancy-based discrimination. They are Colorado, Idaho, Kansas, Maryland, Missouri, Pennsylvania, Tennessee, Vermont, Washington, and West Virginia.

Georgia and Mississippi prohibit state employers from discrimination based on pregnancy but don't cover private sector employers.

Some of the state laws exempt very small employers from responsibility, and others apply just to employers that offer leave for sickness or disability to nonpregnant employees.

## **BREASTFEEDING IN THE WORKPLACE**

The DOL counts 32 states with laws relating to breastfeeding rights. Those states are Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and Washington.

Of those states, Oklahoma's law is permissive of state protection rather than requiring protections for employees who are breastfeeding.

The laws in Montana and Texas apply just to public employers. Louisiana's and Missouri's laws apply just to public schools.

Many of the laws are similar. Some common provisions include requiring employers to allow break time—either unpaid or paid—to express breast milk, as well as a requirement or at least a reasonable effort to provide a clean, private place other than a toilet stall for employees to express breast milk.

Some state laws specify a length of time employers must make provisions for expressing breast milk. For example, Hawaii's law requires employers to allow break time to express milk for one year after the birth of a child. Washington and Colorado have laws requiring employers to provide break time for two years after a child's birth.

Oregon's law applies to employees expressing milk for a child 18 months of age or younger. New York's law requires employers to make break time available to nursing mothers for up to three years after a child's birth.

Laws in Louisiana, Nevada, and Utah apply to employees who are mothers of children under 1 year old.

Many state laws exempt the smallest employers from any requirements. Many laws also include exceptions for employers that would suffer undue hardship by strictly adhering to the laws.

## STATUTES

### California

#### HIRING

#### Limits on noncompete agreements

*This law establishes that any noncompete contract that is void under state law is unenforceable regardless of where and when the contract was signed. The law prohibits an employer or a former employer from attempting to enforce a contract that is void regardless of whether the contract was signed and the employment was maintained outside of California. The law establishes that an employer that violates it commits a civil violation. It authorizes an employee, a former employee, or a prospective employee to file a claim to enforce the law for injunctive relief or the recovery of actual damages, or both, and would provide that a prevailing employee, former employee, or prospective employee is entitled to recover reasonable attorneys' fees and costs.*

**Cite:** 2023 CA SB699, CA Pub. Ch. 157 (4 pages)

**Enacted:** 9/1/2023

**Effective:** 9/1/2023

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202320240SB699](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB699)

#### WAGES

#### Increases in minimum wage for fast food workers

This law increases the state's minimum wage for fast food workers to \$20 per hour beginning on April 1, 2024. The law creates a Fast Food Council that has the power to increase the wage each year through 2029 by 3.5% or the change in averages for the U.S. Consumer Price Index for urban wage earners and clerical workers, whichever is lower. The law also prohibits any city, county, or city and county from enacting or enforcing any ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees.

**Cite:** 2023 CA AB1228, CA Pub. Ch. 262 (11 pages)

**Enacted:** 9/28/2023

**Effective:** 1/1/2024

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202320240AB1228](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1228)

## Maryland



### ANALYSIS

#### LEGISLATION

#### Change to Maryland's cannabis laws raises questions for employers

by David M. Stevens, Whiteford, Taylor & Preston LLC

As of July 1, Maryland law now permits the possession and use of small amounts of marijuana. Unlike some other jurisdictions that have decriminalized marijuana possession, Maryland's new statute doesn't directly address the law's consequences for employers and employees. In the absence of statutory language clarifying the law's impact on the workplace, many Maryland employers have been left uncertain about their ability to prohibit or test for marijuana use among their employees.

#### LEGAL LANDSCAPE REMAINS UNCHANGED

Before the new law's enactment, Maryland employers were free to prohibit the use and possession of marijuana in the workplace, as well as to test for marijuana as part of a drug testing program as long as the testing program complied with procedural requirements set by a state statute. The fact that the new law removing criminal penalties associated with the use of marijuana doesn't contain any provisions limiting employers' discretion with respect to drug-related policies means that employers retain the same level of flexibility that was in place before the new statute took effect.

As a result, Maryland employers may continue to enforce policies that prohibit employees from working while under the influence of marijuana or from possessing or using marijuana on the employer's property. Likewise, Maryland employers that engage in drug testing may continue to include marijuana among the substances encompassed by a testing program.

In doing so, employers must continue to comply with the mandatory procedures applicable to such screening programs, including use of a certified testing facility, issuance of required notices, and the opportunity for employees who test positive to obtain a retest at their own expense.

#### REEVALUATING POLICIES

While the new statute doesn't compel a change to existing policies, a number of employers have used the discussion surrounding the new law as an opportunity to reevaluate their current drug testing program. The increasing prevalence of marijuana use among younger segments of the workforce, coupled with a tight labor market, has led some employers to conclude that the potential negative impact of testing programs on their ability to recruit and retain employees outweighs their benefits, at least with regard to positions that don't involve direct safety concerns.

While the hiring and retention considerations that affect the decision of whether to utilize a drug testing program will vary from one business to another, the recent change decriminalizing marijuana use at the state level doesn't require employers to make a particular change in such programs, at least until such time as new legislation or court interpretations emerge.

#### **FURTHER LEGISLATION MAY BE ON THE HORIZON**

Maryland employers shouldn't assume that the current legal outlook will continue indefinitely. As noted above, other jurisdictions that have decriminalized marijuana use have enacted specific provisions that prohibit employers from making employment decisions based on an employee's off-duty use of marijuana, and it's possible that similar legislation may be taken up by the General Assembly in future legislative sessions.

Employers are encouraged to consult with legal counsel both to monitor any future developments on this front and to ensure that their existing policies with respect to drug testing are compliant with current Maryland law.

*Excerpted from Maryland Employment Law Letter Steven Bers and David M. Stevens, Editors Whiteford, Taylor & Preston LLC*

## **Michigan ANALYSIS**



### **EMPLOYMENT LAW**

#### **Winds of change in Michigan: Pending statutory changes and proposals**

*by Gary S. Fealk, Bodman PLC*

*As a result of the 2022 election, the Democratic party took control of the Michigan House and Senate. This, combined with a sitting Democratic governor, set the stage for employee-friendly changes and proposals in employment law in Michigan.*

#### **CHANGES IN LAW**

The following measures have already been passed in Michigan in 2023:

- Repeal of right to work, meaning clauses and union contracts that make the payment of dues and fees mandatory are now lawful. This change will go into effect in March 2024.
- Prevailing wage has been reinstated. Effective March 2024, Michigan will require contractors on state construction projects to pay the "prevailing wage," equivalent to a union-type wage, and report wages to the state to verify compliance.

- Amendments to the Michigan Civil Rights Act. The following protected classifications were added to the Civil Rights Act: sexual orientation, gender identity, abortion, and racial/ethnic hairstyles.

#### **SIGNIFICANT PROPOSALS**

The following pending bills appear to have support and could significantly alter Michigan's employment law landscape:

- House Bill 4023 would prohibit a temporary labor service from providing labor at a jobsite where a strike, lockout, or labor dispute exists.
- House Bill 4390 would redefine who is an independent contractor. To qualify as a contractor, an individual would have to be free from the employer's control and direction when it comes to the performance of work; perform work that's outside the usual course of business; and be customarily engaged in an independently established trade, occupation, or business of the same work the individual performs for the employer. There are no exceptions in the bill, and if passed, it will be the most onerous contractor test in the nation.
- House Bill 4399 would prohibit employers from requiring employees to agree to a noncompete clause, unless the employer provides applicants with written notice that a noncompete clause is required for the position; before hiring, discloses in writing the terms of the noncompete agreement; and posts the law or summary in a conspicuous place in the worksite. The bill would also prohibit noncompete agreements for low-wage workers (within 138% of the poverty line).
- House Bills 4292 and 4396 would expand whistleblower protection to independent contractors.

#### **TAKEAWAY**

The bottom line is that the Michigan Legislature has already made employee-friendly changes to Michigan employment laws, and more employee-friendly regulation is expected.

*Excerpted from Michigan Employment Law Letter Gary S. Fealk and John T. Below, Editors Bodman PLC*

## New Hampshire

### EMPLOYEE PRIVACY

#### Workplace support for nursing employees

*This law establishes minimum workplace supports for nursing mothers and requires employers to provide nursing employees with appropriate spaces in the workplace for a period of one year following the birth of the child. All employers with at least six employees working in New Hampshire will be required to adopt policies to address the use of sufficient space and reasonable break periods for nursing employees that need to express milk during working hours. Employers will be required to make this policy available to employees at the time of hire.*

*Employees will be required to give their employer at least two weeks' notice before needing break periods and space. The space provided to express milk must be within a reasonable walk of the employee's worksite unless a different location is mutually agreed to by the employer and employee. The space cannot be a bathroom and must be a clean space shielded from view and free from intrusion from coworkers and the public. Employees cannot be required to make up time related to use of this break period. They will have the option of taking their break period contemporaneously with break or meal periods already provided by the employer. Employers and employees may negotiate different terms for reasonable break periods than provided by the law. The law provides employers a single exemption from its terms only for instances in which providing a reasonable break period and sufficient space would impose an undue hardship on its operations. The law defines "undue hardship" as any action that requires significant difficulty or expense when considered in relation to factors such as the size of the business, its financial resources, and the nature and structure of its operation.*

**Cite:** 2023 NH HB358, NH Pub. Ch. 191 (5 pages)

**Enacted:** 8/4/2023

**Effective:** 1/1/2025

[https://www.gencourt.state.nh.us/bill\\_status/legacy/bs2016/billText.aspx?sy=2023&id=231&txtFormat=pdf&v=current](https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/billText.aspx?sy=2023&id=231&txtFormat=pdf&v=current)

## New York

### EMPLOYEE PROTECTIONS

#### Protects employee freedom of speech & conscience

*This law protects employee freedom of speech and conscience by prohibiting employers from coercing employees into attending or participating in meetings sponsored by the employer concerning the employer's views on political or religious matters. Every employer shall post a sign in every workplace at the location or locations where notices to employees are normally posted to inform them of their rights. Employers are not prohibited from communicating to employees any information they're required by law to communicate or from communicating any information about job duties.*

**Cite:** 2023 NY SB4982, NY Pub. Ch. 354 (2 pages)

**Enacted:** 9/6/2023

**Effective:** 9/6/2023

<https://legislation.nysenate.gov/pdf/bills/2023/S4982>

### WAGES

#### Wage payment protections

*This law increases the threshold for applicability of wage payment protections for certain persons employed in a bona fide executive, administrative, or professional capacity from \$900 to \$1,300 per week.*

**Cite:** 2023 NY SB5572, NY Pub. Ch. 433 (1 page)

**Enacted:** 9/15/2023

**Effective:** 4/1/2023

<https://legislation.nysenate.gov/pdf/bills/2023/S5572>

### WORKERS' COMPENSATION

#### Increases compensation

*This law increases the compensation schedule in case of disability. It provides that compensation after July 1, 2026, shall not be less than one-fifth of the New York state average weekly wage unless the employee's weekly wage is equal to or less than one-fifth the weekly wage; then, they shall receive the entire amount.*

**Cite:** 2023 NY SB1161, NY Pub. Ch. 352 (3 pages)

**Enacted:** 9/6/2023

**Effective:** 9/6/2023

[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=SB1161&term=&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=SB1161&term=&Text=Y)

### WORKERS' COMPENSATION

#### Language access

*This law amends the Workers' Compensation Law in relation to language access services to align provisions requiring document translation and language access services with those of other state agencies.*

**Cite:** 2023 NY AB5609, NY Pub. Ch. 390 (2 pages)

**Enacted:** 9/15/2023

**Effective:** 9/15/2023

[https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=AB5609&term=&Summary=Y&Memo=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=AB5609&term=&Summary=Y&Memo=Y&Text=Y)

## REGULATIONS

### Alaska

#### LICENSURE

##### Continuing education for architects, engineers, and land surveyors

The State Board of Registration for Architects, Engineers, and Land Surveyors amended continuing education requirements for licensees, streamlining existing provisions and simplifying requirements related to computation and recordkeeping of education credits and adding clarifying definitions.

**Cite:** 12 AAC 36.510 - .550 (Alaska Online Public Notice System, 09/15/2023) (17 pages)

**Adopted:** 9/15/2023

**Effective:** 10/15/2023

<https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=143770>

### California

#### CIVIL RIGHTS

##### Employment regulations relating to criminal history

The Civil Rights Council amended regulations pertaining to the consideration of conviction history prior to a conditional offer of employment; pertaining to consideration of certain types of conviction history; governing what an employer must do when they intend to deny an applicant employment conditionally offered because of the applicant's conviction history; covering labor contractors, union hiring halls, and client employers; prohibiting disparate treatment; determining adverse impact; outlining procedural requirements; and covering situations when an employer seeks the Work Opportunity Tax Credit.

**Cite:** 2 CCR §§ 11017, 11017.1 (CRNR 2023, No. 31-Z, 08/04/2023, page 1020) (10 pages)

**Adopted:** 7/24/2023

**Effective:** 10/1/2023

<https://govt.westlaw.com/calregs/Search/Index>

#### WORKERS' COMPENSATION

##### Classification and rating rules

The Department of Insurance amended the Workers' Compensation Uniform Statistical Reporting Plan-1995, the Workers' Compensation Experience Rating Plan-1995, and the Miscellaneous Regulations for the Recording and Reporting of Data-1995.

**Cite:** 10 CCR §§ 2318.6, 2353.1, 2354 (CRNR 2023, No. 31-Z, 08/04/2023, page 1019) (3 pages)

**Adopted:** 7/24/2023

**Effective:** 9/1/2023

<https://govt.westlaw.com/calregs/Search/Index>

#### WORKERS' COMPENSATION

##### Medical treatment utilization schedule

The Workers' Compensation Board amended rules to make evidence-based updates to the medical treatment utilization schedule pursuant to Labor Code section 5307.27.

**Cite:** 8 CCR §§ 9792.22, 9792.23.2, 9792.24.7 (CRNR No. 34-Z, 08/25/2023, page 1112) (3 pages)

**Adopted:** 8/10/2023

**Effective:** 8/10/2023

<https://govt.westlaw.com/calregs/Search/Index>

### Colorado

#### WORKERS' COMPENSATION

##### Procedural rules for hearings

The Department of Personnel & Administration amended the Office of Administrative Courts Procedural Rules for Workers' Compensation, with filing, service, and hearing requirements.

**Cite:** 1 C.C.R. 104-3 (46 CR 15, 08/10/2023, page 780) (11 pages)

**Adopted:** 8/10/2023

**Effective:** 9/1/2023

<https://www.sos.state.co.us/CCR/Upload/AGORquest/AdoptedRules02023-00281.docx>

### Connecticut

#### LICENSURE

##### Continuing education for electricians and plumbers

The Department of Consumer Protection amended continuing education rules for electricians and plumbers, with amendments to continuing education course requirements and approval procedures, withdrawal of approval, and notification requirements.

**Cite:** Regs., Conn. State Agencies § 20-334d-1 (Connecticut eRegulations System, Tracking Number PR2023-005) (12 pages)

**Adopted:** 08/03/23

**Effective:** 08/03/23

<https://eregulations.ct.gov/eRegsPortal/Search/getDocument?guid={708ABB89-0000-C112-BD3C-4CCA321D69BB}>

## Florida

### LICENSURE

#### Examinations

The Board of Professional Engineers amended rules for reexamination with additional requirements after a third examination failure, allowing for two additional attempts if an applicant is delayed in taking examinations due to reserve or active duty service in the United States Armed Forces or National Guard.

**Cite:** Fla. Admin. Code R. 61G15-21.007 (49 faw 3020, 08/15/2023) (1 page)

**Adopted:** 8/10/2023

**Effective:** 8/30/2023

<https://www.flrules.org/gateway/readFile.asp?sid=0&type=1&tid=27449756&file=61G15-21.007.doc>

## Illinois

### LABOR

#### Day and temporary labor services

The Department of Labor adopted emergency rules to implement legislative amendments to the Day and Temporary Labor Services Act, including changes to rules for complaints, penalties, training, equal pay for equal work, placement fees, safety hazard disclosures, and record-keeping responsibilities for third-party clients.

**Cite:** 56 Ill. Adm. Code 260 (47 Ill. Reg. 12457, 08/18/2023) (24 pages)

**Adopted:** 8/7/2023

**Effective:** 8/7/2023

[https://www.ilsos.gov/departments/index/register/volume47/register\\_volume47\\_33.pdf](https://www.ilsos.gov/departments/index/register/volume47/register_volume47_33.pdf)

### LABOR

#### Incumbent exclusive representative

The Labor Relations Board amended general rules to define “incumbent exclusive representative” as the existing exclusive representative of the employees in a bargaining unit.

**Cite:** 80 Ill. Adm. Code 1200 (47 Ill. Reg. 11825, 08/04/2023) (7 pages)

**Adopted:** 7/7/2023

**Effective:** 7/7/2023

[https://www.ilsos.gov/departments/index/register/volume47/register\\_volume47\\_31.pdf](https://www.ilsos.gov/departments/index/register/volume47/register_volume47_31.pdf)

## Iowa

### BENEFITS

#### Employer childcare tax credit

The Economic Development Authority adopted and filed a new chapter of rules to establish an employer childcare tax credit, describe how the proportion of the federal credit attributable to expenditures in Iowa will be calculated, and outline the application process for the credit.

**Cite:** 261 IAC 57 (IAB Vol. XLVI, No. 3, 08/09/2023, page 200) (4 pages)

**Adopted:** 7/21/2023

**Effective:** 9/13/2023

<https://www.legis.iowa.gov/docs/aco/bulletin/08-09-2023.pdf>

## Kansas

### LICENSURE

#### Fees

The Board of Healing Arts adopted rule amendments to update various licensure fees collected as authorized by statute.

**Cite:** K.A.R. 100-11-1 (42-34 kan reg 1038, 08/24/2023) (2 pages)

**Adopted:** 9/8/2023

**Effective:** 9/8/2023

[https://sos.ks.gov/publications/pubs\\_kar\\_Regs.aspx?KAR=100-11-1&Srch=Y](https://sos.ks.gov/publications/pubs_kar_Regs.aspx?KAR=100-11-1&Srch=Y)

## Kentucky

### LICENSURE

#### Social work telehealth

The Board of Social Work adopted new rules to protect the health and safety of individuals and establish procedures for preventing abuse and fraud through the use of telehealth, prevent fee splitting through the use of telehealth by social workers who use telehealth in the provision of social work services, and provide for continuing education.

**Cite:** 201 KAR 23:170 (50 Ky.R. 527, 08/01/2023) (3 pages)

**Adopted:** 6/22/2023

**Effective:** 8/1/2023

[https://apps.legislature.ky.gov/law/kar\\_registers/50Ky\\_R\\_2023-24/02\\_Aug.pdf](https://apps.legislature.ky.gov/law/kar_registers/50Ky_R_2023-24/02_Aug.pdf)

## LICENSURE

### Temporary permission to practice social work

The Board of Social Work adopted new regulations to establish the requirements for the granting of temporary permission to engage in the practice of social work when an applicant has completed all requirements other than passing the required examination.

**Cite:** 201 KAR 23:160 (50 Ky.R. 524, 08/01/2023) (4 pages)

**Adopted:** 6/22/2023

**Effective:** 8/1/2023

[https://apps.legislature.ky.gov/law/kar/registers/50Ky\\_R\\_2023-24/02\\_Aug.pdf](https://apps.legislature.ky.gov/law/kar/registers/50Ky_R_2023-24/02_Aug.pdf)

## Louisiana

### LICENSURE: HEALTHCARE PROFESSIONALS

#### Dentistry continuing education and practice

The Board of Dentistry amended rules to remove a list of specialties and provide that any area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and that's accredited by a dental accreditation agency that is recognized by the U.S. Department of Education will be recognized as a specialty field, as well as extended the validity of examination scores from three to five years.

**Cite:** LAC 46:XXXIII.122, 301, 1509, 1709 (LR 49:1382, 08/20/2023) (2 pages)

**Adopted:** 8/20/2023

**Effective:** 8/20/2023

<https://www.doa.la.gov/media/mdpnd1xv/2308.pdf>

## Massachusetts



### ANALYSIS

#### PAID FAMILY LEAVE

#### Department issues important PFML updates

by Amelia J. Holstrom, Skoler, Abbott & Presser, P.C.

*The Massachusetts Department of Family and Medical Leave (department) has issued some updates that are important for employers to know. The department administers the Paid Family and Medical Leave (PFML) law, under which employees are eligible to take up to 26 workweeks of PFML each benefit year for various reasons, including leave for their own serious health condition or the serious health condition of a family member and leave to bond with children after birth, adoption, or placement. In recent weeks, the department issued two important updates regarding these two issues, along with its Fiscal Year (FY) 2023 Report.*

## CONTRIBUTION RATE IS INCREASING

Employees (and employers at companies with more than 24 employees) fund the PFML program through contributions deducted from their wages, and employees who take PFML are paid a certain percentage of their regular pay up to a maximum based, in part, on the state's average weekly wage.

Beginning on January 1, 2024, the PFML contribution rate for businesses with 25 or more employees is increasing from 0.63% of wages to 0.88%. Of the 0.88%, 0.18% applies to the family leave portion of the law and may be paid for solely by the employee. The remaining 0.70% is applicable to the medical leave portion of the law, of which 0.28% may be paid for by the employee, with the remaining 0.42% to be paid for by the employer.

Similarly, the PFML contribution rate for businesses with fewer than 25 employees is increasing from 0.318% to 0.460%. Employers with under 25 employees may require them to pay the full 0.460% contribution.

Individual contributions are still capped by the Federal Social Security taxable maximum, meaning PFML contributions aren't paid by the employee or the employer on any income over that maximum. For 2023, that maximum was \$160,200. The maximum hasn't yet been set for 2024, but employers will need to pay attention to that number.

## NEW NOTICE IS NOW REQUIRED

Under the law, employers are required to give employees a written notice that includes information on the contribution rates, among other things, at the time of hire and 30 days before any contribution rate change. As a result, employers must provide notice of the new contribution rate to current employees by December 2, 2023.

The department hasn't yet issued its model notice, but employers can check the department's website for it in the near future.

If you hire someone before January 1, 2024, but after you've already distributed the new notice to your current employees, you'll need to give them both your current notice (with 2023 rates) and the new notice (with 2024 rates).

## MAXIMUM WEEKLY BENEFIT IS INCREASING

PFML provides partial wage replacement for employees up to a maximum weekly payment based on a calculation involving the employee's average weekly wage and the state's average weekly wage, which is calculated and published yearly. Initially, the maximum weekly payment was \$850 per week, but it has increased significantly since then. In 2023, it was \$1,129.82. In 2024, the maximum weekly benefit amount is increasing to \$1,144.90.



## FY 2023 REPORT SHEDS LIGHT ON EMPLOYEE USE

The department also issued its FY 2023 (July 1, 2022, to June 30, 2023) PFML Report. When compared with the FY 2022 Report, the 2023 Report sheds light on some significant differences in FY 2023 and some things that stayed the same. Here are the highlights:

In FY 2023, the department approved 143,356 applications for PFML—a 27.39% increase in approved applications over FY 2022. The majority of those—49.36%—were for an employee’s own serious health condition.

Leave associated with recovery from childbirth and/or pregnancy represented 13.19% of approved applications. Notably, 62.88% of individuals who had an approved medical claim related to recovery from childbirth also had an approved family leave claim for bonding. Family leave to bond with a child following birth, adoption, or foster care placement accounted for 27.37% of approved applications, and leave for a family member’s serious health condition represented 10.17% of approved applications.

A small number of approved applications were for military exigency leave and leave to care for a servicemember.

The report indicates that the department denied 16.27% of applications for various reasons, including that the individual hadn’t satisfied the financial eligibility test, worked for an employer with a private plan, submitted appropriate documentation, applied for bonding leave within one year of the birth, and notified the employer of the individual’s need for leave within the timelines set forth in the statute and regulations.

The report also includes demographics for approved claimants. Notably, just like in FY 2022, the age group with the most approved claims was 31- to 40-year-olds. Additionally, the report notes that the total number of claimants—just over 82,000—for which demographic data is provided doesn’t equal the total number of approved claims, which is more than 143,000, because individuals can file more than one claim in a year.

Finally, the average weekly wage of individuals who applied for PFML in FY 2023 was \$1,155.48, which was more than 18% lower than the average weekly wage of individuals who applied in FY 2022.

## BOTTOM LINE

You should continue to check the department’s website for the 2024 Contribution Notice and send that notice, as outlined above, no later than December 2, 2023. You’ll also need to distribute those notices in the near future. Additionally, you should consult with your payroll providers and confirm that the correct contribution rate will be put in place effective January 1, 2024.

*Excerpted from Massachusetts Employment Law Letter Amelia J. Holstrom, Marylou V. Fabbo, Timothy F. Murphy, John S. Gannon, Erica E. Flores, and Meaghan E. Murphy, Editors Skoler, Abbott & Presser, P.C.*

## New York

### LICENSURE

#### Engineer examination requirements

The Education Department amended rules to update requirements for admission to the examination for licensure as an engineer, allowing “all experience” pathway applicants to sit for the fundamentals of engineering examination.

**Cite:** 8 NYCRR 68.3 (2023-31 N.Y. St. Reg. 17, 08/02/2023) (1 page)

**Adopted:** 7/18/2023

**Effective:** 8/2/2023

<https://govt.westlaw.com/nyccr/Search/Index>

## North Carolina

### LICENSURE

#### Dental hygiene licensure by credentials

The Board of Dental Examiners amended rules for approving dental hygiene licensure by credentials, detailing submissions of applications to the board, allowing for “secure electronic transmission” of documents and information, and licensure examination requirements.

**Cite:** 21 NCAC 16C.0501 (38:03 NCR 157, 08/01/23) (2 pages)

**Adopted:** 7/1/2023

**Effective:** 7/1/2023

<https://files.nc.gov/oah/documents/2023-08/Volume-38-Issue-03-August-1-2023.pdf?VersionId=VDbei6PRmSFUIJKWMGANihUqQQYFKhFh>

### LICENSURE: HEALTHCARE PROFESSIONALS

#### Dental hygienist continuing education

The Board of Dental Examiners amended rules for continuing education requirements, exemptions from continuing education requirements, and credit for education received.

**Cite:** 21 NCAC 16I .0201, .0204 (38:03 NCR 160, 08/01/2023) (3 pages)

**Adopted:** 7/1/2023

**Effective:** 7/1/2023

<https://files.nc.gov/oah/documents/2023-08/Volume-38-Issue-03-August-1-2023.pdf?VersionId=VDbei6PRmSFUIJKWMGANihUqQQYFKhFh>

## Texas

### LICENSURE

#### Continuing education requirements

The Department of Licensing and Regulation adopted amendments regarding Continuing Education Requirements to remove the requirement for registered accessibility specialists to meet continuing education requirements with an approved course provider.

**Cite:** 16 TAC §59.3 (48 TexReg 4641, 08/25/2023) (1 page)

**Adopted:** 8/11/2023

**Effective:** 8/31/2023

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=16&pt=4&ch=59&rl=3](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=16&pt=4&ch=59&rl=3)

## Washington

### LICENSURE

#### Foreign-educated physical therapy licensees

The Board of Physical Therapy amended rules to change the Test of English as a Foreign Language (TOEFL) minimum passing scores and remove a requirement related to an accredited program for licensure as a physical therapist.

**Cite:** WAC 246-915-120 (WSR 23-16-125, 07/29/2023) (2 pages)

**Adopted:** 7/29/2023

**Effective:** 9/1/2023

<https://lawfilesexternal.wa.gov/law/wsr/2023/16/23-16-125.htm>

### WORKERS' COMPENSATION

#### Independent medical examinations

The Department of Labor and Industries added new rules to address how to accommodate the worker by providing alternative pathways to having an in-person independent medical exam (IME) performed when a worker cannot access a provider in a reasonably convenient location and to ensure mutual understanding of when telemedicine may be appropriate for IME.

**Cite:** WAC 296-23-358, WAC 296-23-359 (WSR 23-16-115, 08/01/2023) (2 pages)

**Adopted:** 8/1/2023

**Effective:** 9/1/2023

<https://lawfilesexternal.wa.gov/law/wsr/2023/16/23-16-115.htm>