

On Your Radar

Draw on Our Expertise



June / July 2019

Each month in this newsletter – and more frequently on our [Matrix Radar](#) blog – we provide updates on introduced, pending, and passed legislation. As usual, we have a lot to report this month. If you need additional information about any of the bills or passed legislation discussed in this newsletter or any other Matrix publication, please contact us at ping@matrixcos.com. We'll be happy to share information that just won't fit in these newsletters!

Multiple | State Legislative Updates

Our first update comes to you in several parts. Many state legislative sessions have drawn to a close, we wanted to report out to you where things stand. [Learn More](#)

PFML | Updates

As the year progresses, states continue to address paid family and medical leave laws – whether by introducing them, passing them, or letting them die. Take a look at the new lay of the land. [Learn More](#)



Legislative Updates

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GET TO KNOW



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READ OUR BLOG

Learn about our insights in absence management and workplace accommodations, and how they affect you and your business.



Multiple | State Legislative Updates

As many state legislative sessions have drawn to a close, we have a rash of new leave and accommodation laws to report.

California Paid Family Leave. Effective July 1, 2020, California workers will be able to receive up to 8 weeks of family temporary disability benefits (also referred to as paid family leave) in a 12-month period, increased from the current 6 weeks of benefits. The benefit will continue to be available for leave taken for family purposes, including to care for a seriously ill family member (child, spouse, parent, grandparent, grandchild, sibling, or domestic partner), or to bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption.

[CA Senate Bill 83](#) also adds a new qualifying reason to the family temporary disability insurance program. Effective January 1, 2021, California employees will be able to receive wage replacement benefits during leave taken to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

Currently, these leaves are not job protected under the paid family leave program. Rights to reinstatement may come from other unpaid leave laws such as the California Family Rights Act and the federal Family and Medical Leave Act.

More changes may be on the way. The bill includes a requirement for study and development of a proposal for bonding leave up to 6 months per parent and an increase in the wage replacement rates from the current 60-70%:

By November 2019, the Office of the Governor, through consultation with a task force, will develop a proposal to increase paid family leave duration to a full six months by 2021-22, for parents to care for and bond with their newborn or newly adopted child. This proposal must assess and address job protections for employees, wage replacement rates up to 90 percent for low wage workers and provide a plan to implement and fund expanded paid family leave benefits, as well as other findings

Multiple



and recommendations of interest. The Office of the Governor will present task force findings and observations to the Legislature by November 2019.

Connecticut Paid Family and Medical Leave. With the passage of [Senate Bill 1](#) Connecticut has become the 9th state to enact a paid family and medical leave law. Commencing on January 1, 2022, Connecticut employees will be able to take paid leave for the following reasons:

- Employee's own serious health condition
- Family member serious health condition
- Bonding (birth, adoption, foster care)
- Organ or bone marrow donation
- Military exigencies
- Care of a seriously ill / injured servicemember
- Matters related to being a victim of family violence

Entitlement is 12 weeks in a 12-month period for all leave reasons plus an additional 2 weeks if leave is needed for the employee's pregnancy-related incapacity, except an employee may take up to 26 weeks to care for a seriously ill or injured servicemember.

The program is funded exclusively from employee contributions, which start January 1, 2021, and cannot exceed ½ % of an employee's wages.

A full summary of the Connecticut PFML law is provided on our blog www.matrix-radar.com.

Maine Earned Paid Leave. In a law notable for what it does not say, Maine has adopted a paid time off law that is touted as the first of its kind in the country. There is no limitation in the law regarding the reasons an employee can use his or her accrued paid time off, so anything is covered.

Pursuant to [ME SB 110/LD 369](#), effective January 1, 2021, Maine businesses that employ more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year must allow employees to accrue paid leave at the rate of one hour for every 40 hours worked, up to 40 hours per year. There are several categories of employees who are not covered, including seasonal and agricultural workers and certain commissioned employees. A full list of exemptions is available in Maine's unemployment compensation



laws. Employees subject to a collective bargaining agreement in effect on January 1, 2021, are likewise not covered until the CBA expires.

The employer can delay use of the leave until the employee has worked for that employer for 120 days in a 1-year period. Except in cases of emergency, illness, or other sudden necessity, an employee must give “reasonable” notice to his/her supervisor of the intent to take leave and must be scheduled to prevent undue hardship in the employer. However, none of these terms or concepts is defined.

The law has no provisions relating to maximum accrual, carryover, or treatment of accrued leave at separation from employment. The Maine Department of Labor is tasked with developing regulations, so perhaps these gaps will be addressed before the law’s effective date.

Nevada Paid Time Off. Following the Maine style, Nevada has passed [Senate Bill 312](#) requiring employers with 50 or more employees in the state to provide paid time off to all employees except temporary, seasonal, or on-call employees. The employees can use their accrued time off for any purpose and don’t need to provide a reason to the employer. Effective January 1, 2020, employees will accrue paid leave at the rate of 0.01923 hours for every hour worked. This odd accrual rate equates to 40 hours of earned paid leave per year for an employee who works a typical 40-hour workweek. Employers have the option of front-loading an employee’s PTO entitlement at the beginning of a benefit year or letting the employee accrue time through the course of the year. Employees can begin using their paid time off on their 90th day of employment and must give notice of the intent to use leave as soon as practicable.

The employer can designate a minimum increment of leave time, not to exceed 4 hours. Although there is no cap on how much paid time of an employee can accrue in a benefit year, carryover from year to year and maximum usage per benefit year (defined as a 365-day period) can be limited by the employer to 40 hours. Accrued but unused paid time off does not need to be paid to an employee upon separation from employment, but if an employee is rehired within 90 days and the separation was not due to the employee voluntarily leaving employment, he or she must be credited with the accrued time off existing at the time of separation.



New Mexico Caregiver Leave. [New Mexico Senate Bill 123](#) does not require an employer to provide any type of time off to its employees. However, if an employer provides sick leave for an eligible employee's own illness or injury or to receive health care, the employer must also permit its 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 use of sick leave by employees. This is similar to California's Kin Care law and Washington's Family Care Act. "Family members" include the employee's spouse or domestic partner and any individual who is (by blood, marriage or legal adoption) a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle of the employee. This law went into effect on June 14, 2019.

Oregon Donor Leave. The Oregon Family Leave Act (OFLA) has been amended by [Senate Bill 796](#) effective January 1, 2020, to add to the definition of serious health condition:

Any period of absence for the donation of a body part, organ or tissue including preoperative or diagnostic services, surgery, post-operative treatment and recovery.

OFLA currently provides up to 12 weeks of unpaid but job-protected leave of absence due to an employee's own serious health condition or to care for a family member with a serious health condition. While many organ or tissue donation procedures would come under the existing OFLA definition of serious health condition even without this new law, it is now clear that time off for related procedures or appointments is also covered, not just the actual donation procedure.

Oregon Paid Family and Medical Leave. And here comes State No. 10! The Oregon legislature has passed [OR House Bill 2005](#), a paid family and medical leave law. Assuming it will be signed by the Governor, the law will provide wage replacement benefits starting on January 1, 2023. Leave reasons include medical leave (employee's own serious health condition), family leave (care for a family member with a serious health condition, bonding with a new child), and safe leave (matters related to domestic violence/harassment/sexual abuse/stalking when the employee or a family member is a victim). Total duration of paid leave in a leave year for any/all reasons is 12 weeks, plus 2 additional weeks if leave is needed for pregnancy-related incapacity. The law also allows an employee to take 4 additional weeks of *unpaid* leave for reasons covered by the Oregon Family Leave Act.



Benefits are paid at 100% if an employee's average weekly wage (AWW) is equal to or less than 65% of the state AWW. If the employee's AWW is greater than 65 % of the state AWW, the employee's weekly benefit amount will be 65% of the state AWW PLUS 50% of the employee's AWW that is greater than 65% of the state AWW. The maximum weekly benefit amount is 120% of the state AWW.

The total contribution rate (as a percentage of employee wages) is not yet established. Whatever is set, the employer will pay 40% of that amount and the employee will pay 60%. Contributions will start on January 1, 2022.

Matrix will provide a full summary of the Oregon PFML law on our blog, www.matrix-radar.com, once it is finalized and signed by the Governor.

Oregon Pregnancy Accommodations (including Lactation). Oregon has joined the more than 20 states that now require employers to provide accommodations for pregnant employees, even if the employee's condition does not rise to the level of a disability. Effective January 1, 2020, Oregon employers with 6 or more employees must make reasonable accommodations to the known limitations due to an employee's pregnancy, childbirth or a related medical condition, including but not limited to lactation, unless the employer can demonstrate that the accommodation would impose an undue hardship (that is, requires significant difficulty or expense) on the operation of the employer's business. Accommodations may include, but are not limited to:

- Acquisition or modification of equipment or devices;
- More frequent or longer break periods or periodic rest;
- Assistance with manual labor; or
- Modification of work schedules or job assignments.

Employers may not require a pregnant employee to accept an accommodation that is unnecessary for the applicant or the employee to perform the essential duties of the job or require an employee to take family leave under OFLA or any other leave, if the employer can make reasonable accommodation to the employee's known limitations.

Employers must post notice of the provisions of the new law in a conspicuous and accessible location in or about the premises where employees work. In addition, employers must

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provide written notice to existing employees within 180 days after the act goes into effect, at the time of hire for new employees, and within 10 days after an employee informs the employer that she is pregnant.

Washington Lactation Breaks. Existing Washington law requires employers to provide reasonable accommodations due to the employee's pregnancy and pregnancy-related health conditions. That law has been amended by [WA Substitute House Bill 1930](#) to include accommodations relating to the employee's need to express breast milk. Effective July 28, 2019, Washington employers with 15 or more employees must provide reasonable break time for an employee to express breast milk each time the employee has need to express, for two years after the child's birth. The employer must provide a private location, other than a bathroom, if such a location exists at the place of business or worksite. If the business location does not have a space for the employee to express milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their needs.

NOTE: Matrix does not presently administer lactation breaks due to the immediate but short-duration nature of such breaks. For more information about state and federal laws requiring lactation breaks, including the Fair Labor Standards Act applicable to nonexempt employees, see <https://www.abetterbalance.org/resources/breastfeeding-while-working/>.

PFML | Updates

PFML

As the year progresses, states continue to address paid family and medical leave laws – whether by introducing, passing, or letting them die. Here is our updated map reflecting the current lay of the land:

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Paid Family & Medical Leave – Laws Existing or Introduced in 2019



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In addition to new paid family and medical leave laws passed by Connecticut and Oregon (see above), Washington, Massachusetts, and District of Columbia are marching through their implementation phases. Here are updates but as always, watch our blog at www.matrix-radar.com for current news. You can also use the search box on the blog, type in the state you are interested in, and find all articles we have posted about each state's PFML law.

Washington PFML. The state has been implementing the rules that provide a lot of the "how to" for complying with WA PFML. Unfortunately, these are being addressed piecemeal, in phases, so it is hard to get a good, cohesive picture. While phases One through Four are final, phases Five and Six are not Phase Six is not expected to be final until December 20, 2019 – just 12 days before benefits payments start and perhaps many days after claims can be filed for those giving 30 days' advance notice of their leave request. All the rules (final and draft) can be accessed on the Employment Security Department's [Rulemaking page](#).



The deadline for PFML wage reporting and premium payments has changed again.

Reporting and payments for Q1 and Q2 2019 are now due between July 1 and August 31, 2019. For more information, visit the [reporting page](#) on the ESD Paid Leave website.

Still missing, in addition to final regulations? As yet the ESD has not provided forms for benefits applications or the certifications required to support a leave request and the required notices to employees.

Massachusetts PFML. In a flurry of activity in June, the Commonwealth passed legislation to delay the date for starting employee and employer contributions from July 1 to October 1, 2019. At the same time, the Commonwealth also increased the combined contribution rate from 0.63% to 0.75% of employee qualifying earnings to ensure there would not be a funding shortfall due to the delay in contributions.

The Massachusetts Department of Family and Medical Leave (DFML) was also busy. The delay in collection of contributions spawned several related delays in key deadlines. The deadline for providing required notices to employees was extended to September 30, 2019. The DFML issued updated workplace posters and individual employee notices (including an addendum for those employers who had already given notice to their employees) to reflect the new dates and contribution rates. The various notices – in several languages – can be accessed on the DFML website [here](#).

Although applications for private plans can be filed at any time, they are generally not effective until the first day of the quarter following approval. However, if an employer applies for a private plan exemption by Dec. 20, 2019 (and the plan is approved) the employer does not have to submit employee and employer contribution to the state for the quarter from October 1-December 31; rather the employer can retain such contributions to fund payment of benefits under its private plan. *Guidance from the DFML about the private plan exemption can be found on the [DFML exemption page](#).*

The DFML also released the [final regulations](#), effective July 1, 2019, and [the bond form and instructions](#) required for private plans.

All employers will be required to file quarterly reports through MassTaxConnect beginning in January 2020. Reporting and documentation guidelines will be announced prior to Oct. 1, 2019.

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MATRIX CAN HELP!

In addition to keeping you abreast of developments through these blog posts, Matrix is taking other steps to assist employers interested in the Massachusetts and Washington private plan options. These include developing state-specific sample private plans for use by our clients and a guide for our account managers to assist you with the private plan decision and application process.

If your company is interested in the private plan option for Massachusetts or Washington PFML, contact your Matrix/Reliance Standard account manager or send us a message at ping@matrixcos.com. And stay tuned here for more PFML information as it develops!

MATRIX CAN HELP! Questions about how legislative changes or court opinions could impact your business?

Want to learn more about our benefits and absence management solutions? Matrix provides leave, disability, and accommodation management services to employers seeking a comprehensive and compliant solution to these complex employer obligations. We monitor the many leave laws being passed around the country, watch the courts and governmental agencies, and specialize in understanding how they work together.

For leave management and accommodation assistance, contact your Account Manager or local Reliance Standard Sales Representative or contact us at ping@matrixcos.com.

Disclaimer *This communication is intended as general information only and does not constitute a legal opinion or legal advice.*