Employers, Are Your Leave Policies Ready to Ring in 2023?

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With the arrival of the new year comes the effective date of many new leave laws (and expansion of existing leave laws) across the United States. Below we summarize family and sick leave laws that will take effect across various states in 2023.

California

California employers will see two main changes to leave laws in 2023 (both of which we blogged about here): an expanded definition of "family member" for family, medical and sick leaves, and new bereavement leave protections. First for 2023, eligible California employees will be able to take family or medical leave under the California Family Rights Act ("CFRA") and sick leave under the Healthy Workplaces, Healthy Families Act ("HWHFA") to care for a "designated person," which is defined as "any individual related by blood or whose association with the employee is the equivalent of a family relationship," and can be identified by the employee at the time the employee requests the leave. Second, California employers will be required to provide eligible employees with up to five days of unpaid bereavement leave to attend to needs resulting from the death of a family member (which takes its definition from CFRA, but it is unclear at this time whether it will also include a "designated person") at any time within three months of the family member's death. Employees will also be able to use any accrued but unused paid vacation, sick, or personal leave time to take bereavement leave.

Colorado

In Colorado, starting January 1, 2023 covered employers must begin contributing to the family medical leave insurance fund created by the Family and Medical Leave Insurance Act ("FAMLI Act") through a 0.9% payroll tax. The payroll tax, which will remain at 0.9% through 2023 and 2024, will be split equally between employers and employees. The FAMLI Act applies to most Colorado employers and will cover Colorado employees (including remote workers who work for Colorado employers) who earned at least $2,500 in the relevant base period. Beginning in 2024, eligible Colorado employees may apply for up to 12 weeks of partially paid leave (up to 16 weeks for health conditions relating to pregnancy or childbirth complications) for certain qualifying reasons, including the employee's or a family member's serious health condition, to care for a newborn or newly placed child, to address needs arising from a family member's active duty military service, and/or because the employee or their family member is a victim of domestic violence, stalking, or sexual assault or abuse. Colorado employers should ensure they are ready for 2023 by registering with the FAMLI Division and creating a plan to collect and remit the required premiums, which will be due after the first quarter of 2023 closes.

Oregon

Starting January 1, 2023, employers with 25 or more employees in Oregon must begin making contributions into the new Oregon Paid Family and Medical Leave Insurance ("PFMLI") program, which provides eligible employees with paid time off for certain family and medical reasons. Employers pay 40 percent of the premium and employees pay 60 percent, which is equivalent to one percent of an employee's wages for 2023. Employers with fewer than 25 employees need not make contributions into the program, but still need to collect and remit their employees' share. Employers may elect to participate in the program through the Oregon Employment Department plan or a state-approved equivalent plan. Starting September 3, 2023, eligible employees can apply for up to 12 weeks (14 if pregnant) of PFMLI benefits to (i) bond with a child following birth or adoption; (ii) recover from a serious medical condition; or (ii) if the employee or a family member experienced domestic violence, sexual assault, or harassment.

Maine

Maine has amended its paid leave law, effective January 1, 2023, to require all private employers with 11 or more employees to pay out all accrued vacation pay upon the employee's separation from employment for any reason. Failure to comply with this requirement may result in payment for the amount owed, liquidated damages up to double the amount overdue, and attorney's fees and costs.

New York

As we previously reported, starting January 1, 2023, eligible employees in New York may apply for New York Paid Family Leave Law benefits to care for their sibling (including a biological, adopted, step, or half-sibling). The maximum annual employee contribution for 2023 is $399.43, which is $24.28 less than 2022, and the maximum weekly benefit for employees will increase to $1,131.08.

Michigan

Michigan is set to implement the Michigan Earned Sick Time Act ("ESTA"), effective February 20, 2023, expanding the coverage and amount of paid sick time available to employees. The Michigan legislature originally approved ESTA in September 2018, which would have required employees to accrue one hour of sick time for every 30 hours worked, with no cap on accrual or carry over as follows: employers with 10 or more employees would have been required to permit up to 72 hours of paid sick time per year, while employers with less than 10 employees would have been required to permit up to 40 hours of paid sick time and up to an additional 32 hours of unpaid sick time per year. However, subsequent amendments to ESTA significantly scaled back the law's original requirements and resulted in the adoption of the Paid Medical Leave Act ("PMLA"), which went into effect in March 2019. Several groups successfully filed suit to challenge the constitutionality of the amendment process and on July 19, 2022, the Michigan Court of Claims reinstated the originally approved 2018 ESTA. The State of Michigan filed an appeal and moved for a stay of the Court's decision pending the appeal. While the Court denied the motion for a stay, it did postpone the enactment of ESTA until February 20, 2023, to provide employers time to make any necessary changes to be in compliance. Parties to the lawsuit have requested the appellate court issue its decision by February 1, 2023.

Looking Ahead

Some states have important changes on the horizon that employers should be aware of, even though there is no need to take action just yet. In 2025, paid family and medical leave laws will take effect in Delaware and Maryland. Both states will require covered employers to begin contributing to the relevant state funds before leave benefits become available to employees. Delaware employers have until January 1, 2024 to make arrangements for payroll contributions to the fund, while Maryland employers with 15 or more employees must begin contributing to the fund on October 1, 2023 at a rate set by the state. Vermont, on the other hand, is implementing a *voluntary* paid family and medical leave program. Benefits under the Vermont program will begin with state employees on July 1, 2023 and extend to private employers and employees on July 1, 2024. Unlike the programs described above, Vermont's program does not require employers contribute through payroll taxes. Instead, participating private employers will pay a weekly premium based on their selected program. Vermont's program follows neighboring New Hampshire's similar voluntary program, which was enacted in 2021.

Employers should take a moment before 2022 is over to ensure their policies are compliant with 2023 requirements. Members of Proskauer's Labor and Employment Department are ready to answer questions and bring your policies into the new year.

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