

LEGISLATIVE MONITOR

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Prudential Group Insurance

OCTOBER 2016

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EEOC issues final *Enforcement Guidance on Retaliation and Related Issues*

Released August 29, 2016

The Equal Employment Opportunity Commission (EEOC) published its final *Enforcement Guidance on Retaliation and Related Issues,* which replaces its 1998 Compliance Manual section on retaliation. The guidance addresses retaliation under each of the statutes enforced by EEOC, including the Age Discrimination in Employment Act (ADEA), Title V of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act (GINA).

The guidance was issued in response to a growing trend in retaliation charges. Nearly 45% of all discrimination allegations received by the EEOC include a retaliation charge.

Topics explained in the new guidance include:

- The scope of employee activity protected by the law.
- Legal analysis to be used to determine if evidence supports a claim of retaliation.
- Remedies available for retaliation.
- Rules against interference with the exercise of rights under the ADA.
- Detailed examples of employer actions that may constitute retaliation.

Employers can access the EEOC Guidance, a Questions and Answers document, and Small Business Fact Sheet at **https://www.eeoc.gov/eeoc/newsroom/release/8-29-16.cfm**.

Please note: When you click on this link, you will leave the Prudential website and will be taken to the EEOC website, which is not affiliated with The Prudential Insurance Company of America.

Prudential
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0290171-00003-00

Decline in Consumer Price Index results in no Cost of Living or Indexing Adjustments

Effective July 1, 2016

Some of Prudential's Long Term Disability (LTD) plans contain an optional Cost of Living Adjustment (COLA) provision that automatically increases the net monthly benefit received by the claimant every July 1 for the first five years of payments. The amount of that COLA increase is typically defined as the lesser of 50% of the Consumer Price Index (CPI-W) or 6%. The amount of the annual increase varies every year depending on the amount of change in the Consumer Price Index. Because there has been a decline in the CPI, no COLA adjustments are payable this year on LTD plans containing Prudential's standard COLA provision.

However, an annual COLA adjustment will be applied on LTD plans containing a COLA provision that utilizes a flat percentage (typically 3%). For these plans only, the LTD payments issued in early August, which represent benefits for the month of July, will include the COLA increases. (Some of our plans contain language that applies the COLA in a month other than July. Those claims will be adjusted according to the applicable plan language.)

A similar provision called "Indexing of Pre-Disability Earnings" is standard in most LTD contracts that have a Partial Disability provision, and provides for annual increases in the amount considered to be pre-disability income for claimants who are partially disabled. A claimant who is receiving partial disability benefits on July 1 of any year and was disabled (either totally or partially) throughout the immediately preceding 12 months may qualify for indexing. Again, as no COLA is payable this year due to the decline in the CPI, indexing will not be applied to LTD partial disability claims in 2016.

Connecticut adds Military Exigency to State Family and Medical Leave Law

Effective June 7, 2016

Connecticut recently amended its family medical leave law to allow employees to take protected leave for "qualifying exigency" as defined under the federal Family and Medical Leave Act (FMLA). As a result, Connecticut employees can use their state leave allotment to take time off to address circumstances arising when their spouse, child, or parent is on active duty or has been notified of an impending call to order in the armed forces. Connecticut's Family and Medical Leave Law provides qualified employees with 16 weeks of unpaid leave within a 24-month period.

Prudential has updated our leave management procedures to include exigency as a qualifying absence under Connecticut FML for our Absence Management customers.

Illinois passes three leave bills

This summer, Governor Bruce Rauner signed three leave bills into law that will impact businesses with Illinois employees

Illinois Child Bereavement Leave Act

Effective July 29, 2016

The Illinois Child Bereavement Leave Act (CBLA) requires employers to provide employees who suffer the loss of a child with up to two weeks (10 work days) of unpaid leave to attend the child's funeral (or funeral alternative); make arrangements necessitated by the child's death; and/or to grieve. Employers may view the full text of the IL CBLA at **http://ilga.gov/legislation/99/SB/PDF/09900SB2613enr.pdf.** *Please note: When you click on this link, you will leave the Prudential website and will be taken to the ilga.gov website, which is not affiliated with The Prudential Insurance Company of America.*

Key provisions of the law include the following:

- Employees may take leave for the loss of a biological, adopted, foster, or step son or daughter, a legal ward, or a child for whom the employee stood in loco parentis.
- The bereavement leave must be taken within 60 days after the employee receives notice of the child's death.
- In the event of the death of more than one child in a 12-month period, an employee may take two weeks of leave per child, up to a total of six weeks of bereavement leave during the 12-month period.
- Employers may request documentation of the need for leave and require 48 hours advance notice, unless doing so is not reasonable or practicable.

Employer and employee eligibility under the CBLA mirror the federal Family and Medical Leave Act (FMLA) so that all Illinois employers and employees covered by FMLA are covered by this law. However, the IL CBLA does not allow employees to take leave in excess of their FMLA allotment.

Prudential has updated our leave management procedures with the new Illinois Child Bereavement Leave Act for our Absence Management customers.

Illinois passes three leave bills

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Illinois amends Victims' Economic Security and Safety Act (VESSA)

Effective January 1, 2017

The Victims' Economic Security and Safety Act (VESSA) allows employees who are victims of domestic or sexual violence or who have family or household members who are victims of such violence to take unpaid leave. An amendment signed by the governor in August expands VESSA coverage to include all employers, not just those with 15 or more employees. However, employers with fewer than 15 employees are only required to provide eligible employees with up to four weeks of leave during a 12-month period. Employers with 15 or more employees are still required to grant up to twelve (12) weeks of unpaid leave per any twelve (12) month period.

Employees may take VESSA leave to seek medical help, legal assistance, counseling, safety planning, and other assistance. The Act also prohibits employers from discriminating against employees who are victims of domestic or sexual violence or who have family or household members who are victims of domestic or sexual violence. The recently passed amendment does not change the law with respect to employee eligibility, covered relationships, leave reasons, length of leave, notice, certification, or any other provision.

Employers may obtain additional information regarding VESSA at **https://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/vessa.aspx**.

Prudential will be updating our leave management procedures with the changes to the Illinois Victims' Economic Security and Safety Act ahead of the January 2017 effective date for our Absence Management customers.

Illinois Employee Sick Leave Act

Effective January 1, 2017

The Employee Sick Leave Act will permit Illinois employees to use up to six months of earned sick leave benefits for caregiving responsibilities. Employers usually limit use of "personal sick leave benefits" to absences related to an employee's own illness. Beginning in 2017, Illinois employees will be able to use accrued time for absences due to illness, injury, or medical appointments of the employee's immediate family. Immediate family is defined broadly as the employee's children, spouse, sibling, parent, parents-in-law, grandchildren, grandparents or step-parents.

The law does not specify the maximum duration an employee can take per occurrence, stating it should be permitted for a "reasonable period of time." However, it does specify that the same employment terms and policies that apply to employee sick leave may be applied to family care absences. Moreover, employers can limit the use of sick leave benefits for family care to six months, even if the employee has accrued more time for their own care.

Lastly, the expansion of personal sick leave to include family care absences does not extend to employer plans that provide compensation for absences such as short or long term disability. Employers may obtain additional information regarding the new Sick Leave Act at **http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0841**.

Prudential does not currently offer paid sick leave administration and as a result, we will not administer Illinois Employee Sick Leave when it becomes effective.

Please note: When you click on these links, you will leave the Prudential website and will be taken to the respective jurisdiction websites, which are not affiliated with The Prudential Insurance Company of America (Prudential).

New Local Paid Sick Leave Legislation

Chicago, Illinois; Minneapolis, Minnesota; Los Angeles, California; and San Diego, California join the ever-growing number of local and state governments enacting paid sick leave legislation. The regulatory summaries below are provided for informational purposes only. Prudential does not currently offer paid sick leave administration and, as a result, we will not administer these leaves for our Absence Management customers as they become effective.

Chicago Paid Sick Leave Ordinance
Effective July 1, 2017

Chicago's new ordinance will allow workers within the city limits to earn and use up to 5 days of paid sick leave a year. Starting July 1, 2017, employees will accrue one hour for every 40 hours worked and may carry over up to 2.5 days of unused sick days to the following year. However, employers are not required to pay out unused sick days upon an employee's termination. New employees can use accrued sick leave after an initial six-month probationary period.

Eligible employees may use their accrued paid sick leave in any of the following circumstances:

- Care for the employee's or a family member's health condition, including medical care, treatment, diagnosis, or preventative care;
- The employee or his/her family member is the victim of domestic abuse;
- Business closure by a public official due to a health emergency; or
- Closure of a school or place of care attended by the employee's family member by a public official due to a health emergency

When an absence is reasonably foreseeable, employers may request up to seven days advance notice of the employee's need for leave. Employees should notify their employer as soon as is practicable if the leave is due to unforeseeable circumstances. Employers may require supporting documentation for absences of more than three consecutive days.

Chicago employers that offer Paid Time Off (PTO) programs that exceed the requirements of the Paid Sick Leave Ordinance are exempt from these requirements provided employees can accrue and use at least five days of PTO within a calendar year.

Employers may obtain additional information regarding the new Paid Sick Leave at **https://chicago.legistar.com/LegislationDetail.aspx?ID=2688219&GUID=CAFDC647-4F3F-4CE6-90D0-101B4728A10A**.

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Minneapolis Sick and Safe Time Ordinance
Effective July 1, 2017

In May, the City of Minneapolis passed a paid leave ordinance which will require employers to provide employees with sick and safe time starting in 2017. The leave must be: (1) paid for employers with six or more employees, and (2) unpaid for business with five employees or fewer. However, during the first five years following implementation of the ordinance, new businesses (excluding chain establishments) will only be required to provide unpaid sick and safe leave during the 12 months following the hire date of their first employee.

Beginning July 1, 2017 (or the employee's hire date if later), employees will accrue an hour of sick and safe leave for every 30 hours worked, up to a maximum of 48 hours in a year. Accruals may be carried over from year to year, but the employee's total accrual may not exceed 80 hours. There is a 90-day waiting period to start using accrued sick and safe leave for new hires.

Eligible employees working in Minneapolis may take sick and safe leave for circumstances related to:

- The employee's or a family member's health condition, including treatment or preventative care;
- Domestic abuse, sexual assault, or stalking of the employee or their family member;
- Business closure by a public official due to a health issue;
- Closure of a school or place of care attended by the employee's family member by a public official due to a health issue; or
- Closure of a school or place of care attended by the employee's family member due to inclement weather; loss of power, heating or water; or other unexpected closure.

Employers are required to provide pay statements containing the amount of accrued sick and safe time available to employees and any sick and safe time used during that pay period. However, unused sick and safe leave time does not need to be paid out at termination.

Employers may obtain additional information regarding the new Sick and Safe Leave Ordinance at **http://www.ci.minneapolis.mn.us/sicktimeinfo/index.htm**.

New Local Paid Sick Leave Legislation

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Los Angeles Paid Sick Leave

Effective July 1, 2016

Starting on July 1, 2016, Los Angeles businesses with more than 25 employees are required to provide employees with at least 48 hours of paid sick time (six full-time days) per year. This is three days more than currently required by California's state paid sick leave. The Los Angeles program will take effect for employers with 25 or fewer employees on July 1, 2017. To be eligible, employees must work at least two hours a week in the City of Los Angeles for the same employer for 30 days or more within a year.

Los Angeles workers may use Paid Sick Leave for reasons consistent with the California state paid sick law (e.g. to seek medical treatment or diagnosis for themselves or a family member, or in the event that the employee is a victim of domestic violence, sexual assault, or stalking). However, the Los Angeles ordinance expands the definition of family member to include "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Also unlike California state paid sick leave, employers cannot require employees to use leave in two-hour minimum blocks.

Employers may choose between two methods for granting paid sick leave time. They can front-load paid sick leave by granting a minimum 48-hour allotment at the beginning of each year, or allow employees to accrue one hour of leave for every 30 hours worked.

For current employees, paid sick leave may be used immediately or after 90 days of employment for new hires. Employees may only use 48 hours of leave annually. Any unused accrued time can be carried over to the following year and may be capped at 72 hours. Employers are not required to pay out unused paid sick leave time upon termination, but if an employee is rehired within one year of separation, previously accrued and unused sick leave must be reinstated.

Additional information regarding the new Paid Sick Leave is available at **http://clkrep.lacity.org/onlinedocs/2014/14-1371_ORD_184320_6-2-16.pdf**.

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San Diego Paid Sick Leave

Effective July 1, 2016

After a nearly two-year delay, San Diego voters recently approved an Earned Sick Leave and Minimum Wage Ordinance that was originally passed by the city council in August 2014. A subsequent Implementing Ordinance, effective September 2, 2016, further clarifies certain provisions.

The San Diego ordinances require employers to provide paid earned sick leave to all employees, including temporary and part-time employees, who perform at least two hours of work within the geographical boundaries of the City of San Diego. Starting on July 11, 2016, or date of hire if later, employees accrue one hour of paid sick leave for every 30 hours worked in San Diego. Employees can use their accrued sick leave immediately; however, a 90-day probationary period applies to new hires.

Employees may use earned sick leave for the following covered purposes:

- the employee's own physical or mental illness, injury, or medical condition or to obtain diagnosis, treatment, or other medical reasons, including pregnancy or obtaining a physical examination;
- to provide care or assistance to a family member with a physical or mental illness, injury, or medical condition, or who requires diagnosis or treatment;
- when necessary for the employee or an employee's family member to obtain medical attention or other services due to domestic violence, sexual assault, or stalking; or
- when an employee's place of business or child's school or child-care provider is closed due to a public health emergency.

Employers may request up to seven days advance notice for foreseeable absences or as soon as is practicable if the leave is due to unforeseeable circumstances. Supporting documentation for the absence may be required if the leave exceeds three consecutive days.

Employees may use up to 40 hours of accrued leave in a year and may carry over unused time into the following year. However, employers are permitted to cap an employee's total accrual at 80 hours and are not required to pay out unused sick days upon an employee's resignation or termination.

Employers may obtain additional information regarding the new Paid Sick Leave at **https://www.sandiego.gov/treasurer/minimum-wage-program**.

SAVE THE DATE: Upcoming Industry Conferences

November 17, 2016

Prudential-Sponsored DMEC Webinar "Statutory Disability: Hot Topics for 2017 and Frequently Asked Questions"

Prudential, in partnership with the Disability Management Employer Coalition (DMEC), will be presenting a Tools & Tactics webinar on November 17. If you have employees in any of these statutory jurisdictions—California, Hawaii, New Jersey, New York, Puerto Rico, and Rhode Island—you're looking for tools and tactics to stay on top of your compliance obligations! The session will provide information about disability program changes for 2017 and will help you understand how these programs really work by reviewing claim scenarios.

Registration for Prudential customers is free. Please use the coupon codes and web links below when registering. **NOTE:** The discount code gets applied in Step 3 of the registration process which will zero-out the cost of the webinar before you or your customer checks-out.

http://dmec.org/2016/02/17/2016-webinar-statutory-disability-whats-new-for-2017-and-hot-topics/

Discount Code: **16Prudential2**

DMEC is an industry association dedicated to providing education on integrated disability, absence management, and return-to-work solutions.

March 27–29, 2017

2017 Integrated Benefits Institute (IBI) Annual Forum

The Integrated Benefits Instituted (IBI) will hold their Annual Forum in San Francisco, California March 27–29, 2017. Attendees, including employers, suppliers, and other thought leaders, will explore innovative solutions to health, wellness, and productivity challenges. The Forum offers breakout sessions, discussion panels, tools, and several networking opportunities to bring like-minded professionals together for a common goal: improving the health, well-being and performance of America's workforce.

Conference information is available at **www.ibiweb.org/forum/**.

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