New York Releases 2019 Employee Contribution Rate for Paid Family Leave (NY PFL)

Effective January 1, 2019

On August 31, New York’s Department of Financial Services announced that the 2019 employee contribution rate for Paid Family Leave (PFL) will be 0.153% of an employee’s weekly wage up to and not to exceed the Statewide Average Weekly Wage (SAWW) of $70,569.72. As a result, the 2019 maximum contribution per employee is $107.97. This is an increase from the 2018 maximum PFL contribution rate of $85.56, which was based upon 0.126% of the $67,907.84 SAWW.

Also effective January 1, 2019, the PFL benefit percentage will increase from 50% in 2018 to 55% in 2019 and the maximum leave duration will increase from 8 to 10 weeks. Please note that the applicable benefit percentage and leave duration will apply based upon the employee’s first day of leave. For example, if a PFL leave begins on December 31, 2018, the employee will be eligible to receive 50% of his/her Average Weekly Wage for up to 8 weeks, whereas if the leave begins January 1, 2019, a 55% benefit percentage up to 10 weeks would apply.

Prudential will be amending the contracts for our DBL/PFL customers to reflect the 2019 rates. Clients with New York employees should update their payroll systems with the new contribution rate as necessary.


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Hawaii Amends Temporary Disability Insurance (TDI) Law
Effective July 10, 2018

Hawaii recently amended its Temporary Disability Insurance Law (TDI), which provides partial wage replacement to employees who are unable to work because of an off-the-job sickness or injury. The changes provide greater flexibility to employees filing or appealing claims and increase employer penalties for late responses.

Effective July 10, 2018, the following changes apply to the TDI program:

► An advanced practice registered nurse (APRN) can provide care and certify a disability. Previously only physicians could certify a TDI disability.
► The employer penalty for failing to comply with an insurer’s request for information regarding wages, hours, or duration of employment increased from $10 to $250. Employers have seven days from the date of such requests to respond.
► TDI appeals may be filed at the various offices of the Department of Labor and Industrial Relations (DLIR). Previously, claimants were limited to filing appeals in the county in which the claimant resides or in which they were employed prior to disability.
► DLIR may send notices of appeal hearing electronically or by first-class mail. If such notice cannot be successfully delivered to a party of an appeal, the department can post the notice of hearing to the DLIR’s webpage.

Prudential has updated its claim procedures for our Hawaii TDI customers. Employers can access the amended law at: https://www.capitol.hawaii.gov/session2018/bills/GM1271_.PDF.

New Jersey Temporary Disability Benefits (TDB) and Family Leave Insurance (FLI) Updates
Multiple Effective Dates

Annually New Jersey updates the maximum weekly benefit amount for their state mandated disability and family leave programs – Temporary Disability Benefits (TDB) and Family Leave Insurance (FLI). For 2019, the TDB and FLI Weekly Benefit Maximum is increasing from $637 to $650. The 2019 Maximum Employee Contribution Rates for TDB and FLI were not announced as of the date of this publication. Employers are encouraged to check New Jersey’s website for updates: https://www.nj.gov/labor/ea/ea_index.html.

In addition, New Jersey recently amended their Temporary Disability Benefits (TDB) and Family Leave Insurance Laws. The three bills summarized below will go into effect on October 4, 2019, one year from their enactment:

► Assembly Bill 2762  Requires the plan administering a covered individual’s TDB benefits for pregnancy (including both the state plan and private plans) to automatically process an application for FLI benefits, unless the individual affirmatively opts out.
► Assembly Bill 4118  Permits submission of TDB and FLI claims prior to the commencement of leave in certain foreseeable circumstances.
► Assembly Bill 2763  Expands the data the Commissioner of Labor must provide in annual reports.

A fourth bill, Senate Bill 844, is pending. If enacted, it will create a return a return to work program for eligible employees receiving TDB benefits, allowing them to receive a prorated benefit payment for up to 12 weeks while working on a part-time basis.

Prudential provides insured and self-insured TDB administration. For our TDB customers, we are reviewing the New Jersey bills and will be making the necessary updates to our procedures ahead of the effective dates.

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UPDATE: Washington State Paid Family and Medical Leave (PFML)

Premium Assessment effective January 1, 2019
Benefit Eligibility effective January 1, 2020

As reported in previous issues of the Legislative Monitor, Washington state is rolling out Paid Family and Medical Leave (WA PFML). To implement the program, Washington’s Employment Security Department (ESD) has organized the rulemaking process into six phases. On September 13, ESD released a draft of the Phase 3 Rules, which address benefit applications and benefit eligibility. Employers can access the Phase 3 draft rules as well as information about the other phases on ESD’s Rulemaking website: https://esd.wa.gov/paid-family-medical-leave/rulemaking?utm_medium=email&utm_source=govdelivery.

Washington PFML will be funded through both employer and employee contributions beginning on January 1, 2019, with benefits payable starting January 1, 2020. The ESD will administer the program, including the payment of benefits. However, employers may opt out of the state program and create a Voluntary Plan provided it complies with state minimum requirements and subject to ESD approval.

To help employers prepare and apply for voluntary plans, the ESD recently published a Voluntary Plan Guide and Application. The ESD plans to update the guide throughout the fall, prior to the start of premium collection in January. Employers who are interested in the voluntary plan option are encouraged to visit the ESD’s website for the most current versions of the guide and application which can be accessed at: https://esd.wa.gov/paid-family-medical-leave#Factsheets.

Prudential is continuing to monitor Washington state’s rulemaking process and will provide updates when available.

DOL Publishes Two New FMLA Opinion Letters

Published August 28, 2018

For the first time since 2009, the Department of Labor’s Wage and Hour Division (WHD) published two opinion letters which address the Family and Medical Leave Act (FMLA). FMLA2018-1-A addresses “No-fault” attendance policies and roll-off of attendance points. FMLA2018-2-A clarifies that organ donation can qualify as a serious health condition under the FMLA when it involves either inpatient care or continuing treatment.

Employers can access these opinion letters via the following DOL website: https://www.dol.gov/whd/opinion/search/index.htm?FMLA.

DOL Extends FMLA Notice and Form Expiration Dates

New Expiration Date: August 31, 2021

The U.S. Department of Labor recently updated the expiration dates on their model FMLA Notices and Certification forms to August 31, 2021. No other changes were made. The most current versions are now available at: https://www.dol.gov/whd/fmla/forms.htm.

Every 3 years the DOL is required under the Paperwork Reduction Act of 1995 to submit its FMLA forms to the Office of Management and Budget (OMB) for approval. The DOL may continue to use the forms while it seeks renewal of OMB’S approval. The FMLA notices and forms were originally set to expire on May 31, but were extended 3 months to August 31, 2018 before being approved through 2021.

Please note that no changes are needed for Prudential’s Absence Management customers as our notices and forms are compliant with the requirements.

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# PAID SICK LEAVE UPDATE

The regulatory summaries provided below are 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.

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## New York City Enacts Temporary Work Schedule Changes for Personal Events

**Effective July 18, 2018**

Effective July 18, 2018, New York City employers are required to grant eligible employees up to two temporary work schedule changes per year to accommodate personal events. The change addresses the needs of those who need the flexibility of time to accommodate personal and family issues.

Information about the new law is available at: [http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2900941&GUID=68DC01AE-C577-4B86-B3E5-B9D98836C1E2&Options=ID%7c&Search](http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2900941&GUID=68DC01AE-C577-4B86-B3E5-B9D98836C1E2&Options=ID%7c&Search). Highlights are summarized below.

### New York City Enacts Temporary Work Schedule Changes for Personal Events

<table>
<thead>
<tr>
<th><strong>Eligibility</strong></th>
<th>Employees who have worked for an employer for 120 days and have logged 80 hours of work in New York City are eligible to seek temporary schedule changes under the law.</th>
</tr>
</thead>
</table>
| **Types of Schedule Changes Covered** | Employers are required to provide flexibility with respect to the hours and location of an employee's work schedule including:  
- Paid or unpaid time off,  
- Change in work location or ability to work remotely,  
- The ability to swap shift(s) with other employees, and  
- Changes in scheduled work hours. |
| **Qualifying Personal Events** | Eligible employees may request temporary changes for:  
- Care for a minor or family member with a disability who relies on the employee for care and maintenance;  
- Attending a legal proceeding or hearing for either the employee himself or for a dependent family member who relies on the employee for care and maintenance; and  
- Any circumstance that would constitute appropriate use of safe or sick time. |
| **Usage Rules** | Leave permitted under this new law will take priority over any leave permitted under the New York City Earned Sick and Safe Time Act (ESSTA). An employee does not need to use leave accrued under ESSTA before requesting schedule changes under this law.  
- Employees must advise employers of the need for the accommodation verbally and in writing. Employers must respond to verbal requests immediately and respond to written requests within 14 days of the request. The accommodation need not be granted if the written request is not received. |
| **Other Requirements** | Employers must post the notice “You Have a Right to Temporary Changes to Your Work Schedule” which must be easily seen by employees at each NYC workplace. Notices are available for download and printing on the city’s website.  
- Retaliation against accommodation requests is prohibited. |

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Duluth, Minnesota Enacts Paid Sick and Safe Time Ordinance

Effective January 1, 2020

On May 29, 2018, the Duluth City Council adopted Ordinance No. 10571 establishing minimum standards for earned sick and safe time in the City of Duluth. The law provides eligible employees with paid leave for their own medical needs, those of a family member, or other covered reasons. The Ordinance will take effect on January 1, 2020.

Information about Duluth’s new Paid Sick and Safe Time Law is available at http://www.duluthmn.gov/city-clerk/earned-sick-and-safe-time/. Highlights are summarized below.

### Duluth, MN Paid Sick and Safe Leave At-A-Glance

<table>
<thead>
<tr>
<th>Covered Employers</th>
<th>Employers with five or more employees nationwide, excluding federal, state, county, and local governments.</th>
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<tbody>
<tr>
<td><strong>Employee Eligibility</strong></td>
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<tr>
<td>▶ Employees who perform work within the geographic boundaries of the city of Duluth for more than 50% of their working time in a 12-month period; and</td>
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<tr>
<td>▶ Employees who spend a substantial part of working time in the city and who do not spend more than 50% of their work time within a 12-month period in any other particular place</td>
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<tr>
<td>▶ Excluded workers include independent contractors, student interns, seasonal employees and those covered by the federal Railroad Unemployment Insurance Act.</td>
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<tr>
<td><strong>Accrual Methodology</strong></td>
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<tr>
<td>▶ Employees accrue one hour of paid sick and safe leave time for every 50 hours worked, up to an annual maximum of 64 hours.</td>
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<tr>
<td>▶ Employees begin accruing leave on the effective date of the Ordinance or their first day of employment, whichever is later.</td>
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<tr>
<td>▶ Up to 40 hours of earned but unused sick and safe leave time can be carried over to the following calendar year.</td>
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<tr>
<td><strong>Usage Rules</strong></td>
<td></td>
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<tr>
<td>▶ Employees may begin to use earned paid sick and safe leave time after 90 days of employment.</td>
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<td>▶ An employee’s use of paid sick and safe leave time in each calendar year shall not exceed 40 hours.</td>
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<td>▶ Leave may be taken in increments consistent with the employer’s practices, provided the increments do not exceed 4 hours.</td>
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<td>▶ For absences of more than three days, employees may be asked to provide reasonable documentation of the need for leave.</td>
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<tr>
<td>▶ Employees must comply with the employer’s usual notice and procedural requirements for absences or for requesting leave.</td>
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<tr>
<td>▶ Employers are not required to pay employees for accrued but unused leave upon termination.</td>
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<tr>
<td><strong>Qualifying Absence</strong></td>
<td></td>
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<tr>
<td>▶ Paid sick and safe leave may be used for:</td>
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<tr>
<td>▶ The diagnosis, care, treatment, or recovery from an employee’s, or for care of a family member’s mental or physical illness, injury or other health condition, or for preventive medical care; or</td>
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<tr>
<td>▶ An absence due to domestic abuse, sexual assault, or stalking of the employee or employee’s family member.</td>
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<tr>
<td>*Family member includes child, spouse or domestic partner, parent, sibling, grandparent, grandchild, and “any other individual related by blood or whose close association with the employee is the equivalent of a family relationship”</td>
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<tr>
<td><strong>Other Requirements</strong></td>
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<tr>
<td>▶ Earned paid sick and safe leave must be paid at the employee’s hourly rate, for hourly employees, or an equivalent rate for salaried employees.</td>
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<tr>
<td>▶ Employers shall be required to provide notice to employees of their entitlement to paid sick and safe leave, including their rights under the Ordinance.</td>
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<tr>
<td>▶ Retaliation against an employee for requesting or using earned paid sick and safe leave is prohibited.</td>
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<tr>
<td>▶ Employers can satisfy the law’s requirements by front-loading 40 hours of sick and safe leave at the beginning of each year.</td>
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**UPDATE: Uncertain Fate of Two Texas City Paid Sick Leave Laws**

Austin: Effective October 1, 2018 (on hold)
San Antonio: Effective August 1, 2019

In the April 2018 issue of the Legislative Monitor, we reported that effective October 1, 2018 Austin would become the first city in Texas to implement an Earned Sick Time law. However, in August, the Texas Court of Appeals enjoined the implementation pending the outcome of a legal challenge that alleges that local paid sick leave laws violate the state’s minimum wage law. The program, if allowed to go into effect, will allow employees to accrue up to 64 hours annually for the employee’s own health condition, to care for a seriously ill family member or to participate in certain activities related to domestic abuse, sexual assault, or stalking involving the employee or their family member. Employers can access the Austin Ordinance at: [http://assets.austintexas.gov/austincouncilforum/0E-20180215135505.pdf](http://assets.austintexas.gov/austincouncilforum/0E-20180215135505.pdf).

The outcome of the Austin leave’s legal challenge would impact the fate of a San Antonio Earned Paid Sick Time Ordinance, passed by the City Council on August 16. If allowed to move forward, the San Antonio program will be effective August 1, 2019 (August 1, 2021 for employers with less than 5 employees). Employees will accrue 1 hour of sick leave for every 34 hours worked to be used for the employee’s own illness or to care for a seriously ill family member. Employers can access the San Antonio ordinance at: [https://sanantonio.legistar.com/LegislationDetail.aspx?ID=3601021&GUID=F8BDD841-F429-4ECE-ADE3-57852848610E](https://sanantonio.legistar.com/LegislationDetail.aspx?ID=3601021&GUID=F8BDD841-F429-4ECE-ADE3-57852848610E).

**Maryland, Virginia and Delaware Enact Paid Parental Leave for Government Employees**

The regulatory summaries provided are for informational purposes only. Prudential does not currently administer the paid leave programs summarized below.

**Maryland: Parental Leave with Pay for Executive Branch Employees**

Effective October 1, 2018

In May, the Maryland governor signed into law Senate Bill 859, which provides all state executive branch employees parental leave with pay. Employees who are the primary caregiver of a child may use up to 60 days of parental leave to care for the child immediately following his or her birth or adoption (where the child is under age six).

Employees entitled to parental leave may use available accrued annual leave and personal leave and must be provided with additional paid leave to attain the 60 days of parental leave if the amount of available annual and personal leave is less than 60 days. Employees may only use parental leave after obtaining approval from their appointing authority and are required to provide certification of the birth or adoption in accordance with the federal Family and Medical Leave Act (FMLA) guidelines.

Virginia: Paid Parental Leave for Executive Branch Employees
Effective June 25, 2018

On June 25, 2018, Virginia’s governor signed an executive order creating a Paid Parental Leave program for executive branch employees. The Department of Human Resource Management (DHRM) is charged with establishing policy and guidance to support the implementation of the program.

To be eligible, employees must have worked for the Commonwealth for a minimum of 12 consecutive months. Employees may use up to 8 weeks or 320 hours of leave within the 6 months following the birth, adoption, or foster placement of a child younger than 18. If both parents are eligible, they each receive parental leave, which may be taken concurrently, consecutively, or at different times. Parental leave can only be taken once in a 12-month period and only once per child.

Eligible employees will receive 100% of their regular salary during a parental leave and time taken will not count against their annual or sick leave. The Commonwealth’s parental leave will run concurrently with leave provided under the Family and Medical Leave Act (FMLA).

Employers can access the Executive Order creating Parental Leave for Virginia Commonwealth employees at: https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-12-Parental-Leave-For-Commonwealth-Employees.pdf.

Delaware: Paid Parental Leave for State Employees
Effective April 1, 2019

On June 30, 2018, the governor of Delaware signed House Bill 3 into law. This legislation provides state workers up to 12 weeks of paid parental leave after the birth or adoption of a child age 6 or younger. Up to 6 weeks of unpaid leave may be taken following the adoption of a child over age 6. Both the paid and unpaid parental leave entitlements expire 12 months after the birth of placement of the child.

State employees will receive 100% of their creditable compensation during a qualified leave. Delaware’s Paid Parental leave will run concurrently with federal Family Medical Leave (FMLA) and state employers are prohibited from terminating benefits or employment of employees exercising their right to take paid parental leave.

Eligible employees include all full-time state employees, including reorganized school districts, charter schools, and vocational schools with at least 1 year of service. The Office of Management and Budget will establish guidelines for the implementation of this Act prior to the effective date.

Information about the Delaware Paid Parental Leave program for state employees is available at https://legis.delaware.gov/BillDetail?legislationId=25617.

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SAVE THE DATE
for Upcoming Industry Events

November 15, 2018
State Disability and Paid Leaves Webinar – What’s New for 2019

Prudential, in partnership with the Disability Management Employer Coalition (DMEC), will be presenting an upcoming Tools & Tactics webinar. DMEC is an industry association dedicated to providing education on integrated disability, absence management, and return-to-work solutions.

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. This session will provide information about disability and paid leave program changes for 2019. We’ll also provide a refresher on New York’s new Paid Family Leave that went into effect in 2018 and look ahead to upcoming paid leave programs in Washington state, the District of Columbia, and Massachusetts. Ample time will be provided to answer employer questions.

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.

Discount Code: 18PRUDENTIAL2

April 24-26, 2019
2019 Health & Benefits Leadership Conference

Human Resource Executive will hold its Annual Health & Benefits Leadership Conference in Las Vegas, NV, from April 24-26, 2019. Employers will gain useful solutions and ideas to help craft a solid benefits program that will attract new employees, retain top talent, improve employee engagement, and enhance productivity and more. Sessions are created and delivered by senior executives from leading organizations, both large and small, to give you a high-caliber learning experience with real-world lessons and practical takeaways. A supplier expo will provide access to suppliers and networking opportunities.

Conference information is available www.benefitsconf.com.

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