



# The Current State of North America Workforce Compliance

2023 Report

# The Impact of 2022 Leave Protections – And What to Expect in 2023



Throughout 2022, employers in the United States and Canada faced many new and amended leave laws affecting their employees. While the past few years have seen many changes to compliance laws and regulations, this year focused on employees' calls for more time off. Among the new and amended laws granted by state and provincial lawmakers, those impacting employee time off for family and medical reasons, including bereavement, proved especially noteworthy.

In the U.S., this kind of legislation was implemented in states from coast to coast. Here are several examples:

- **California Bereavement Leave**

New legislation in California requires employers with five or more employees to provide five days of bereavement leave to covered employees beginning January 1, 2023.

- **California Family Rights Act Leave Extended to a “Designated Person”**

California enacted legislation that expands leave under the California Family Rights Act, allowing covered employees to take time off to provide care to a “designated person” with a serious health condition starting January 1, 2023.

- **Alabama Family Leave**

The Alabama Adoption Promotion Act took effect July 1, 2022, requiring private companies with 50 or more employees (and public agencies and schools) to provide eligible employees with up to 12 weeks of family leave for the birth and care of a newborn or adopted child during the first year after birth or placement. Employees are eligible for family leave if they have completed at least 12 months of employment and worked at least 1,250 hours during the previous 12 months.

- **Illinois Family Bereavement Leave**

Illinois renamed the Child Bereavement Leave Act to the Family Bereavement Leave Act. This amendment expanded the definition of family members for whom bereavement leave may be taken and includes events such as fertility-related losses, failed adoptions, and failed surrogacy agreements as reasons for employees to take bereavement leave.

- **Maryland Paid Family and Medical Leave**

Maryland established a statewide family and medical leave program to provide up to twelve weeks of paid leave to employees for family and medical reasons beginning January 1, 2025. Employees will be able to take paid leave to (1) care for a child during the first year after the birth or placement of the child through foster care, kinship, or adoption; (2) care for a family member with a serious health condition; (3) care for their own serious health condition; (4) care for a service member who is the employee's next of kin; or (5) attend to a qualifying exigency arising out of the military deployment of a family member.

- **New York State Paid Family Leave**

New York State amended its Paid Family Leave to allow employees to take paid leave to care for a biological, adoptive, step-, or half-sibling with a serious health condition starting on January 1, 2023.

- **Washington Paid Family and Medical Leave Amendments**

Effective June 9, 2022, eligible employees have been able to use Washington Paid Family Leave for bereavement reasons during the seven days following the loss of a child if the employee meets one of these conditions: (1) they would have qualified for prenatal or postnatal medical leave for the birth of their child, (2) they would have qualified for family leave to bond with their child during the first 12 months after birth, or (3) they had a child under age 18 placed in their home and qualified for bonding leave within the first 12 months of placement.

In 2022, several Canadian jurisdictions joined the U.S. in providing new leave protections for family, medical, and bereavement reasons:

- **Alberta Bereavement Leave Amended**

On May 31, 2022, Alberta expanded bereavement leave so employees who have been employed by the same employer for at least 90 days and who would have been either biological, adoptive, or surrogate parents can take up to three days of unpaid bereavement leave per calendar year when a pregnancy ends other than in a live birth.

- **British Columbia Illness or Injury Leave Amended**

Beginning March 31, 2022, covered employees with an illness or injury can take up to five paid days and three unpaid days of leave in a calendar year. Prior to March 31, employees were limited to three unpaid days of leave for an illness or injury. The employee decides whether to use paid or unpaid leave.

- **Paid Medical Leave for Federally Regulated Employers**

Changes to the *Canada Labour Code* affected federally regulated employers beginning December 1, 2022. With these changes, employees are entitled to three days of paid medical leave after 30 days of continuous employment and to the accrual of one day of paid medical leave at the beginning of each month, up to a maximum of 10 days in a calendar year. Each day of paid medical leave not used in a calendar year carries over to the next year, but it counts toward the ten days that can be earned in the new calendar year. Employers may require employees who take at least five consecutive days of paid medical leave to provide medical certification within 15 days of returning to work.

Changes to compliance laws and regulations show little sign of slowing down. As U.S. and Canadian employers look to 2023, they can anticipate more changes to leave protections, especially for family, medical, and bereavement reasons. This report offers employers a look at the year's biggest changes to North American compliance and insights to help them prepare for what's ahead.



## Paul Kramer

### *Director of Compliance, WorkForce Software*

Paul Kramer, JD, is an experienced employment law attorney and has been the Director of Compliance at WorkForce Software for more than 10 years. As Director of Compliance, he researches and stays abreast of employment laws in the United States, Canada, and elsewhere in the world. Before joining WorkForce Software, Paul was in private practice specializing in representing employers in employment law issues for almost two decades and represented companies of all sizes in many industries.

# Fighting Employee Burnout During a Pandemic

February 1, 2022



As the COVID-19 pandemic drags on, more workers are exhibiting and reporting signs of burnout such as fatigue, low motivation, and a general decline in mental health. The pandemic has muddled the boundary between home and “the job” as remote employees often feel pressure to work after hours and remain available to their employers. At the same time, “the great resignation”—where many workers have quit their jobs in dissatisfaction—has exacerbated the problem by expanding the job responsibilities of a waning workforce.

Employee burnout should greatly concern companies because it can adversely affect job performance, including legal compliance, productivity, and working relationships.

So here are a few strategies employers should consider implementing to assist workers in avoiding and recovering from burnout:

## 1 | Communication

Create an environment where employees can openly discuss burnout with their managers. Manager support will allow the employer and employee to find solutions together and help workers stay positive and productive.

## 2 | Flexible Scheduling

Avoid rigid work schedules, which may complicate work/family balance. Allowing employees to complete their assignments around personal and family obligations will help curb and alleviate burnout.

## 3 | Adequately Train Employees

Give your employees all the training they need to succeed in their positions. Remember, well-trained workers are less prone to burnout.

## 4 | Encourage Time Off

Don't disparage the taking of vacations or personal time off from work. Consider establishing company holidays. Strategic time off energizes employees and increases productivity.





## 5 | Appreciate Employees

Acknowledging your appreciation for your staff and their hard work can make them feel valued. Of course, following up strong employee performance with pay raises (where feasible) will improve productivity and translate into higher-quality service from your workers.

## 6 | Promote Boundaries and Clarify Expectations

Employees often look for clues from their employers for expectations surrounding work hours and productivity. Organizations can reduce burnout by not overburdening their workers with too many tasks and emphasizing proper work/life balance.

## 7 | Provide Paid Volunteer Time

Volunteering to help others can significantly improve mental health. Consequently, by providing paid time off to employees to perform volunteer services, companies can boost their workers' well-being and benefit those in our society who need help.


## Final Thoughts

Burnout has been especially harmful to employees during COVID-19. Personal financial strain, family health concerns, and additional job responsibilities are only a few of the stresses workers have faced during these volatile and uncertain times. Anything you can do to assist and guide your workers through the pandemic, including the strategies above, will ultimately pay off with improved compliance, performance, and employee engagement.

# California COVID-19 Supplemental Paid Sick Leave

March 1, 2022



 On February 9, 2022, California enacted Senate Bill 114, bringing back COVID-19 Supplemental Paid Sick Leave (“SPSL”) for California public and private employers with more than 25 employees. The new SPSL grants leave to employees who cannot work or telework because of reasons related to COVID-19 and replaces last year’s COVID-19 Supplemental Paid Sick Leave law, which expired September 30, 2021. Although the new SPSL took effect February 19, 2022, it applies retroactively to January 1, 2022, and remains effective until September 30, 2022.

2022 SPSL provides two leave banks for workers. The first bank holds a maximum of 40 hours if a full-time employee or a family member the employee is caring for tests positive for COVID-19. The second is a 40-hour bank allocated for other covered reasons. Employees who work part-time are entitled to a prorated amount of SPSL based on their type of schedule.

Here are the additional covered reasons for SPSL:

## 1 | Quarantine or Isolation

The employee is subject to a COVID-19 quarantine or isolation period as defined by order or guideline of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace.

## 2 | Medical Advice

A health care provider advises the employee to quarantine or isolate because of COVID-19 concerns.

## 3 | Seeking Medical Diagnosis

The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.

## 4 | Vaccine Symptoms

The employee has symptoms related to a COVID-19 vaccination or booster or is caring for a family member with such symptoms, preventing the employee from working or teleworking.



## 5 | School or Place of Care Closure

The employee is caring for a child whose school or place of care has closed or is otherwise unavailable for reasons related to COVID-19 on the premises.

Employers that paid for COVID-19 related absences after January 1, 2022, but before February 19, 2022, will be able to credit these payments to their 2022 SPSL obligation if the leave was for a covered reason. Additionally, employers must display on paystubs (or other written notices employees receive on payday) the amount of SPSL the employee has used through the pay period in which it was due.

## 6 | Vaccination

The employee is attending a vaccination appointment for themselves or a family member to receive a vaccine or vaccine booster against contracting COVID-19. Generally, employers may limit leave for this reason to three days or 24 hours unless a health care provider gives a verification for additional time off.

## 7 | Caring for a Family Member

The employee is caring for a family member subject to a COVID-19 order or guideline or advised to isolate or quarantine.

## Final Thoughts

California employers with more than 25 employees should update their sick-leave policies and wage statements to ensure compliance with the 2022 SPSL. The California Labor Commissioner's Office also issued a new notice that covered employers are required to conspicuously post on premises and distribute by email to employees who do not frequent a physical workplace.

Finally, since federal, state, and local COVID-related leave laws around the country seem to be constantly changing, multi-state employers should seek legal counsel if they have any compliance-related concerns.



# Best Practices for Maintaining HR Compliance in a Rapidly Changing Workforce

March 17, 2022



***HR compliance is a complicated part of running any company. Streamline these processes with modern methods and WorkForce Software technology.***



Companies across the globe are still struggling to keep up with the new challenges and regulations triggered by the pandemic. Additional administrative burdens and substantial legal risks imposed by these new laws and regulations mean ensuring workplace policies are in-line with new local, state, and federal laws. This is where modern workforce management software can help to reinforce HR compliance throughout an organization's workforce.

HR departments are responsible for a massive amount of paperwork, sensitive information, and legal liability. Some of these responsibilities include, but are not limited to:

- New and amended COVID-19 legislation, such as California COVID-19 Supplemental Paid Sick Leave
- Medical certifications under FMLA (Family and Medical Leave Act) and other leave laws
- Reasonable accommodation and undue hardship under the ADA (Americans with Disabilities Act)
- Crime victim leave laws
- Compliance with federal, state, provincial, and local laws

Policies regarding unions, workplace safety, and industry standards also fall within the responsibility of HR departments. With so many regulations in so many areas to keep track of, effective compliance checks are critically important to prevent financial, civil, and even criminal penalties from being lobbed at organizations and their decision makers.

From proper training to corporate policy, there are many layers of a business that can be improved through a simple HR compliance check. These rules are for the protection of not just the company, but the employees as well. With WorkForce Software's digital platform, keeping the workplace in compliance with all legal obligations is more achievable.



## Document Policies and Procedures for HR Compliance

All rules and regulations of an organization must be internally and externally aligned. In other words, company policy must reflect the laws of the country that work is being conducted in. At the same time, internal policies must reflect the mission statement of the company.

To maintain compliance with all laws and regulations, documenting these rules in clear, concise language is necessary to ensure transparency. Corporate policy should be available in both physical and online sources, making it convenient for all employees.

Even when policy is defined, it can't sit static in company manuals; it must be maintained with regular review. Federal and state laws change often, so HR compliance checks can help keep internal regulations up to date. Legal counsel can assist with these assessments to ensure no laws are being violated, while other experts can help confirm verbiage within company policy is clear and aligned with the organization's values.



## Be Consistent

All rules put into the workplace must be fair. If any regulations are not implemented fairly and consistently throughout all areas of the workforce, employees may be reluctant to comply and employers may face discrimination charges.

Simply announcing and enforcing a rule isn't enough. Training and compliance checks must be conducted regularly, from front-line to executive level staff. If there are any inconsistencies in enforcement, employees may have difficulty adjusting and adhering to new protocols.

There are many possible strategies that managers and executives can use to be thorough with compliance enforcement. It could be as simple as highlighting written company policy with employees during meetings. Recurring meetings give Human Resource professionals an opportunity to notify employees about new programs and laws. Consistency should be the goal of any responsible HR department.



## Reinforce HR Compliance Whenever Possible

Whether following internal policies and procedures or complying with external regulations, compliance should be ingrained in the conscience of the entire organization.

To ensure organizations remain compliant with the applicable laws and regulations, it's best practice to constantly review and tweak policies and procedures that may no longer be relevant as a whole or to certain employee types. In some cases, even managers who have been with a company for decades may not be fully aware of every policy. Thus, it's most important to provide as much training and resources as possible to drive compliance.

One of the best strategies to incentivize employees to know their own workplace's policy is to prioritize ease of access. Having workplace rules spread across platforms makes it easy for workers to find company information. Devote a section of the company's online platform to all internal and external policies and provide handbooks to employees during the onboarding process.

You may also reinforce policies by integrating checklists into certain procedures to further emphasize the importance of staying compliant. The more familiar employees are with what's expected of them, the more ingrained a culture of compliance will be, and the less likely they are to stray away from corporate and regulatory guidelines.

## Stay on Top of Law and Regulation Updates

An added difficulty for organizations is how quickly laws seem to expand in the United States and Canada each year. From new amendments to California's Family Rights Act to British Columbia's new Paid Illness and Injury Leave law. These legal guidelines can suddenly be thrust on companies without notice.

And it's not just federal laws. Most legislation enacted in 2021 affecting employers stemmed from state and local authorities. Any legal misstep could pave the way for costly litigation.

For a practical solution to the perpetual expansion of labor laws, let's look at a specific example. The federal [Family and Medical Leave Act](#) (FMLA) is a complicated piece of legislation that allows employees to take unpaid, job-protected leave for specific family and medical purposes. How then does an HR department enforce compliance with an ever-changing raft of government regulations?

Fortunately, there are ways employers can improve their methods of [FMLA administration](#), guard against leave abuse, and ensure covered employees can take advantage of leave if necessary:

- Mandate written leave requests for all absences
- Closely monitor employee use of FMLA leave
- Require medical certification for leave requests
- Request second and third opinion as necessary
- Keep detailed records of FMLA leave
- Investigate possible abuses of policy
- Substitute paid leave for unpaid FMLA leave

HR departments, meanwhile, should keep up with new laws in general by subscribing to legal update services. Regular audits can also help expose any weaknesses in company policy or detect any out-of-date regulations.

## Practice Effective Communication

Getting complete compliance from the entire workforce is the hardest part during any policy change. The best remedy is clear, coherent, and consistent communication between management and employees.

Include HR when presenting new regulatory or policy changes to employees. They can help explain and clarify the purpose and logic behind each rule change. This will further help in getting policy changes to permeate all layers of the organization.

Pandemic-related policy, labor law updates, and any amendments should be quickly disseminated. If employees don't have the correct information at hand and in time, then it can become difficult for them to stay [compliant](#).

Effective communication thrives on [employee feedback](#). After all, nobody knows the workplace better than the people that work there. The most useful suggestions can come from employee input. Employee engagement and in-the-moment feedback surveys are effective ways of gauging employee sentiment.



Employee compliance begins with effective communication, especially for deskless shift workers. Clear communication not only helps these office-less workers and management exchange information fast, but it further builds trust, a key ingredient in securing compliance.

Open communication creates community, motivates employees to work together toward a common goal, and creates a cohesive and compliant company culture. With a greater sense of purpose, employees automatically become more productive, more engaged, more loyal, and overall more compliant.

WorkForce Software's smart communication capabilities provides a secure place to reach and engage employees in the form of their favorite app. It enables real-time communication and two-way conversations with direct messaging. Sharing important announcements and keeping everyone in the loop on policy and regulatory changes is fast and easy.





## Simplify HR Compliance with WorkForce Software

When it comes to workforce management, an organization's compliance concerns extend beyond regulatory compliance. It encompasses union and collective bargaining agreements, industry standards, corporate policies, health and safety rules, and security concerns. With each new layer comes new compliance concerns. Keeping pace with the raft of increasingly complicated legislation playing out in the North America landscape can be a challenge.

But as Paul Kramer, Director of Compliance at WorkForce Software, notes: "Employers must be mindful to keep pace with these changes or risk liability."

A rigorous compliance check is a vital first step in building a strong company culture and creating happy employees. With established best practices and a future-ready approach, the [WorkForce Suite](#) has companies covered for every labor law or agreement — whether global or local, legislative or contractual — to ensure organizations are compliant now and into the future.

## Final Thoughts

WorkForce Software delivers full-spectrum compliance capabilities with multiple labor regulations, including:

- Family Medical Leave Act (FMLA)
- Fair Labor Standards Act (FLSA)
- Americans with Disabilities Act (ADA)
- Affordable Care Act (ACA)



# Department of Labor Increasing FMLA and FLSA Audits

Apr 7, 2022



In February 2022, the United States Department of Labor (DOL) announced plans to increase Family and Medical Leave Act (“FMLA” or “Act”) audits and wage and hour audits under the Fair Labor Standards Act (FLSA), particularly for employers in the warehouse and logistics industries. Despite the announcement’s focus on these two industries, it would be prudent for all covered employers to be on the lookout for increased audit and enforcement activity by the DOL.

Here are a few best practices employers should follow if audited under the FMLA:

## 1 | Understand the FMLA

The FMLA requires covered employers to provide to eligible employees unpaid, job-protected leave for specified family and medical reasons. Group health insurance coverage must remain in effect during this leave period. It’s a complicated law. To avoid costly FMLA violations, employers should have a strong working knowledge of the numerous regulations that interpret and implement the Act.

## 2 | Prominently Post Notice Requirements

All employers covered by the FMLA must conspicuously post on their premises, in workspaces occupied by employees, a notice explaining the Act’s provisions. Information concerning procedures for reporting alleged violations must also be conspicuously posted. The notice must be prominently posted where it can be easily seen by applicants and employees. Employers can be fined by the DOL for violating FMLA posting requirements.

## 3 | Define Your FMLA Year

Employers can choose a calendar year to determine FMLA leave entitlement, but the FMLA regulations permit other leave years to be used, including a “rolling” 12-month period. Many employers prefer the 12-month rolling period because it prevents employees from taking more than 12 consecutive weeks of leave. Be sure to select the FMLA year best suited for your organization.

## 4 | Review and Revise (If Necessary) Your FMLA Policy

If an employer has an employee handbook, it must include an FMLA policy to guide employees regarding their leave rights and obligations. Employers should regularly review their FMLA policy and, if necessary, revise it to ensure it is up to date.

## 5 | Conduct an Internal FMLA Audit

One way employers can ensure they are ready for a DOL audit is to first conduct their own internal FMLA audit. Audits should include activities such as:

- Reviewing FMLA policies and correspondence for compliance
- Making sure employee leaves have been properly tracked and calculated
- Analyzing your leave certification process for fairness
- Reviewing steps taken to curb leave abuse (including employee privacy rights)
- Ensuring employees receive proper notice of leave rights
- Routinely checking that FMLA records are accurate and complete
- Review the Consistency of Your FMLA Processes
- Review each step of the FMLA process to determine if it is being implemented consistently. Inconsistent treatment of employees can lead to employment discrimination claims as well as FMLA violation claims.
- Ensure FMLA Records Are Maintained for Three Years
- Employee FMLA records must be maintained for at least three years. These records include:
  - Basic payroll and employee identification data
  - Dates/hours where FMLA leave was taken
  - Copies of employer and employee FMLA notices
  - Copies of documents describing employee benefits or employer policies and practices
  - Certification forms
  - Premium payments of employee benefits
  - Records of any leave disputes between the employer and employee
- DOL Audits Under FLSA

These audits will generally review whether employees are being paid all their legally earned wages (including minimum wage and overtime), are safe from workplace harassment and retaliation when they claim their rights and are not misclassified as independent contractors. The DOL has indicated it will use all tools necessary to ensure workers are protected and properly paid under the FLSA, which includes audits.

## 6 | Make Sure FMLA Forms Comply with FMLA Regulations

Review your FMLA forms to ensure they comply with FMLA regulations. The DOL has issued model forms employers can use if they don't wish to create their own forms.

## 7 | Train Your Managers

When an employee seeks leave for the first time for an FMLA-qualifying reason, the employee does not have to expressly assert rights under the FMLA or even mention the Act. Consequently, to reduce violations and liability, managers should be trained to recognize FMLA leave requests and how to properly handle them. Knowledge of FMLA policies and procedures is vital for supervisors and managers.

## Final Thoughts

All employers, especially those in the warehouse and logistics industries, should be more cautious than ever in guarding their employees' rights under the FMLA and FLSA. Violations of these laws can be expensive. With the DOL's announcement that they will be enforcing the FMLA and FLSA more vigorously, this is no time for employers to become lax in their legal obligations. Be prepared.

# Maryland Continues National Trend of Paid Family and Medical Leave for Private-Sector Workers

May 3, 2022



Historically, there has been a limited number of states with paid family and medical leave laws covering private-sector workers. In the past few years, however, there has been a growing trend under state law to legislate paid family and medical leave for private employees—and this trend continues today. Maryland recently became the 10th state to enact a paid family and medical leave law for private- and public-sector employees, and [more of these laws are sure to follow](#).

Maryland's law, known as the [Time to Care Act of 2022](#), establishes a Family and Medical Leave Insurance (FAMLI) Program to provide paid leave benefits to employees who have worked at least 680 hours in the 12-month period immediately preceding the leave. Self-employed individuals may also elect to participate in the program.

## Paid leave benefits start in 2025

Employees taking leave will begin receiving replacement income of up to 90% of their weekly wages from a state-administered fund (with a maximum of \$1,000 per week, indexed annually to inflation). Employers with more than 15 workers, employees, and self-employed individuals may begin contributing to the fund on October 23, 2023; employers with more than 15 workers must contribute (unless exempted). Covered employers satisfying the Act's requirements through a private employer plan are exempt from the contribution requirement, as are their workers.

Employees may take up to 12 weeks of paid leave per year under the Act, up to 24 weeks if they become eligible to take leave to care for a new child and their own medical condition in the same year. The qualifying conditions for FAMLI leave are as follows.

If you are:

- Attending to the employee's own serious health condition that renders the employee unable to perform the functions of their position
- Caring for a covered family member with a serious health condition

- Caring for a child during the first year after birth or placement through adoption, foster care, or kinship care
- Caring for an employee's next of kin who is a military service member with a serious health condition resulting from military service
- Attending to a qualifying exigency arising out of the deployment of a service member who is the employee's family member

"Family member" under the Act is broadly defined to include (1) the employee's spouse; (2) the employee's biological, adopted, foster, or step-child; (3) a child for whom the employee has guardianship or legal or physical custody; (4) a child for whom the employee stands in loco parentis; (5) a biological, adoptive, foster, or step-parent of the employee or the employee's spouse; (6) the employee's legal guardian or a ward of the employee or the employee's spouse; (7) a person who acted as a parent or stood in loco parentis to the employee or their spouse when they were a child; (8) the employee's biological, adoptive, foster or step-grandparent; (9) a biological, adoptive, foster or step-grandchild of the employee; and (10) the employee's biological, adoptive, foster, or step-sibling.

Leave taken under the Act will run concurrently [with federal FMLA leave](#). Eligible employees, however, must take all employer-provided paid leave not required by law before receiving FAMLI benefits.

Maryland is not the only state recently enacting new paid family and medical leave legislation that includes coverage for private workers. [Delaware](#) just passed a bill similar to Maryland's law, while [Washington state](#) has again amended its Paid Family and Medical Leave Act (effective June 9, 2022), which will allow workers to use paid family leave for bereavement purposes during the seven days after a qualifying family member's death. And Virginia's new Private Family Leave Insurance Act permits employers to voluntarily purchase insurance policies that replace a portion of an employee's income loss due to family leave reasons.

Organizations should be prepared to provide the required notice to each [employee covered by a new paid leave law](#) because failure to do so could be costly.



## Final Thoughts

With the national paid family and medical leave landscape constantly changing and becoming ever more complex, employers are encouraged to review and revise their current leave policies and practices as necessary. The best way to keep track of every amendment, alteration, and new legislation is with a modern workforce management solution like WorkForce Software, where even the most complex restrictions in leave and scheduling from either compliance or contracts is thoroughly managed on a flexible platform.



# Give Employees a Break: Complying with California's Meal Break Law

June 6, 2022



California law grants employees more rights than any other state in the country, which, unfortunately, leads to many legal violations by employers doing business there. One of California's most frequently violated employment laws is its meal break rule, requiring employers to provide non-exempt employees with mandatory meal breaks during their workday. This highly detailed legislation can lead to costly lawsuits and fines if not properly followed.

Here are several key components of California's general meal break requirement employers should know about to remain compliant:

## 1 | General Meal Break Rule

Employers may not require non-exempt employees to work for more than five hours per day without providing them with a 30-minute unpaid meal break. This off-duty meal period should begin no later than four hours and fifty-nine minutes into an employee's shift. A second 30-minute off-duty meal break must be granted for all workdays an employee works more than 10 hours.

## 2 | Off-Duty Meal Break Conditions

Employers must provide employees with a reasonable opportunity to take an uninterrupted 30-minute meal break. This legal obligation is satisfied if, during the meal period, the employer relieves the employee of all duties, relinquishes control over the worker's activities, and does not impede or discourage the employee from taking a compliant break.

## 3 | Waiver of Meal Breaks

Employees may waive their first 30-minute meal period if the workday will be completed in no more than six hours, provided the employer and employee voluntarily agree to the waiver. The second 30-minute meal break can be waived only if the total hours worked on that workday do not exceed 12, the employee and employer mutually consent to the waiver, and the first meal break of the day was not waived. It is best practice to put any waivers in writing.

## 4 | Recording Meal Breaks

Employers must maintain a record of start and end clock times for each meal period. It is insufficient to merely demonstrate that the worker took a half-hour meal break—the timecard must show the precise clock times.



## 5 | On-Duty Meal Breaks

Employers may provide an employee with a 30-minute on-duty meal break without owing a meal period premium but only in limited circumstances. On-duty meal breaks are allowed when the employee's work prevents them from being relieved of all duties, the worker agrees in writing to it, the employee is paid, and the on-duty period can be revoked in writing by the employee at any time. On-duty meal periods are rarely upheld when challenged by an employee.

## 6 | Missed Meal Periods

Employees must be paid one hour of pay at their regular rate of compensation, known as a meal period premium, for each workday they are not provided with a legally compliant meal break. "Regular rate of compensation" means the same thing as "regular rate of pay" when calculating overtime premiums under California law. Fortunately for employers, only one meal period premium is imposed each day even if a worker misses both meal breaks. Unfortunately for employers, however, the California Supreme Court recently held that employees who successfully sue to recover unpaid meal premiums are entitled to derivative wage statements and waiting time penalties under the Labor Code.

## 7 | Training or Meetings During Meal Periods

Some employers provide training or hold meetings with employees during scheduled meal breaks. Even if employees are given a meal during this training or meeting, this is still considered working time for which they must be paid their regular rate of compensation and meal period premium.

## Final Thoughts

There are general exceptions to these meal break rules for particular industries in some California Industrial Welfare Commission Wage Orders. Nevertheless, California employers should be cognizant of providing nonexempt employees with legally compliant meal breaks in terms of timing, duration, relief of duties, and waivers. They should also create a workplace culture of having workers take meal breaks instead of skipping them. Failing to do so can lead to premium pay being owed and costly penalties and litigation.

# Alberta, Canada: More Job-Protected Leave for Employees

July 7, 2022



In March 2022, Canada's fourth-largest province, Alberta, reported having close to two million payroll employees and is looking to attract more. Unfortunately, the influx of new workers risks mounting employment standards complaints, especially for employers who do not prioritize compliance. Alberta's Employment Standards Code (ESC) establishes the minimum standards of employment most employers in the province must follow.<sup>1</sup> These standards include work hours, earnings payments, overtime, vacations, general holidays, youth employment, termination of employment, and job-protected leaves. The ESC seems to be constantly changing, and it has happened again.

On May 31, 2022, Alberta's Labour Statutes Amendment Act, 2022 (Bill 17), received Royal Assent, expanding employee leave entitlements in Alberta in two ways:

## 1 | Bereavement Leave

In past years, workers employed by the same employer for at least 90 days were entitled to three days of unpaid bereavement leave per calendar year upon the death of a covered family member. Effective May 31, 2022, this leave entitlement was expanded to allow employees to also use bereavement leave when their pregnancy, the pregnancy of their spouse or common-law partner, or the pregnancy of another person ends other than in a live birth (i.e., miscarriage, stillbirth, or abortion). This expansion makes bereavement leave available for employees who are biological and adoptive parents and parents whose children are being carried by gestational carriers/surrogates.

## 2 | Reservist Leave

Reservist leave entitlement for annual training is no longer limited to 20 days per calendar year. With the removal of this 20-day leave restriction, employees who have completed at least 12 consecutive weeks of employment with an employer may take as much unpaid leave as needed to participate in reservist training. This amendment makes it easier for employees to fulfill their annual training duties without using other time off, such as vacation or contractual leave.

<sup>1</sup> Federally regulated industries in Alberta are not regulated by the ESC. Instead, they are governed by the Canada Labour Code. A list of federally regulated industries and workplaces in Canada can be found at [canada.ca/en/services/jobs/workplace/federally-regulated-industries.html](https://canada.ca/en/services/jobs/workplace/federally-regulated-industries.html)

## Final Thoughts:

It is recommended that covered employers review and revise their leave policies and practices to ensure compliance with these new statutory bereavement and reservist leave entitlements. Companies with workers throughout Canada, including U.S.-based employers, should understand that each province and territory in Canada has its own employment standards to comply with and that these standards constantly change. What was right yesterday may be unlawful today. Staying on top of new employment laws and regulations is not easy, especially for multi-province/-territory employers. To stay ahead, consider seeking legal help or using an automated workforce management system to help maintain compliance and ensure success.



# What Qualifies as a FMLA Serious Health Condition?

August 2, 2022



The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified medical and family reasons while maintaining group healthcare coverage. Two of the most common events triggering FMLA leave are if the employee or a covered family member suffers from a serious health condition. But what qualifies as a serious health condition under the FMLA?

Many employers struggle with whether an employee or their family member has a serious health condition when making an FMLA leave request. In short, a serious health condition is an illness, injury, impairment, and physical or mental condition involving continuing treatment or inpatient care by a healthcare provider. This brief definition likely does not answer all your questions.

To offer more clarity on what qualifies as an FMLA serious health condition, here are some examples:

## 1 | Inpatient Care

A health condition requiring an overnight stay in a hospital, residential medical care facility, or hospice meets the definition of a serious health condition, including any period of subsequent treatment or incapacity connected with the overnight stay.

## 2 | Long-Term or Permanent Conditions

If an employee is being supervised by a health care provider for a condition rendering them incapacitated for a long time or permanently, they have an FMLA serious health condition. These serious health conditions include Alzheimer's disease and terminal illnesses such as cancer.

## 3 | Pregnancy and Prenatal Care

Any period of incapacity due to pregnancy, such as morning sickness or bed rest before giving birth, is a serious health condition. FMLA leave may also be taken for prenatal care even if it does not result in incapacitation.

## 4 | Chronic Health Conditions

FMLA leave may be taken for a period of incapacity due to a chronic health condition such as migraine headaches, epilepsy, diabetes, and asthma. This type of serious health condition requires care by a healthcare provider at least twice a year and must recur over an extended period. Chronic conditions can cause a continuing inability to work or merely episodes of incapacity.



## 5 | Incapacity With Continuing Treatment

An FMLA serious health condition includes a period of incapacity of more than three consecutive full-calendar days, plus any continuing treatment or period of incapacity relating to the same condition. Continuing treatment means either two or more visits to a healthcare provider within 30 days of the first day of incapacity (with the first treatment occurring within seven days) or at least one treatment with a healthcare provider within seven days of the first day of inability followed by a regimen of care such as antibiotics or physical therapy.



## 6 | Elective Surgery

Not all elective surgery qualifies as a serious health condition. However, if elective surgery results in an overnight stay in a hospital, an employee's FMLA leave request would meet the definition of a serious health condition under the inpatient care criteria.

Conditions such as the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraine), routine dental or orthodontia problems, and periodontal disease typically do not meet the definition of serious health condition unless complications arise resulting in inpatient care or continuing treatment.

## 7 | Conditions Requiring Multiple Treatments

Time off for multiple medical treatments qualifies as a serious health condition if it is for restorative surgery following an accident or other injury. Additionally, a condition that would likely require an absence of more than three consecutive full-calendar days if not treated qualifies (e.g., severe arthritis, kidney disease, and cancer requiring chemotherapy).

## Final Thoughts

Remember, employers can be exposed to extensive liability for FMLA interference or denial if they do not respond in a timely manner to an employee's FMLA leave request. If there is a possibility that the medical condition of an employee or covered family member is an FMLA serious health condition, employers should provide the proper notification and certification forms to the employee to determine whether a serious health condition exists. Model notification and certification forms can be found on the U.S. Department of Labor's website <https://www.dol.gov/agencies/whd/fmla/forms>.

# Ensure Compliance with Employee Workplace Rights

September 6, 2022



For many employers, the true definition of workplace compliance and its importance is not always clear. Workplace compliance means ensuring workers receive all the rights and protections they are entitled to under federal, state, and local laws. Managing employees in compliance with workplace legislation will lead to a more motivated and satisfied workforce, helping employers avoid costly litigation for violating employee rights.

Here is a list of employee workplace rights you must keep in mind to motivate your workforce, remain compliant, and avoid hefty penalties:

## 1 | Discrimination and Harassment

Under federal law, employees have the right to be free from discrimination and harassment because of race, color, sex (including sexual orientation, gender identity, and pregnancy), age, national origin, religion, and genetic information (including family medical history). Protections against discrimination and harassment may be even broader under state and local laws.

## 3 | Confidentiality

Employees have a right to expect that medical and genetic information they share with their employer will be kept confidential. This information should not be stored in regular personnel files. Instead, medical and genetic information must be maintained in a separate file accessible only to properly designated officials.

## 4 | Retaliation

Employees should be free to report discrimination or other illegal workplace activity without fear of retaliation. Retaliation may include employee discipline, termination, transfer to another position, verbal or physical abuse, increased scrutiny, harassment, or other activities making the employee's work more difficult.

## 2 | Reasonable Accommodations

Employees are entitled to workplace accommodations, including time off, due to disabilities (physical and mental) and religious beliefs, unless doing so would cause undue hardship for the employer. Employers must consider each accommodation request on a case-by-case basis because each case will be different.

## 5 | Proper Pay

Federal, state, and local laws guarantee that workers are paid fairly for their time, including minimum wage and overtime compensation requirements. Wages are due on the regular payday for the pay period, and deductions from wages for things such as cash shortages and employer-mandated uniforms may not reduce an employee's pay to below the minimum wage or overtime rate.

## 6 | Equal Pay

The federal Equal Pay Act requires men and women in the same workplace to be paid equally for equal work. "Equal work" does not mean the jobs have to be identical, but they must be substantially equal in skill, effort, responsibility, and working conditions. The Act covers all types of pay, including wages, bonuses, stock options, profit sharing, life insurance, vacation pay, holiday pay, allowances, and other benefits. Exceptions to equal pay for equal work are an employer's use of a bona fide seniority system, merit system, incentive system, or any factor other than gender.

## 7 | Misclassification

Workers have the right to be properly classified as employees or independent contractors. Proper classification of a worker as an employee is important because employees generally are entitled to certain protections not provided to independent contractors, including unemployment insurance, overtime pay, worker's compensation, and employment benefits.

## 8 | Leaves of Absence

In certain situations, employees are entitled to protected leaves of absence from work. A wide range of laws governs workplace leaves for reasons such as personal and family illness, pregnancy, disability, organ donation, crime-victim status, military service, the death of a family member, personal emergencies, family responsibilities, and other reasons. Many organizations also have policies and collective bargaining agreements providing workers with additional leave rights.



## Final Thoughts

Pleading ignorance of the law will not protect employers from liability for noncompliance. Employers must know of these and other employee rights. Regulatory compliance also builds trust with employees, customers, and vendors, laying the groundwork for a strong company brand and reputation. Workplace compliance affects every aspect of a business and should be a mandatory part of any company's business strategy.



# New Legislation Imposes Additional Family Leave Obligations on California Employers

October 10, 2022



The California Family Rights Act (CFRA) provides eligible employees with up to 12 weeks of unpaid, job-protected leave during any 12-month period to care for their own serious health condition, care for a covered family member with a serious health condition, bond with a newborn or newly adopted/fostered child within the first year of birth or placement, or address a qualifying exigency relating to a close family member's covered military service.

Effective January 1, 2023, recently signed bills amending the CFRA will expand the Act's leave entitlements in two major ways:

## 1 | Leave to Care for a Designated Person

Eligible employees can take job-protected CFRA leave to care for a "designated person" with a serious health condition. A designated person is "any individual related by blood or whose association with the employee is the equivalent of a family relationship." The employee may identify the "designated person" when the employee requests the leave, but employers can limit the employee to one designated person per 12-month period. Additionally, employees may elect or be required by their employers to substitute their accrued vacation leave or other accrued time off during this period or any additional paid or unpaid time off negotiated with the employer.[1]

## 2 | Bereavement Leave

Employees with at least 30 days of employment with a covered employer will be entitled to five days of bereavement leave upon the death of a family member. "Family member" means an employee's spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. The leave must be completed within three months of the family member's death and must be taken pursuant to any existing bereavement leave policy of the employer. In the absence of an existing policy, bereavement leave may be unpaid, except when an employee can use other available paid time off such as vacation, personal leave, sick leave, or compensatory time off during the leave. The new legislation also allows employers to require documentation of the family member's death, such as a death certificate, a published obituary, or a written verification of death, burial, or memorial services.

[1] The term "family member" under California's paid sick leave law was also expanded to include a "designated person." For paid sick leave, the law defines "designated person" as "a person identified by the employee at the time the employee requests paid sick days" and does not require that the person be related by blood or affinity or be the equivalent of a family relationship.

## Final Thoughts:

The CFRA covers private employers with five or more employees, the state, and any political or civil subdivision of the state and cities. These employers should prepare to comply with these amendments to the CFRA by updating their employee handbooks, employee policies, leave request forms, and other leave-related documents. Failing to do so could lead to confusion among workers and costly compliance problems.



# 2023 Changes Coming to NY State Paid Family Leave

October 31, 2022



Since its inception in 2018, the New York State Paid Family Leave Law has provided a phased-in benefit program of job-protected paid leave for eligible employees to:

- Bond with a new child within 12 months of birth, adoption, or foster care placement
- Care for a family member with a serious health condition
- Attend to qualifying exigencies when an employee's spouse, domestic partner, child, or parent is deployed abroad on covered active military duty

Paid Family Leave has also been available to employees in certain situations when they, or their minor dependent child, are subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19.

New York employers in 2023 should be aware that the following key changes to the New York State Paid Family Leave program will take effect on January 1:

## 1 | Care for Siblings

In 2022 and earlier, New York State Paid Family Leave to care for a “family member” was limited to an employee's spouse, domestic partner, child, stepchild, parent, parent-in-law, stepparent, grandparent, or grandchild. “Siblings” were not covered for protective relative care. Beginning in 2023, however, eligible employees will also be allowed to take Paid Family Leave to care for a sibling with a serious health condition. This includes biological, adopted, step-, and half-siblings.

## 3 | Decrease in Employee Contributions

The New York State Paid Family Leave program may be funded by way of payroll deductions. Although benefits will be expanding in 2023 to cover siblings, employee contributions will decrease. Eligible employees will contribute 0.455% of their gross wages per pay period to the leave program. The maximum annual contribution for 2023 is \$399.43, \$24.28 less than in 2022. Employees earning under the present New York State Average Weekly Wage of \$1,688.19 will contribute proportionately less than the yearly cap of \$399.43, consistent with their lower wages.

## 2 | Increase in Maximum Weekly Benefits

Employees taking New York State Paid Family Leave in 2023 will still receive 67% of their average weekly wage, up to a cap of 67% of the present Statewide Average Weekly Wage. In 2023, however, the New York State Average Weekly Wage increases to \$1,688.19, meaning the maximum weekly wage replacement benefit for 2023 will rise to \$1,131.08. This is \$62.72 more than the weekly benefit employees received in 2022.

## Final Thoughts:

Employers in New York should review their Paid Family Leave practices, policies, and forms to include siblings in the expanded definition of “family member.” Failing to do so could result in a confused workforce and costly compliance problems. Employers should also verify that their employee 2023 contribution rate is updated to ensure proper payroll management. Don't hesitate—be prepared for these 2023 compliance changes.

# FMLA Compliance Review

December 6, 2022



Although the purpose of the Family and Medical Leave Act of 1993 (“FMLA” or “Act”) is to promote equity in the workplace by allowing employees to balance their work responsibilities with family and health demands, there is much more to it than that. The end of the year is the perfect time to refresh your knowledge about the complexities of the FMLA to ensure you meet your organization’s legal obligations and support your employees.

There are more than 70 FMLA regulation sections in Title 29, Part 825 of the Code of Federal Regulations, which implement the FMLA, and many of these sections contain numerous subparts.

Understanding all these regulations can be daunting for employers, causing them to make frequent phone calls to their lawyers for legal advice.

Here is a quick summary outlining important information Human Resource teams must know to understand and comply with the FMLA.

## 1 | Covered Employers

The FMLA covers private employers who employ 50 or more workers in 20 or more workweeks in the current or preceding calendar year, as well as public agencies and schools, regardless of the number of employees. Once a private employer meets the 50-employee threshold, it will remain covered, even if it drops below 50 employees, as long as it employed 50 or more employees in 20 or more workweeks in either the current or previous calendar year.

## 2 | Employer General Notice Requirements

FMLA-covered employers must provide a general notice to their employees advising them of their FMLA rights. To do so, they must (1) display or post a general notice, such as a poster, in a conspicuous place where employees are located; and (2) provide a written general notice to any FMLA-eligible employees, such as in an employee handbook or other written leave materials. Employees must receive a general notice upon hire if an employer does not have a handbook or written materials.

### 3 | Reasons for Leave

Eligible employees may take up to 12 workweeks of FMLA leave in a 12-month period for these reasons:

- The birth of a child and care for the child within one year of birth
- The placement of an adopted or foster child with the employee and to bond with the child within one year of placement
- A serious health condition rendering the employee unable to perform the functions of their position, including incapacity due to pregnancy and prenatal care
- To care for their spouse, son, daughter, or parent with a serious health condition, including incapacity due to pregnancy and for prenatal care
- A qualifying exigency arises because the employee's spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty

Additionally, FMLA military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness to take up to 26 workweeks of unpaid leave during a "single 12-month period" to care for the servicemember. Employees are limited to 26 workweeks of leave for any FMLA-qualifying reason during this single 12-month period.

### 4 | Requesting FMLA Leave

An employee's request for FMLA leave may be oral or written. The first time an employee requests leave for a qualifying reason, they do not have to mention the FMLA specifically but must provide enough information for the employer to know the time off may be covered by the Act. Employers may require employees to comply with their usual and customary policies for requesting leave unless unusual circumstances prevent them from doing so.

After determining an employee's FMLA eligibility status for a requested leave, the employer must inform the employee, orally or in writing, whether they are eligible. For this purpose, employers may use the Department of Labor's model "Notice of Eligibility & Rights and Responsibilities" form.

### 5 | Certification Process

The FMLA certification process allows employers to obtain information regarding the reason for an employee's leave, including the duration of the absence. Employers may require a certification when an employee requests leave for their serious health condition, the serious health condition of a family member, and for qualifying exigency and military caregiver leave reasons. Certification may not be requested for leave to bond with a healthy newborn, adopted, or foster child. The Department of Labor has model forms employers can use when requesting certification.

Employees must provide the certification information to the employer within 15 calendar days after the employer's request, unless it is not practicable under the circumstances to do so, despite the employee's diligent good faith efforts. Upon receiving the certification, employers must advise the employee if the certification is incomplete or insufficient and give the employee seven calendar days to correct any deficiency (unless not practicable under the circumstances despite the employee's diligent good faith efforts). The employer may deny the FMLA leave if an employee fails to provide a complete and sufficient certification.

Recertification of the need for leave may generally be requested by employers no more often than every 30 days and only in connection with an employee's absence. Employers may request recertification for an employee's absence in fewer than 30 days if the employee requests a leave extension, the circumstances described in an earlier certification changed significantly, or the employer receives information casting doubt on the employee's stated reason for the leave or the continuing validity of the existing certification.

In some cases, employers must wait more than 30 days to request recertification. If the original certification specifies that the minimum duration of the serious health condition will exceed 30 days, employers must generally wait until the minimum duration expires before requesting recertification.

When leave for an employee's or family member's serious health condition lasts beyond a leave year, the employer may require a new certification in each subsequent leave year if the leave is for the same reason. The same certification rules apply to annual certifications as to the initial certification.

## 6 | Recordkeeping

Employers must maintain FMLA records for at least three years. The records need not be retained in any particular form and may be maintained electronically or in any other format, provided it includes all the required information.

## 7 | Job Restoration

When an employee returns from FMLA leave, they must be restored to the same position they held when the leave began or to an equivalent job. An equivalent job is virtually identical to the original position in terms of pay, benefits, and other terms and conditions of employment.

## 8 | Eligible Employees

To be eligible for FMLA leave, an employee must: (1) work for a covered employer; (2) have worked for the employer at least 12 months as of the date the FMLA leave is to begin; (3) have a minimum of 1250 hours of service for the employer during the 12 months immediately preceding the leave; and (4) work at a location where the employer employs at least 50 employees within 75 miles of that worksite.

## 9 | Group Health Plan Continuation

During FMLA leave, employers must maintain the employee's health coverage under any group health plan on the same basis as if the employee had not taken leave. "Group health plan" means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to employees, former employees, or the families of employees or former employees.

## Final Thoughts:

The FMLA is a robust law. Successful FMLA administration requires employers to respond skillfully and consistently to leave requests, and to stay up to date with changes in the law, to avoid the headaches and high costs associated with non-compliance. To ensure your continued compliance and that you have not slipped into any non-compliant practices, it is a good idea to audit your FMLA leave practices every year or two.

[Visit WorkForce Software's Compliance Navigator to Learn More About New and Changing Workplace Legislation](#)





# Stay Up to Date with Everchanging Labor Laws, Emerging Issues, and New Guidance

With a new year comes new employee demands and legislation. In 2023, organizations can expect more employee leave protections passed into law, especially for family, medical, and bereavement reasons. Employers who still need to do so should prepare a work-from-home policy, given the continuing rise of hybrid and remote workplaces.

When it comes to workplace compliance, change is the only constant. An organization's compliance concerns extend beyond regulatory compliance to include union and collective bargaining agreements, industry standards, corporate policies, health and safety rules, and security concerns. Employers must stay diligent and focus on the legal developments in the states and provinces where they operate. Ensuring your organization is up to date on ever-changing labor laws, emerging issues, and new guidance does more than protect from the risk of costly litigation.

A successful compliance check is vital to building a strong company culture and positive employee experiences. WorkForce Software's Compliance Navigator offers your organization the insight and resources to stay up to date and prepared for what's ahead.

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