State/Local Compliance Update: November 2023

A brief update on what happened the prior month in group health plan compliance at the state and local level, listed alphabetically. If you would like additional information, please reach out to the GBS Compliance Team.

Colorado

- **Updated guide released regarding insurance coverage for "gender-affirming" care.** In 2023, Colorado became the first state in the country to explicitly include "gender-affirming" care services in its benchmark plans for essential health benefits (EHBs). To help better understand the new requirements, the CO DOI created a guide on insurance coverage of "gender-affirming" medical services for individual and small group health insurance plans. The DOI has updated the guide to reflect the insurance companies and plans that will be available in 2024 in light of the current open enrollment. The DOI notes that the information in the guide is not an exhaustive list of all procedures, but rather a list of many common services to treat gender dysphoria. It also does not include the different processes, like prior authorization or letters from a provider, that may be required by an insurance company in order to show that it is medically necessary to receive a service or medication.
- **Employees eligible for Colorado's Family and Medical Leave Insurance (FAMLI) program benefits starting January 1, 2024.** FAMLI will provide most employees with up to 12 weeks of paid leave for various family and medical reasons starting in 2024. Covered Colorado employers should already be withholding premium contributions from employee wages, reporting wage data to the Colorado Division of Labor & Employment (CDLE) on a quarterly basis, have the required program notice posted in the workplace, and be registered for an employer FAMLI account with the CDLE. Colorado employers should also make sure their leave policies have been updated, adjust payroll systems to account for new FAMLI benefits, and educate employees.

Illinois

- **Proposed regulations issued for Illinois Paid Leave for All Workers Act.** On November 3, Illinois published proposed regulations under the Illinois Paid Leave for All Workers Act ("Act"). The Act goes into effect January 1, 2024, and requires covered employers to provide eligible Illinois employees with up to 40 hours of paid leave each year (which employees can use for any reason). As a reminder, the Act is expansive, covering all employers that have one or more employees in the state of Illinois with certain exceptions for some state, federal, and unionized workers. Illinois rulemaking procedures require at least a 90-day notice period before the proposed regulations can be finalized, so employers will not have the benefit of final regulations prior to the Act's effective date on January 1. But, employers should take careful note of these proposed regulations when implementing their paid leave policies to help comply with the new law.
- **New paid leave ordinance for Chicago employers.** On November 9, the Chicago City Council passed the Chicago's Paid Leave and Paid Sick and Safe Leave Ordinance requiring employers to provide employees with 10 paid leave days (5 general paid leave days and 5 paid sick leave days). This new ordinance replaces the current Chicago Paid Sick Leave Ordinance and goes into effect December 31, 2023. Like the prior sick leave ordinance, the new law provides that if an

employer has an existing policy that meets or exceeds the requirements of the paid leave and sick leave created by the ordinance, that is sufficient for compliance. The ordinance applies to all employers with employees in Illinois. A covered employee is any employee who, in a two-week period, works at least two hours for an employer while physically present in the geographic boundaries of the city. And as mentioned above, the ordinance will require employers with employees working in Chicago to provide eligible employees with up to 40 hours of paid leave for any purpose and 40 hours of paid sick leave per year—for a total of 80 hours. Note that The Illinois Paid Leave for All Workers Act, which takes effect on January 1, 2024, does not apply to any employer located in a municipality or county where the employer is required by local law or ordinance to provide paid leave time to its employees. So, employers located within Chicago will be subject only to the requirements of the ordinance. However, an Illinois employer located outside of Chicago that has employees who work in Chicago for at least two hours over any two-week period will have to comply with the Paid Leave for All Workers Act for its employees who do not work in Chicago and comply with the Ordinance for its employees who work in Chicago.

Maryland

- **Initial contribution rate for new Family and Medical Leave Insurance State Plan has been released.** Starting in 2026, Maryland workers will receive job protection and up to $1000 a week for up to 12 weeks to take time away from work to care for themselves or a loved one, to bond with a child, and for certain military-related events. When benefits start in January 2026, either the employer's private plan or the State Plan will provide partial wage replacement to the worker while they are on leave. Employers participating in the State Plan will begin making contributions on wages paid to employees starting October 1, 2024. The total rate of 0.9% of covered wages up to the Social Security wage base will be evenly split between employees and employers, who will each contribute 0.45%. Small businesses with 14 or fewer employees are exempt from the employer's portion of the contributions. Employees of those small businesses will continue to contribute their 0.45% share. The 0.90% contribution rate will continue through at least June 30, 2026.

Massachusetts

- **Massachusetts HIRD form filing due December 15.** Massachusetts employers with six or more employees in Massachusetts are required to file the annual Health Insurance Responsibility Disclosure (HIRD) form by December 15, 2023. Filing is done on the MassTaxConnect (MTC) Web Portal. The HIRD form assists MassHealth in identifying members who have access to qualifying employer-sponsored coverage who may be eligible for the MassHealth Premium Assistance Program. In-state or out-of-state employers who had six or more employees who were employed within the state of Massachusetts during the past 12 months are required to complete the HIRD form. For more information see the Mass HIRD FAQs website.
- **2024 contribution rate for State Paid Family and Medical Leave (PFML) program announced.** The contribution rate for PFML will increase to 0.88% in 2024, up from 0.63% in 2023. The medical leave portion accounts for 0.70% of eligible wages—0.42% of which is contributed by the employer, and 0.28% of which is contributed by the employee. Contributions for the family leave program are 0.18% of eligible wages in 2024 and up to 100 percent of the family leave contribution can be withheld from the covered employee's wages. Employers with fewer than 25 covered individuals must send an effective contribution rate of 0.46% of eligible wages. This contribution rate is less because small employers are not required to pay the employer share of

the medical leave contribution. However, they may elect to cover some or all the covered individuals' share.

Minnesota

- **Bloomington amends its Sick and Safe Time Ordinance to line up with Minnesota ESST law.** The City Council for the City of Bloomington, Minnesota, has adopted amendments to its Sick and Safe Time Ordinance. Minnesota's separate state-wide Earned Sick and Safe Time (ESST) mandate does not preempt related ordinances enacted in four Minnesota cities, but the changes to Bloomington's Ordinance were made to align with language implemented by Minnesota's ESST legislation. Both this amendment and the state-wide ESST go into effect January 1, 2024.
- **Minnesota publishes sample ESST employee notice and additional guidance.** Minnesota's state-wide Earned Sick and Safe Time (ESST) requires covered employers (starting January 1, 2024) to provide eligible Minnesota employees with at least one hour of paid ESST for every 30 hours worked, up to a maximum of 48 hours per year and an overall balance of 80 hours. Minnesota also currently has four local paid sick and safe leave mandates in effect in Bloomington, Duluth, Minneapolis, and Saint Paul. The Minnesota statewide ESST mandate will not preempt these local mandates. The State released a sample notice for employers to use when satisfying the ESST law's notice requirements, and the sample notice includes several areas that need to be customized by the employer before it is distributed, posted or displayed. Employers may forego use of the sample, but the alternative notice must include all information mandated by the ESST law. The notice must be provided to employees on their date of hire or by January 1, 2024, whichever is later. Also, any employer that maintains an employee handbook must include the ESST notice within the handbook. The Bloomington, Minneapolis, and St. Paul local paid sick time ordinances also require notice in employee handbooks. Minnesota's DOL also issued FAQs, a fact sheet, and a video overview of the law to aid employers. Additional information and links to the sample notice, FAQs, workplace poster, and video overview are available on the State's ESST website.

New York

- **Expiration of requirement to provide paid leave for COVID vaccination.** As of January 1, 2024, New York employers are no longer required to provide up to four hours of paid leave for employees to receive a COVID vaccine.

Ohio

- **Ohio extends coverage age for dependents under dental/vision policies issued in the state.** Governor DeWine signed House Bill Number 33 which includes an amendment extending dependent coverage under fully insured dental and vision policies issued, delivered, renewed, or amended in Ohio beginning January 1, 2024. The amendment extends coverage for dependents up to age 26 if they are: (1) an unmarried natural child, stepchild, or adopted child of the subscriber, (2) reside in Ohio or be enrolled as a full-time student at an accredited institution of higher education, (3) are ineligible for coverage under their own employer plan, and (4) are ineligible for Medicaid or Medicare.

Puerto Rico

- **Puerto Rico extends maternity/adoption leave requirements for public sector employees.** On November 13, Governor Pierluisi signed Act No. 129-2023, increasing the duration of maternity leave for government employees to 16 weeks (4 weeks for prenatal leave, 8 weeks after birth,

and 4 additional weeks for childcare). Leave is also increased for government employees who chose to adopt. If a woman adopts a minor 5 years of age or younger who is not enrolled in an educational institution, she is entitled to the same maternity benefits leave as an employee who has given birth. However, if she adopts a minor 6 years of age or older, she is entitled to paid maternity leave of 15 days. Note that adoption leave is available to men, but this new amendment with the increased adoption leave does not apply for men.

Washington

- **Washington Paid Family and Medical Leave (PFML) 2024 premium rates announced.** Effective January 1, 2024, the WA PFML total premium rate will be 0.74% of wages up to the Social Security cap of $168,600. This new rate is a decrease of the current rate of 0.8%. The total contribution of 0.74% is split between employers and employees, depending on the size of the employer. Employers with 50 or more employees working in the state of Washington will contribute up to 28.57% of 0.74%, and their Washington state employees will pay 71.43% of 0.74%. Employers with fewer than 50 employees working in the state of Washington are not required to contribute the employer portion of the premium. However, they must still withhold the employee premium or pay the employees' premiums on their behalf. See the State's PFML website for more information.