State/Local Compliance Update: October 2024

A brief update on what happened the prior month in group health plan compliance at the state and local level, listed alphabetically.

California

- **California to require IVF coverage for group health plans.** Governor Newson signed SB 729 on September 29 expanding fertility insurance coverage, including in vitro fertilization (IVF). The new law will apply to policies that are written or renewed on or after July 1, 2025. The benefits that insured group health plans will be required to provide under the new law will depend on if the plan is a large or small plan.
    - Large fully insured plans (those with 101 or more employees) must **provide** coverage for the diagnosis and treatment of infertility and fertility services. This includes up to three completed rounds of IVF.
    - Small fully insured plans (those with 100 or fewer employees) must **offer** employers the option to provide coverage for the diagnosis and treatment of infertility and fertility services as a rider to small group policies. But it does not mandate that the coverage be included in the policies.
    - For both large and small group policies, the policy may not impose any limitations or cost sharing on such infertility or fertility services that are different from those imposed upon benefits for services not related to infertility or fertility.
    - The law expands the definition of infertility to include a condition or status characterized by any of the following:
        - (a) A licensed physician's findings, based on a patient's medical, sexual, and reproductive history, age, physical findings, diagnostic testing, or any combination of those factors.
        - (b) A person's inability to reproduce either as an individual or with their partner without medical intervention (which would cover single individuals and same-sex couples).
        - (c) The failure to establish a pregnancy or to carry a pregnancy to live birth after regular, unprotected sexual intercourse (which is after 12 months for a person under 35 years old; and 6 months for older persons).
    - For fully insured plans outside California, SB 729 includes the following statement: "This section applies to every … policy that is issued, amended, or renewed to residents of this state regardless of the situs of the contract." In other words, the law purports to have extraterritorial reach to apply for any employee in California regardless of whether the policy is situsued in California. It is not clear if/how California can enforce such a provision. We expect more guidance form the California Department of Insurance as we near the implementation date.
    - Exemptions. SB 729 does not apply to self-insured (including level funded) plans. The law also specifically does not apply to religious employers who meet certain requirements; or accident-only, specified disease, hospital indemnity, Medicare supplement, or specialized disability insurance policies.

- **New dental plan coverage and reporting obligations start in 2025.** Under AB 1048 (which was passed in 2023), California fully insured large group dental plans will be prohibited from imposing a dental waiting period or preexisting condition provision for any plan year beginning on or after January 1, 2025. Dental carriers will also be required to report rate information to state regulators annually. Carriers must file the required information at least 120 days before any change in the methodology, factors, or assumptions that would impact rates. If a plan's rate change for a group plan contract is determined to be unreasonable or not justified (by the regulators), the plan must provide notice of that determination to the group applicants or subscribers. While similar reforms were enacted at the federal level under the ACA for medical insurance, dental plans have continued to deny claims related to preexisting conditions and impose waiting periods for necessary dental treatment. Dental insurance premium rates were also previously exempt from California's mandated review process. So, AB 1048 addresses the fact that protections and oversight for medical insurance were missing for dental plans. While this law applies to California dental carriers, employers may want to verify the coverage and reporting requirements will be followed by their carrier for any large group fully insured dental plans.
- **California expands protections and paid sick leave uses for victims of violence**. Governor Newsom signed into law AB 2499 on September 29 and SB 1105 on September 24 that collectively provide leave protections for victims of domestic violence, sexual assault, stalking, or other crimes, as well as protections for employees performing jury duty or taking time off from work to appear in court to comply with subpoenas or other court orders as witnesses. These new laws are effective January 1, 2025. Employers must provide notice to employees of their rights under these new laws upon hire, to all employees annually, at any time upon request, and any time an employee informs an employer that the employee or the employee's family member is a victim. By January 1, 2025, California must develop and post a form that employers may use to comply with the notice requirement.
- **California employers may no longer require employees to take two weeks of paid vacation before they receive PFL benefits**. Governor Newsom signed into law AB 2123 on September 29 that sunsets the authorization for an employer to require an employee to take two weeks of vacation leave before accessing their benefits under the California Paid Family Leave (PFL) program by specifying that it shall not apply to any period of disability commencing on or after January 1, 2025. The option for employees to voluntarily use their vacation time remains available. So, this change will give employees the choice of when and how they want to use any available vacation time in conjunction with their PFL time.

Massachusetts

- **2025 PFML benefit amounts and contribution rates.** The Massachusetts Department of Family and Medical Leave announced (effective January 1, 2025) an increase to the maximum weekly Massachusetts Paid Family Medical Leave (PFML) benefit, while contribution rates from employers and employees that fund the public program will remain the same.
    - For 2025, the maximum weekly PFML benefit which eligible employees may receive will be $1,170.64 per week (an increase from the 2024 maximum of $1,149.90 per week).
    - The overall PFML contribution rate for 2025 will remain at 0.88% of eligible employee wages up to the social security taxable maximum for employers with 25 or more covered individuals. The PFML contribution rate for smaller employers (fewer than 25 covered individuals) will also remain at 0.46%.
    - See the Massachusetts PFML website for more information.

- **Massachusetts expands covered sick time reasons to include reproductive loss events.** The Massachusetts legislature expanded the reasons for which eligible employees may use available earned sick time under the Commonwealth's Earned Sick Time Law (under which employers must allow employees to accrue a minimum of one hour of sick time for every 30 hours worked, up to at least 40 hours per year). The amended law (effective November 1, 2024) now specifically allows use of sick time for a pregnancy loss, unsuccessful assisted reproduction (such as in vitro fertilization (IVF)), or a failed adoption or surrogacy. Sick time is available to address both the physical and mental effects of such an event on an employee or their spouse.

Michigan

- **Michigan publishes FAQs and materials for upcoming changes to paid sick leave law**. As a reminder, the Michigan Supreme Court ruled in July earlier this year that Michigan's current paid sick leave law (the Paid Medical Leave Act) is unconstitutional and reinstated Michigan's original Earned Sick Time Act (ESTA) of 2018. This revision, that takes effect February 21, 2025, will (among other things) expand the paid sick leave available to eligible employees, provide a faster accrual rate, and require smaller employers that were previously exempt to have to comply. The Michigan DOL has now published ESTA FAQs, a new ESTA model poster required to be posted in the workplace, and a brochure providing general information about the paid sick leave law. Generally, the FAQs set forth requirements regarding employer coverage, accrual, the definition of the benefit year, year-end carryover, frontloading, usage (including reasons for use and increments of use), covered family members, interplay with other leaves and time off, rate of pay, payout upon separation of employment, employee notice, documentation, confidentiality, anti-retaliation, recordkeeping, notice and posting, and penalties for violations, as well as information about filing a claim.

New York

- **2025 NY PFL benefit amounts and contribution rates**. The New York State Department of Financial Services announced changes to the employee contribution rate and benefit amounts under the New York Paid Family Leave Law (NY PFL) effective January 1, 2025. As a result of the increase to the New York State Average Weekly Wage (NYSAWW) for 2025, the maximum weekly benefit amount available to individuals has been changed to $1,177.32. This amount represents 67% of the NYSAWW for 2025, which the Department set at $1,757.19. The 2025 benefit represents an increase from the 2024 benefit of $1,151.16 per week. The contribution rate for 2025 will be 0.388% of an employee's gross wages per pay period, for a maximum annual contribution of $354.53. This contribution rate reflects an increase from the 0.373% rate in 2024. Although not required, employers may choose to notify employees of the increase to the contribution rate.