



PLADS

LEGISLATIVE ADVISORY

REGULATORY UPDATES FROM
AFLAC'S PREMIER LIFE, ABSENCE AND
DISABILITY SOLUTIONS DIVISION



JANUARY 2023

We are pleased to share the January 2023 **PLADS Legislative Advisory**, information related to paid and unpaid leave legislation as well as other regulatory updates.

TOP NEWS INSIDE

- Federal legislation: Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act; Pregnant Workers Fairness Act.
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- State/other leave legislation: New York.
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FEDERAL LEGISLATION

Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act

On Dec. 29, 2022, President Biden signed into law the Consolidated Appropriations Act, 2023. Included in it is the PUMP for Nursing Mothers Act, which amends section 7 (29 U.S.C. 207) of the Fair Labor Standards Act – Break Time for Nursing Mother’s Provision by replacing it with what will be section 18d (29 U.S.C.218d) Breastfeeding Accommodations in the Workplace.

Except where noted, effective **April 28, 2023**, employers are required to provide the following:

- A reasonable break time for an employee to express breast milk for their nursing child for one year after the child’s birth each time the employee has a need to express their milk.
- A place for the employee to express their breast milk that is not a bathroom and is shielded from view and free from intrusion from co-workers and the public.

Compensation

- The time provided is unpaid unless required by federal, state or local laws.
- If the employee is not completely relieved from duty during the entirety of the break, then the break time would be considered as hours worked.

Certain exemptions are made for:

- Employers that employ less than 50 employees. They will not be subject “if such requirements would impose an undue hardship by causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer’s business.”
- Crew members of air carriers as defined in 40102 of Title 49, United States Code and Section 1.1 of Title 14, Code of Federal Regulations (or successor regulations).



Rail carriers and employers of motorcoach service operators

Rail carriers and employers of motorcoach service operators are included as covered employers for purposes of this law and specific details are outlined in the act as it pertains to each category, including the effective dates that are unique to them.

The law does not preempt a state or municipal ordinance that provides greater protections to employees.

Aflac encourages employers to review and update their internal policies, and provide timely and appropriate updates/training to management to implement the laws as it applies to their companies.

Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act was also signed into law by President Biden on Dec. 29, 2022. This new law, effective 180 days after the enactment of this Act, requires employers to provide reasonable accommodation to qualified employees (including applicants) with known limitations related to pregnancy, childbirth or related medical conditions of a qualified employee.

Further, the act makes it unlawful to:

- Not make reasonable accommodations for a qualified employee unless the covered entity can demonstrate undue hardship on the operation of the business.
- Require an employee to accept an accommodation other than any reasonable accommodation that is arrived at through the interactive process.
- Require an employee to take leave (paid or unpaid) if another reasonable accommodation can be provided.
- Take adverse action in terms, condition or privileges of employment against a qualified employee who has requested or is using a reasonable accommodation.
- Deny employment opportunities to a qualified employee if the denial is based on the need to reasonably accommodate the employee.

Terms to know

- **Known limitation:** A physical or mental condition related to, affected by or arising out of pregnancy, childbirth or related medical condition that the employee or employee's representative has communicated to the employer whether or not such condition meets the definition of disability specified in Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).
- **Qualified employee:** An employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position, except that an employee or applicant shall be considered qualified if:
 - o Any inability to perform an essential function is for a temporary period.
 - o The essential function could be performed in the near future.
 - o The inability to perform the essential function can be reasonably accommodated.
- "Reasonable accommodation" and "undue hardship" have the meanings given such terms in Section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and shall be construed as such terms are construed under such Act and as set forth in the regulations required by this division, including with regard to the interactive process that will typically be used to determine an appropriate reasonable accommodation.

To review contents of PUMP and the Pregnant Workers Fairness Act, please visit: [Text - H.R.2617 - 117th Congress \(2021-2022\): Consolidated Appropriations Act, 2023 | Congress.gov | Library of Congress](#).

Aflac leave clients: Aflac has reviewed the act and will be assessing our current administration to determine any changes.

STATE/OTHER LEAVE LEGISLATION

NEW YORK

AB A8092B, AB A7595, & SB 4844

New York Labor Law, Sections 201 and 205, Amendments (AB A8092B and AB A7595)

On Nov. 21, 2022, New York Governor Kathy Hochul signed into law an amendment to Section 215 of the New York Labor Law. The amendment prohibits employers from “...assessing any demerit, occurrence, any other point or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay” or otherwise discriminating against an employee when they have used any legally protected absence under federal, state or local law. The law will go into effect **Feb. 19, 2023**.

To review contents of AB A8092B, visit: [NY State Assembly Bill A8092B \(nysenate.gov\)](#).

Enacted and effective on **Dec. 16, 2022**, Governor Hochul also signed into law the amendment to Section 201 of the New York Labor Law that requires employers to provide certain documents that are physically posted in the workplace to be made available to employees electronically through the employer’s website or by email.

To review contents of AB A7595, visit: [NY State Assembly Bill A7595 \(nysenate.gov\)](#).

For information about required New York employer workplace posters, go to: [Posting Requirements | Department of Labor \(ny.gov\)](#).

Aflac encourages employers to review and update their internal policies and provide timely and appropriate updates/training to management to implement the laws as it applies to your company.

Nursing Mothers in the Workplace Act (SB 4844)

Enacted on **Dec. 9, 2022**, New York has also amended the Nursing Mothers in the Workplace Act. The law requires employers to provide reasonable unpaid break time or permit an employee to use paid break time or mealtime each day to allow an employee to express breast milk for her nursing child for up to three years following childbirth. Employers are required to make reasonable efforts to provide a room or other location that is near the work area.

Effective June 7, 2023, the following will apply:

- The employer is required to provide reasonable unpaid break time or permit an employee to use paid break time or mealtime each time the employee has a reasonable need to express milk for up to three years following childbirth. The prior requirement was “each day.”

- Upon the employee's request, an employer is required to designate a room or other location for the employee to express milk. The room/location must be:
 - o Near the employee's work area.
 - o Well lit.
 - o Shielded from view.
 - o Free from intrusion from others in the workplace or the public.
- At minimum, the room or location must also contain:
 - o A chair.
 - o Working surface.
 - o Nearby access to clean running water.
 - o An electrical outlet if the workplace is supplied with electricity.

A restroom or toilet stall may not be used as the designated room or location.

If the minimum requirements of the room for lactation poses an undue hardship, the employer is required to make reasonable efforts to provide a room or location that is near the work area where the employee can express breast milk in privacy.

- If the work location has access to refrigeration, the employer is required to provide access to refrigeration for the purposes of storing the expressed milk.
- Employers are required to have written policies that address the rights of nursing employees to express breast milk at work that is to be distributed to each employee upon hire and annually thereafter.

To review contents of SB 4844, please visit: [NY State Senate Bill S4844B \(nysenate.gov\)](https://www.nysenate.gov/legislation/bills/2019/S4844B).

Please note, Aflac PLADS does not administer this program. We encourage employers to review and update their internal policies and provide timely and appropriate updates/training to management to implement the laws as it applies to your company.



These are educational materials only. Employers should consult their own counsel for obligations for state-mandated leave and disability programs. Products and services are provided by Continental American Insurance Company. In New York, products and services are provided by American Family Life Assurance Company of New York. Products may not be available in all states and may vary depending on state law.

Continental American Insurance Company | Columbia, SC

Aflac New York | 22 Corporate Woods Boulevard, Suite 2 | Albany, NY 12211