



State Disability / Leave Products

Understanding the changing landscape

December 11, 2018

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Speakers

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Agenda

- Federal Changes
- State / Local Changes
- Impact to STD / PTO
- What the Market is Saying
- Appendix
 - Overview of other state statutory products



Federal Changes & Proposals



Tax Credits for Paid Leave

Employers can earn up to 25 percent of the wages paid to qualifying employees who take the leave, the IRS says.

In an FAQ sent out in early April, the IRS says employers must create a policy that:

- Provides at least two weeks a year of paid family and medical leave for all qualifying employees who work full-time. The amount would be prorated for part-time employees.
- Provides paid leave that is not less than 50 percent of normal wages paid to the employee.
- Doesn't consider paid vacation, personal leave, or medical and sick leave as part of family and medical leave.
- Doesn't use paid leave required by state or local government to set the amount of employer-paid family and medical leave benefits. A qualifying employee is any person who falls under the Fair Labor Standards Act and who has worked for this employer for at least one year.
- Also, the employee must not have earned more than a certain amount in the preceding year. For employers claiming the credit in 2018, employees must not have earned more than \$72,000 in 2017. This amount may change each year.



Tax Credits for Paid Leave

For this credit, family and medical leave is available for these reasons:

- Birth of an employee's child and to care for the child.
- Placement of a child with the employee for adoption or foster care.
- To care for the employee's spouse, child or parent who has a serious health condition.
- A serious health condition keeps an employee from performing the functions of the job.
- Any qualifying exigency when an employee's spouse, child or parent is on covered active duty in the Armed Forces. Leave is also available after a family member is notified of an impending call to duty or is ordered to covered active duty.
- To care for a service member who is the employee's spouse, child, parent or next of kin.

Employers can claim the credit for qualifying employees who are on leave for 12 weeks or less. The minimum credit available is 12.5 percent, based on paying 50 percent of an employee's wages during the leave period. The credit can be increased by 0.25 percent to a maximum of 25 percent, based on the amount paid to an employee over the 50 percent minimum threshold.

Employers can begin taking the credit for wages paid in the taxable years starting December 21, 2017. It is currently not available for taxable wages after December 31, 2019.



Proposed Legislation

The Economic Security for New Parents Act (Rubio-FL)

- Allows parents to tap into their Social Security Benefits before retirement
- Parents could take a least two months of paid parental leave at up to 70% of their weekly wage

Workflex in the 21st Century Act (Walters-CA, Rodger-WA and Stefanik-NY)

- Would amend ERISA to provide benefits
- Paid leave is extended to all full time and part time employees
- Employees accrue leave over the course of a plan year
- Employers would fund the bill and the bill would be scaled based on the size of the employer
- Part time employees would receive proportional benefits
- Minimum eligibility requirements in order to qualify
- The bill would pre-empt all state and local paid leave laws and regulations



Proposed Legislation

FAMILY Act (Gillibrand-NY and DeLauro-CT)

- Establishes new office under the Social Security Administration (SSA) to administer and pay benefits
- Provides 12 weeks of paid leave under FMLA at 66% of their monthly wages up to a capped amount (TBD)
- Covers all employers regardless of size
- Funded by a 2 tenths of 1% employer/employee contribution
- Estimates are about \$1.50 per week for a typical worker (Figure would adjust based on income)
- Would run concurrent with, rather than in lieu of state and local benefits
- Based on models of CA, NJ, and RI



National Trend Assumptions

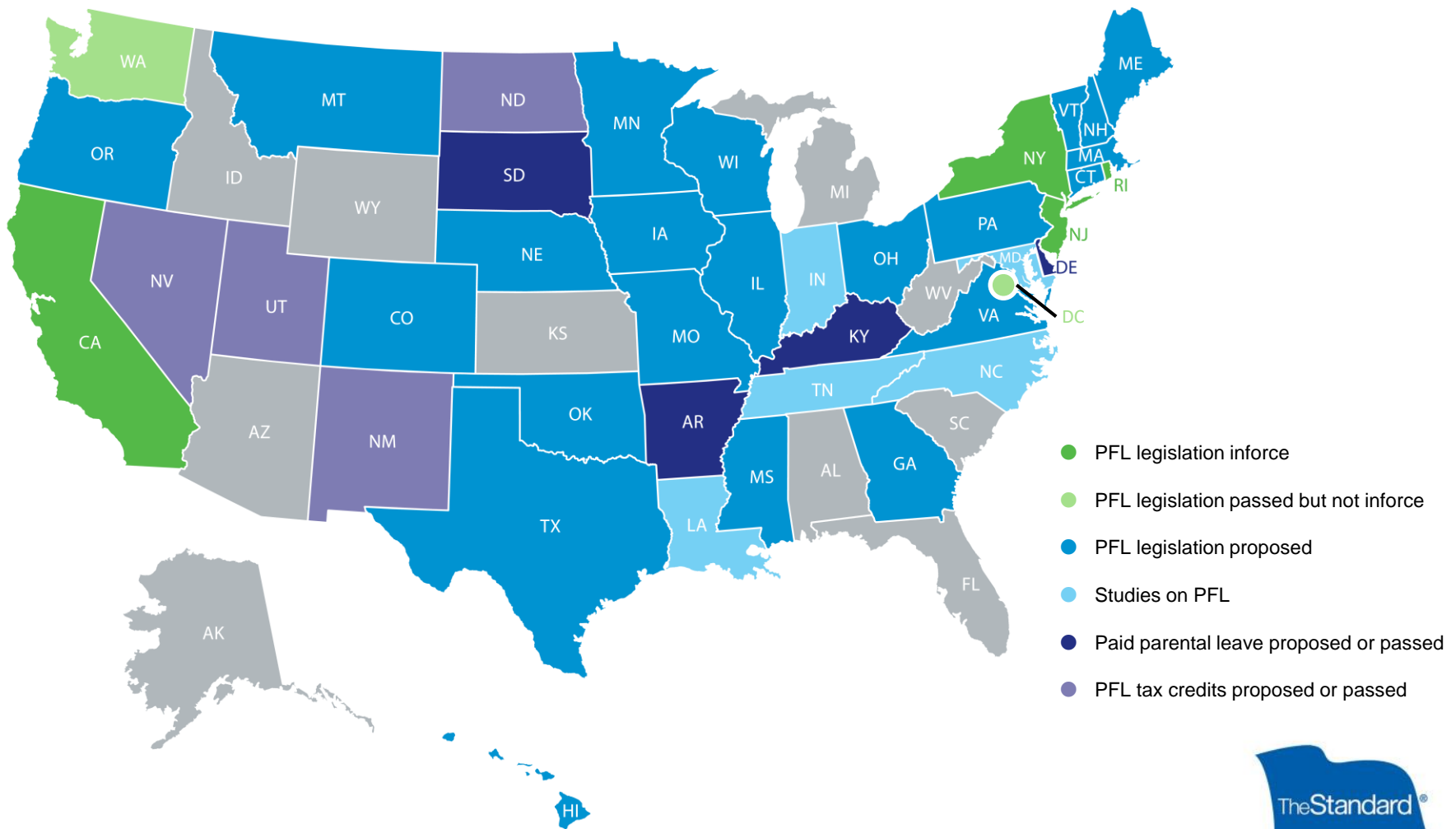
- Who pays for the leave benefit (based on party affiliation)
- Federal law attempts negate state and local laws
- States and municipalities fill the gap making a federal requirements harder to get consensus on
- The Tax Credit encourages paid leave but the cap on earnings could actually discourage implementation
- Tax credit is not guaranteed beyond 2019



Coming Soon to a State Near You



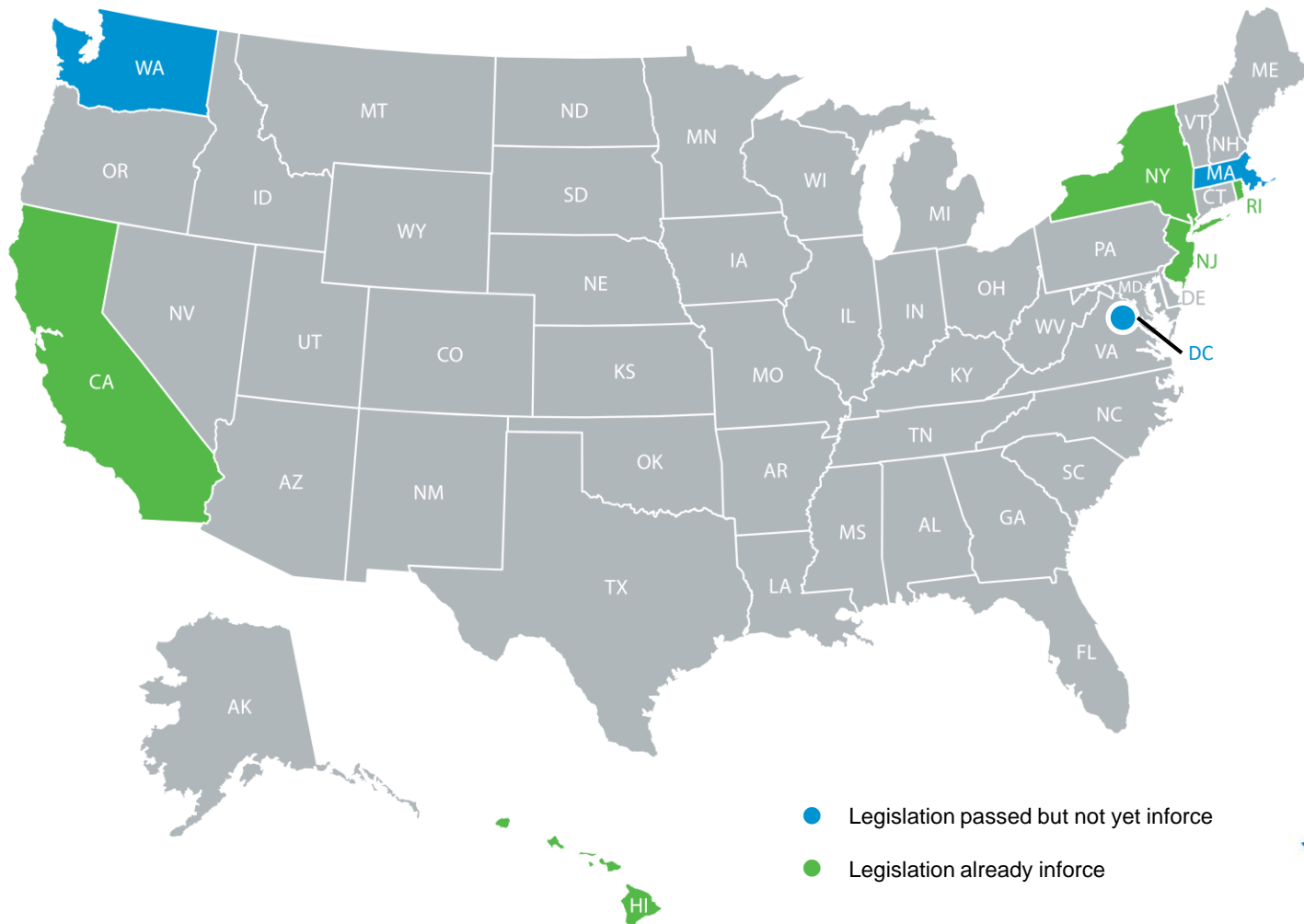
2018 Paid Family Leave Statutory Landscape



December 11, 2018

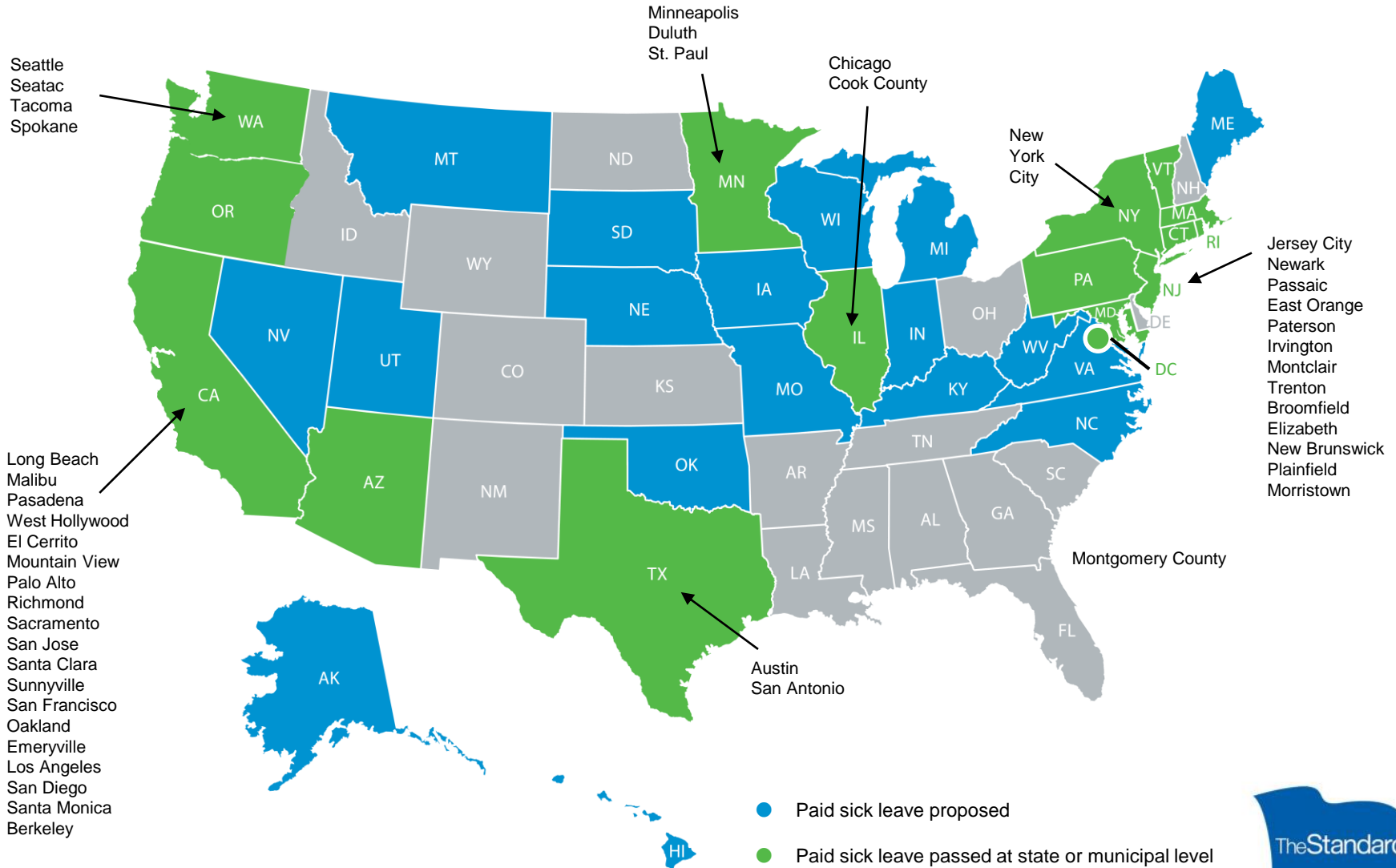


2018 Statutory Disability/Leave Products



2018 Paid Sick Leave Statutory Landscape

Text boxes list locations where municipal paid sick leave laws are in effect.



Why employers are concerned about absence

- Over 241+ State Leave Laws and growing
- If administration is in-house, Employers will need to consider:
 - Supervisors/Administrators can be personally liable
 - FMLA leaves may be approved for fear of litigation with the employee
 - Potential lack of consistency across all locations
 - Having to make tough decisions on some FMLA claims which may put you in a position of acceptance whereas the claim might not be covered if handled by an outside party
 - No resources to help keep you up to date on any new laws/changes
 - Intermittent FMLA is tough to manage and track



Washington– Paid Family & Medical Leave

Waiting Period	Min/Max Benefit	Max Duration
N/A	\$100 / \$1,000	12 / 18 weeks ¹

- WAPFML provides up to 90% of weekly wage while on leave to a maximum of \$1,000 per week
- Must work a minimum 820 hours leading up to leave date (Means that employee may receive benefits before FMLA eligible)
- Employers have option to create a voluntary plan that meets or exceeds the state plan
- Protection extends once FMLA requirements have been met and can extend beyond the FMLA period
- Employee contribution is 0.4% of gross pay and deductions start in 2019. Employers also contribute

¹ In Any Benefit Year

Massachusetts – Paid Family & Medical Leave

Waiting Period	Min/Max Benefit	Max Duration
7 days	TBD / \$850	12 / 20 / 26 ¹

- New state department program to oversee benefit
- Self insured or private plans may be allowed
- Program to be funded by a 0.63% contribution based on an employees weekly wages and paid for by employee and employer
- Used for bonding with a new child, military exigency issues, care for a qualified and covered family member, employees with a serious condition
- Employees can take paid medical leave on an intermittent or reduced schedule

¹ In Any Benefit Year

State and Local Trends

- Over 40% of the states introduced some type of paid leave legislation in 2018
- States appear focused on Paid Family/Medical Leave
- Municipalities appear focused on Paid Sick Leave
- State leaves are not pre-empting local sick leave laws

Impact to Short Term Disability and Paid Time Off



What does this mean for Short Term Disability?

- CA and NJ trend with the introduction of SDI and TBD
- Employers offering a reduced STD plan because the state was paying the benefits
 - Please note: clients may not understand the impact of the state plans (NYDBL)
- Some large employers offering generous STD plans to attract talent
- Increase in voluntary STD plans that paid on top of the state plans (at the employee's expense)
- WA and MA go beyond what CA, NJ and NY offers for paid leave by making all FMLA conditions eligible
- Potential shift away from employer funded STD to VSTD or no STD at all



PTO Plans

- Old trends reversing due to tracking requirements under certain Paid Sick Time Laws
- Upcoming new laws in WA and MA state employers will lose the ability to require the use of PTO for unpaid leave
 - 825.207 (a) Employers can require an employee to use sick time or vacation time during an unpaid leave under FMLA
 - 825.207 (d) in the same regulation states that if the employee is receiving a paid benefit, employers cannot force an employee to use vacation or sick time.
 - Since WA and MA offer paid leave for all FMLA qualifying conditions, employers may no longer be able to require the use of sick/vacation time
 - Potential result is employers reduce PTO banks to prevent employees from double dipping for time lost

What is the Market Saying?



Employer Survey Results¹

Top absence management concerns

Category	Base	Compliance with federal, state and municipal regulations	Employee notification and education about available leave types	Manager education about available leave types, regulatory concerns and compliance	Accurate tracking of time off related to regulatory requirements	Consistent administration	Cost of absence	Coordination of disability and workers' compensation with applicable leave and disability-related regulations	Impact of absence on productivity
ALL	2,162	58%	24%	38%	42%	45%	24%	16%	35%
North Central	659	56%	20%	34%	38%	44%	29%	17%	41%
Northeast	412	60%	26%	37%	43%	46%	23%	14%	34%
South Central	519	59%	25%	38%	41%	47%	24%	15%	32%
Southeast	260	55%	21%	44%	44%	45%	23%	19%	36%
West	304	63%	29%	40%	47%	39%	18%	15%	29%
For Profit	1,301	59%	23%	36%	41%	46%	23%	16%	36%
Nonprofit	827	56%	26%	39%	44%	42%	26%	15%	35%
Under 100 FTEs	714	57%	20%	27%	35%	45%	29%	14%	42%
100 to 499 FTEs	843	59%	25%	41%	44%	42%	22%	16%	37%
500 to 999 FTEs	231	57%	27%	43%	49%	47%	20%	19%	27%
1,000 or more FTEs	336	59%	26%	46%	45%	51%	21%	18%	24%

¹2018 Gallagher Benefit Employer Survey Results

Employer Survey Results¹

Agreement with the statement, “Properly administering and managing lost time, including FMLA, incidental absences, short-term disability, workers’ compensation and related implications of the ADA and ADA Amendments Act, is a top priority for my organization.”

Category	Base	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
ALL	2,341	4%	6%	28%	43%	19%
North Central	719	3%	8%	30%	44%	15%
Northeast	448	4%	4%	28%	46%	19%
South Central	557	5%	7%	26%	42%	20%
Southeast	278	4%	5%	26%	44%	21%
West	331	3%	6%	33%	38%	21%
For Profit	1,414	3%	7%	30%	44%	16%
Nonprofit	885	4%	6%	25%	43%	22%
Under 100 FTEs	801	3%	10%	39%	35%	13%
100 to 499 FTEs	897	4%	6%	23%	48%	20%
500 to 999 FTEs	243	4%	2%	25%	45%	24%
1,000 or more FTEs	359	4%	4%	20%	48%	25%

Employer Survey Results¹

Have a strategy for administering leaves and both occupational and non-occupational disabilities (absence management)

Category	Base	Yes	No	Expected within 2 years
ALL	2,273	44%	41%	15%
North Central	695	42%	44%	14%
Northeast	435	45%	39%	16%
South Central	540	46%	38%	16%
Southeast	274	43%	42%	15%
West	321	44%	39%	17%
For Profit	1,370	42%	43%	16%
Nonprofit	861	49%	37%	14%
Under 100 FTEs	783	32%	57%	12%
100 to 499 FTEs	867	47%	38%	15%
500 to 999 FTEs	238	51%	29%	21%
1,000 or more FTEs	346	62%	19%	19%

The logo features the text "The Standard" in a white, sans-serif font, centered within a blue, wavy, ribbon-like shape. A registered trademark symbol (®) is located to the right of the word "Standard".

The Standard[®]

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Appendix



California – Disability and Paid Family Leave

Benefit	Waiting Period	Min/Max Benefit	Max Duration
SDI	7 days	\$50 / \$1,216	52 weeks
PFL	N/A	\$50 / \$1,216	6 weeks ¹

- Employers can elect to opt out of SDI/PFL if they offer a voluntary disability insurance (VDI) plan that offers at least two enhancements over the state plan.
 - There is significant regulatory filing & reporting requirements in order to offer this
- Benefits are paid based on State Average Weekly Wage (SAWW) not to exceed 60% of weekly wage.
 - For employees who earn less than 1/3rd of the State Average Quarterly Wage (SAQW) the maximum benefit increases to 70% of SAWW
- SDI/PFL benefits are only administered through the State of California EDD division
- VDI/PFL benefits can be administered by a TPA/Carrier
- Employee Maximum contribution is 1% of annual taxable wage base (Currently max contribution is \$1,149.67). This figure adjusts annually.

* SDI – State Disability Insurance, PFL – Paid Family Leave
¹ 6 weeks in a 12 month period.



San Francisco – Paid Parental Leave Ordinance

Waiting Period	Min/Max Benefit	Max Duration
N/A	\$0 / \$811	6 weeks ¹

- Although this is a municipal benefit, it directly ties to CA PFL
- 100% funded by employers
- Law requires employers provide supplemental compensation that equals 100% of the employees gross weekly (subject to a maximum weekly amount)
- Maximum benefit between PFL and PPLO cannot exceed a maximum weekly benefit of \$2,207

¹ 6 weeks in a 12 month period.

Hawaii – Temporary Disability Insurance

Waiting Period	Min/Max Benefit	Max Duration
7 days	\$14 / \$620	26 weeks

- Hawaii does not administer a state plan but requires all employers carry a minimum Temporary Disability Insurance plan
- Employees can earn a maximum of 58% of their weekly earnings under a TDI plan
- The maximum employee contribution is 0.5% or \$5.34 per week (currently)
- Carriers and TPA's are able to provide this service for employers but they must have a physical presence on the islands in order to be able to administer TDI.



New Jersey – Temporary Disability Insurance (TDI)

Waiting Period	Min/Max Benefit	Max Duration
7 days	\$0 / \$637	26 weeks ¹

- Employers can elect to create a self insured version of the state plan provided that the provisions are at least equal to the provisions of the state plan
 - Fully insured or self insured
- Benefits are 66 2/3rd% of the employees weekly average wage
- Employee Maximum contribution is .019% of annual taxable wage base (Currently max contribution is \$64.07). This figure adjusts annually
- Employers contribution can be between 0.1% to 0.75%

¹ 26 weeks or the period necessary for benefits to equal 1/3 of total wages in a base year, whichever is lesser



New Jersey – Family Leave Insurance (FMLI)

Waiting Period	Min/Max Benefit	Max Duration
7 days	\$0 / \$637	26 weeks ¹

- This plan can only be administered through the state. TPA's/Carriers cannot provide outsourcing administration like NJ TDI.
- Employee Maximum contribution is .009% of annual taxable wage base (Currently max contribution is \$30.33). This figure adjusts annually.
- Employers do not contribute to this benefit.
- FMLI does not provide job protection or a leave entitlement, it's merely a monetary benefit.

¹ 6 weeks consecutive or intermittent weeks. Can also be taken in 42 intermittent days during a 12 month period beginning with the first date of the claim.



New York – Disability Benefits Law (DBL)

- This plan can only be administered through the NY State Insurance Fund (NYSIF), TPA's/Carriers or it can be self funded
- There is no NY State Plan Option
- Employee Maximum contribution is .5% of annual taxable wage base (Currently max contribution is \$31.20)
- Employers pays the balance of the benefit plan costs not covered by the employee contributions
- Benefit rate is 50% of the average weekly wage base in the previous 8 weeks earnings to a maximum benefit of \$170 per week
- Benefits are subject to FICA tax

¹ Based on 52 consecutive weeks

New York – Paid Family Leave (PFL)

Waiting Period	Min/Max Benefit	Max Duration
N/A	\$100 / \$653*	8 weeks ¹

- This plan can only be administered through the NY State Insurance Fund (NYSIF), TPA's/Carriers or it can be self funded and must be included as part of an employers DBL offering
- There is no NY State Plan Option
- Employee Maximum contribution is .126% of annual taxable wage base (Currently max contribution is \$85.56 per year)
- Employers do not contribute to this benefit
- NY PFL was updated after it went live on 1/1/18 to now include bereavement leave as one of the qualifying conditions
- Benefits are subject to FICA tax

¹ This will increase to a maximum length of 12 weeks in 2021. Max length for DBL and PFL combined cannot exceed 26 weeks
* The maximum weekly benefit will continue to increase until it represents 67% of the Average Weekly Wage in 2021



Puerto Rico – Temporary Disability Insurance

Waiting Period	Min/Max Benefit	Max Duration
7 days or 1 st day of hospitalization	\$12 / \$113	26 weeks ¹

- Can go through the public plan or “private” insured or self insured plan that equals or exceeds the public plan benefits.
- Employee and employer contributions are shared to a maximum contribution rate of 0.6%. The maximum annual employee contribution is currently \$54.00 based on an annual taxable wage of \$9,000.00
- Benefits are 65% of weekly earnings and are paid from a schedule based on total wages received in a base year.
- Additional benefits can be added for death/dismemberment

¹ based on 52 consecutive weeks



Rhode Island– Temporary Disability Insurance

Waiting Period	Min/Max Benefit	Max Duration
7 days*	\$94 / \$831 / \$1,121 ²	30 weeks ¹

- Insured or Self Insured Plans are not allowed (State administration only)
- Employee Contribution Rate is 1.1%
- Earnings include overtime, vacation, sick leave pay, bonuses and commissions
- Earnings excludes holiday pay and employee must have medical certified disability

¹ In Any Benefit Year

² maximum annual benefit up to 5 defendants



Rhode Island– Temporary Caregiver Insurance

Waiting Period	Min/Max Benefit	Max Duration
7 days*	\$94 / \$831 / \$1,121 ²	30 weeks ¹

- Insured or Self Insured Plans are not allowed (State administration only)
- Employee Contribution Rate is 1.1% and employee must have paid into the TDI fund in order to receive TCI payments
- Designed to care for seriously ill child, spouse, domestic partner, parent, parent-in-law, grandparent or to bond with new child (birth, adoption or foster)
- Bonding claims may only be requested in the 1st 12 months of parenting and proof of parent-child relationship is required
- Benefits are subject to federal and state income taxes

¹ In Any Benefit Year

² maximum annual benefit up to 5 dependants

