Escape the Minefield: Navigating Paid Leave Impacts to Benefits Policies

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The Standard
Phoenix, Arizona

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Agenda

• Federal Changes
• State and Local Changes
• Impact to STD, LTD and PTO
• Benefit Plan Designs
• What the Market is Saying
• Appendix
  • Overview of other state statutory products
Paid Family and Medical Leave Overview

What is Paid Family and Medical Leave?

• Paid Family and Medical Leave—A program which implements paid leave both for one’s own condition and to care for others that is typically job protected
  – Medical or “Own Medical” Leave = Portion of the program which provides paid leave for an individual’s OWN serious health condition
  – Paid Family Leave = Portion of the program which provides paid leave for an individual to bond with a child, care for a family member with a serious health condition or to care of household needs when someone is called to active military leave

• Paid Family and Medical Leave (PFML) is similar to FMLA (Family and Medical Leave Act). PFML takes this a step further by ensuring that you get some pay while taking leave. It’s important to note that PFML will apply in certain instances that FMLA does not cover.
Federal Changes and Legislation
Proposed Legislation: 2018

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.
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 for FMLA qualifying reasons at 66% of their monthly wages up to a capped amount (TBD). Does not provide job or benefit protection as required by FMLA.
- Covers all employers regardless of size.
- Employees must contribute to Social Security in order to qualify.
- Funded by a 2 tenths of 1% employer and 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.
Proposed Legislation: 2018-2019

CRADLE ACT (Ernst-IA and Lee -UT)

- Allows parents to tap into their Social Security Benefits before retirement.
- Would require parents to postpone activating their Social Security Benefits if they choose to use for Paid Parental leave by up to 6 months
- Parents could take up to three months of paid parental leave at up to 70% of their weekly wage.
- Payments would begin 2 weeks after parents applied for a baby’s Social Security Number
- Almost identical to the Economic Security for New Parents Act in 2018
National Trend Assumptions

- Who pays for the leave benefit (based on party affiliation)?
- Proposed Federal law attempts negate state and local laws.
- States and municipalities fill the gap making federal requirements harder to get consensus on.
Coming Soon to a State Near You
If We Look in the Crystal Ball

These states may be the next most likely to pass:

- Colorado
- Maine
- Hawaii
- Vermont
- New Hampshire
- Pennsylvania
- Minnesota
- Illinois
What Often Causes Legislation to Slow Down

• FUNDING!—Even at the state level, this is a big obstacle
• How rich should benefits be?
• Who should you be allowed to take leave for?
• What are the eligibility rules?
• What do you do with small employers?
2019 Paid Sick Leave Statutory Landscape
Why Employers Are Concerned About Absence

- Over 241 state leave laws and growing
- If administration is in-house, employers will need to consider:
  - Supervisors and administrators can be personally liable for FMLA Violations.
  - 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 and changes.
  - Intermittent FMLA is tough to manage and track.
Washington Paid Family and Medical Leave

<table>
<thead>
<tr>
<th>Waiting Period</th>
<th>Min/Max Benefit</th>
<th>Max Duration</th>
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</thead>
<tbody>
<tr>
<td>7 Days¹</td>
<td>$100/$1,000</td>
<td>12/18 weeks*</td>
</tr>
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</table>

- WAPFML provides up to 90 percent 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. They can opt of either the medical leave, family leave or both.
- Protection extends once FMLA requirements have been met and can extend beyond the FMLA period.
- Employee contribution is 0.4 percent of gross pay, and deductions start in 2019. Employers also contribute. Premium is divided between medical leave and family leave (1/3-2/3)
- Benefit is portable for employees
- In any benefit year
- ¹ There is no Elimination Period for Bonding or Placement of a child.
Massachusetts Paid Family and Medical Leave

- New state department program to oversee benefit. Website and Tool Kit for Employers are now available.
- State now accepting private plan applications.
- Self insured or private plans are allowed.
- Program to be funded by a 0.63 percent contribution based on an employee’s 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.

<table>
<thead>
<tr>
<th>Waiting Period</th>
<th>Min/Max Benefit</th>
<th>Max Duration</th>
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<tbody>
<tr>
<td>7 days</td>
<td>TBD/$850</td>
<td>12/20 /26¹</td>
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¹ In Any Benefit Year
Connecticut Paid Family and Medical Leave

Waiting Period | Min/Max Benefit | Max Duration
---|---|---
TBD | TBD/$900 | 12/14 Weeks¹

• Creates Paid Family and Medical Leave Insurance Authority consisting of 15 members to oversee CT PFML

• Benefits start 1/1/2022

• Weekly compensation shall be equal to 95% of the employee’s weekly wages up to an amount equal to 40 times the minimum fair wage and 60% of the employees weekly wages up to an amount equal to 40 times the minimum fair wage. The benefit will not exceed an amount equal to 60 times the minimum fair wage.

• Program can be used for nonconsecutive hours of leave (Paid Intermittent Leave)

• Used for bonding with a new child, military exigency issues, care for a qualified and covered family member, employees with a serious condition.

• Family member defined as spouse, sibling, child, grandparent, grandchild, parent or an individual related to the covered individual by blood or affinity

• Employers can apply to have obligations met via a private plan

¹ Additional 2 weeks available for incapacitation for pregnancy
Oregon Paid Family and Medical Leave

- Benefits start 1/1/2023
- All employees who earn a minimum $1000 per year are eligible for the benefit
- Low income workers can earn 100% of their weekly salary up to a maximum of $1215 (Subject to change based on rules making process)
- Workers who are not defined as low income will receive a percentage of their weekly salary (maximum TBD)
- Expansive definition of FAMILY—includes those beyond blood relatives (“any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship”)
- In additional to all FMLA qualifying reasons, victims of domestic violence are now eligible for the benefit.
- Employers can apply to have obligations met via a private plan. Funded by 1% payroll tax (60% employer, 40% EE). Small business = exempt from paying employer contribution (under 25 EEs)

<table>
<thead>
<tr>
<th>Waiting Period</th>
<th>Min/Max Benefit</th>
<th>Max Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td>Varies</td>
<td>12 Weeks¹</td>
</tr>
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</table>
State and Local Trends

- Over 40 percent of the states introduced some type of paid leave legislation in 2019.
- States appear focused on paid family and 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
Employers Everywhere Should Be Prepared for PFML

• Stay current with PFML rulemaking nationwide
• Be aware of fast approaching deadlines prior to PFML effective dates
• Begin reviewing PFML current employee benefits programs and how PFML laws will impact them:
  • Company Leave Policy
    – PTO
    – Sick Leave
  • STD
  • LTD
How Does PFML Compare with STD?

- STD is wage-replacement that covers OWN disability (not work-related injury/illness)—no family leave; PFML much broader in scope
- State statutory definition of disability under PFML may be different that the definition under STD plan designs
- STD is not job-protected leave with rights to continued health coverage and job reinstatement; PFML is protected leave in certain states
- Difference in amount of time covered and benefits amount (depending on which state plan)
- Difference in eligibility requirements
Impacts to Inforce STD

- Integrated PFML and STD
- Non-integrated reduced benefit STD
- Shift from employer sponsored STD to voluntary or no STD
- States may mandate how or if benefits may integrate
- Similar to current STD practice, LTD waiting period should dovetail with PFML
Impact to LTD

Most common Elimination Periods for LTD

- 90 days for smaller employers
- 180 days for larger employers

Shorter Elimination period means that incidence and rates could go up

For Employers with 180 EP the following could be an issue

- Payment Gap if STD is no longer offered due to state plan
- Creation of STD plan with longer EP to account for state plans
- No RTW incentives under state plans
PTO Plans

- Old trends reversing due to tracking requirements under certain Paid Sick Time Laws.
- Upcoming new laws in WA and MA state employers may 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 or vacation time.
  - Potential result is employers reduce PTO banks to prevent employees from double dipping for time lost.
Possible Changes to Benefit Plan Designs

With several state plans increasing Employer mandated payments, employers may start looking at the following:

• Change in benefit plan designs
  • Eliminating or reducing benefits to pay for new state mandated plans
    – PTO
    – Moving to a higher deductible medical plan
    – Retirement benefit contributions
    – Moving to more EE paid benefits (Voluntary Benefits)

• Trying to adjust all plans to match a current state plan
  • As new states pass legislation, they may be more or less generous than the state that was matched which could make their unified plan design out of compliance
Consideration for Voluntary Plans

**Timely Claims Handling**
- STD Carriers/Insurers—Avg 13.5 days and appeals 40.5 days
- SSDI¹—3-5 week average of initial process and appeals can last between 8-26 months

**Absence Outsourcing**
SSDI plans may include definitions that are not included in unpaid federal/state leave laws. Being able to track and maintain this with SSDI programs is critical

**Claims Experience and Expertise**
- Does your company have the internal resources and expertise to keep up with the changing regulations and complexity?
- Does a 3rd party insurance carrier/TPA have those resources available to you

¹State Statutory Disability Insurance
Voluntary Plan Enhancements

Whether required by law or not, employers may enhance their Voluntary PFML

- For employers offering rich STD benefits now:
  - Increase PFML weekly benefit amount
  - Increase benefit period (or decrease LTD waiting period)

- Plan enhancements do not need to be monetary
  - Decrease waiting period from 7 to 0 days
  - Increase Proof of Loss deadlines (60 day claim filing requirement vs 30 in California)
Taxation of PFML Benefits

- Federal tax law governs taxation of PFML benefits at both the Federal and State level.

- Lack of clarity on the PFL portion of the law when it is employer paid.
  - The law often sits under unemployment so it would be considered taxable

- When Own medical is paid, the employee paid portion of the premium should not be taxable.

- IRS guidance on taxation is unclear. Employers and individuals should take these questions to their tax advisors.
What is the Market Saying?
## Employer Survey Results*

### Top absence management concerns

<table>
<thead>
<tr>
<th>Category</th>
<th>Base</th>
<th>Compliance with federal, state and municipal regulations</th>
<th>Employee notification and education about available leave types</th>
<th>Manager education about available leave types, regulatory concerns and compliance</th>
<th>Accurate tracking of time off related to regulatory requirements</th>
<th>Consistent administration</th>
<th>Cost of absence</th>
<th>Coordination of disability and workers' compensation with applicable leave and disability-related regulations</th>
<th>Impact of absence on productivity</th>
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<tr>
<td>ALL</td>
<td>2,162</td>
<td>58%</td>
<td>24%</td>
<td>38%</td>
<td>42%</td>
<td>45%</td>
<td>24%</td>
<td>16%</td>
<td>35%</td>
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<tr>
<td>North Central</td>
<td>659</td>
<td>66%</td>
<td>20%</td>
<td>34%</td>
<td>38%</td>
<td>44%</td>
<td>29%</td>
<td>17%</td>
<td>41%</td>
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<tr>
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<td>60%</td>
<td>26%</td>
<td>37%</td>
<td>43%</td>
<td>46%</td>
<td>23%</td>
<td>14%</td>
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<td>59%</td>
<td>25%</td>
<td>38%</td>
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<td>24%</td>
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<tr>
<td>Southeast</td>
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<td>21%</td>
<td>44%</td>
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<tr>
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<tr>
<td>For Profit</td>
<td>1,301</td>
<td>59%</td>
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<tr>
<td>Nonprofit</td>
<td>827</td>
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<tr>
<td>Under 100 FTEs</td>
<td>714</td>
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<td>20%</td>
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<td>100 to 499 FTEs</td>
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<td>1,000 or more FTEs</td>
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<td>59%</td>
<td>26%</td>
<td>46%</td>
<td>45%</td>
<td>51%</td>
<td>21%</td>
<td>18%</td>
<td>24%</td>
</tr>
</tbody>
</table>

*2018 Gallagher Benefit Employer Survey Results
Employer Survey Results*

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."

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<th>Category</th>
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<td>1,000 or more FTEs</td>
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<td>4%</td>
<td>4%</td>
<td>20%</td>
<td>48%</td>
<td>25%</td>
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*2018 Gallagher Benefit Employer Survey Results
## Employer Survey Results*

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<td>1,000 or more FTEs</td>
<td>346</td>
<td>62%</td>
<td>19%</td>
<td>19%</td>
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*2018 Gallagher Benefit Employer Survey Results*
Questions?

Thank You.

The Standard is a marketing name for StanCorp Financial Group, Inc. and subsidiaries. Insurance products are offered by Standard Insurance Company of 1100 SW Sixth Avenue of Portland, Oregon, in all states except New York, where insurance products are offered by The Standard Life Insurance Company of New York of 333 Westchester Avenue, West Building, Suite 300, White Plains, New York. Product features and availability vary by state and company, and are solely the responsibility of each subsidiary. Each company is solely responsible for its own financial condition. Standard Insurance Company is licensed to solicit insurance business in all states except New York. The Standard Life Insurance Company of New York is licensed to solicit insurance business in only the state of New York.
Resources

• Relatively Speaking!
  www.standard.com/paid-family-leave

• State Disability and Paid Family Leave Quick Reference Guide

• For detailed state specific questions:
  o NY—www.paidfamilyleave.ny.gov
  o WA—www.paidleave.wa.gov
California Disability and Paid Family Leave

<table>
<thead>
<tr>
<th>Benefit</th>
<th>Waiting Period</th>
<th>Min/Max Benefit</th>
<th>Max Duration</th>
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<tr>
<td>SDI</td>
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<td>52 weeks</td>
</tr>
<tr>
<td>PFL</td>
<td>N/A</td>
<td>$50/$1,252</td>
<td>6 weeks*</td>
</tr>
</tbody>
</table>

- Employers can elect to opt out of State Disability Insurance OR Paid Family Leave if they offer a voluntary disability insurance plan that offers at least two enhancements over the state plan.
  - There is significant regulatory filing and reporting requirements in order to offer this.

- Benefits are paid based on State Average Weekly Wage not to exceed 60 percent of weekly wage.
  - For employees who earn less than 1/3rd of the State Average Quarterly Wage the maximum benefit increases to 70 percent of SAWW.

- SDI and PFL benefits are only administered through the State of California EDD division.

- VDI and PFL benefits can be administered by a third party administrator OR carrier.

- Employee Maximum contribution is 1 percent of annual taxable wage base (current max contribution is $1,183.71). This figure adjusts annually.

* 6 weeks in a 12 month period – This is will increase to 8 weeks as of 7/1/20
San Francisco Paid Parental Leave Ordinance

<table>
<thead>
<tr>
<th>Waiting Period</th>
<th>Min/Max Benefit</th>
<th>Max Duration</th>
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</thead>
<tbody>
<tr>
<td>N/A</td>
<td>$0/$835</td>
<td>6 weeks*</td>
</tr>
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</table>

- 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 Paid Parental Leave Ordinance cannot exceed a maximum weekly benefit of $2,087.

* 6 weeks in a 12 month period.
Hawaii Temporary Disability Insurance

<table>
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<th>Max Duration</th>
</tr>
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<td>7 days</td>
<td>$14/$632</td>
<td>26 weeks</td>
</tr>
</tbody>
</table>

- 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 percent of their weekly earnings under a TDI plan.
- The maximum employee contribution is 0.5 percent or $5.44 per week (currently).
- Carriers and TPAs 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**

<table>
<thead>
<tr>
<th>Waiting Period</th>
<th>Min/Max Benefit</th>
<th>Max Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 days</td>
<td>$0/$650¹</td>
<td>26 weeks*</td>
</tr>
</tbody>
</table>

- 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 2/3\(^{rd}\) percent of the employee’s weekly average wage

- Employee maximum contribution is .017 percent of annual taxable wage base (currently max contribution is $58.48). This figure adjusts annually.

- Employers contribution can be between 0.1 to 0.75 percent.

¹ Will change to $850 effective 7/1/2020 per new bill just signed into law

* 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**

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<tbody>
<tr>
<td>7 days¹</td>
<td>$0/$650¹</td>
<td>26 weeks*</td>
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</table>

- This plan can only be administered through the state. TPA’s and carriers cannot provide outsourcing administration like NJ TDI.

- Employee maximum contribution is .08 percent of annual taxable wage base (Currently max contribution is $27.52). This figure adjusts annually.

- Employers do not contribute to this benefit.

- Family and Medical Leave Insurance does not provide job protection or a leave entitlement. It’s merely a monetary benefit.

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¹ Will change to $850 effective 7/1/2020 and EP will be eliminated per new bill just signed into law in 3/2019

* 6 weeks consecutive or intermittent weeks (will increase to 12 weeks effective 7/1/2020). 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

- This plan can only be administered through the NY State Insurance Fund, TPAs, carriers or it can be self funded.
- Employee Maximum contribution is .5 percent of annual taxable wage base (Currently max contribution is $31.20).
- Employers pay the balance of the benefit plan costs not covered by the employee contributions.
- Benefit rate is 50 percent of the average weekly wage base in the previous 8 weeks earnings to a maximum benefit of $120 per week.
- Benefits are subject to FICA tax.

¹ Based on 52 consecutive weeks
New York Paid Family Leave

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<tr>
<th>Waiting Period</th>
<th>Min/Max Benefit</th>
<th>Max Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>$100/$746.41*</td>
<td>10 weeks**</td>
</tr>
</tbody>
</table>

- This plan can only be administered through the NY State Insurance Fund, TPA’s or carriers or it can be self-funded and must be included as part of an employers DBL offering.
- There is a NY State Plan Option.
- Employee Maximum contribution is .153 percent of annual taxable wage base (currently max contribution is $107.97 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.

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

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<tbody>
<tr>
<td>7 days or 1\textsuperscript{st} day of hospitalization</td>
<td>$12/$113</td>
<td>26 weeks*</td>
</tr>
</tbody>
</table>

- 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 percent. The maximum annual employee contribution is currently $54.00 based on an annual taxable wage of $9,000.00

- Benefits are 65 percent 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 OR dismemberment.

* based on 52 consecutive weeks
Rhode Island Temporary Disability Insurance

- Insured or self-insured plans are not allowed (state administration only).

- Employee Contribution Rate is 1.1 percent.

- Earnings include overtime, vacation, sick leave pay, bonuses and commissions.

- Earnings excludes holiday pay and employee must have medical certified disability.

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<tr>
<td>7 days</td>
<td>$98/$852/$1,150²</td>
<td>30 weeks¹</td>
</tr>
</tbody>
</table>

¹ In Any Benefit Year
² maximum annual benefit up to 5 defendants
Rhode Island Temporary Caregiver Insurance

- Insured or self-insured plans are not allowed (state administration only).

- Employee contribution rate is 1.1 percent 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.

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