



# New California laws affect health insurance, leave, other HR policies

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The California [Department of Managed Health Care \(DMHC\)](#) has posted a [letter](#) summarizing 2019 health insurance laws on balance billing, telehealth, fertility preservation and other coverage issues. Beyond the health insurance field, other new California laws tighten the rules for classifying workers as independent contractors, expand family leave, broaden eligibility for domestic partner registration and impose an individual health coverage mandate. California legislation typically takes effect Jan. 1 of the year after enactment, unless otherwise specified. While state health insurance laws don't apply to self-insured ERISA plans, other legislative developments may impact employers with workers in the state. Employers with workers in California may want to review this roundup of new laws.

## Health insurance changes

In [All Plan Letter \(APL\) 20-001](#), DMHC outlines newly enacted requirements that apply to the healthcare service plans it regulates. Many of these laws also apply to health insurance policies subject to [Department of Insurance](#) regulation. Some of the changes may require plans to update evidence of coverage (EOC) or disclosure forms, provider contracts, or other plan documents. The guidance doesn't identify or address every new requirement that may apply to plans, but generally highlights some key developments.

## Maternal mental health continuity of care

Under a new law ([2019 Ch. 776, AB 577](#)), health plans must continue to cover a terminated or nonparticipating provider's services for women undergoing mental health treatment during or up to one

year after a pregnancy. Health coverage must continue with a terminated provider for up to 12 months from the date of diagnosis or the end of the pregnancy, whichever occurs later.

### **Air ambulance balance-billing ban**

A new law ([2019 Ch. 537](#), AB 651) requires insurers to cover out-of-network air ambulance services as in-network services. Individuals can't be charged more than the in-network cost-sharing amount, which must count toward the deductible and annual out-of-pocket maximum. The insurer and the provider must settle any payment disputes through dispute resolution or in the courts. The law applies to health policies issued, amended or renewed on or after Jan. 1, 2020.

### **Telehealth reimbursement parity**

New telehealth legislation ([2019 Ch. 867](#), AB 744) requires insurers and HMOs that cover telehealth services to provide parity with in-person services under health plans issued on or after Jan. 1, 2021. A plan must provide telehealth coverage on the same basis and to the same extent as coverage for in-person diagnosis, consultation or treatment. Health plans must reimburse identical services — as determined by the provider's description — at the same rate, regardless of whether the services are provided in person or through telehealth. In addition, telehealth services must be subject to the same deductible and annual or lifetime dollar limit as in-person services. Coverage can't be limited to only services from select corporate telehealth providers.

### **HIV PrEP prior authorization**

California pharmacists may qualify to dispense anti-retroviral drugs to prevent AIDS/HIV without a prescription, if certain conditions are met under a new law ([2019 Ch. 532](#), SB 159). Health insurers and HMOs must cover the cost of at least one therapeutically equivalent version of the preexposure prophylaxis (PrEP) drug, without prior authorization or step therapy. Required coverage of PrEP is limited to a 60-day supply per patient once every two years, unless prescribed by an authorized healthcare provider. An insurer (and any contracting pharmacy benefit manager (PBM)) can't prohibit contracting pharmacists from dispensing PrEP or post-exposure prophylaxis drugs if certain conditions are satisfied.

### **Clinical trial coverage requirements**

Legislation ([2019 Ch. 482](#), SB 583) expands required coverage for clinical trials to include trials relating to the prevention, detection or treatment of a life-threatening disease or condition. Cost sharing for routine patient care must be the same as for services delivered outside of a clinical trial, except in-network cost-sharing limits must apply if the clinical trial is not offered or available on an in-network basis. A plan may restrict coverage to an approved clinical trial in California, unless it's not offered or available through a California participating provider.

## Fertility-preservation coverage

California HMOs must provide standard fertility-preservation services when surgery, radiation, chemotherapy or another necessary medical treatment affecting reproductive organs or processes may directly or indirectly impair fertility — a condition known as “iatrogenic infertility.” Legislation ([2019 Ch. 853](#), SB 600) adds standard fertility-preservation services to the definition of basic healthcare services that HMOs must cover. The law defines standard fertility-preservation services as procedures consistent with the established medical practices and professional guidelines published by the American Society of Clinical Oncology or the American Society for Reproductive Medicine.

## Other key California legislation

Other new California laws can impact employers with employees in the state. Changes include amendments to the California Consumer Privacy Act (CCPA), an individual health coverage mandate, stricter criteria for classifying workers as independent contractors, additional disclosure requirements for flexible spending arrangements (FSAs), longer leaves under the state’s paid family leave program, new organ and bone marrow donor leave protections, and updated requirements for domestic partner registrations.

### CCPA

The sweeping CCPA gives state residents the right to control the use of their personal information, including what businesses collect, where it comes from, and how it’s used and shared. Consumers also have the right to stop or limit the collection, use, sharing or selling of their information.

A recent amendment ([2019 Ch. 763](#), AB 25) clarifies and limits the CCPA’s application to data gathered for employment purposes. Under the amendment, CCPA access, deletion and opt-out rights don’t apply to employee information collected by an employer. The amendment also creates an exemption for information needed to administer benefits, but only if the information is used solely for that purpose.

The employment and benefit data exemptions expire after one year, so they will no longer apply in 2021 unless renewed or made permanent in the 2020 legislative session. Employers should discuss the impact and implications of this amendment with legal counsel.

## Individual health coverage mandate

Beginning Jan. 1, 2020, California’s new individual health mandate ([2019 Ch. 38](#), SB 78) requires state residents to maintain minimum essential coverage (MEC) for themselves and their dependents or pay a state tax penalty. Self-insured plan sponsors, health insurers and other entities that provide MEC to residents must report the coverage to the [California Franchise Tax Board](#) (FTB) by March 31 after the coverage year has ended. The FTB will develop reporting forms, but the same information reported to IRS

under [Section 6055](#) of the Internal Revenue Code (as of Dec. 15, 2017) will suffice for California reporting. Until 2023, the state will supplement federal premium tax credits for individuals earning to 600% of the [federal poverty line](#) (FPL).

### **Independent contractor parameters**

Starting Jan. 1, 2020, employers in California must reclassify some independent contractors as employees under a new law ([2019 Ch. 296](#), AB 5). However, certain sectors and occupations remain exempt, while others remain subject to a separate multifactor test. The legislation codifies and expands a 2018 decision by California's Supreme Court (*Dynamex Operations West, Inc. v. Super. Ct.*, 416 P.3d 1 (Cal. 2018)). The California law diverges from the approach to independent contractor status taken by the [DOL](#) and the [National Labor Relations Board](#).

Under the California law, workers are presumed to be employees for wage and benefit purposes rather than independent contractors, unless the hiring entity can show the working relationship meets all three conditions — known as the “ABC” test — established in *Dynamex*:

- A — The hiring entity does not exercise control and direction over the performance of the work.
- B — The work performed is outside the hiring entity's usual business.
- C — The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.

Two California websites hosted by the [Employment Development Department](#) (EDD) and [Labor & Workforce Development Agency](#) (LWD) explain the criteria for classifying workers as employees vs. independent contractors. The LWD also offers [FAQs](#) with more detail on determining worker status.

### **FSA deadline disclosure**

Starting in 2020, California employers have to notify employees about the deadlines for using money in health, dependent care or adoption assistance FSAs. Notice delivery must take two forms, including via email or text message; by telephone; through the postal service; or in person. One form can be electronic delivery.

The new law ([2019 Ch. 195](#), AB 1554) contains no details on timing, other than requiring notice delivery before plan year-end. This leaves questions as to whether annual open-enrollment disclosures or periodic FSA vendor notices will suffice. Other questions include whether ERISA preempts the state law for health FSAs and whether this law applies only to midyear forfeitures. Employers with workers facing forfeiture of FSA funds in 2020 may want to include a notice in open-enrollment materials if possible.

## Duration of the state's paid family leave program

Effective July 1, 2020, a new California law ([2019 Ch. 24](#), SB 83) expands the maximum duration of paid family leave from six weeks to eight weeks to bond with a new child or care for a family member with a serious health condition. Effective Jan. 1, 2021, an amendment to a [2018 law](#) allows employees to take eight weeks' leave for military exigencies related to a family member's active duty or call to active duty. Because supplemental pay under San Francisco's [paid parental leave ordinance](#) is tied to the state's PFL benefits, the city will extend its program from six weeks to eight weeks, effective July 1, 2020.

## Organ and bone marrow donor leave

Starting in 2020, California employers will have to provide up to 30 days of unpaid leave per year for employees who become organ donors, under a new law ([2019 Ch. 316](#), AB 1223). The unpaid time off is in addition to the current requirement to provide paid leave of five days for bone marrow donation and 30 days for organ donation ([Cal. Lab. Code § 1510](#)). Employees must provide documentation for the leave. The law also provides specific insurance protections for organ donors.

An employer may require an employee to take up to five days of earned but unused sick leave, vacation or paid time off for bone marrow donation and up to two weeks for organ donation before providing the state-mandated bone marrow or organ donation leave. The law prohibits this time off from running concurrently with leave taken under the federal Family and Medical Leave Act (FMLA). However, recent US Department of Labor (DOL) [guidance](#) prohibits delaying designation of qualifying FMLA leave.

## Domestic partner registration

Since Jan. 1, domestic partners no longer need to be of the same sex — or at least age 62 if opposite sex — to register in California and gain all the same state-law benefits as spouses. Though registered domestic partners [don't qualify](#) for spousal treatment under federal law, the state law ([2019 Ch. 135](#), SB 30) grants them family leave under the [California Family Rights Act](#) and tax-favored treatment for employer-provided coverage. Insurance policies issued in the state must treat spouses and registered domestic partners the same. In addition, group health policies issued in other states generally must extend equal coverage to California registered domestic partners.

California is one of a handful of states that didn't eliminate domestic partner registration after the US Supreme Court [overturned](#) Section 3 of the Defense of Marriage Act, which had recognized only heterosexual marriages under federal law (*United States v. Windsor*, 570 U.S. 744 (2013)).

## Related resources

### Non-Mercer resources

- [APL 20-001](#) (California Department of Managed Health Care, Jan. 15, 2020)

## New California laws affect health insurance, leave, other HR policies

- [California Healthcare Mandate](#) (California FTB, Jan. 2, 2020)
- [California Family Rights Act Fact Sheet](#) (California Department of Fair Employment and Housing, Dec. 31, 2019)
- [2019 Ch. 867](#), AB 744 (California Legislature, Oct. 13, 2019)
- [2019 Ch. 853](#), SB 600 (California Legislature, Oct. 12, 2019)
- [2019 Ch. 776](#), AB 577 (California Legislature, Oct. 12, 2019)
- [2019 Ch. 763](#), AB 25 (California Legislature, Oct. 11, 2019)
- [2019 Ch. 537](#), AB 651 (California Legislature, Oct. 7, 2019)
- [2019 Ch. 532](#), SB 159 (California Legislature, Oct. 7, 2019)
- [2019 Ch. 482](#), SB 583 (California Legislature, Oct. 2, 2019)
- [2019 Ch. 316](#), AB 1223 (California Legislature, Sept. 20, 2019)
- [2019 Ch. 296](#), AB 5 (California Legislature, Sept. 18, 2019)
- [2019 Ch. 195](#), AB 1554 (California Legislature, Aug. 30, 2019)
- [2019 Ch. 38](#), SB 78 (California Legislature, June 27, 2019)
- [2019 Ch. 24](#), SB 83 (California Legislature, June 27, 2019)
- [2019 Ch. 135](#), SB 30 (California Legislature, July 30, 2019)
- [2018 Ch. 173](#), AB 2548 (California Legislature, Aug. 20, 2018)
- [Cal. Lab. Code § 1510](#) (California Legislative Information)
- [California Franchise Tax Board](#)

### **Mercer Law & Policy resources**

- [Some independent contractors in California will become employees](#) (Sept. 26, 2019)
- [California individual health coverage mandate includes employer reporting](#) (July 16, 2019)

## New California laws affect health insurance, leave, other HR policies

- [California's data privacy law appears not to reach HIPAA-covered group health plans, but other impacts unclear](#) (April 8, 2019)

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