Roundup of selected state health developments, fourth-quarter 2021

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In this article

As 2021 came to an end, some state legislatures remained in session, and regulators stayed busy. Guidance in the fourth quarter addressed plan sponsor reporting for several states' individual health coverage mandates and health plan details in Massachusetts. A new Illinois law requires certain employer health plan disclosures. The focus on prescription drug costs continued, with a transparency report in California and pharmacy benefit manager (PBM) laws in Delaware, North Carolina, and North Dakota. Delaware and Ohio enacted new insurance mandates, and New York introduced a COVID vaccine cost-sharing bill for insured plans. State paid leave laws garnered much attention, with some jurisdictions updating benefits and contributions for 2022 and others drafting regulations or clarifying current law. Other benefit-related issues involved Colorado's benchmark plan, Connecticut's health plan identification cards, Massachusetts' tax limits for transit benefits, New York City's employee vaccine mandate, and Washington's long-term care mandate, which is now in limbo and the subject of a federal lawsuit.

Health plan reporting

Several states updated or enacted reporting obligations for plan sponsors near the end of 2021. California, New Jersey and Rhode Island posted updates for self-funded plan sponsors, health insurers and other providers of minimum essential coverage (MEC) that must report to the state. Illinois enacted a new mandate requiring employers to disclose to employees in the state how the employer's plan compares with the state's essential health benefits (EHBs). Massachusetts reminded employers to submit an annual Health Insurance Responsibility Disclosure (HIRD).

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California

California has updated its reporting information webpage for health coverage payers in the state. Applicable entities have until March 31, 2022, to report to the California Franchise Tax Board (FTB) for the 2021 coverage year. However, penalties for failure to file won't begin to accrue until after May 31.

Though the IRS has extended the 2022 federal deadline to provide individual coverage statements until March 2, the state hasn't extended its Jan. 31 due date since it is set by statute (CA Rev. & Tax. Code § 61005(e)). However, the FTB has previously indicated that it will not apply penalties for furnishing untimely statements to individuals. In addition, duplicative California statements aren't necessary if individuals have received the federal coverage statement (IRS Form 1095-B or 1095-C).

Illinois

Employers that offer group health coverage to Illinois employees must provide a comparison of the employer plan's covered benefits against the essential health benefits that state-regulated individual health insurance policies must provide. The 2021 law (Pub. Act 102-0630, SB 1905) took effect when signed on Aug. 27. Regulators have posted a sample comparison chart and FAQs. For more detail, see Illinois mandates health plan disclosure with EHB comparison (Dec. 1, 2021).

Massachusetts

Employers with six or more Massachusetts employees had to submit completed state HIRD forms by Dec. 15, one month after the form became available via MassTaxConnect. This annual reporting obligation applies even if an employer doesn't offer health coverage. See the MassTaxConnect FAQs for more information.

Employers need to report on comprehensive medical health insurance plans offered to Massachusetts employees for the upcoming plan year, but not on stand-alone dental or vision coverage. For each federal employer identification number (FEIN) and each health plan that has variable benefits or rates, employers must complete a separate health plan entry. Failure to comply could result in a penalty of $1,000–$5,000 per violation.

New Jersey

Employers providing minimum essential health coverage must transmit federal 1095 forms to the New Jersey Division of Taxation by March 31, 2022, according to recent guidance. Covered employees who were New Jersey residents in 2021 must be provided a 1095 form by March 2, 2022. The reporting obligation applies to both part-year and full-year New Jersey residents, whether covered for part of the year or the full year. Form 1095-C with only Parts I and II completed won't meet New Jersey filing requirements. Employers should transmit those forms only if unable to separate them from a file with other forms that meet filing requirements.

Employers sponsoring group health plans must ensure each New Jersey resident covered in 2021 receives at least one 1095 form. However, employers don't need to send separate forms to dependents.

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Rhode Island

Rhode Island has extended its employer health coverage reporting deadline to March 31, 2022, according to Division of Taxation guidance (Advisory 2021-45). The Rhode Island deadline is normally Jan. 31, but since the IRS deadline to file coverage statements is March 31, 2022, the state is following suit. No similar delay has been announced for the disclosure to individuals, even though IRS has extended its deadline for furnishing ACA individual statements until March 2.

Rhode Island is one of five jurisdictions — including California, Massachusetts, New Jersey and Washington, DC — that require health coverage providers (including self-funded employers) to report coverage for employees and dependents who reside in the jurisdiction. These locations and Vermont require residents to maintain an appropriate level of health coverage or face a potential tax penalty. However, Vermont doesn't require employer reporting at this time.

Prescription drugs

California has issued a prescription drug report showing, in part, a 15% spending increase over four years. Delaware has stepped up its PBM pricing restrictions, network adequacy requirements and reporting as part of a new law. North Carolina has joined a growing number of states requiring PBMs operating in the state to obtain a license. Citing a US Supreme Court ruling, a federal appeals court upheld a North Dakota law regulating PBMs that faced an ERISA challenge.

California

A Prescription Drug Cost Transparency Report, released in December by the Department of Managed Health Care (DMHC), shows drug spending increased by 15% ($1.5 billion) over the four years from 2017–2020. Key findings include:

- Drug spending in 2020 exceeded $10.1 billion, an increase of almost $500 million (5%) over the prior year, outpacing the 3.7% rise in medical costs.
- Prescription drugs accounted for more than 12% of health plan spending.
- Overall, total health plan premiums increased by 5.9% from 2019 to 2020.
- Specialty drugs accounted for only 1.6% of all drugs dispensed but more than 60% of annual drug spending.
- Generic drugs accounted for almost 90% of all drugs prescribed but less than 20% of annual drug spending.

The report also provides detail on the 25 most prescribed and most costly drugs, as well as the 25 drugs with the highest year-over-year increase. California law requires DMHC to issue this annual report, using data provided by insured managed care plans in the commercial market.

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Delaware

A recent Delaware act (2021 Ch. 256, HB 219) imposes certain pricing restrictions, network adequacy requirements, and disclosure and reporting obligations on PBMs registered with the state. The revisions to the current law (DE Code tit. 18, Ch. 33) prohibit PBMs from engaging in spread pricing or reimbursing a pharmacy an amount less than the PBM reimburses itself or an affiliate for the same drug or service. In addition, PBMs must provide a "reasonably adequate and accessible" network of pharmacies "within a reasonable distance" from a patient's residence. Mail-order pharmacies do not count in determining network adequacy. A PBM must allow network participation by any pharmacy willing to accept the PBM's established terms and conditions.

New reporting requirements include rebates, sources of income and product details. Additional changes to the law somewhat broaden the definition of a PBM, apply the law to "patients" rather than "insureds" and shift penalty provisions from the insurance code to the PBM law. Whether these minor amendments broaden the scope of the law to include self-funded ERISA plans is unclear.

The new provisions apply to contracts between PBMs and pharmacies or pharmacists entered into, renewed, or extended on or after Oct. 26, 2021. The Delaware Insurance Commissioner announced on Nov. 2 that the department will begin drafting and enforcing regulations under the law.

North Carolina

North Carolina now requires PBMs operating in the state to obtain a license for any contracts entered into, renewed, or amended on or after Oct. 1, 2021. Under the new law (2021 Ch. 161 / SB 257), PBMs must allow any properly licensed pharmacist or pharmacy to participate in a retail pharmacy network on the same terms and conditions that apply to other similarly situated network participants. Patient cost sharing must include amounts paid by the insured or on the insured's behalf for certain prescriptions. PBMs generally cannot retroactively deny or reduce already adjudicated claims. The measure doesn't appear to have any direct impact on self-funded ERISA plans.

North Dakota

ERISA doesn't preempt any part of North Dakota's pharmacy benefits manager (PBM) law (ND Cent. Code § 19-02.1-16.1-16.2), a federal appeals court ruled (*Pharm. Care Mgmt. Ass'n v. Wehbi*, No. 18-2926 (8th Cir. Nov. 17, 2021O).The court revisited the preemption case after the US Supreme Court upheld an Arkansas PBM law (*Rutledge v. Pharm. Care Mgmt. Ass'n*, 140 S. Ct. 812 (2020)).

The North Dakota law bans gag orders, imposes certain pricing disclosures, restricts how some fees are paid, and specifies which performance measures and accreditation standards a PBM can use in its pharmacy contracts. In addition, the law limits a PBM's ability to have an ownership interest in a patient assistance program and a mail-order specialty pharmacy. The law also specifies that a licensed pharmacy or pharmacist may dispense any and all drugs allowed under that license.

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Although the court held that ERISA preemption doesn't apply, certain provisions are subject to Medicare Part D preemption. Specifically, certain disclosure requirements (including gag-order bans), utilization-management provisions and a retroactive fee ban are subject to Medicare Part D preemption.

Insurance

Delaware has enacted a first-dollar coverage mandate for insulin pumps. Legislation introduced in New York would impose certain cost-sharing requirements for COVID-19 vaccines. A new Ohio law requires parity in cost sharing and coverage for telehealth and in-person services. None of these laws applies to self-funded group health plans.

Delaware

Health plans issued or renewed in Delaware or on or after Jan. 1, 2022, must provide first-dollar coverage for medically necessary insulin pumps, under a recently enacted law (2021 Ch. 241, SB 107). The plan may apply cost sharing to related services and restrict coverage to services at an approved facility.

The law applies to insured health plans issued in Delaware and certificates of coverage issued to state residents. Certain high-deductible health plans (HDHPs) are exempt if omitting cost sharing would prevent health savings account (HSA) contributions under Section 223 of the Internal Revenue Code. The measure doesn't apply to self-insured ERISA plans.

New York

A bill (A 227) filed in the New York Assembly on Jan. 5, 2022, would require insured health plans issued in the state to use a specific formula for reimbursing the costs of any necessary vaccination (including COVID-19 vaccines). Here is a summary of the calculation:

- Current or most recently reported US Centers Disease Control and Prevention private-sector cost, plus
- A minimum of 21% added for shipping, handling and storage costs, plus
- Total cost of vaccine administration, including current-year Medicare rates for reimbursing the cost of supplies, data entry, counseling, inventory management and routine nursing activities

The bill's sponsor states that the goal is to "promote maximum immunization" by requiring insurers to pay the "full cost of the vaccine and vaccine related expenses." The bill is pending with the Assembly's Insurance committee. If enacted, this mandate would take effect on Jan. 1, 2023.

Ohio

Insured health plans covering Ohio residents must reimburse telehealth providers for services otherwise covered under the plan. However, provider reimbursement for telehealth services doesn't have match

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the rate paid for in-person services. Legislation (2021 Act 134, HB 122) amending the state's telehealth law also bans higher cost sharing for telehealth services. Under a 2019 law (OH Rev. Code § 3902.30), health plans issued or renewed on or after Jan. 1, 2021, must cover telehealth services on the same basis and to the same extent that in-person healthcare services are covered. The new provisions take effect March 23, 2022.

Paid leave

States with paid family and medical leave (PFML) and disability benefit laws posted contributions and benefits updates for 2022. California, Connecticut, Hawaii, New Jersey, New York, Rhode Island, Washington, and Washington, DC, have recently posted updates (updates from Massachusetts were covered in the last quarterly roundup). New York also added siblings as family members under the paid family leave law, beginning in 2023. Colorado has begun developing regulations for the state's voter-approved PFML program and updated regulations banning use-or-lose vacation accruals. Massachusetts has revised the written notice of PFML benefits that employers must distribute to workers in the state. Oregon has begun the regulatory process for its delayed PFML program.

California

California has announced its State Disability Insurance (SDI) and Paid Family Leave (PFL) rates for 2022. The taxable wage base is $145,600, an increase from $128,298 in 2021. The employee contribution rate, which includes both SDI and PFL, will drop from 1.2% of wages up to the taxable wage base in 2021 to 1.1% in 2022. The 2022 maximum weekly benefit of $1,540 reflects an increase from the 2021 maximum of $1,357. Benefits are payable at 60% or 70%, depending on the greatest quarterly base period earnings above or below one-third of the state's average quarterly rate. The state average weekly wage is up to $1,570, so one-third of the quarterly average is $6,803 for 2022 [($1,570 x 13 weeks) ÷ 3 = $6,803].

Colorado

Colorado has adopted its first Family and Medical Leave Insurance (FAMLI) program regulations for private employers and self-employed individuals (7 CO Code Regs. § 1107-1), developed a dedicated website and proposed the next round of rules (7 CO Code Regs. § 1107-2). The voter-approved law (CO Rev. Stat. §§ 8-13.3-501 to -524) will provide eligible employees partial wage replacement for 12–16 weeks of leave, depending on the circumstances. Employees will be able to take paid leave for many of the same reasons permitted under the federal Family and Medical Leave Act (FMLA). The program also will extend paid leave so victims of domestic violence, sexual assault or stalking can handle related issues. For more detail, see Colorado moves forward on paid family and medical leave (Jan 4, 2022).

Colorado

Effective Jan. 1, 2022, revised wage protection rules for employees in Colorado prohibit the forfeiture of any accrued paid time off available to use for vacation, even if an employee can also use the leave for

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other purposes. The updated rules (7 CO Code Regs. § 1103-7) come after a state supreme court decision banning use-or-lose vacation policies left uncertainty about the impact on other types of leave programs. For more detail, see Colorado high court bans use-it-or-lose-it vacation policies (Nov. 30, 2021).

Connecticut

Connecticut's paid family and medical leave (PFML) benefits became available on Jan. 1, 2022. The PFML program applies, with limited exceptions, to any employer with one or more employees working in Connecticut. Eligible employees can to take up to 12 weeks (or more in some cases) of partially paid leave for many of the same reasons allowed for unpaid leave under the federal FMLA. Employers don't have to contribute, but must collect and remit employee contributions, which began at the start of 2021.

The maximum weekly PFML benefit of $780 will increase to $840 on July 1, 2022. The employee contribution remains at 0.5% of wages up to the annually adjusted Social Security taxable earnings limit ($147,000 in 2022).

Last December, regulators posted proposed PFML regulations focusing on the claim appeal process. Review and approval by the state Legislative Regulation Review Committee is expected by Feb. 8, 2022.

For more detail, see Connecticut readies its paid family and medical leave program (Dec. 2, 2021).

Hawaii

Hawaii has posted its 2022 Temporary Disability Insurance (TDI) rates. The weekly wage base has increased to $1,200.30 from $1,102.90 in 2021. Hawaii law permits employee contributions of up 0.5% of wages (capped at the weekly wage base) with a weekly contribution of $6.00, up from $5.51 in 2021. The 2022 maximum weekly benefit is $697, an increase from $640 in 2021. Hawaii doesn't currently have a paid family leave mandate or program.

Massachusetts

Massachusetts has updated its PFML notices for 2022. Employers and covered business entities must provide an updated written notice of PFML benefits, contribution rates and other provisions to their current workforce within 30 days. The updated notice — in each employee's primary language — must also go to new employees within 30 days of hire. Employers need to collect signed acknowledgments of receipt from new hires, but whether the same applies to current employees receiving updated notices is unclear. Employers can provide the notice electronically and receive acknowledgment of receipt electronically or on paper. Employers also must conspicuously display an updated poster. More information on the notice requirement can be found at the MA PFML website.

New Jersey

New Jersey has posted its 2022 temporary disability insurance (TDI) and family leave insurance (FLI) rates. Employee contributions have decreased from 0.75% (0.47% for TDI and 0.28% for FLI) in 2021 to

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0.28% in 2022 (0.14% each). Employers must collect and remit contributions up to the $151,900 taxable wage base for 2022, an increase from $138,200 in 2021. Eligible employees can qualify for 85% of wages for up to 26 weeks for TDI and up to12 weeks for FLI. The 2022 maximum TDI/FLI weekly benefit rate of $993 reflects an increase from $903 in 2021.

New York

New York has posted its 2022 paid family leave (PFL) benefit rates. For qualified leave beginning on or after Jan. 1, 2022, eligible employees receive 67% of their average weekly wage, up to the annually adjusted maximum for up to 12 weeks. The 2022 weekly maximum has risen to $1,068.36, up from $971.67 in 2021.

The premium rate for PFL coverage in 2022 remains 0.511% of an employee's wages in each pay period, up to an annual maximum employee contribution of $423.71. This rate includes coverage for benefits in situations when an employee or their minor dependent child is under a quarantine or isolation order due to COVID-19. The state's website includes PFL updates and FAQs.

Recent New York legislation (2021 Ch. 550, SB 2928) adds siblings to the roster of family members for whom eligible employees may take paid leave to provide care due to a serious health condition. As a result, employees may take paid leave to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as defined in the law. The new provision takes effect for qualified leave beginning on or after Jan. 1, 2023.

Oregon

Oregon regulators have posted proposed and draft regulations in two separate batches to implement the state's delayed paid family and medical leave insurance (PFMLI) program. Batch 1 includes proposed regulations outlining contribution provisions, including what wages to include in determining the contribution amount and how contribution levels would be set. Batch 2 draft rules set the framework for "equivalent plans" — insured or self-funded — that employers may choose to sponsor instead of participating in the state-run program.

Washington

Washington has posted its paid family and medical leave (PFML) rates. Contributions will rise from 0.4% in 2021 to 0.6% of employee wages up to the 2022 Social Security taxable earning cap ($147,000). Of this amount, employers with 50 or more Washington employees will pay up to 26.78% and employees will pay 73.22%. Smaller employers don't have to contribute. Benefits are 90% of an employee's average weekly wage (AWW) up to 50% of state AWW (updated to $1,475), plus 50% for an employee's AWW exceeding 50% of the state's AWW. The maximum weekly benefit amount for 2022 is $1,327, up from $1,206 in 2021.

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Washington, DC

For leaves that start on or after Sept. 26, 2021, changes to Washington, DC's Universal Paid Leave (UPL) law add two weeks of paid prenatal leave to the paid family and medical leave (PFML) program. Other amendments increase the maximum duration of medical leave from two to six weeks and allow its use for miscarriage or stillbirth. The Universal Paid Leave Amendment Act of 2021 (Act 24-45, Sec. 4061) also sets year-to-year variable leave durations and the employer contribution rates for later years, depending on the projected fiscal impact. The act also clarifies insurance offset restrictions and implements certain special provisions related to the city's COVID-19 public health emergency. For more detail, see Washington, DC, amends and extends paid family and medical leave (Nov. 2, 2021).

Other benefit-related issues

Colorado has updated its essential health benefits (EHBs) to include gender-affirming care, raising dollar limits for plans using the state's benchmark and covering related treatments. Connecticut now requires health carriers and third-party administrators operating in the state to include on identification cards whether the plan is self-funded. Massachusetts has set 2022 tax exclusion limits for transit benefits that differ from the federal limits. New York City has updated its COVID-related FAQs on workplace vaccine requirements. Washington abruptly halted implementation of its long-term care (LTC) program and won't collect premiums for the first quarter. The program's fate and the employee contribution status remain in limbo, while a lawsuit seeks to stop the mandate from taking effect.

Colorado

The Centers for Medicare & Medicaid Services has approved Colorado's request to provide gender-affirming care in the individual and small-group health insurance markets as part of the state's EHB benchmark beginning in 2023. Colorado's new EHB-benchmark plan will allow access to a wider range of services for transgender individuals in addition to benefits already covered. The plan also adds certain prescription drugs as alternatives to opioids, as well as acupuncture treatments. In addition, EHBs will include an annual mental health wellness exam — one 45- to 60-minute visit per plan year, with a qualified mental healthcare provider.

Though large group health plans don't have to provide coverage of EHBs, those that use a Colorado benchmark and cover gender-affirming care won't be able to impose dollar limits on that care.

Connecticut

Effective Jan. 1, 2022, health plans in Connecticut must identify on any insurance card issued whether the coverage is fully insured or self-insured. The new law (2021 Pub. Act 21-02, SB 1202) applies to health carriers and third-party administrators — including self-funded ERISA plan administrators — that issue a health coverage identification card in the state. The card must prominently display the plan type in a readily understandable, standardized format that the insurance regulators will provide.

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Massachusetts

Massachusetts guidance (Technical Information Release 21-12) sets state tax limits for parking and transit benefits for tax years beginning in 2022. The monthly exclusion amounts are $285 for employer-provided parking and $150 for combined transit pass and commuter highway vehicle transportation benefits. These amounts differ from the federal limits of $280 for each.

Massachusetts tax law (MA Gen. Laws Ch. 62, §1) generally follows the federal tax code in effect on Jan. 1, 2005, with targeted updates. As a result, most federal tax changes enacted since 2005 — including any changes to Internal Revenue Code §132(f) — don't flow through to state income tax. The state didn't update its tax code to mirror the federal change allowing the same exclusion amount for both transit categories. Employers with Massachusetts employees receiving mass transit and/or commuter vehicle benefits must include any amount exceeding $150 per month as income at the state level.

New York

New York City has posted FAQs on its COVID-19 workplace vaccine requirement website. Key points include:

- All employers in New York City are covered by the order.
- All employees who work with other employees or the public are covered.
- Valid religious and medical exceptions apply.
- Employer must maintain record of accommodations.
- First vaccine was due by Dec. 27, 2021;
- Second vaccine is due within 45 days of the first.
- Proof of vaccine is limited to specific documents,
- Workers must present an identification (ID) card, such as a driver's license, a passport or an employee ID card, with each proof of vaccination.
- Each work location must conspicuously display the poster developed by city officials.

While the FAQs don't specify that employers must retain records of the vaccines, regulators note that keeping a record "is easiest and most efficient" and suggest approaches.

Washington

Employers with Washington employees don't have to begin collecting contributions to the WA Cares Fund for the state's LTC program, which were slated to begin in January 2022. Gov. Jay Inslee and legislative leaders issued statements on Dec. 17 delaying the start of the program to "make

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improvements to the Fund during the 2022 legislative session," noting that "some areas … need adjustments."

Lawmakers plan to make recommendations about how the program will handle near-term retirees and residents who move out of Washington to retire. In addition, revised legislation will need to assure that employees who have opted out of the program maintain their private LTC insurance policies. Some of these issues were identified in a lawsuit filed in November that seeks to halt the law's implementation.

The governor has announced that he sent a letter instructing the state Employment Security Department not to collect LTC premiums "before they come due in April." Employers won't be subject to penalties and interest for not withholding LTC contributions from employees' wages while legislation is under consideration.

The letter notes, in part, that employers must choose whether to begin collecting premiums and risk having to return the premiums to workers after a change in the law, or delay collection in anticipation of a legislative change. Although lawmakers "strongly encourage" employers to pause collecting premiums, the letter warns "if the Legislature fails to change the law, employers will still be legally obligated to pay the full amount owed."

Lawsuit

A class-action lawsuit looking to halt implementation of WA Cares argues ERISA preempts the new mandate, and terms of the law violate the US Constitution's equal protection clause and the privileges and immunities clause (*Pacific Bells, LLC v. Inslee*, No 2:21-cv-01515, (W.D. WA)).The complaint also alleges the mandate violates the Age Discrimination in Employment Act . Employers based in Washington along with several employees brought the lawsuit, which the state has filed a motion to dismiss. The litigation is ongoing.

Related resources

Mercer Law & Policy resources

- States, cities tackle COVID-19 paid leave (regularly updated)
- States update group health plan sponsor reporting obligations (Jan. 21, 2022)
- 2022 state paid family and medical leave contributions and benefits (Jan. 19, 2022)
- Colorado moves forward on paid family and medical leave (Jan. 4, 2022)
- Connecticut readies its paid family and medical leave program (Dec. 2, 2021)
- Illinois mandates health plan disclosure with EHB comparison (Dec. 1, 2021)
- Proposed regulations extend ACA individual statement due dates (Dec. 1, 2021)

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- Colorado high court bans use-it-or-lose-it vacation policies (Nov. 30, 2021)
- Washington, DC, amends and extends paid family and medical leave (Nov. 2, 2021)
- States seek to rein in Rx costs and pharmacy benefit managers (Oct. 26, 2021)
- Changes to California's paid leave programs coming in 2023 (Oct. 8, 2021)
- Agencies issue new FAQs on COVID-19 testing, vaccines (Oct. 6, 2021)
- Oregon's paid family and medical leave contributions delayed to 2023 (Aug. 5, 2021)
- Washington adds tight exemption timeline to long-term care law (May 3, 2021)
- Supreme Court upholds Arkansas law regulating PBMs (Dec. 10, 2020)
- Colorado voters approve paid family and medical leave law (Nov. 10, 2020)
- Massachusetts readies for paid family and medical leave (Jan. 13, 2020)
- Massachusetts employers' health coverage reports due by Dec. 15 (Nov. 13, 2019)

Other Mercer resources

- Life, Absence and Disability

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