



Roundup of selected state health developments, fourth-quarter 2023

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In this article

<u>Paid family and medical leave (PFML) | Other leave-related issues | Prescription drugs (Rx) | Insurance | Telehealth | Other benefit-related issues | Related resources</u>

The end of 2023 saw no shortage of state health-related activity. Massachusetts modified its paid family and medical leave (PFML) law, while Colorado and Oregon issued guidance as PFML benefits became available in September 2023 and January 2024, respectively. Significant paid sick leave (PSL) changes occurred, with four cities amending ordinances and Minnesota providing resources for its earned sick and safe time (ESST) law, which took effect Jan. 1. Prescription drug (Rx) issues arose in California, Hawaii and New York. California and Michigan enacted health insurance laws. California also authorized a study on universal healthcare financing. Illinois delayed a new pay/benefit parity law for temporary employees. As 2024 unfolds, the state legislative and regulatory landscape promises to remain busy. For more details, see Top 10 health, leave benefit compliance and policy issues in 2024 (Oct. 12, 2023), especially Sections 1 (Prescription drugs) and 7 (State-mandated paid leave and other state law trends).

PFML

Colorado finalized seven PFML regulations. Massachusetts amended its PFML law regarding "top-off" benefits. Oregon issued an order on employee attestation when taking leave to care for a person related by affinity. A Washington, DC law continues a coordination rule between required paid leave and short-term disability (STD) benefits. Rate/benefit announcements for 2024 occurred in California, Connecticut, Hawaii, New Jersey, Oregon, Rhode Island, Washington and Washington, DC.

California

California has <u>posted</u> State Disability Insurance (SDI) and Paid Family Leave (PFL) rates for 2024, as shown in the table on the next page.

SDI/PFL rates	2023	2024
Required employee contributions	0.9%	1.1%
Maximum annual wage base	\$153,164	None
Maximum weekly benefit	\$1,620	\$1,620
Minimum weekly benefit	\$50	\$50

Colorado

The Family and Medical Leave Insurance (FAMLI) Division <u>adopted</u> rules addressing these topics, among other things:

- <u>Benefits and employer participation</u>. The application year is now the 12-month period measured forward from the claim filing date; the application year previously was measured backward from the claim filing date. Certifying healthcare providers cannot be the claimant or a family member.
- Coordination of benefits. An employer may not count the amount or duration of FAMLI wagereplacement benefits against past or future balances of a short-term or long-term disability STD/LTD policy or other bank of time provided solely for PFML purposes.
- <u>Job protection, anti-retaliation and anti-interference</u>. Prohibited retaliation now includes evicting an employee from employer-provided housing. Prohibited interference now includes failing to reinstate an employee when leave ends, unless the employee failed to provide notice of the need for PFML or resigns and the employer provides the required denial notice.

Connecticut

The 2024 employee contribution rate to Connecticut Paid Leave <u>remains</u> 0.5% of wages up to the <u>Social Security maximum wage base</u> (Social Security max), which is \$168,600 in 2024. Employer contributions are not required.

Hawaii

Hawaii currently has no PFL law but has posted Temporary Disability Insurance (TDI) rates for 2024:

TDI rates	2023	2024
Maximum weekly employee contributions (0.5% of maximum weekly wage base)	\$6.59	\$6.87
Maximum weekly wage base	\$1,318.48	\$1,374.78
Maximum weekly benefit	\$765	\$798

Massachusetts

A new law (2023 Ch. 55, HR 4053) amended the PFML requirements for top-off benefits. Subject to an exception described in later guidance, an employer must allow top-off benefits up to 100% of the employee's average weekly wage in addition to PFML benefits under either the state's public plan or the employer's approved private plan. These top-off benefits might take the form of paid sick time, vacation or other paid time off (PTO). Before this change, only employees on PFML under the public plan could use these employer-provided benefits and only during the seven-day waiting period for PFML benefits. The amendment took effect Nov. 1, 2023. Later Department of Family and Medical Leave guidance limits this employee right, making it "subject to the accrual and use rules of an employer's PTO policies."

New Jersey

New Jersey has <u>posted</u> 2024 TDI and family leave insurance (FLI) rates:

TDI/FLI rates	2023	2024
Required employer contributions:		
• TDI	Balance of plan costs	Same
• FLI	None	None
Required employee contributions:		
• TDI	0.0%	0.0%
• FLI	0.06%	0.09%
Maximum annual wage base	\$156,800	\$161,400
Maximum weekly benefit	\$1,025	\$1,055

Oregon

The state's Bureau of Labor and Industries <u>clarified</u> that an employer may require a written attestation when an employee requests paid leave to care for an individual related by affinity with a serious health condition. Also, Oregon has <u>posted</u> 2024 rates:

Paid Leave Oregon rates	2023	2024
Required employer contributions:		
• 25 or more employees nationally	0.4%	0.4%
Fewer than 25 employees nationally	0.0%	0.0%
Required employee contributions	0.6%	0.6%
Maximum annual wage base	\$132,900	Social Security max
Maximum weekly benefit	\$1,469	\$1,523.63

Benefits became available on Sept. 23, 2023, and remain unchanged for 2024. For details, see <u>Oregon's paid family and medical leave contributions delayed to 2023</u> (Aug. 5, 2021).

Rhode Island

Rhode Island has posted 2024 TDI rates:

TDI rates	2023	2024
Maximum annual wage base	\$84,000	\$87,000
Required employee contributions	1.1%	1.2%
Maximum annual contribution amount	\$924	\$1,044
Maximum weekly benefit		
 From Jan. 1 through June 30 	\$1,007	\$1,043
 From June 30 through Dec. 31 	\$1,043	TBD thereafter

Washington

Washington has posted 2024 PFML rates:

PFML rates	2023	2024
Total contribution rate (up to Social Security max)	0.80%	0.74%
Required employer contributions:		
 50 or more Washington employees nationally (28.57%) 	0.21792%	0.21142%
Fewer than 25 employees nationally	0.0%	0.0%
Required employee contributions (71.43%)	0.58208%	0.52858%
Maximum weekly benefit	\$1,427	\$1,456

Washington, DC

Under 2023 Act 25-0288 (B25-0390), universal paid leave (UPL) benefits may not be reduced by estimated or actual STD benefits received by employees. The law took effect on Nov. 28, 2023, and expires on July 10. For more details, see Roundup of selected state health developments, fourth-quarter 2022 (Feb. 17, 2023). The district's UPL maximum weekly benefit for leaves beginning on or after Oct. 1, 2023, is currently \$1,118, based on the current minimum wage of \$17 per hour.

Other leave-related issues

Chicago and Cook County, IL, expanded their PSL ordinances to include paid leave for any reason. Both moves aligned the local ordinances more closely with the state's Paid Leave for All Workers Act (PLAWA) (820 IL Comp. Stat. §§ 192/1–192/99), which took effect Jan. 1. Comparable events occurred in Minnesota, where Bloomington and St. Paul modified their sick time ordinances to mirror the state's ESST law, which took effect Jan. 1. California added specific bereavement reasons to its leave law. Seattle finalized rules related to its leave law for app-based workers. For details on state accrued paid leave laws, see Roundup: State accrued paid leave mandates (Oct. 25, 2023).

California

Employers with five or more employees must allow up to five days of paid or unpaid leave after a "reproductive loss event," under 2023 Ch. 724 (AB 848). The term means a failed adoption or surrogacy, a miscarriage or stillbirth, or an unsuccessful assisted reproduction on the part of an employee, a spouse or a domestic partner. Employees become eligible for the leave after 30 days of employment and can take the leave intermittently. In most cases, employees must use the leave within three months of the event. The law took effect Jan. 1.

Illinois — Chicago

Chicago <u>replaced</u> its <u>existing PSL mandate</u> with a requirement to provide both paid leave for any purpose in addition to paid sick and safe leave. The requirement applies to private employers with at least one covered employee and city employers (including those in public schools, city parks and transportation). <u>Amendments</u> made in mid-December 2023 delayed the effective date from Jan. 1 to July 1 of this year. Chicago's existing PSL requirement stays in effect through June 30. The state's PLAWA, which took effect on Jan. 1, does not preempt the Chicago ordinance.

Here is a summary:

- Paid leave (PL). Employees may accrue up to 40 hours per year to use for any purpose.
- Paid sick and safe leave (PSSL). Employees may accrue up to 40 hours per year for their own or a
 family member's illness, injury, or preventive care or for reasons related to domestic violence, sexual
 assault, public health emergency, or communicable disease.
- Covered employees. The ordinance applies to any employee who works at least 80 hours in a 120day period within the city's geographic boundaries (including compensated travel time).
- Accruals. Starting July 1 or, if later, on the hire date, employees accrue one hour of leave for every 35 work hours, capped at 40 hours each of PL and PSSL in a 12-month period.
- Carryovers. On July 1, employers must transfer employees' unused accrued PSL to PSSL. Annual carryovers are capped at 16 hours for unused PL and 80 hours for unused PSSL.

- Frontloading. Employers may avoid accruing leave by frontloading 40 hours each of PL and PSSL to each eligible employee. Carryover is still required for up to 80 hours of unused PSSL, but carryover of unused PL does not appear to be required.
- Payout upon separation and transfer. Medium employers (51–100 covered employees) must pay out up to 16 hours of unused PL on employment separation before July 1, 2025, and all unused PL thereafter. Larger employers must pay out all unused PL on separation. The same payout requirements apply when a worker transfers outside of the city and loses eligibility under the law. Small employers (50 or fewer covered employees) are exempt from PL payout requirements. Payout of unused PSSL is not required by any employer. The new ordinance has a potential conflict with existing state vacation forfeiture rules; see State laws limit vacation forfeitures (April 14, 2023).
- Waiting period. Before new employees can use leave, employers may impose a waiting period of up to 30 calendar days for PSSL or 90 calendar days for PL after hire date.
- Employer disclosure. Employers must post a notice in a conspicuous place in the worksite and provide a notice with the first paycheck issued after the law takes effect and annually thereafter with paychecks issued within 30 days of July 1. Employers also must provide all covered employees written PL and PSSL policies, including any notices required from employees, in their primary language at hire and at least five calendar days before a policy change. Each wage statement must contain PL and PSSL accrual rates, usage, and availability.
- **Employee notice.** Employers may require reasonable employee notice (up to seven days) for foreseeable leave and preapproval for PL, but not for PSSL. After three consecutive days of PSSL, employers may require certification.
- Unlimited paid time off (UPTO). Employers may comply with the ordinance by granting covered employees UPTO on hire (or on the first day of a 12-month accrual period). Employees must have the right to use UPTO for any reason and without prior approval. On an employee's separation, employers must pay out 40 hours, minus time off used in the 12 months before separation.
- **Enforcement.** Penalties (up to \$3,000) apply for various violations. Covered employees have a private right of action for PSSL violations as of July 1, and for PL violations as of July 1, 2025.

The Department of Business Affairs and Consumer Protection proposed rules clarifying these points:

- Covered employees. Immigration status does not affect eligibility. Day laborers are covered.
- Accrual. Only hours worked in Chicago earn PL and PSSL accruals.
- **Carryover.** Any PL or PSSL carryover increases the usage cap for the following year. For example, an employee with 32 hours of PSSL carryover has up to 72 hours of PSSL available in the new year.
- **Exception.** Employers do not have to allow use of PL or PSSL if an employee is suspended or on disciplinary leave.

The Office of Labor Standards has posted an <u>informational flyer</u> and <u>FAQs</u> with additional information.

Illinois — Cook County

Cook County, IL (covering the greater Chicago area) <u>amended</u> its <u>existing ordinance</u> to mirror the state PLAWA, transforming the former PSL mandate into one requiring paid leave for any reason. The duration of this leave is up to five days per year. The changes took effect Dec. 31, 2023, but enforcement is delayed until Feb. 1. Unlike the PLAWA, the ordinance allows a private right of action (with potential treble damages), while the state law is enforced only by the state Department of Labor. Under the home rule doctrine, cities within Cook County have the right to opt out of the county ordinance; for example, Chicago has done that.

Minnesota

The Department of Labor and Industry issued a <u>sample employer notice</u>, <u>poster</u> (in multiple <u>languages</u>) and <u>FAQs</u> in advance of the new ESST law's Jan. 1 effective date. For details, see <u>Minnesota earned sick and safe time</u> (slide deck) (Oct. 3, 2023) and <u>Minnesota adopts paid sick and safe leave requirement</u> (Sept. 27, 2023).

Minnesota — Bloomington

Bloomington <u>amended</u> its <u>existing ESST ordinance</u>, which took effect July 1, 2023. The "family member" definition now matches the state's definition, which includes a designated individual. New hires no longer face a 90-day waiting period before using ESST, and employees no longer can use ESST for the death of a family member. Employers may frontload ESST; those frontloading 48 hours at the start of the year must pay out unused time at year-end; employers frontloading 80 hours do not have to do so. These and other changes took effect Jan. 1.

Minnesota — St. Paul

Effective Jan. 1, St. Paul amended its existing ESST ordinance to align with the new state law:

- Covered employees. The definition no longer includes flight deck or cabin crew members of an air
 carrier if less than half their work hours are in Saint Paul in each calendar year and they receive paid
 leave equal to or exceeding the amounts set by the ordinance. New hires no longer face a 90-day
 waiting period to use leave.
- **Covered employers.** Staffing agencies are covered if they provide at least one temporary employee working in the city's geographic boundaries for at least 80 hours in a calendar year.
- **Family members.** The definition now includes an employee's, spouse's or registered domestic partner's relative; any other individual with a close relationship to the employee; and up to one designated individual per year.

- Qualifying reasons. New reasons include time needed to make an employee's home safer or to relocate because of domestic abuse, sexual assault, or stalking. Remote and in-person workers also may take leave when a healthcare professional or authority determines they or a family member is at risk of infecting others with a communicable disease.
- **Accrual, frontloading.** Revisions mirror the state law. Frontloading employers must apply the same method to all employees; no other local or state law in Minnesota has this requirement.

Washington — Seattle

The Office of Labor Standards published <u>final rules</u> (now in effect) providing guidance on the city's <u>App-Based Worker Paid Sick and Safe Time (PSST) Ordinance</u>. Enacted last March, the ordinance requires covered network companies (like Uber and DoorDash) with at least 250 app-based workers worldwide to provide paid leave. Here are some highlights:

- **Sexual assault exception.** The ordinance prohibits a worker from using leave if facing a "verifiable allegation of sexual assault." The rules provide nine examples of evidence supporting such a determination. A worker has retroactive access to paid leave if the allegations ultimately lack substantiation.
- Accessible system. Companies must meet specific standards to ensure workers understand how to request and use paid leave.
- **Withholding compensation.** The ordinance allows companies to withhold compensation if paid leave is for an unauthorized reason, if they follow notice and appeal requirements.

The ordinance took effect on May 1, 2023, for food delivery workers in Seattle and on Jan. 13, for all other app-based workers. For details, see <u>Roundup of selected state health developments, first-quarter</u> 2023 (May 19, 2023).

Rx

California removed the expiration date for a cost-sharing cap on covered outpatient prescriptions. Hawaii sued three pharmacy benefit managers (PBMs) over various marketing and administrative practices. A New York law prohibits price gouging.

California

Existing law — originally set to expire in 2024 — caps copayments, coinsurance or other cost sharing on a covered outpatient prescription drug at \$250 per 30-day supply of an individual prescription in insured and HMO plans (with exceptions for bronze-level plans and high-deductible health plans (HDHPs). 2023 Ch. 820 (AB 948) eliminated that expiration date.

Hawaii

The state's attorney general <u>alleged</u> CVS Caremark, Express Scripts and OptumRx violated state laws governing the use of rebates, fees and formularies. The attorney general label the pharmacies' business practices as "unfair and deceptive" and said they resulted in "ill-gotten gains." The four-count, 46-page <u>complaint</u> seeks unspecified damages and injunctive relief. The case has been removed to federal district court, which has stayed proceedings pending the outcome of similar cases in other jurisdictions.

New York

<u>2023 Ch. 725</u> (SB 608) modified a general business law to add drug shortages as a type of "abnormal disruption of the market." The law thus bars all entities in the drug supply chain from selling goods or services at unconscionably excessive prices during a drug shortage identified on a <u>federal Food and Drug Administration list</u>. This law took effect on Dec. 13, 2023.

Insurance

California and Washington, DC, passed insurance laws. New Colorado regulations address the use of artificial intelligence (AI) in life insurance. Michigan repealed its abortion-related insurance opt-out requirement by recognizing a fundamental right to reproductive freedom. New Mexico issued final regulations on excepted benefits, and Washington finalized abortion-coverage rules.

California

Three new laws apply to fully insured and managed care plans (including HMOs):

- **Ground ambulance balance billing.** As a result of <u>2023 Ch. 454</u> (AB 716), participants cannot pay more than the in-network cost-sharing rate for out-of-network ground ambulance providers, effective for plan years starting in or after 2024.
- Autism coverage. Current law requires coverage of behavioral health treatment for autism and related conditions, provided by a qualified provider, professional, or paraprofessional. Under 2023
 Ch. 635 (SB 805), qualified autism service professionals include psychological associates, associate marriage and family therapists, and associate clinical social workers. The law took effect Jan. 1.
- Maternal mental health services. A new law (2023 Ch. 349, AB 904) expands an existing maternal mental health mandate. The law requires plans to adopt a maternal and infant health equity program that addresses racial health disparities in outcomes through the use of doulas. Health equity programs must be developed by Jan. 1, 2025.

California generally does not apply its insurance laws on an extraterritorial basis to fully insured plans issued in another state, as long as both an employer's principal place of business and a majority of employees are located outside of California. The law does not affect self-funded plans.

Colorado

Colorado's Division of Insurance (DOI) published what may be the first state insurance <u>rules</u> addressing AI for life insurers that use external consumer data and information sources (ECDIS) or employ algorithms and predictive models that use ECDIS. Those life insurers must establish a risk-based governance and risk-management framework designed to determine whether those AI uses result in unfair discrimination based on race. Covered life insurers must provide a narrative report on compliance progress to the DOI by June 1; they also must provide a compliance report by Dec. 1 and annually thereafter. DOI issued these regulations, effective Nov. 14, 2023, under its <u>general</u> and <u>unfair discrimination</u> rulemaking authority.

Michigan

Michigan repealed four abortion-related laws, including the state's <u>Abortion Insurance Opt-Out Act</u>. Effective Feb. 13, <u>2023 Pub. Act 286</u> (HB 4949) specifically repeals the 2013 law requiring fully insured plans to provide elective abortion only through an optional rider and repeals parts of the Penal Code criminalizing abortion, the Legal Birth Definition Act (previously found unconstitutional) and community health funding limitations related to abortion in the Health Code.

New Mexico

New Mexico's insurance <u>regulations</u> currently impose coverage and other standards on insured excepted-benefit plans like accident-only, hospital indemnity, other fixed indemnity and specified disease coverage. The state's Office of Superintendent of Insurance (OSI) <u>finalized</u> an ancillary plan exception to these regulations. Ancillary plans must meet all of these requirements:

• Obtain a participant's proof of major medical coverage before the plan is issued

Include an initial disclosure with plan-specific content on the application, enrollment form and policy or certificate of coverage first two requirements, OSI delayed the effective date by one year. This exception is now effective for ancillary plans issued on or after Jan. 1, 2025.

Washington

- An <u>April 2023 bill</u> amends a law requiring abortion coverage if a plan covers maternity care. The
 amendment requires covered plans to provide abortion coverage cost-free, beginning on or after Jan.
 1; see <u>Roundup of selected state health developments</u>, second-quarter 2023 (Aug. 14, 2023). <u>Final regulations</u> mirror the statutory amendment and confirm that an exception "at the minimum level necessary" exists for HDHPs qualifying to work with health savings accounts.
- Provide an annual disclosure with standard content to all participants

After industry commenters pointed out administrative challenges for the

Washington applies its insurance laws on an extraterritorial basis to state residents covered by fully insured plans issued in another state. The law does not affect self-funded plans.

Washington, DC

The <u>Prior Authorization Reform Amendment Act</u> (2023 Act A25-0301, B25-0124) limits situations in which fully insured plans may require prior authorization for some medications, procedures and other medical care. Prior authorization is allowed for covered services if a determination of medical necessity for different care exists or the care is experimental or investigational. Prior authorization is strictly prohibited when based solely on cost. Prior authorization also is prohibited for medication-assisted treatment, prehospitalization transportation an emergency healthcare services. The law took effect Jan. 17, 2024.

Washington, DC applies its insurance laws on an extraterritorial basis to state residents covered by fully insured plans issued in another state. The law does not affect self-funded plans.

Telehealth

New California and Wisconsin laws permit out-of-state telehealth providers for certain services. New Jersey extended its telehealth reimbursement parity mandate through the end of this year.

California

Under <u>2023 Ch. 837</u> (AB 1369), licensed physicians and surgeons in another state may provide healthcare via telehealth to individuals with an immediately life-threatening disease or condition. Other requirements must be met. The law took effect Jan 1.

New Jersey

Originally set to expire Dec. 31, 2023, New Jersey's mandate requiring reimbursement parity between inperson and telehealth providers remains in effect through 2024 as a result of <u>2023 Ch. 199</u> (HB 5757). This requirement applies to fully insured plans but not self-funded plans. New Jersey generally does not apply its insurance laws on an extraterritorial basis to fully insured plans issued in another state.

Wisconsin

Wisconsin enacted two laws

- 2023 Act 55 (SB 196) enters the state into the interstate <u>Counseling Compact</u> for competent mental health professionals, including professional counselors; advanced practice, independent or clinical practice social workers; and clinical substance abuse counselors/
- <u>2023 Act 56</u> (SB 197) enters Wisconsin into the Audiology and Speech-Language Pathology Interstate Compact (<u>ASLP-IC</u>), which facilitates interstate audiology and speech-language pathology services, including those provided via telehealth.

Subject to certain restrictions, specified providers licensed in another state can provide services in Wisconsin. The laws took effect Dec. 8, 2023.

Other benefit-related issues

A California law launches a study on universal healthcare financing. Illinois delayed a key provision in its temporary worker pay/benefit parity law. New York announced its 2024 healthcare surcharge rates. Seattle provided updates for its hotel worker health coverage mandate.

California

Under <u>2023 Ch. 412</u> (SB 770), the state Health and Human Services Agency must explore a unified healthcare financing system, a potential precursor to meaningful universal healthcare legislation. An interim report is due Jan. 1, 2025; a final report is due Nov. 1, 2025.

Illinois

Section 65 of <u>2023 Pub. Act 103-0564</u> (HB 3641) — enacted in mid-November 2023 — delays the 90-calendar-day calculation for determining a laborer's eligibility under the <u>Day and Temporary Labor Services Act</u> (2023 Pub. Act 103-0437, HB 2862) from Jan. 1 to April 1. The law requires pay and benefit parity between workers employed by temporary agencies and their counterparts at third-party clients. For details, see Roundup of selected state health developments, third-quarter 2023 (Nov. 15, 2023).

New York

The Department of Health (DOH) has posted the <u>2024 regional covered-lives assessment</u> (CLA) rates and percentage surcharges for graduate medical education (GME) under the Health Care Reform Act (HCRA). The HCRA imposes an annual CLA — based on the number of covered individuals (and families) living in New York — on "electing" health claim payors, including self-funded plans. Nonelecting payors are not subject to the annual CLA but may incur significantly higher GME percentage surcharges on certain in-state hospital expenses. For more information, see <u>New York announces 2024 HCRA covered-lives assessment rates</u> (Jan. 3, 2024).

Washington — Seattle

Seattle has published the <u>2024 notice of rights</u> for employees of local hotels and ancillary hotel businesses. A hotel employee's right to health coverage expenditures applies to most businesses that own, control or operate a Seattle hotel or motel with 100 or more guest rooms and to ancillary hotel businesses with 50 or more employees worldwide. The Office of Labor Standards announced <u>2024 rates</u> earlier in 2023, consistent with the requirement to release rates for the coming year by every June 30.

Related resources

Mercer Law & Policy resources

- 2024 state paid family and medical leave contributions and benefits (Jan. 31, 2024)
- New York announces 2024 HCRA covered-lives assessment rates (Jan. 3, 2024)
- Roundup of selected state health developments, third-quarter 2023 (Nov. 15, 2023)
- Roundup: State accrued paid leave mandates (Oct. 25, 2023)
- Top 10 health, leave benefit compliance and policy issues in 2024 (Oct. 12, 2023)
- Minnesota earned sick and safe time overview (slide deck) (Oct. 3, 2023)
- Minnesota adopts paid sick and safe leave requirement (Sept. 27, 2023)
- Roundup of selected state health developments, second-quarter 2023 (Aug. 14, 2023)
- Roundup of selected state health developments, first-quarter 2023 (May 19, 2023)
- State laws limit vacation forfeitures (April 14, 2023)
- Roundup of selected state health developments, fourth-quarter 2022 (Feb. 17, 2023)
- Oregon's paid family and medical leave contributions delayed to 2023 (Aug. 5, 2021)

Other Mercer resources

- Life, absence and disability benefits
- MercerRx

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