

Employment & Labor Law Alert

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Maryland Joins First States Enacting Paid Family and Medical Leave Law

Employers with at least one employee in Maryland will be required to provide paid family and medical leave under the [Time to Care Act \(S.B. 275\)](#), enacted April 9 by Maryland's General Assembly by overriding Gov. Larry Hogan's veto. Maryland joins nine states, plus the District of Columbia, in enacting some form of employee paid family and medical leave (PFML) rights.

Employers will have ample time to get familiar with the new law. Employer contributions to the Maryland Family and Medical Leave Insurance Fund (FMLI Fund) are not scheduled to begin until Oct. 1, 2023, and eligible employees will not be able to claim PFML until Jan. 1, 2025. In the meantime, June 1, 2023, is the first significant date for the new law. The Maryland Secretary of labor is required to adopt implementing regulations, and the Maryland Department of Labor will determine the contribution rates for the FMLI Fund by no later than June 1, 2023.

In general, the new law will apply to a majority of the state's employees and will provide PFML to eligible employees and self-employed persons, funded by contributions to the FMLI Fund by employees, certain employers and participating self-employed individuals. PFML benefits will equal up to 90% of an employee's average weekly wages, capped at \$1,000 per week.

Here are some frequently asked questions about the new law and our answers (at least for now).

Who are the covered employers and employees?

The PFML law generally applies to employers (including governmental entities) that employ at least one individual in the state. Covered individuals who may claim PFML are employees who have worked at least 680 hours over



the 12-month period immediately preceding the date on which leave is to begin, and self-employed individuals who opt into the program (and pay contributions to the PFML Fund) by filing a written notice of election with the Maryland Secretary of Labor.

Maryland's PFML has less stringent requirements than the federal Family and Medical Leave Act (FMLA), including a significantly lower hours requirement (680 vs. 1,250) for the 12-month period preceding the leave and employee count requirement (one vs. 50 or more in a 75-mile radius).

What are the permissible uses of PFML?

Covered individuals can use PFML for the following:

1. To care for a child during the first year after birth or placement through foster care, kinship care or adoption ("bonding leave").
2. The employee's own serious health condition resulting in the inability to perform the functions of their position.
3. To care for a family member with a serious health condition.

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4. To care for a service member who is the employee's next of kin.
5. A qualifying exigency arising out of the deployment of a service member who is a family member of the employee.

PFML will run concurrent with relevant leave taken under the federal FMLA.

Who are family members for purposes of PFML?

"Family Member" is defined as:

1. A biological, adopted, foster or stepchild of the employee
2. A child for whom the employee has legal or physical custody or guardianship
3. A child for whom the employee stands in loco parentis, regardless of the child's age
4. A biological, adoptive or foster parent or a stepparent of the employee or of the employee's spouse
5. The legal guardian of the employee or a ward of the employee or of the employee's spouse
6. An individual who acted as a parent or stood in loco parentis to the employee or the employee's spouse when the employee or the employee's spouse was a minor
7. The employee's spouse
8. A biological, adopted or foster parent or a stepgrandparent of the employee
9. A biological, adopted or foster or a stepgrandchild of the employee
10. A biological, adopted or foster sibling or a stepsibling of the employee

Who are service members for purposes of PFML?

A service member is an individual who is an active duty or former member of the United States Armed Forces; a reserve component of the United States Armed Forces; or the National Guard of any state.

How much PFML time can an employee receive?

Generally, the amount of PFML is capped at 12 weeks in an "application year" (the 12-month period beginning on the first day of the calendar week in which an employee files an application for PFML).

The exception to this general rule is where an employee is eligible for both medical leave due to their own serious health condition and bonding leave in the same application year. In this case, the employee may receive an additional 12 weeks of PFML. Intermittent leave is available where applicable, and employees taking intermittent leave must use increments of four hours or more.

How much does PFML pay?

Employees using PFML will be eligible for up to 90% of average weekly wages, capped at a maximum weekly benefit of \$1,000.

The Maryland Department of Labor will annually adjust the maximum weekly benefit beginning on Jan. 1, 2026.

How is PFML funded?

PFML will be funded through contributions to the FMLI Fund from employees in the state of Maryland (via payroll deductions), employers with 15 or more employees, and self-employed individuals who opt in. Contributions are set to begin Oct. 1, 2023, at rates to be set by the Maryland Secretary of Labor by June 1, 2023. Contribution rates will be subject to biannual review.

Employers have the option to satisfy contribution requirements through a private employer plan if the plan is offered to all the employer's eligible employees; meets or exceeds the rights, protections and benefits provided under the new law; and is approved by the Maryland Department of Labor. Should an employer elect to take the private employer plan route, that employer and any employees covered by such plan would be exempt from PFML Fund contributions.

Does the new law provide job protection?

If a covered individual either receives benefits or takes leave for which benefits may be paid, employers are required to restore the employee to an equivalent position

upon the expiration of the leave. Employers can terminate an employee who is out on PFML only for cause, although cause is not defined in the new law. Additionally, employers can deny restoration of a position if the following conditions are met: The denial is necessary to prevent “substantial and grievous economic injury” to the employer’s operations, the employer notifies the employee of its intent to deny restoration of the position at the time that the employer determines that economic injury would occur, and, if the PFML has already begun, the employee elects not to return to employment after receiving the employer’s notice.

What about continuation of medical benefits?

Employers must maintain the health benefits of employees taking PFML in the same manner as required under the federal FMLA.

Are there employer notice requirements?

Employers must provide written notice regarding the availability of PFML to new employees at the time of hire and each subsequent year. The Maryland Department of Labor is required to develop a standard notice for employers to use to meet this requirement.

Further, in the event that an employee specifically requests PFML, or when an employer knows that an employee’s leave may be for a reason covered under PFML, the employer must, within five business days, notify the employee of their eligibility to take PFML.

The new law also mandates the Maryland Department of Labor to develop a standard notice for employers to use to meet this requirement.

How will the new law be enforced?

Employers cannot willfully make or cause false statements to be made about PFML, willfully fail or refuse to make FMLI Fund contributions, or make deductions from employee wages to pay any of the employer contribution amount.

Employers also cannot discharge, demote or otherwise discriminate or take adverse action against an employee because they have done any of the following:

1. Filed for, applied for or received benefits, or taken family or medical leave for which benefits may be paid
2. Inquired about the rights and responsibilities under the new law
3. Communicated an intent to file a claim, a complaint or an appeal under the new law
4. Testified or indicated they intend to testify or otherwise assist in a proceeding under the new law

The Maryland Secretary of Labor can enforce the law by conducting an investigation and bringing a civil action. Employees may also bring civil actions, subject to certain requirements.

Violations may subject the employer to civil penalties, payment of lost wages and damages, reinstatement of the aggrieved employee, payment of contributions plus interest, statutory penalties for failure to pay contributions, a compliance audit by the Maryland Department of Labor, punitive damages, attorneys’ fees and costs, injunctive relief, and any other appropriate relief.

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