

Paid Family and Medical Leave Continues to Expand in Several States

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Minnesota is the most recent state to enact a mandatory paid family and medical leave program, joining 11 other states and Washington D.C. in implementing paid leave laws. With a paid leave proposal being passed by the state legislature and publicly endorsed by its Governor, Maine is poised to soon follow.

On May 25, 2023, Governor Tim Walz signed House File (HF) 2 to create a state-paid family and medical leave program. The new law will go into effect on January 1, 2026. The program is set to be administered by the Minnesota Department of Employment and Economic Development, which will maintain employer accounts and determine applicant eligibility and benefit amounts.

Employee Eligibility and Leave Types

The law applies to all full-time and part-time employees in Minnesota regardless of employer size, with limited exceptions for self-employed individuals, independent contractors, and seasonal employees. An eligible employee may apply to receive benefits under this law if: (1) the employee was unable to perform work due to one of the reasons listed below, (2) the employee has earned at least 5.3 percent of the state's average annual wage, and (3) the employee has fulfilled the certification requirements for the type of leave requested.

Benefits will be available to employees who cannot perform work due to one of the following reasons:

- **Serious Health Condition.** The law defines a “serious health condition” as a physical or mental illness, injury, impairment, condition, or substance use disorder that involves inpatient care, or continuing treatment or supervision by a health care provider for various types of incapacity.
- **Bonding Leave.** This includes time for a biological, adoptive, or foster parent to spend with a child in connection with the child's birth, adoption, or placement. Bonding leave must be taken within 12 months of the birth, adoption, or placement of the child, except where “the child must remain in the hospital longer than the mother,” in which case the leave must end within 12 months after the child leaves the hospital. When related to adoption, employees may use bonding leave for various situations in the adoption process.
- **Family Care Leave.** The law will allow employees to take time off to care for a family member with a serious health condition, or to care for a family member who is a military member. A “family member” is defined broadly under the law and includes siblings, grandchildren, grandparents, sons- or daughters-in-law, and any individual who has a relationship with the applicant that

creates the expectation and reliance that the applicant care for the individual, regardless of whether they reside together.

- **Safety Leave.** This is defined as time off related to domestic abuse, sexual assault, or stalking of an employee or a family member. Employees may take leave to seek medical attention, counseling, legal advice, relocation, or victim services.
- **Qualifying Exigency Leave.** The law will allow time off due to a military member's active-duty service or notice of an impending call or order to active duty in the United States armed forces.

Length of Leave and Benefit Amounts

The Minnesota law will allow employees to take up to 12 weeks of paid leave for their own serious health condition and up to 12 weeks of paid leave for bonding, family care, safety, or a qualifying exigency. However, employees are limited to taking twenty weeks of combined leave in a full benefit year. For example, if an employee took twelve weeks of leave due to his or her own serious health condition, the employee would then be limited to 8 weeks of family care leave.

Employees may also take leave intermittently throughout the year, but intermittent leave will be limited to no more than 480 hours in a 12-month period unless otherwise provided by the employer. Moreover, employers may require this leave be taken concurrently with FMLA leave and/or Minnesota's Pregnancy and Parenting Leave Statute (Minnesota Statute § 181.941).

Employees will be paid benefits weekly. The weekly benefit will be calculated by applying the following percentages to the employee's average typical workweek and weekly wage during the high quarter of the base period:

- 90% of wages that do not exceed 50% of the state's average weekly wage; plus
- 66% of wages that exceed 50% but are less than 100% of the state's average weekly wage; plus
- 55% of wages that exceed 100% of the state's average weekly wage.

Notice Requirements

Employees are subject to certain notice requirements. If the need for leave is foreseeable, the employee must provide at least 30 days advance notice. If the request for leave is not foreseeable, the employee must provide notice as soon as practicable. The employee must provide oral, telephone, or text message notice sufficient to make the employer aware that the employee needs leave. In addition, the employer may require the employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employer Premiums

Employer premiums will be paid quarterly on taxable wages paid to employees. Beginning January 1, 2026, employer premium rates will be as follows:

- 7% for employers participating in both family and medical benefit programs

- 4% for an employer participating in only the medical benefit program and with an approved private plan for the family benefit program
- 3% for an employer participating in only the family benefit program with an approved private plan for the medical benefit program

In Maine, Legislative Document 1964 is set to create the Maine Paid Family and Medical Leave Benefits Program. The law will provide up to 12 weeks of paid leave per year to all eligible private and public sector employees (excluding federal government employees) regardless of employer size.

Eligible employees will be allowed to take leave to bond with a new child, to care for a family member with a serious health condition, to attend to a qualifying exigency arising out of an eligible employee's family member's active duty service or notice of an impending call to duty, to care for a family member, to take safe leave, or to take leave for any reason set forth in Maine's Family Medical Leave Requirements. Like Minnesota, Maine defines "family member" broadly to include grandparents, grandchildren, siblings, or "any other individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship."

An employee is eligible for leave under the program after earning at least 6 times the state average weekly wage in the preceding 4 calendar quarters prior to applying. If an employee is approved for leave, the program will replace 90% of the employee's average weekly wage calculated over the past four quarters, excluding any bonus pay. The maximum weekly benefit amount will be limited to 120% of the state average weekly wage.

To pay for this program, Maine will impose a 1% payroll tax to be split evenly between the employer and the employee. Employers with fewer than 15 employees will not be required to make employer contributions to the program, though they must still collect the employee's portion of the tax. The bill requires payroll contributions to begin on January 1, 2025. Claims by eligible employees will be processed beginning on January 1, 2026.

In addition to Minnesota and Maine, the following states have passed legislation involving paid family and medical leave laws: California, Connecticut, Massachusetts, New Jersey, New York, Rhode Island, Washington, Colorado, Oregon, Delaware, Maryland, and the District of Columbia. Payroll deductions have commenced in Colorado and Oregon, though employees will not be able to collect benefits until 2024 in Colorado and September 2023 in Oregon. Legislation has been passed in Delaware and Maryland as well, though benefits will not become available until 2026 and 2025, respectively.

To learn how these developments can affect your business, contact a member of Benesch's Labor & Employment Practice Group.

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