

# Paid Family and Medical Leave Is Coming to Maryland

**Law and the Workplace Blog** on **April 15, 2022**

On April 9, 2022, the Maryland state legislature overrode Governor Hogan's veto of [Senate Bill 275](#), also known as the Time to Care Act of 2022 (the "Act"). With the enactment of the law, Maryland becomes the latest state to establish paid family and medical leave for employees. The Act creates a family and medical leave fund (the "Fund") which provides temporary paid leave benefits to covered employees and participating self-employed individuals. The program will be administered by the state, and paid leave benefits will be made directly by the state to eligible individuals from the Fund.

## **Covered Reasons for Leave**

Beginning January 1, 2025, paid leave under the Act will be available for:

- Caring for a child during the first year after the child's birth or after the placement of the child through adoption, foster care, or kinship care,
- Caring for a family member with a serious health condition,
- Attending to the covered individual's own serious health condition that results in the individual being unable to perform the functions of the covered individual's position.
- Caring for a service member with a serious health condition resulting from military service who is a covered individual's next of kin; and
- Attending to a covered individual's "qualifying exigency" (defined to include various events related to military deployment or matters resulting therefrom) arising out of the deployment of a service member who is a family member.

"Family member" is broadly defined to include a covered individual's:

- Child (including a ward or one for whom the covered individual has legal or physical custody or guardianship or stands in loco parentis);
- Parent or legal guardian (including one who acted as a parent or stood in loco parentis to the covered individual when the covered individual was a minor);

- Spouse;
- Grandparent;
- Grandchild; and
- Sibling.

“Family member” also includes the ward, parent, or legal guardian of the covered individual’s spouse or one who acted as a parent or stood in loco parentis to the spouse when the spouse was a minor. All of the above relationships include biological, adopted, foster and step-relations.

### **Eligibility for and Amount of Leave Benefits**

Paid leave benefits will be available for employees who have worked at least 680 hours over the 12-month period immediately preceding the date on which leave is to begin (“covered employees”). Self-employed individuals may also receive such benefits if they elect to participate in the program.

Covered employees and participating self-employed individuals will be entitled to paid leave benefits which will be paid for from the Fund. Benefits are capped at 12 weeks in an application year – meaning within the 12 month period following the employee applying for benefits (starting from the first day of the calendar week in which the application was made). However, a covered individual may receive an additional 12 weeks of benefits if the employee received benefits for child care during the first year of a new child’s birth or adoption and then becomes eligible for benefits due to the covered individual’s serious health condition (or vice versa).

Covered individuals’ paid benefit entitlement is subject to a somewhat complicated formula, based on wages received over the past 680 hours. Based on these calculations, paid leave benefits will initially range from \$50 to \$1,000 a week, with the maximum weekly benefit subject to annual adjustment by the Maryland Secretary of Labor starting January 1, 2026.

Employees may take paid leave under the Act intermittently in increments of at least 4 hours, but to do so must:

- Make a reasonable effort to schedule the intermittent leave in a manner that does not unduly disrupt the employer’s operations; and

- Provide the employer with reasonable and practicable prior notice of the reason for why the intermittent leave is necessary.

Employers may not reduce an individual's total amount of entitled leave beyond the amount of intermittent leave the individual actually took.

Employers are required to continue any employment health benefits "in the same manner as required under maintenance of health benefits in the federal Family and Medical Leave Act" while on leave covered by the Act.

### **Interaction with Other Leave Laws and Benefits**

All leave taken under the Act runs concurrently with eligible federal Family and Medical Leave Act ("FMLA") leave.

An employee must take all employer-provided paid leave that is not required to be provided by law (presumably leave such as vacation and employer provided parental paid leave) before receiving benefits under the Act. Such employer-provided paid leave is considered leave taken under the Act and subject to the protections provided for paid leave under the Act (discussed below).

An otherwise eligible employee is ineligible for paid leave under the Act for any period in which they are receiving benefits under Maryland Title 8 unemployment insurance or Title 9 workers' compensation wage replacement benefits. However, an employee receiving compensation for a permanent partial disability under Title 9 may still be eligible for benefits under the Act.

### **Fund Contributions**

Beginning October 1, 2023, every employer with 15 or more employees that employs at least one individual in Maryland, every employee (through payroll deductions), and every participating self-employed individual will be required to contribute to the Fund. The rates of contribution will be set by the state.

An employer is exempt from making contributions to the plan if it provides a private employer plan to all eligible employees with benefits, insurance, or a combination of both that meets or exceeds the rights, protections and benefits provided by the Act. An employer must file their private employer plan with the Maryland Department of Labor (the "Department") in order to receive the exemption.

## **Employee Notice Requirements**

An employer may require employees to provide written notice at least 30 days before taking leave under the Act where such leave is foreseeable.

If an employee's leave is not foreseeable, the employee must provide notice to the employer as soon as practicable and comply with the employer's requirements for requesting other leave so long as those requirements do not interfere with the employee's ability to take leave under the Act.

## **Employer Notice Requirements**

Employers must provide written notice to every employee of their rights under the Act at the time of hire and annually thereafter.

In addition, employers must notify employees of their eligibility to take leave within five business days of the employee's request for leave under the Act or when an employer knows that an employee's requested leave may be eligible for benefits under the Act.

Notice provided to employees must include:

- The right of an eligible employee to receive benefits under the Act.
- The procedure for filing a claim for benefits.
- The employee's responsibilities regarding any notice they must provide and any penalties for failing to provide such notice.
- The right of an employee to file a complaint for alleged violations.
- The right of an eligible employee to job protection; and
- A description of the prohibited acts, penalties, and complaint procedures under the Act.

The Department is required to develop a standard notice for employers to use for this purpose.

## **Prohibited Acts/Employee Protections**

While an employee takes leave under the Act, an employer may terminate an employee for "cause" (which the Act does not define).

Further, an employer can deny restoration of an employee's position after they take covered leave if:

- The denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;
- The employer notifies the covered individual of its intent to deny restoration of the position at the time the employer determines the economic injury would occur; and
- If the leave has already begun, the employee elects not to return to employment after receiving notice of the employer's intention to deny restoration.

Employers may not take adverse action against an employee because the employee has:

- Filed for, applied for, or received benefits under the Act;
- Inquired about the rights and responsibilities under the Act;
- Communicated an intent to file a claim, complaint, or an appeal under the Act; or
- Testified or intends to testify or otherwise assist in a proceeding under the Act.

Employers also may not fail or refuse to pay contributions to the Fund, and may not take deductions from employee wages to pay for any portion of the employer's contribution.

An employee's rights under the Act cannot be diminished through a collective bargaining agreement or an employer policy.

Further, the Act cannot be construed to diminish an employer's obligation to comply with a collective bargaining agreement or an employer policy that allows an employee to take leave for a period of time longer than what is provided under the Act.

### **Enforcement of the Act**

Employees who believe their employer has violated the Act may file a written complaint with the Department. The Department will try to resolve the complaint through mediation.

If the Department is unable to resolve the complaint through mediation and determines a violation has occurred, the Secretary of Labor will issue an order describing the violation and direct the recovery of employment benefits, or other compensation denied or lost, including any actual economic damages. The Secretary of Labor's order may also seek reinstatement of the employee and may assess a civil penalty of up to \$1,000 for each employee for whom the employer is not in compliance. If the employer does not comply with any such order, the Act provides that the Secretary of Labor or the employee may commence a civil action to enforce the order.

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We will continue to provide updates on the Act, including the issuance of any implementing regulations and other guidance, as they occur.

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