State & Local Compliance Update
USI EMPLOYEE BENEFITS

June 2, 2023, *as updated*

Minnesota Passes Paid Family and Medical Leave Law

Update on February 26, 2025: As of January 1, 2026, the Minnesota PFML contribution amount will be increased to 0.88% instead of the proposed amount of 0.70%. This document has been updated to reflect this change.

On May 25, 2023,[1] Minnesota became the 12th state to provide paid family and medical leave ("PFML").[2] Starting January 1, 2026, eligible employees will be able to apply for up to 20 weeks of paid leave with the Minnesota Department of Employment and Economic Development ("DEED").

COVERED EMPLOYERS

Any employer with at least one employee working within Minnesota must provide PFML. This includes most private and public employers such as school districts and city/county public entities. Self-employed individuals and independent contractors may opt into the program. Seasonal hospitality employees (i.e., those that work less than 150 hours per year) are not eligible for PFML benefits.

ELIGIBLE EMPLOYEES

Eligible employees have work and wage requirements. Eligible employees are those persons that either:

- Work at least 50% of their time within Minnesota;
- Do some of their work in Minnesota and reside within Minnesota for at least 50% of the calendar year; or

[1] On the same day, Minnesota passed an Earned Sick and Safety Leave Law which is not addressed in this Update.
[2] A copy of the text can be found at: https://www.revisor.mn.gov/bills/text.php?number=HF2&type=ccr&version=0&session=ls93&session_year=2023&session_number=0.

- Neither work or reside in Minnesota but the place where their work is directed from is located in Minnesota.

In addition, Minnesota employees must earn at least $3,500 in wages (from a single employer or multiple employers) within a period of 12 consecutive months prior to applying for paid leave.

TYPES OF LEAVES

The law classifies eligible leave into two categories (i) family leave, and (ii) other leave, with each providing up to 12 weeks of leave in a benefit period, although an employee may take up to 20 weeks of combined leave in a 12-month benefit period. The qualifying leave events are:

Family leave:

- Serious health condition for the employee.
- Pregnancy and parental leave, including bonding with a new biological, adopted or foster child.
- Care of family member's or military member's serious health condition.

Other leave:

- To care for self or family member's domestic assault, sexual assault, and/or stalking (includes legal assistance and household relocation).
- Qualifying exigencies, such as imminent departure of family member to active military duty.

To be eligible, the qualifying event must have an expected duration of at least seven days (except for bonding with a new child) and will be considered to be taken consecutively unless the event is identified as intermittent on the PFML application.

PFML defines "family member" as the employee's:

- spouse, domestic partner, child (including in loco parentis, legal guardian, and "de facto" parent), parent/legal guardian, sibling, grandparent (including spouse's grandparent), grandchild, son/daughter-in-law; and
- an individual who has a relationship with the applicant that creates an expectation and reliance that the applicant cares for the individual, whether or not the applicant and the individual reside together.

Additional guidance will be necessary on how to properly test or confirm the existence of such a relationship. Presumably, this broad definition incorporates leave for such persons as domestic partners, which is something that FMLA does not cover.

CONTRIBUTIONS AND BENEFITS

Starting mid-2024, covered employers will commence submitting wage detail reports to DEED. These reports will outline the quarterly wages paid to PFML eligible employees and their hours worked.

In 2025, employers will be required to provide notices to employees that outline the PFML, including eligibility requirements and how to request leave. DEED will provide language for these notices closer to their distribution deadline.

Starting January 1, 2026, employers will contribute 0.88% of employee wages, although employers can opt to pay the entire amount or elect to have employees pay up to 50% of the required premiums.

The PFML benefit is based upon a percentage of the employee's wages and the state's average weekly wage. Workers can expect to receive:

- 90% of their weekly wages that are less than or equal to 50% of the stage's average weekly wage[3]);
- 66% of their weekly wages that are greater than 50% of the state's average weekly wage but less than 100% of the state average weekly wage; or
- 55% of their weekly wages that are more than 100% of the state average weekly wages.

An employer cannot require that the employee use their accrued PTO, sick and/or vacation time at the same time as PFML or instead of PFML Employees can however choose to use their accrued paid time off ("PTO"), sick and/or vacation time instead of the PFML and the PFML protections will still be in effect for the individual. An employer can choose to provide supplemental benefit payments to compensate employees to their normal compensation amounts.

Starting July 1, 2025, employers will be able to substitute state-approved private plans instead of participating in the state program. Additional guidance on the process will be forthcoming but private plans are expected to include a surety bond.

NOTICE REQUIREMENTS AND RETALIATION PROHIBITION

Employers are required to post a notice in the workplace about the PFML in both English and the primary language of 5 or more employees. Employers are also required to provide newly hired employees with written notice on their expected PFML benefit amount and instructions on how to apply for the benefits. DEED is expected to produce a template for employers.

Employees are required to provide notice to the employer at least 30 days in advance of their intent to apply for a foreseeable leave or as soon as practicable for an unforeseeable leave. The employer can still require the employee to follow their normal call-in/reporting procedures if they do not unnecessarily interfere with the employee's ability to apply for the leave.

Employers are prohibited from retaliating against employees for utilizing their paid leave. Employees that were hired at least 90 days prior to using their leave have the right to be reinstated with their employer into either their same job or an equivalent job. Similar to FMLA, employees retain access to their health insurance while on paid leave.

EMPLOYER ACTION ITEMS

Employers should begin to determine if they have employees that will be eligible for this future leave benefit. Creating a process to track eligibility would be prudent and to develop a process to provide the required written notice to new hires.

Employers may want to review their existing leave policies and handbooks to see if there is any potential overlap with the new requirements. This may be especially important for multi-state

[3] For 2023, 50% of the state's average weekly wage is $643.50.

employers that have attempted to create uniform leave policies to satisfy the different leave laws in these jurisdictions.

DEED is currently drafting frequently asked questions and additional guidance for employers and employees. Employers may want to sign up for their newsletters to keep up with the most recent updates.

RESOURCES

- A copy of the statute can be found at: https://www.revisor.mn.gov/bills/text.php?number=HF2&type=ccr&version=0&session=ls93&session_year=2023&session_number=0
- DEED website: https://mn.gov/deed/programs-services/paid-family/.