

MAY 5, 2022 | STATE &amp; LOCAL TRENDS

# Maryland Joins a Number of States by Enacting a Paid Family and Medical Leave Law

Maryland recently became the tenth state to enact a paid family leave law – joining California, Colorado, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island and Washington, as well as the District of Columbia and San Francisco. Although the legislature passed the [Maryland Time to Care Act of 2022](#) by a supermajority vote on March 31, 2022, Governor Hogan opposed the bill and vetoed it on April 8, 2022. Just one day later, however, the legislature voted to override Governor Hogan's veto by an overwhelming majority.

Although the bill will be phased in over the course of the next two-and-a-half years, Maryland employers should pay close attention to the law and the regulations that the Maryland Department of Labor will be implementing within the next year. To get ahead, employers should proactively make plans to revise their current leave policies and reach out to their HR and payroll providers to ensure that they are prepared to handle the necessary payroll tax contributions.



## Effective Dates and Roll-Out of the Act

Similar to how the District of Columbia and other jurisdictions implemented their paid family leave laws, the law will be phased in over the course of several years. Specifically, the Act establishes a Family and Medical Leave Insurance Fund that will require all employers with 15 or more employees, all employees, and all self-employed individuals that elect to participate in the program to make contributions a fund beginning October 1, 2023. Notably, employers with less than 15 employees are not required to contribute to the fund, but employees of those small employers will still be required to contribute to the insurance fund.

The contribution rates will be set by the Maryland Secretary of Labor by June 1, 2023. Covered employees will be eligible to claim and receive benefits approximately a year-and-a-half later on January 1, 2025. The funding requirements and employer/employee contribution rates will also be periodically reviewed and subject to change based on bi-annual studies and recommendations by the Maryland Secretary of Labor.

## Coverage and Qualifying Events under the Act

The Act defines “covered employer” broadly to any person or governmental authority that employs at least one individual in the state of Maryland. However, there are certain limitations on who is eligible to claim benefits.

Covered individuals – i.e. employees eligible to claim benefits under the Act – are defined as employees who have worked at least 680 hours over the 12-month period immediately before the date that leave is to begin.

Eligible employees may receive up to 12 weeks of benefits in an application year for a covered reason, which is the 12-month period beginning on the first day of the week in which an employee applies for the benefits. An employee may, however, receive an additional 12 weeks of benefits if the individual qualifies for both parental leave and a medical leave due to their own serious health condition in the same application year.

The Family and Medical Leave benefits, which will run concurrently with benefits under the federal Family and Medical Leave Act, are available for the following covered reasons:

1. To care for a child during the first year after the child's birth or after the placement of the child through foster care, kinship care, or adoption;
2. To care for a family member with a serious health condition;
3. Because the covered individual has a serious condition that results in the covered individual being unable to perform the functions of the covered individual's position;
4. To care for a service member who is the covered individual's next of kin; or
5. Because the covered individual has a qualifying exigency arising out of the deployment of a service member who is a family member of the covered individual.

A "family member" is defined as:

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

A "serious health condition" is defined as an illness, an injury, an impairment, or a physical or mental condition that involves:

1. inpatient care in a hospital, hospice, or residential health care facility;
2. continued treatment by a licensed health care provider; or
3. continued treatment or supervision at home by a licensed health care provider or other competent individual

under the supervision of a licensed health care provider.

### **Employee Pay During Leave**

The Act provides for partial wage replacement of up to 90% of the employee's average weekly wages, with a maximum weekly benefit amount of \$1,000. The maximum weekly benefit will also be reviewed and adjusted annually to reflect the annual percentage growth of the area's Consumer Price Index.

### **Anti-Discrimination and Job Protection Provisions**

Similar to other paid family and medical leave laws, the Act provides employees certain job protections when an employee takes leaves or receives benefits for a qualifying event. Specifically, employees that take leave under the Act must be restored to their equivalent position of employment upon expiration of the leave. Job restoration may only be denied in cases where it is necessary to prevent substantial and grievous injury to the employer's business operations and the employer provides notice of the intent to deny the employee's job restoration rights at the time the employer determines that economic injury would occur. Furthermore, employee health benefits must be continued throughout the leave in the same manner as required under the FMLA. Finally, employers may only terminate employees utilizing leave under the Act for cause.

### **Notice Requirements**

Employers have certain notice obligations under the Act, which will be prepared and provided by the Maryland Department of Labor when the implementing regulations are issued. Once the employees are eligible to receive benefits, employers must provide employees written notice of the rights and duties of an employee under the Act at the time of hire and on an annual basis. When an employee requests leave, employers will also be required to notify the employee of his or her eligibility to take leave for which benefits may be paid under the Act within five (5) business days of the request.

### **Private Plan Option**

Covered employers have the option of satisfying the Act's requirements through a private employer-plan that meets or exceeds the benefits and coverages provided in the Act and is approved by the Maryland Department of Labor. If an employer applies and is approved by the Department of Labor for a private plan option, both the employer and its employees are exempt from contributing to the insurance fund through payroll taxes.

While employers have about a year-and-a-half until contributions must be made to the insurance fund, employers should begin preparing for the Act's rollout. Employers should take this time to collaborate with their HR and payroll systems to account for this new leave and the future payroll tax contributions. Employers should also take steps to prepare a new family and medical leave policy for Maryland employees that can be added to their employee handbook. Finally, employers should carefully monitor the Maryland Department of Labor's website for the release of the Act's regulations, which will be issued within the next year.

If you have any questions or need additional assistance, Conn Maciel Carey's [Labor and Employment](#) team can assist with reviewing and revising existing leave policies and provide guidance to help comply with the Act's requirements.

