

April 13, 2022

MARYLAND PASSES MANDATORY PAID LEAVE LAW

On April 9, 2022, the Maryland General Assembly overrode Governor Larry Hogan's veto of the Time to Care Act of 2022 to establish a mandatory paid leave program. This program will provide for up to 12 weeks of paid leave for all employees in the State who meet minimum eligibility criteria. Such benefits will be provided either through a State-based program known as the Family and Medical Leave Insurance (FAMLI) Program or by private employers who elect to opt out of the FAMLI Program and instead pay such benefits either directly or through an insurance policy.

It will take several years to implement these new leave rules. Outlined below is the key information we know now about how this program will work.

Program Basics:

- Any employer employing one or more employees in Maryland will be impacted.
- Benefits must be made available to all "covered employees" in Maryland.
- A "covered employee" is any individual who worked at least 680 hours in the 12 months immediately before the date leave begins.
- Both employees and any employer with 15 or more employees must contribute towards the program's cost.
- Private employers may opt out of the FAMLI Program. However, if they do so, they must offer an alternative that meets the rights, protections, and benefits provided through the FAMLI Program. Any such private plan must be filed and approved by the Maryland Department of Labor.
- Employers will be required to provide notice to employees about these new rules. The State will provide model notices.
- Self-employed individuals may opt-in to the FAMLI Program for an initial term of three years. After that, they can decide each year if they wish to participate.

Program Benefits:

- Benefits are available for up to 12 weeks per year for covered employees taking leave to:
 - Care for a newborn child or a child newly placed for adoption, foster care, or kinship care with the individual during the first year after the birth, adoption, or placement;
 - Care for a family member with a serious health condition;
 - Attend to a health condition that results in the individual being unable to perform functions of their job;
 - Care for a next-of-kin service member; or
 - Attend to a qualifying event arising out of a family member's deployment.

- The definition of "family member" for this purpose is quite broad, including, for example, legal guardians, grandparents, stepfamily members, and foster family members.
- Leave may be taken on an intermittent basis.
- The weekly benefit is based on a covered employee's average weekly salary and can range from \$50 to \$1,000.
- Within this range, the required benefit is calculated using a benchmark equal to 65% of the State average weekly wage. The benefit is calculated as follows:

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| For employees making the State benchmark or less: | 90% of average weekly wage |
| For employees making more than the State benchmark: | 90% of average weekly wage up to the State benchmark PLUS 50% of remaining average weekly wages |

- Coverage runs concurrently with FMLA job-protected leave, if applicable.
- The same benefit protection that applies during FMLA applies while an employee is on FAML I Program leave.

Implementation is anticipated to follow the schedule outlined below:

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| June 1, 2022 | Effective date for the Time to Care Act of 2022 |
| December 1, 2022 | Deadline for the Maryland Department of Labor (MDL) to make a recommendation of rates for participation in the FAML I Program and the appropriate cost-sharing formula for employers and employees |
| June 1, 2023 | Maryland Secretary of Labor must set total contributions and % of the rate to be paid by employers (with > 15 employees) and employees |
| October 1, 2023 | Contributions to the FAML I Program begin |
| January 1, 2025 | Benefits from the FAML I Program begin |

Notably, the new FAML I Program does not supersede or change other existing federal and state laws requiring employers to provide paid and unpaid leave.

We will continue to carefully follow the implementation of the FAML I Program and its private employer alternative and provide additional information as it becomes available.

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