



Get ready for New Hampshire Paid Family Leave



Granite State Paid Family Leave Plan

On June 29, 2021, Governor Sununu signed the New Hampshire (NH) state budget, which includes a comprehensive statutory program mandating paid family leave benefits for state employees and creating a voluntary opt-in program for other employers and individuals, as discussed in more detail below. Titled the Granite State Paid Family Leave Plan (“the Granite State Plan”), benefits will be payable for state employees starting January 1, 2023 for all leave reasons covered by the Federal Family and Medical Leave Act (“FMLA”) except leave because of the employee’s own serious health condition. Therefore, state employees will be eligible for paid leave to bond with a new child, to care for a family member with a serious health condition, because of a qualifying military exigency or to care for next of kin who is injured in the line of active military duty.

Duration, Benefits and covered family members

Under the Granite State Plan, state employees are eligible for up to 6 weeks of paid family leave benefits paid at 60% of wages, capped at the Social Security taxable wage maximum. The covered family members under the law include the same family members covered by the FMLA, including parent, child and spouse and also includes domestic partner and grandparents, as well as the parent of a spouse or domestic partner. There are no other details about the paid leave benefits. The law contemplates that the Department of Administrative Services (“DAS”) will have discretionary authority to determine various aspects of the program, including the base period by which the average weekly wage will be determined, the tenure requirement before an employee is eligible for benefits (though no new tenure requirement can be applied if an employee meets the requirement and then changes jobs), and whether there should be a waiting period.

Benefits for non-state employees

The Granite State Plan contemplates that one or more private insurance carriers will be selected through an RFP process to provide the mandated benefits for state employees. The selected carrier(s) will also be required to offer paid leave benefits to other public and private employers as well as individual employees on a voluntary opt-in basis. Set forth below is a summary of the different opt-in options.

- **Public employers and private employers with 50 or more employees.** Public employers of any size as well as private employer with 50 or more employees may choose to offer the Granite State Plan paid family leave benefits. If they choose to do so, they will contract directly with the selected carrier(s).
- **Individual Opt-in.** Individuals who work for either a public or private employer with 50 or more employees¹ that chooses not to offer the Granite State Plan benefits or who fails to otherwise offer benefits that are at least equivalent to the Granite State Plan benefits will have the opportunity to purchase paid leave benefits through a purchasing pool for family and medical leave insurance that will be administered by the Department of Employment Security (DES). The law permits the pool to be experience rated and coverage through the pool will include a 7-month waiting period, a one-week elimination period, and a 60-day annual open enrollment period. Premiums in the pool may not exceed \$5 per subscriber per week. While the benefits under the Granite State Plan are limited to paid family leave benefits, individuals can choose to opt in for paid family leave and, if their employer does not offer Short Term Disability Insurance, the individual can also opt in for paid leave benefits for their own serious health condition that is not work-related.

NH PFL

Benefits payable

starting

January 1, 2023



Up to 6 weeks

of paid family leave benefits paid at **60% of wages**, capped at the Social Security taxable wage maximum



Family leave for

bonding, to care for a family member with a serious health condition, because of a qualifying military exigency or to care for next of kin who is injured in the line of active military duty



- **Private employers with fewer than 50 employees.**

Private employers with fewer than 50 employees can also purchase paid leave benefits for their employees through the Granite State Plan by making premium remittances into an FMLA premium fund administered by the DES.

Premium Stabilization Trust Fund

The Granite State Plan creates a premium stabilization trust fund that will be funded by premium taxes imposed on premiums written by duly authorized insurance companies for family leave insurance written under the terms of the Granite State Plan. The moneys in the fund will be used to create a premium stabilization reserve and used exclusively for the purpose of assuring that the premiums charge to participants in the individual pool remain stable from year to year and do not exceed \$5 per subscriber per week. The fund will be administered by the DES which is authorized to make periodic payments to participating insurance carrier(s).

Premiums

The per employee premium (“state rate”) that is charged by the successful bidder for the state contract for the paid family leave coverage for state government employees will be expressed as a percentage of wages and is to be determined. The premiums for public employers and private employers with 50 or more employees who opt in will be derived from the state rate through the application of rating factors that are actuarially justified and specified in the bid response. As noted above, premiums for individuals who opt in will be no more than \$5 per subscriber per week. And, the statute is not clear on how the premium will be established for employers with fewer than 50 employees who opt in.

Employer Tax Credit

For employers who choose to sponsor paid leave plans under the Granite State Plan, there will be a tax credit allowed in an amount equal to 50 percent of the premium paid by a sponsoring employer for family and medical leave insurance coverage offered to employees.

Job protection & Health Care Continuation.

Participating employers with 50 or more employees who opt in to the Granite State Plan are required to restore eligible employees who take leave to the same or equivalent position held prior to such leave and to continue to provide health insurance to employees during the leave. These employers also may not discriminate or retaliate against employees for accessing the paid leave benefits. Employers may require the leave to run concurrently with the federal FMLA or with employer policies or a collective bargaining agreement.

Timelines

The law states that a request for proposals will be issued no later than March 31, 2022, and that by January 1, 2023, (1) the coverage for leaves will be in place for state government employees and (2) the coverage will also be available for purchase by other public and private employers with more than 50 employees and individuals.

Next steps

Sun Life will continue to provide updates as they become available. Employers should become familiar with the law and decide whether or not to opt into the program or establish a private plan.

1. The law is somewhat ambiguous on whether individuals who work for employers with fewer than 50 employees can also opt in. We expect that this will be clarified in the coming months.

The information in this document is based on our knowledge of New Hampshire Paid Family Leave. We will update this document as we learn more. This document is not intended to be and should not be construed as legal advice. Employers are encouraged to consult employment law counsel for legal advice.

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