Get ready for Maryland Paid Family and Medical Leave (MD PFML)

On April 9, 2022, the Maryland General Assembly voted to override Governor Hogan's veto and pass a broad reaching paid family and medical leave (PFML) bill in Maryland. Public and private employers with one or more employee in the state will be subject to the law. The program will be funded through premium contributions based on wages and will provide the opportunity for eligible employees to take job protected, partially paid leave for certain covered leave reasons discussed below. Paid leave benefits will be available starting January 1, 2025, and premium contributions will commence October 1, 2023. Private PFML plans will be available to employers who elect to provide paid family and medical leave benefits that are at least as generous as the state program benefits on either a fully insured or self-insured basis. Private plan employers must seek and obtain approval of their private plan, and, if approved, will be exempt from making premium contributions under the state plan.

Applicability. Any person or governmental entity that employs at least one individual in the state of Maryland will be subject to this law. Self-employed individuals can elect to participate in the program provided they do so for an initial minimum period of three years.

Covered Individuals. Covered individuals include covered employees and self-employed persons who have opted into the program. Self-employed individuals must opt in for an initial period of at least three years and, thereafter, may renew for periods of at least one year.

Covered Employees. A covered employee is an employee who has worked at least 680 hours over a 12-month period preceding the date on which their leave begins. The law does not specify that this time worked must be either within the State of Maryland or for their current employer.

Leave Reasons. Covered leave reasons include:

1) Bonding within a year of the birth, adoption, foster-care, or kinship care placement of a new child of the covered individual;
2) Caring for a covered individual's family member with a serious health condition
3) Because the covered individual's own serious health condition makes them unable to perform the functions of their position;
4) Caring for a service member who is the covered individual's next of kin; or
5) Because of a qualifying military exigency arising from the deployment of a service member who is a family member of the covered individual.

Covered family members. Maryland's law defines family member to include child, parent, parent-in-law, spouse, sibling, grandchild, or grandparent. Notably, domestic partners are not covered family members. Additional definitional terms are as follows:

- ***Child*** includes a biological, adopted, foster, or stepchild as well as any child under legal or physical custody or guardianship of the covered individual, or for whom the covered individual stands in loco parentis, regardless of the child's age.
- ***Parent*** includes a biological, adoptive, foster, or stepparent of the covered individual or the covered individual's spouse. Parent also Includes a ward of the covered individual or covered individual's spouse, a person the covered individual or covered individual's spouse has legal guardianship over, and an individual who acted in loco parentis to the covered individual or covered individual's spouse when the individual or spouse was a minor.
- ***Grandparent*** includes a biological, adopted, foster and step-grandparent of the covered individual.
- ***Grandchild*** includes a biological, adopted, foster or step-grandchild of the covered individual.
- ***Sibling*** includes a biological, adopted, foster and stepsibling of the covered individual.

Definition of serious health condition. Serious health condition means an illness, injury, impairment or physical or mental condition that involves any of the following: (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.

Duration. Covered individuals will be able to take up to 12 weeks of PFML per application year with additional time becoming available in certain situations. A covered individual may receive an additional 12 weeks of leave benefits if, in the same application year, they:

- Received benefits because they were bonding with a new child or become eligible to receive benefits to bond with a new child; or
- Received benefits because of a need for leave for their own serious health condition or become eligible to receive benefits for leave for their own serious health condition.

As a result of this provision, an employee could potentially be eligible for up to 24 weeks of MD PFML benefits in one application year.

Application year. The application year is the 12-month period beginning on the first day of the calendar week in which the covered individual files an application for benefits. Note that the first day of the calendar week is not identified but in U.S. calendars, this is typically Sunday.

Intermittent leave. Leave is available continuously or intermittently. If intermittent leave is needed, the employee must make a reasonable effort to schedule time as to not unduly disrupt the operations of the employer and provide the employer with reasonable and practicable prior notice of the reason for which intermittent leave is necessary. The minimum increment of intermittent leave is 4 hours.

Amount of benefits. If the covered individual's average weekly wage is 65% or less than the state average weekly wage, the benefit paid will be 90% of the covered individual's average weekly wage. If their average weekly wage is greater than 65% of the state average weekly wage, the individual will be paid the sum of 90% of their average weekly wage up to 65% of the state average weekly wage and 50% of their average weekly wage that is greater than 65% of the state average weekly wage.

The minimum benefit is $50, and the maximum benefit will be $1,000 for the year of 2025. The maximum will be determined each year based on the difference between the prior year's maximum and the annual increase to the consumer price index. The maximum for each year will be announced on the prior September 1st.

The covered individual's average weekly wage is calculated as the total wages received by the covered individual over the most recent 680 hours for which the covered individual was paid divided by the number of weeks worked.

Premiums. Contributions to fund the program will begin October 1, 2023. Employees, employers with 15 or more employees, and self-employed individuals who are participating in the program will contribute to the fund. The statute is somewhat unclear, but it seems that covered employees will initially be responsible for 75% of the contributions owed and employers can deduct employee contributions through payroll deductions. Alternatively, employers can elect to pay a portion of the employee's required contributions and deduct less than 75%. Self-employed individuals who have opted into the program will be responsible for paying the total rate of contribution for the applicable year.

On or before June 1st, 2023, and every 2 years thereafter, the secretary shall set the total rate of contribution and the percentage attributable to employees and employers with 15 or more employees. The rate will be in effect for 24 months beginning on the January following. The contribution will be applied to all wages up to and including the social security wage base.

Every 2 years beginning in 2025, on or before December 1st, a cost analysis of the program will be performed, and recommendations will be made regarding the contributions and cost-sharing formula between employees and employers. Although the percentage of contributions that employees and employers are responsible may be adjusted in varying percentages between employee and employer between the ratios of 25%/75% (employee/employer) and 75%/25% (employer/employee).

Job Protection & Health Care Continuation. MD PFML is job protected. Employer may only terminate an employee on PFML leave for cause and may only deny restoration if the denial is necessary to prevent substantial and grievous economic injury to operations of employer and employer notifies employee of intention to deny restoration.

The covered individual is also entitled to the continuation of health benefits during the leave.

FMLA concurrency. Leave under MD PFML will run concurrently, if applicable, with leave under the federal FMLA.

Paid Time Off. A covered individual is required to exhaust all employer-provided leave, that is not required to be provided by law, prior to receiving MD PFML benefits. The law states that any employer provided leave being exhausted, as required prior to receipt of MD PFML, shall be treated the same as MA PFML leave, which would indicate that time taken using employer-provided paid leave would be deemed job protected. The law also states that if this employer provided leave may not reduce any weeks of leave for which benefits may be paid. Therefore, it seems the law is attempting to require exhaustion of paid time off, apply job protection to such time taken for a MD PFML leave reason, and finally, ensure covered employees are entitled to receive the full amount of their MD PFML allotment of benefits after taking employer-provided paid time off.

Private Plans. An employer can establish a private plan if they offer benefits to all eligible employees and the private plan meets or exceeds the state plan by providing the same or more generous rights, protections and benefits to covered employees. Private plans are required to be filed with the Maryland Department of Labor for approval and once approved the employer and employees with a private plan will be exempt from contributions owed to the state plan. Private plans can be either self-insured or fully insured.

Next steps. Sun Life will continue to provide updates as they become available. Employers should become familiar with the law and start to consider whether they intend to have employees obtain their benefits from the state program or whether the employer wants to establish a private plan.

Other State Paid Family and Medical Leave laws. Maryland became the 10th state to adopt a PFML program joining California, Colorado, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington. In addition, the District of Columbia has a paid family and medical leave program, Hawaii has a statutory disability program, and Delaware as passed a paid family and medical leave law that as of this writing is awaiting the Governor's signature. New Hampshire passed a paid leave mandate for state employees with the opportunity for opt in by private employers or individuals.

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This content is not to be considered legal advice. We recommend Clients speak with legal counsel specializing in labor and employment law to ensure your organization has met all of the requirements under the Maryland Paid Family Leave (PFL) Act.

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