



Maryland Passes Expansive Paid Family Leave Law

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On Saturday, April 9, the Maryland General Assembly closed its legislative session by passing the Time to Care Act of 2022, overriding Governor Hogan's earlier veto of Senate Bill 275. As such, Maryland has now joined just nine (9) other states and the District of Columbia in enacting a paid family leave statute that covers all Maryland employers employing at least one person in the state.

The Maryland Department of Labor will issue implementing regulations by June 1, 2023. But beginning on October 1, 2023, businesses with 15 or more employees, all employees, and all self-employed individuals who elect to participate in the program will be required to contribute to the state's Family Medical Leave Insurance (FAMLI) fund. This contribution is essentially a payroll tax to be split between employers and employees with the tax rate to be determined through a Maryland Department of Labor study. Employers may elect instead to self-fund a paid family leave plan that meets or exceeds the benefits of the state program, but such a self-funded plan must also be approved by the Maryland Department of Labor. Then, starting on January 1, 2025, employees will be able to apply for benefits when the need for covered leave arises, but only after exhausting all other employer-provided leave, such as PTO or sick leave.

Under the new Maryland law, covered employees will be able to take leave for reasons similar to those allowed under the federal Family Medical Leave Act (FMLA), including leave related to the birth or adoption of a child, in connection with a serious health condition, to care for a sick family member, or to deal with a military deployment. The Time to Care Act, however, is more generous than the federal law in several important respects.

First, under the Maryland law, employees can take 12 weeks for the birth/adoption of a child *and* an additional 12 weeks to care for their own serious health condition. Thus, an employee can feasibly take 24 weeks of leave under the Act within in the same year. The federal FMLA leave is capped at 12 weeks per year regardless of the reason for the leave. Second, unlike the FMLA, which provides for unpaid leave, Maryland's leave is paid, and the amount of paid leave is tied to a percentage of the employee's average wage and capped at \$1,000.00 per week. Third, the state law applies not only to

employers with 50 or more employees working within a 75-mile radius, as the FMLA provides, but to *all* Maryland employers (though only those with 15 or more employees are required to contribute to the FAMLFI fund). Next, employees on leave under the Time to Care Act may be terminated only for *cause*, unless the employer can prove that it would suffer *substantial and grievous economic injury* by keeping the employee. Further, the employee must be permitted to keep his or her health insurance while on leave. Just like the FMLA, intermittent leave will be available under the Maryland law, but an employee may not take intermittent leave in an increment of less than four (4) hours. Lastly, employees need only be employed for 12 months and work 680 hours in that one-year period to be eligible. The FMLA leave requires that the employee work for 12 months and 1,250 hours to be eligible. In other words, the lower hour requirement under the Time to Care Act means it covers both full and part-time employees.

Employer missteps under this law could have serious consequences. The Act allows damages for violations of treble lost wages/compensation and attorneys' fees. Maryland employers should be on the lookout for implementing regulations next year.

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