

# What You Need to Know About Maryland's New Family Leave Law

By Jessica Summers

This year, Maryland joined the growing number of states and localities that have implemented paid family leave programs. The Maryland Time to Care Act of 2022 will establish a state fund to provide paid leave benefits for employees who need to take time away from work for certain specified reasons. The new Maryland program follows a similar structure to the DC paid family leave program that went into effect in 2020.

Understandably, employers and employees have many questions about the new law. The Maryland Department of Labor (MD DOL) is expected to issue its first round of regulations on the new law next summer. While there are still a number of unanswered questions to be resolved and details to be hammered out, here's what we do know about how the new law will work:

## **Who is going to pay for the new leave?**

The leave will be paid through a new Maryland Family and Medical Leave Insurance (FAMLI) Fund. Employers and employees will be required to contribute to the fund through payroll taxes, although the contribution rate and the employer/employee contribution split has not been determined. By December 1, 2022, the MD DOL must conduct a cost analysis of the program and make recommendations on the total rate of contribution and the appropriate cost-sharing formula between employers and employees for making contributions. Every two years thereafter, beginning in 2025, MD DOL is again required to study and make recommendations on the total rate of contributions and the appropriate cost-sharing formula between employers and employees.

## **When does the new law go into effect?**

Required contributions to the FAMLI fund will begin on October 1, 2023. Eligible employees will be able to start drawing from the fund starting on January 1, 2025.

## **Who is covered by the new law?**

All employers with at least one employee in Maryland are covered. This includes employers that just have a single remote worker in the state. However, only employers with 15 or more employees will be required to contribute to the FAMLI fund. The statute does not specify whether the 15-employee threshold applies to employers with 15 employees in Maryland or 15 employees company-wide. This will need to be clarified through regulation.

Self-employed people who do not employ anyone besides themselves may elect to either participate in (and contribute to) the FAMLI fund and be eligible for benefits or opt-out.

## **Which employees will be eligible for the paid leave?**

Employees will be eligible for paid leave under the new law after they have worked at least 680 hours (either for a single employer or multiple employers in Maryland) in the twelve month period immediately preceding the commencement of the leave.

Thus, employees will be eligible for the new Maryland paid family leave before they would be eligible for federal FMLA leave. Likewise, employees who work for employers that are too small to be covered by the federal FMLA leave will also be eligible for the Maryland paid family leave.

Due to the low eligibility threshold, an employee will only have to work about 14 hours per week per year to qualify and at 40 hours per week, a worker will qualify in about 17 weeks. As a result, many part-time workers may end up being covered by FAMLII.

### **How much paid leave will a qualifying employee be entitled to and for what reasons?**

A qualifying employee in Maryland will be eligible for up to 12 months of paid leave in a 12 month period for any of the following reasons:

- The birth, adoption, or foster care placement of a child (within the first year);
- To care for a family member with a serious health condition;
- To address their own serious health condition that prevents them from performing their job;
- To care for a next kin with serious health condition resulting from military service; and
- To attend to “qualifying exigencies” arising out of a family member’s deployment to military service.

An employee will be able to take up to 24 weeks of leave in a 12 month period in the event that the employee has both a birth, adoption or foster placement and a serious health condition in the same 12 month period.

For those employers familiar with the FMLA, these categories of leave will look very familiar. Any Maryland paid family leave will run concurrently with any FMLA leave that an employee might be entitled to.

While an employee is out on Maryland paid family leave, the employer may only terminate the employee for cause and, unless one of the statutes limited exceptions applies, must restore the employee to their position at the end of the leave. In other words, while the employer doesn’t have to pay for the leave, it will still be obligated to provide the time away from work.

### **What benefits will a qualifying employee be entitled to?**

An employee’s benefit under the FAMLII fund is calculated based on their rate of compensation, with a minimum benefit of \$50 per week and a maximum benefit of \$1,000 per week. If the employee’s average weekly wage is 65% or less of the state average weekly wage, they receive 90% of their wage. If the employee’s average weekly wage is greater than 65% of the state rate, they receive 90% of their wage up to 65% of the state rate, then 50% of anything in excess of that amount. These minimum and maximum amounts will be adjusted for inflation.

Employees must exhaust any paid leave voluntarily provided by their employer (such as vacation or PTO) before they will be able to claim benefits from the FAMLII fund.

### **What if the employer already provides employees with paid family and medical leave?**

Employers that offer leave benefits to their employees that are equivalent to or that exceed the benefits that the employee would be entitled to under the new law can opt out, and the employee and employer will not be required to contribute to the FAMLII fund.

### **What questions do we still need answered?**

In addition to the question noted above about whether the 15-employee threshold will include employees in other jurisdictions, the regulations from the MD DOL will also hopefully address the treatment of employees who work in multiple jurisdictions including Maryland.

The MD DOL is also tasked with creating the notices that employers will be required to disseminate.

Paley Rothman’s Employment Law Group will continue to monitor and provide updates on the rollout of the new law and is happy to answer any questions you might have in the meantime.