Maryland passes paid family and medical leave law

By Rich Glass and Katharine Marshall
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In this article

Enacted April 9, Maryland's Time to Care Act (TTCA) (2022 Ch. 48, SB 275) establishes a paid family and medical leave (PFML) insurance program, with contributions starting Oct. 1, 2023. Contribution rates are to be determined. Starting in 2025, covered employees may take up to 12 weeks of leave in a rolling 12 months, with an additional 12 weeks possible if the employee experiences a serious health condition and needs to bond with a new child. The program will provide up to 90% of average weekly wages (subject to an initial $50 minimum and $1,000 maximum, adjusted annually thereafter). Covered employers must participate in the state program or comply with an approved private plan (insured, self-insured or a combination). TTCA leave is in addition to the state's existing sick and safe leave under the Healthy Working Families Act, effective since 2018. For more details, see Roundup: State accrued paid leave mandates (April 29, 2022).

Covered employers and employees

Covered employers. The law applies to all employers (including state and local governmental employers) with at least one employee working in Maryland. An employer does not include the sole owner of a sole proprietorship or limited liability company or a C or S corporation whose owner is the only employee.

Covered employees. Full- and part-time employees are eligible for PFML if they worked at least 680 hours in 12 months immediately before the leave starts. Self-employed individuals may opt into the program.

Funding

The law creates the Family and Medical Leave Insurance (FAMLI) Fund administered by Maryland's Department of Labor (MDOL). Employer and employee contributions start Oct. 1, 2023. However, unlike other state PFML laws, the TTCA is silent on actual contribution rates for employers and employees. Employers with fewer than 15 employees need not contribute. Neither do covered employees with an hourly wage less than $15 per hour (at least through June 30, 2026); during that period, the state intends to pay the required contribution for those individuals.

MDOL will determine contribution rates by June 1, 2023. This initial determination will apply through 2025. On or before April 1, 2025 and every two years thereafter, MDOL will consult with state agencies and relevant stakeholders to calculate the recommended:

- Contribution rates
- Employer/employee cost-sharing formula (which could range from 75% employer/25% employee to 75% employee/25% employer)
- Cost efficiency of possibly outsourcing services related to premium collection, claims administration, data management, fraud control, marketing/advertising and other program elements

The total contribution rate and percentage allocation will be set for two years by June 1 (for example, by June 1, 2025, for years 2026–2027 and by June 1, 2027, for years 2028–2029). MDOL must also conduct a cost analysis every two years (starting in 2025) focused on maintaining solvency and ensuring covered employees receive benefits.

Employers may contribute the entire employee portion (or some of it). Self-employed individuals who opt into the program must contribute the total rate and are subject to the same Oct. 1, 2023, contribution start date.

Qualifying leave

These reasons qualify for leave:

- **Parental leave:** birth, adoption, foster care placement or kinship care (an undefined term) of an employee's child during the first year
- **Family caregiving:** care for a family member with a serious health condition, as defined by the statute
- **Service member caregiving:** care for an employee's next of kin who is a service member with a serious health condition
- **Medical:** an employee's serious health condition causing inability to perform the functions of his or her position

- **Military qualifying exigency:** any of 10 reasons related to a family member's military service, as defined by the statute

Family member. Covered family members include:

- Employee's biological, step-, adopted or foster children
- Employee's children in legal or physical custody or under guardianship
- Employee's children for whom an employee stands *in loco parentis* (no age limit)
- Employee's or spouse's biological, step-, adoptive or foster parents
- Employee's legal guardian or employee's or spouse's ward
- Individuals who acted as a parent or stood *in loco parentis* to an employee or the employee's spouse during childhood
- Employee's spouse
- Employee's biological, step-, adoptive or foster grandparents or grandchildren
- Employee's biological, step-, adoptive or foster siblings

Duration. Except in one circumstance, leave cannot exceed 12 weeks in an application year (the 12-month period starting on the first day of the week in which an employee applies for benefits). Employees who experience a serious health condition and qualify for parental leave (as described above) may receive another 12 weeks of benefits in a single application year.

Employees may take intermittent leave, regardless of the reason, in minimum increments of four hours.

Wage-replacement benefits

Benefits will become available Jan. 1, 2025, with a $50 weekly minimum and $1,000 weekly maximum benefit. No benefit waiting period will apply. The weekly maximum will be adjusted yearly by the annual percentage growth in the Consumer Price Index for All Urban Consumers (CPI-U), Washington–Arlington–Alexandria area. Beginning in 2025, MDOL will announce the maximum weekly benefit for the next year by Sept. 1.

A covered employee's wage replacement benefit depends on the employee's average weekly wage (AWW) — total wages paid over the last 680 hours ÷ the number of weeks worked — relative to the state average weekly wage (SAWW):

- If the covered employee's AWW is 65% of or lower than the SAWW, the benefit is 90% of the AWW.

- If the covered employee's AWW is greater than 65% of the SAWW, the benefit is 90% of the AWW up to 65% of the SAWW, plus 50% of the AWW exceeding 65% of the SAWW, capped at the $1,000 maximum benefit.

Employees receiving workers' compensation for reasons other than a permanent partial disability are not eligible for PFML benefits.

Employee rights

During leave, health benefits must continue at active employee rates "in the same manner as required under … the federal Family and Medical Leave Act (FMLA)." Employers must restore an employee returning from leave to a position equivalent to the one held before leave began. An employer may deny job restoration only by satisfying all three of these conditions:

- Job restoration would cause "substantial and grievous" economic injury to employer operations.
- After determining economic injury would occur, the employer notifies the employee about its intent to deny restoration rights.
- An employee already on leave when receiving this notice elects not to return to work. (Employees receiving this notice prior to taking leave do not have the same opportunity to elect to return.)

The law protects employees exercising TTCA rights from employer discrimination or retaliation.

Private plans

Employers may opt out of the PFML insurance program if their private plan meets or exceeds the TTCA's rights, protections and benefits. This plan may self-insured, fully insured or a combination. MDOL must approve the plan. Approved plans exempt an employer (and covered employees) from contributing to the FAMLI Fund. Upcoming guidance should provide more details.

Coordination with other leave

Employees must exhaust any employer-provided paid time-off (PTO) benefits not required by law before taking TTCA paid leave. Accordingly, employees do not have to exhaust paid leave accrued under Maryland's Healthy Working Families Act. When an employee uses other employer PTO for family or medical reasons covered by the TTCA, the law's job protection, health benefit continuation, anti-retaliation and complaint provisions apply.

TTCA leave runs concurrently with federal FMLA leave when both laws apply.

The law does not diminish an employer's obligations under a collective bargaining agreement or an employer policy that provides leave benefits for a longer duration.

Required notices

Employer notice. Employers must provide each employee a written notice about the law's rights and duties on hire and annually thereafter. Employee leave requests potentially triggering TTCA leave require an employer to provide a notice of eligibility to the employee within five business days of the request. MDOL will publish model notices.

Employee notice. Employers may require at least 30 days' advance written notice for foreseeable leave. For unforeseeable leave, employees must provide notice as soon as practicable and comply with the employer's notice procedures and requirements for other types of leave, as long as those requirements do not interfere with the employee's TTCA rights.

Administration

Guidance. MDOL must issue claim procedure regulations, set contribution rates and determine employer/employee cost sharing by June 1, 2023. Upcoming rules should fill in the law's gaps on topics like claim filings, appeals, certifications, notice standards, employer complaints of fraud and other aspects of benefit administration like recordkeeping. Under the TTCA, MDOL must:

- Notify employers within five business days after a claim filing
- Approve or deny a claim, and notify the employee and employer about this decision within 10 business days after a claim filing
- Make the first benefit payment within five business days of a claim's approval and every two weeks thereafter until leave ends

Claim substantiation. TTCA leave requires certification of the reason for leave other than parental leave. Certifications of serious health conditions must include:

- When the serious health condition began
- The serious health condition's probable duration
- Appropriate facts within the knowledge of the licensed healthcare provider

Depending on the certification, additional requirements may apply:

- A *family member's* serious health condition certification must have a statement indicating the covered individual needs to care for a family member and the estimated amount of time needed.
- An *employee's* serious health condition certification must contain a statement indicating the employee is unable to perform the functions of the position.

- An *intermittent leave* certification for a *family member's* or *service member's* serious health condition must include the expected duration. Such certifications for *employees* must contain a statement indicating the employee is unable to perform the functions of the position.

The law provides no details on military-related qualifying exigency certifications.

Enforcement

MDOL can investigate alleged violations and file suit under the law. Employer contribution failures are subject to the amount due (plus interest) and a penalty of up to two times the amount of overdue contributions. MDOL can also conduct audits and receive employee complaints. Those complaints may be resolved through mediation, or MDOL ultimately can issue an order compelling an employer to restore lost wages and damages, reinstate an employee with or without back pay (as applicable), and pay a civil penalty of up to $1,000.

MDOL and the state attorney general may also bring actions. Employees may bring suit in limited circumstances. Potential liability includes:

- Three times the amount of lost wages and benefits
- Court-assessed punitive damages
- Reasonable attorneys' fees and other costs
- Injunctive and other relief that a court deems appropriate

Employer actions

While awaiting regulations and other guidance, employers have work to do. Here are some steps to take before key deadlines in 2023 and 2025:

- Factor TTCA requirements into future workforce planning or headcount changes.
- Identify which employees are eligible for TTCA leave.
- Review current PTO programs and address coordination with TTCA leave.
- Explore the private plan option and decide whether to insure or self-insure.
- Ensure proper changes occur to your payroll system.
- Educate your staff on the law's key features.
- Create a communication strategy that encompasses required notices.
- Watch for guidance and other developments (for example, regulations, sample notices and forms, posters, FAQs, and webinars).

The law preempts any local PFML laws or ordinances — except those applicable municipality employers — enacted on or after June 1, 2022. Multistate employers should also examine Maryland's new mandate in light of PFML requirements in other jurisdictions. Current programs exist in California, Connecticut, Hawaii, Massachusetts, New Jersey, New York, Puerto Rico, Rhode Island, Washington and Washington, DC. For more details on these other jurisdictions, see 2022 state paid family and medical leave contributions and benefits.

Programs in Colorado and Oregon commence next year. Delaware enacted a PFML law in May 2022 that will require contributions starting in 2025 and make benefits available in 2026.

Related resources

Non-Mercer resources

- Paid family and medical leave in the United States (Congressional Research Service, June 13, 2022)
- 2022 Ch. 48, SB 275, the Time to Care Act (MD Legislature, April 9, 2022)

Mercer Law & Policy resources

- Delaware enacts paid family and medical leave law (July 7, 2022)
- Roundup of selected state health developments, first-quarter 2022 (May 31, 2022)
- Roundup: State accrued paid leave mandates (April 29, 2022)
- 2022 state paid family and medical leave contributions and benefits (Jan. 19, 2022)

Other Mercer resources

- Life, absence & disability
- Employers revisit time-off benefits (June 3, 2021)
- Think globally, comply locally: How employers navigate leave laws (Nov. 15, 2018)

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