

April 2022

MD General Assembly Enacts Time to Care Act of 2022

On April 9, 2022, the Maryland General Assembly voted to override Governor Larry Hogan's veto of the Time to Care Act of 2022 ("the Act"), enacting paid family and medical leave (PFML) in Maryland. The Act establishes a [Paid Family and Medical Leave Insurance Program](#) to which employers, employees, and self-employed individuals will make contributions.

PFML will run concurrently with federal Family and Medical Leave Act (FMLA) leave, and employees must take all employer-provided paid leave that is not required to be provided by law (presumably leave such as vacation and employer-provided parental paid leave) before receiving benefits under the Act. Such employer-provided paid leave is considered leave taken under the Act and subject to the protections provided for paid leave under the Act. Employers may require 30 days' written notice of foreseeable leave; however, employee requests for PFML are submitted to and decided by the state.

PFML is permitted for the following reasons:

- To care for a newborn child or a child newly placed for adoption, foster care, or kinship care.
- To care for a family member with a serious health condition.
- To attend to an employee's own serious health condition that prevents the employee from performing the functions of their position.
- To care for a next of kin military service member with a serious health condition resulting from military service.
- To attend to qualifying military exigencies.

The Act will expand leave benefits to more employees across Maryland, including those who may not be eligible under the federal FMLA. Maryland employees are eligible for PFML if they have worked at least 680 hours over the previous 12-month period immediately preceding the date on which leave is to begin. With some exceptions, leave for a qualifying reason under the law is job-protected and employees on leave may only be terminated "for cause". Health coverage must also be maintained for employees on leave. In addition, employers must provide notice of the law at the time of hire and annually thereafter.

HIGHLIGHTS

Key Dates:

06/01/2023: MD Department of Labor to furnish regulations

10/01/2023: Covered employers and employees must begin making contributions to PFMLIF.

01/01/2025: Covered employees can begin to receive benefits.

Benefits:

Weekly benefits up to 90% of workers average weekly wages for up to 12 weeks.

Who is covered under the Act?

- All workers in the state of MD who have worked at least 680 hours in the preceding 12-month period.
- All employers in the state of MD with at least 1 employee.
- Self-employed individuals that elect to participate.

Funding:

Employees, self-employed individuals that choose to participate, and employers with 15 or more employees will share responsibility through payroll contributions. Contribution rates will be set by MD DOL.

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PFML Benefits, Funding and Violations

The Act generally allows up to 12 weeks of leave per year. Employees may be entitled to an additional 12 weeks of leave in a year for both their own serious health condition and for child bonding. Leave can also be taken in intermittent periods for all qualifying reasons.

Covered employees will receive up to 90% of their average wages during leave, up to \$1,000 per week. The benefit rate gradually declines for higher-wage workers and is calculated based on the state average weekly rate. Beginning in 2026, the cap will be adjusted for inflation. The state will set the program's employer and employee contribution rates by June 1, 2023. Contributions to the state fund will begin on October 1, 2023. Claims for benefits can be filed by eligible employees beginning January 1, 2025.

Employers with fewer than 15 employees are not required to contribute to the state fund. Employees who earn a wage of \$15/hour or less will not be required to begin contributions in 2023. Instead, the state will subsidize the employee's contributions through June 30, 2026.

Compliance violations are substantial. Employees can take civil action to recover three times the value of lost wages and reasonable attorney's fees. Civil penalties may be assessed up to \$1,000 for each employee with whom the employer is not in compliance.

Employer Considerations

Employers may substitute self-funded private employer plans that meet or exceed PFML benefits. While the new Maryland paid leave will run concurrent with any applicable leave under the federal Family and Medical Leave Act (FMLA), eligibility requirements under Maryland's law are significantly lower than under the federal law. This means that employees will be eligible for paid leave under Maryland's law sooner, and more employers will be covered, than under the federal law.

Further clarifications are expected once regulations are released in 2023.

Bolton's comprehensive service offerings include plan review and contract amendments, plan design changes, drafting new policies, and performing cost impact studies. Contact a Bolton consultant to determine the compliance status of your current leave programs and recommended actions.

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