



FAMILY AND MEDICAL LEAVE LAWS

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This *issue brief* provides an overview of federal and state family and medical leave laws, including an overview of states with paid family leave programs.

Federal Law

The U.S. Family and Medical Leave Act of 1993 (FMLA) provides an eligible employee with the ability to take a total of 12 work weeks of leave during any 12-month period for specified serious health and family circumstances.¹ An employee who takes leave under the FMLA is entitled to be restored to the same position, or an equivalent position, upon his or her return.

The FMLA applies to employers who are engaged in commerce, or in any industry or activity affecting commerce, with 50 or more employees. An employee must have worked for at least 1,250 hours with his or her employer during the prior 12-month period and have at least 12 months of service in order to be eligible for leave under the FMLA.

Circumstances covered under the FMLA include time off: for the birth, adoption, or foster placement of a child; in order to care for a spouse, child, or parent who has a serious health condition; because of the employee's own serious health condition which makes the employee unable to perform his or her job functions; and because of an urgent need due

to an immediate family member's active duty service. The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or continuing health care treatment.

The FMLA generally requires that an employee give at least 30 days notice to his or her employer when possible. Employers may provide leave under the FMLA as either unpaid or paid time off, and may require that an employee use accrued vacation or sick time during leave in certain instances.

Colorado Law

Colorado Family Care Act. The Colorado Family Care Act adds an employee's civil union or domestic partner as a qualifying immediate family member for the purposes of the FMLA, if the partner has a serious health condition.²

Domestic violence. Colorado law permits an eligible employee to take up to three days of leave in any 12-month period if the employee is a victim of domestic abuse, stalking, sexual assault, or another crime with a domestic violence component. The leave may be paid or unpaid and must be used to seek a civil protection order, obtain medical care or mental health counseling, make the employee's home secure, or seek legal assistance.³

¹29 U.S.C. § 2601, *et seq.*

²Section 8-13.3-201, *et seq.*, C.R.S.

³Section 24-34-402.7, C.R.S.

States With Paid Family Leave Laws

Several other states have enacted their own family and medical leave laws, most of which either expand the amount of leave available to an employee or expand those family members for whose care leave may be taken. Five states have established paid family leave programs.

California. In 2002, California created the California Paid Family Leave Program. The program is designed to provide temporary disability insurance coverage, with up to six weeks of partial wage replacement benefits within any 12-month period to an eligible employee who takes time off work to care for a child, spouse, parent, grandparent, grandchild, sibling, or domestic partner with a serious health condition. The wage replacement benefits under the program may also be used during leave taken to bond with a child within one year of birth, adoption, or foster placement. Wage replacement benefits currently range from \$50 to \$1,173 per week and are approximately 55 percent of an employee's weekly earnings prior to the leave period. The program is administered by the State Disability Insurance Program and is funded through employee payroll deductions.⁴

New Jersey. In 2008, New Jersey created the Family Leave Insurance Program. The program provides up to six weeks of partial wage replacement benefits to an eligible employee who takes time off work to care for a child, spouse, domestic partner, civil union partner, or parent with a serious health condition, or to bond with a newly born or adopted child. An employee may receive two-thirds of his or her average weekly wage, up to the current ceiling of \$633 per week. The program is administered under the Temporary Disability Insurance Program and funded through employee payroll deductions.⁵

New York. In 2016, New York created a paid family leave program that takes effect January 2018. The program is designed to

provide partial wage replacement benefits for an eligible employee who takes time off work to care for a child, parent, grandparent, grandchild, spouse, or domestic partner with a serious health condition; to bond with a newly born or adopted child; or due to conditions related to an immediate family member's active duty service. In 2018, eligible employees will be able to receive up to 50 percent of their average weekly wage for up to eight weeks. In 2019, eligible employees will receive up to 55 percent of their average weekly wage for up to ten weeks. In 2020, eligible employees will receive up to 60 percent of their average weekly wage for up to ten weeks. In 2021, and thereafter, eligible employees will receive up to 67 percent of their average weekly wage for up to 12 weeks. The program is funded through employee payroll deductions and administered under the state's workers' compensation program.⁶

Rhode Island. In 2013, Rhode Island created a temporary caregiver insurance program. The program provides partial wage replacement benefits for up to four weeks per year to an eligible employee who takes time off work to care for a child, spouse, domestic partner, parent, parent-in-law, or grandparent with a serious health condition, or to bond with a newly born or adopted child. Wage replacement benefits are 4.62 percent of an employee's quarterly wages, with a maximum of \$817 per week. The program is funded through employee payroll deductions and administered under the state's Temporary Disability Insurance Program.⁷

Washington. In 2007, Washington created the Family Leave Insurance Program. The program is designed to provide up to five weeks of partial wage replacement benefits for an eligible employee who takes time off work because of the birth or adoption of a child. However, implementation of the program has been delayed indefinitely due to the lack of a funding mechanism.⁸

⁴Cal. Unemp. Ins. Code § 3300, *et seq.*

⁵N.J. Rev. Stat. § 43:21-37, *et seq.*

⁶N.Y. Work. Comp. Law § 200, *et seq.*

⁷R.I. Gen. Laws § 28-41-34, *et seq.*

⁸Wash. Rev. Code § 49.86.005, *et seq.*