



Family, Medical, and Sick Leave Laws

By Luisa Altmann

This *issue brief* provides an overview of federal and state family, medical, and sick leave laws.

Federal Law

Family and Medical Leave Act. The U.S. Family and Medical Leave Act of 1993 (FMLA) allows eligible employees to take up to 12 weeks of leave per year for specified circumstances.¹

FMLA applies to most employers 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 to be eligible for leave. Employers may provide leave under 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.

Circumstances covered under 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; and because of an urgent need due to an immediate family member's active duty service.

Tax incentives. In 2017, the federal Tax Cuts and Jobs Act created a tax credit for tax years 2018 and 2019 for businesses that provide qualifying paid family and medical leave to eligible employees. The tax credit covers 12.5 percent to 25.0 percent of the wages paid to an employee on leave.²

Federal employee paid leave. The National Defense Authorization Act for FY 2020, signed in

December 2019, allows federal employees to take up to 12 weeks of paid parental leave for the birth of a child or the placement of an adoptive or foster child beginning in October 2020. Employees must have worked for the federal government for at least one year and commit to returning to work following the paid leave for at least 12 weeks.³

COVID-19 response. The Families First Coronavirus Response Act, signed in March 2020, expanded FMLA to allow employees who have been employed for at least 30 days to take leave to care for their child while school or childcare is closed due to COVID-19. Leave taken in excess of 10 days must be paid. The law also requires employers to provide up to two weeks of paid sick leave for any employees unable to work due to circumstances related to COVID-19. The law applies to employers with 500 or fewer employees, though those with 50 or fewer employees may qualify for an exemption. Employers are eligible for certain tax credits based on leave wages paid. The law repeals on December 31, 2020.⁴

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.⁵

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

¹29 U.S.C. § 2601, *et seq.*

²26 U.S.C. § 45S.

³S. 1790, Sec. 7601.

⁴H.R. 6201, Sections 3101, 5101, and 7001.

⁵Section 8-13.3-201, *et seq.*, C.R.S.

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.⁶

Senate Bill 19-188. Senate Bill 19-188 created the Family and Medical Leave Implementation Task Force, consisting of 15 members representing a variety of groups. Final recommendations from the task force were provided on January 6, 2020. All of the documents related to the task force's activities are available here:

<https://sites.google.com/state.co.us/famli/home>

Other State Laws

Paid family and medical leave laws. Eight states, including California, Connecticut, Massachusetts, New Jersey, New York, Oregon, Rhode Island, and Washington have enacted paid family and medical leave (PFML) laws. Additionally, Hawaii has a paid medical leave law. The following sections discuss a few common components of these laws. More information about the laws in these states can be found here:

<http://leg.colorado.gov/publications/state-paid-family-and-medical-leave-laws>

History. California, New Jersey, New York, and Rhode Island enacted temporary disability insurance laws in the 1940s. Hawaii later followed in the 1960s. The laws in California, New Jersey, and Rhode Island created state-run programs to provide partial wage-replacement benefits in the event of a worker's own non-work related injury, illness, or pregnancy. The PFML programs in these states often expanded the existing state temporary disability insurance program, or used the same state agency to administer the new program.

Hawaii and New York require employers to provide temporary disability insurance benefits to employees through private plans. In 2016, the New York law was expanded to require employers to also provide family leave benefits to employees.

Reason for leave. These PFML laws generally allow workers to take leave for the same reasons provided for under the federal FMLA law, while some also provide workers with access to leave in the event of domestic or sexual violence.

Funding structure. The PFML programs in California, Connecticut, and Rhode Island are fully funded by employees. In Massachusetts, New Jersey, New York, and Washington, workers and employers share the cost of medical leave, while workers fully cover the cost of family leave. In Oregon, employees and employers share the cost of the full PFML program. Employers below a certain size in Oregon and Washington are not required to pay the employer contribution.

Length of leave. The maximum length of paid leave allowed under these programs varies significantly by state. For example, workers in Washington can take up to 12 weeks per year for their own medical care, while workers in California can take up to 52 weeks. Workers in Rhode Island can take up to 4 weeks for family leave, while workers in Massachusetts can take up to 12 weeks.

Benefit amount. The amount of wage-replacement benefits that workers on leave receive varies by state. Most are calculated based on a worker's average weekly wage (AWW) and have calculations that make the benefits progressive in nature. For example, workers in Oregon receive 100 percent of their AWW, up to an amount equal to 65 percent of the statewide AWW, and 50 percent of their AWW above that amount, up to a maximum of 120 percent of the statewide AWW.

Paid sick leave laws. Thirteen states have enacted paid sick time laws requiring private sector employers to provide employees with a certain amount of paid sick time. Paid sick time is intended to allow employees to take time off for short-term health needs and preventive care compared with the longer-term needs covered by family and medical leave. The laws in six of these states apply to all private sector employers, while the other laws apply to those with more than 10 to 15 employees. These laws allow employees to accrue one hour of paid sick time for every 30 to 52 hours worked, which can be used after a typical waiting period of 90 days.

⁶Section 24-34-402.7, C.R.S.