



FAMLI 2020

Fair Family and Medical Leave Act



Key Elements

- Employer Mandate
- 8 - 12 Week Paid Leave and Employment Protection
- “Family member” defined as immediate family member and those with “blood-like relationship” with financial support/obligation
- All Private Employers by 2027
 - Local Government Exemption
 - State Employees Included
- Creation of Office of Paid Family and Medical Leave
- Per employee fee per qualified employer

Requirements

- Beginning in 2022
- Each employer in the state shall provide paid family and medical leave and corresponding job protection to each of its employees
- Compliance:
 - Certify that the employer offers self-funded paid leave benefits in accordance with the act
 - Certification process to be determined by rule
 - Obtain paid leave insurance plan issued by a compliant insurer



Employers

- All private employers
 - Between July 2022 and June 2025, employers with 20 or more employees
 - Between 2025 and 2027, employers with 10 or more employees
 - After 2027, all employers
- Executive, legislative and judicial branches of the state and its political subdivisions

Amount of Leave Benefits

- 8 Weeks July 2022 and June 2025
- 10 weeks July 2025 and June 2027
- 12 weeks After July 2027
- All benefits run concurrent to Federal FMLA leave benefits

Employment Protection

- Restored to the position of employment held when the leave commenced
 - Same benefits, pay and other terms and conditions of employment
- Restored to an equivalent position with equivalent benefits
- No retribution for use of benefit
 - “Employer shall not discriminate or discharge any individual for opposing any practice made unlawful by the section; filed any charge or proceeding; given any info in connection with an inquiry related to any right afforded under the act.”



Exemptions

- Local Governments (Opt Out)
- Employers with 20 or fewer employees until 2025
- Employers with 10 or fewer employees until 2027
- Seasonal workers
 - Except that starting in 2025 and every two years thereafter, the Director shall report on feasibility and steps necessary to expand leave requirement to seasonal employees



Leave Protection Fund

- Fee paid by each employer that offers paid leave in an amount determined by the director by rule
- Money may only be used to reimburse employees for claims appealed and to pay for the claims appeal process

Employer Requirements

- Employer must maintain records related to compliance for 5 years.
- Office may periodically inspect employer records to ensure compliance
- Nothing prohibits an employer from offering more generous leave benefits or job protection

Employer Requirement

- Notice posting in prominent location within business
- Not allowed to require the use or exhaust time off under employer policy prior to use of FAMLI Leave Benefits
 - PTO, Vacation Time, or Sick Time
- Not allowed to require an employee to charge all or part of leave to unused accrual or other PTA
- Employee may supplement the FAMLI Leave through vacation, PTO, sick leave to secure 100% of weekly wage

Covered Individuals

- Employees who work for a qualified employer for 6 months or more
 - Notifies employer of intent to take leave “as soon as practicable”
 - 30 days notice if leave is foreseeable
- Employees who don't work for qualified employer who opts to purchase FMLI insurance
- State employees

Individual's Leave Process

- Inform employer of intent take leave
 - Rules promulgated regarding form and manner in which notification to an insurer will be made
 - Include requirement of written notice and proof of need with consideration for right to privacy
- May designate an adult as a proxy empowered to persue and support entirety of employee's claim to leave benefits
 - Proxy form must be made readily available by employer



Events

- Their own serious health condition;
- Caring for their new child during the first year after the birth or adoption of the child or the placement of the child through foster care;
- Caring for a family member who has a serious health condition;
- A qualifying exigency (see slide 14); and
- Any additional purpose approved in the federal "Family and Medical Leave Act of 1993" (FMLA).

Definitions

- Serious Health Condition
 - An illness injury impairment or physical or mental condition that involves:
 - Inpatient care in a hospital or residential medical care facility
 - Hospice care in any setting; or
 - Continuing treatment or ongoing care by a health care provider
 - Serious health condition includes domestic abuse sexual assault or abuse and stalking

Family member defined

- Immediate family member
- Parental Guardian
- Person with whom the covered individual has a blood-like relationship that shows financial support or obligation to each other as defined by the Director by rule.

Qualifying Extinction

- Military related events/activities
 - A need arising out of a family member's active duty service or notice of an impending call or order to active duty
 - Providing for the care or other needs of the military member's child or other family member, making financial or legal arrangements for the military member
 - Attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member

Benefits

- 90% of weekly wage for wages that are less than 50% of average weekly wage
- 50% of weekly wage for all wages that equal or exceed 50% of average weekly wage
- Except that "an employer is not required to pay an eligible individual more than 80% of the average weekly wage
 - Wage includes salary, wages, tips, commissions, and other comp
- Intermittent leave in increments of one hour if consistent with employer policy
- Accrued paid leave can not reduce the weekly wage benefit
- If worker's comp eligible event, 75% is allowed
 - Ok to combine WC and FAML benefit

Office of Paid Family and Medical Leave

- Created for the business purpose of developing and overseeing a paid family and medical leave program
- Collect "minimal fees" for each covered employee
 - Create and administer educational materials
 - Develop appeals process for the denial of claims
 - Create "leave protection fund" for 2 weeks of paid leave during pendency of denial claim
- Establish "Outreach Program" to Employers and Employees

Office of Paid Family and Medical Leave

- Establish complaint process
 - 2 year tolling period
 - Employer has right to cure within 14 days
 - Fines authorized to be imposed
 - Office must rule within 180 days
 - No civil action shall be brought until process complete

Operating Expenses of Office of FAMLI

- General Fund Loan
- Bonding authority utilizing fee revenue



Insurer Requirements

- Guaranteed Issue
- Community Rating
- Premium Rates established by DOI Commissioner