Statutory Update

++June 6, 2024

In this Update:

Federal

Departmental Guidance

Pregnant Workers Fairness Act (PWFA) – Final Regulations

The Pregnant Workers Fairness Act (PWFA) became effective on June 27, 2023, and was established to bolster employee rights and protections already provided under the Americans with Disabilities Act (ADA) and the Pregnancy Discrimination Act. The PFWA requires employers with 15 or more employees to make reasonable and appropriate accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee or applicant, absent undue hardship. It also provides additional protections against retaliation or discrimination.

On April 19 the U.S. Equal Employment Opportunity Commission (EEOC) published final regulations around the PWFA's requirements, which provide guidelines to assist employers in navigating when and how protections under the law may apply. Enforcement under the new regulations begins June 18, 2024.

Below are links to the regulations, as well as to summary and interpretive guidance from the EEOC:

- Final Rule effective June 18, 2024
- Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA)
- What You Should Know About the Pregnant Workers Fairness Act
- Pregnancy Discrimination and Pregnancy-Related Disability Discrimination

See also our recent post, Comparing Accommodation Rights: PWFA and ADA, on the MMA ADL blog.

Artificial Intelligence and the FLSA, the FMLA, and Other Employment Laws

On April 29 the Department of Labor's Wage and Hour Division (WHD) issued Field Assistance Bulletin No. 2024-1. The bulletin cautions that the efficiencies created by the use of Artificial Intelligence and automated systems should not replace "responsible human oversight", and provides guidance to help employers limit exposure to non-compliance with employment laws such as the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act of 1993 (FMLA).

State and Local

Family and Medical Leave Updates

Connecticut Paid Leave (CT PL) – Amendments

On May 9 the governor of Connecticut signed SB222 (now Public Act No. 24-5), making the following amendments to the Connecticut Paid Leave law effective October 1, 2024:

- Paid Leave for Victims of Sexual Assault: The Act amends the state's Family Violence Leave Act (Conn. Gen. Stat. §31-51ss) to add sexual assault* as a qualifying reason for leave. Currently, an eligible employee may claim up to 12 days of CT PL benefits for their needs associated with family violence. As the CT PL law directs to the Family Violence Leave Act for this leave reason, CT PL benefits will also be available in cases of sexual assault.

  * "*Sexual assault" means any act that constitutes a violation of §53a-70, §53a-70a, §53a-71, §53a-72a, §53a-72b, or §53a-73a of the CT Penal Code.*

- Concurrent Payments from Other State Programs: The CT PL law states that benefits may not be claimed at the same time as benefits under the state's unemployment or workers compensation laws, "or any other state or federal program that provides wage replacement". Effective October 1, the Act adds one exception to this: a covered employee may receive CT PL benefits concurrently with payment(s) received from the Victim Compensation Program administered by the Office of Victim Services within the Judicial

Department. The employee's total compensation during that period may not exceed their regular rate of pay.

- Benefit Overpayments: Any claimant who has received a greater amount of benefits than was due to them under the CT PL law will be charged by the Paid Family and Medical Leave Insurance Authority for the amount overpaid, and required to pay the amount to the Authority according to a repayment schedule. If a person fails to repay according to the schedule established, the Authority may request the Commissioner of Administrative Services to seek reimbursement for the amount owed plus interest (1%) pursuant to Conn. Gen. Stat. §12-742.

  A similar process will be in place for penalties assessed by the Authority.
- Employer Registration and Reporting/Contribution Remittance: Each employer making payment of any wages to an employee must (1) register with the Authority, and (2) submit reports required by the Authority in a form and manner prescribed by the Authority. Any employer that fails to comply will be subject to penalties established by the Authority pursuant to §31-49h(b). *The law text was previously silent on these requirements*.
- Definition of 'Employer': The CT PL law applies to employers with one or more employees. The federal government, the state or a municipality, a local or regional board of education, or a nonpublic elementary or secondary school are not included in the definition of Employer, except that the state, a municipal employer or local or regional board of education is an employer with respect to each of its 'Covered Public Employees'. The Act adds that:
  - the governor, in consultation with the Authority, may enter into a memorandum of understanding with any federally recognized tribe located within the state to authorize employees of both the tribe and any tribally owned business to participate in the CT PL program; and
  - a municipality is defined as any metropolitan district, town, consolidated town and city, consolidated town and borough, city, borough, village, fire and sewer district, sewer district and each municipal organization having authority to levy and collect taxes. (*Note: this definition was also added to the CT FMLA law, as municipalities are excluded from its requirements as well.*)
- Posting Requirement for Health Care Providers: As a part of the Authority's CT PL public education campaign, health care providers (*as defined under the CT FMLA*) must display an informational poster in a clear and conspicuous manner accessible to patients and caregivers. The Authority will develop or approve a poster for this purpose before the October 1 effective date.

On May 20 the state legislature passed SB220 (now Public Act No. 24-102), which amends §31-49p of the CT PL law to expand on the appeal process available to any person who believes they were wrongly (1) denied CT PL benefits, or (2) assessed a penalty. The amendments become effective July 1, 2024.

Colorado Family and Medical Leave Insurance (CO FAMLI) – Guidance

Colorado's Department of Labor and Employment (CDLE) recently posted the following "supplemental guidance":

- Coordinating of STD, LTD and Parental Leave with CO FAMLI Leave (April 5) - illustrates how employers can: (1) require CO FAMLI benefits to run concurrently with short-term disability, long-term disability, or parental leave; (2) top-off CO FAMLI benefits with STD, LTD, or parental leave; or (3) both.
- Additional 4 Weeks of Leave for Pregnancy or Childbirth Complications (April 29) – clarifies that the existence of a pregnancy or childbirth complication does not alone give rise to an additional 4 weeks of leave. There must be a serious health condition related to the pregnancy or childbirth complication, and treatment for that serious health condition may not necessarily require 4 full additional weeks of leave.
- Continuation of Healthcare Benefits during CO FAMLI Leave (April 5) – addresses the employee requirement to pay their portion of health benefit costs while on CO FAMLI leave, and maintenance of health benefits when a covered individual's award of continuous CO FAMLI leave continues beyond a separation of employment.
- Advance Payment of Benefits (April 5) – outlines conditions that must be met in order for an employer to receive a reimbursement from the FAMLI Division for advance payments to an employee.

Delaware Paid Leave (DE PL) – Regulations Updates

Our November 21, 2023 Update included a summary of the Delaware Paid Leave (DE PL) law's requirements and provisions, incorporating information from final regulations released last July. A few reminders:

- Contributions toward the program begin January 1, 2025, with benefit payments beginning January 1, 2026.
- Certain exemptions apply based on employer size, as well as whether the employer received approval to "grandfather" their company disability and/or leave policies prior to January 1, 2024.
- Employers may apply for a private plan to satisfy DE PL requirements. Applications for private plans to be effective in time for employers to avoid public program contributions beginning January 1, 2025 will be accepted between September 1, 2024 and December 1, 2024. More information on the application process will be available in the coming months.

On March 1 the Delaware Department of Labor (DE DOL) adopted updated final regulations, which made minor changes to the original regulations, but also a few notable ones:

Notice to Employees

§3710 of the law outlines that employers must notify their employees of the availability of paid leave under the DE PL program, the protections provided under the law, and the procedure for applying for benefits. This notice must be provided in writing:

1) to each employee working in Delaware
    a) at time of hire, and
    b) when an employee requests covered leave, or when the employer acquires knowledge that an employee's leave may be for a qualifying event under DE PL.
2) by displaying a poster in a conspicuous place accessible to employees at the employer's place of business in English, Spanish, and any language that is the first language spoken by at least 5% of the employer's workforce, if the poster has been provided by the DE DOL.

The updated regulations added that employers must also provide notice to all Delaware employees prior to the start of contributions on January 1, 2025. This notice must be provided no later than December 2, 2024.

A model notice will be provided by the DE DOL.

Coordination of Company-Provided Benefits

Paid time off

- An employer may require an employee to use no more than 75% of earned but unused paid time off ("PTO") before accessing DE PL benefits. Any paid time off required by an employer to be used by an employee prior to accessing DE PL benefits may be counted against the length of the employee's DE PL leave. An employee cannot be required to exhaust all of their PTO.
- An employer must provide employees with notice of its coordination policy for PTO and DE PL benefits. This notice must include, at a minimum, the following:
    - whether use of employee's accrued paid time off is required prior to accessing DE PL benefits;
    - how much of an employee's accrued paid time off is required to be used before accessing DE PL benefits; and
    - whether the use of accrued paid time off counts towards the total length of leave provided under the DE PL law.
- Upon agreement between an employee and their employer, an employee may use their PTO to supplement their wages up to 100% of the employee's average weekly wage. Any agreement to do so must be in writing and signed and retained by the employee and the employer.
- Employees cannot receive more than 100% of their average weekly wage during their DE PL benefit period. It is both the employer's and the employee's shared responsibility to review benefit information to make sure any supplemental benefits or wages are integrated correctly with the DE PL benefit to avoid an overpayment.

Employer provided short-term disability, long-term disability, or other paid leave policies

- If DE PL leave also qualifies for benefits from an employer-provided short-term disability, long-term disability, or other paid leave policy, the employer may count both the wage replacement amount and the duration of the DE PL leave against the benefit amounts and leave duration provided under the employer-provided policy. The employer must provide all employees with written notice of their intention to do so, as required by 19 Del.C. §3709(a)(2).
- Whether an employer provided disability benefit or paid leave policy is primary or secondary depends on the terms of the disability or paid leave policy.
    - If the employer provided disability/paid leave policy is primary, the DE PL benefit payment will be reduced by what the employer provided disability/paid leave policy pays so that the covered individual receives no more than 100% of their average weekly wage.
    - If DE PL is primary, the employer provided disability/paid leave policy will supplement the DE PL benefit up to no more than 100% of a covered individual's average weekly wages.
    - If there is no language within the policy identifying whether the policy is primary or secondary, then the DE PL program will be secondary.
- The rules above also apply to DE PL leave that is taken on a reduced or intermittent schedule.
- The rules above do not apply to employer provided paid time off benefits that have been "grandfathered". Coordination of benefits will be guided by the requirements of the grandfathered benefits and an employer's policies. In no event will an employee receive more than their average weekly wage.

More information about the DE PL program may be found on DE DOL's dedicated webpage.

Maine Paid Family and Medical Leave (ME PFML)

Contributions toward Maine's Paid Family and Medical Leave (ME PFML) program will begin January 1, 2025. The contribution rate is not to exceed 1.0% of wages, and will be applied to wages up to the Social Security maximum. Employers and their employees will split the premium evenly, except that employers with fewer than 15 employees are not required to remit the employer portion of contributions (*see note under Proposed Regulations below regarding employer count*).

Benefits under the program will become payable on May 1, 2026. and will provide employees working in the state up to 12 weeks of paid leave for:

1) the employee's inability to work due to a serious health condition;
2) to care for a covered family member with a serious health condition;
3) to bond with a new child during the first 12 months following birth or placement for adoption or foster care;
4) for "safe leave" to attend to the employee's or a family member's needs due to violence, assault, sexual assault, stalking, or any act that would support an order for protection from abuse;
5) for needs associated with a qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on covered active duty, or has been notified of an impending call or order to covered active duty in the United States Armed Forces;
6) to care for a covered family member who is a current or former member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, with a serious injury or illness incurred or aggravated in the line of duty; or
7) any other reason covered under Maine Family Medical Leave, such as:
    - for the employee's organ donation; or
    - if the employee's spouse, domestic partner, parent, sibling or child who is a member of the state military forces or the United States Armed Forces dies or incurs a serious health condition while on active duty.

See our August 31, 2023 Update for a summary of the law's provisions and requirements. More information, including FAQ and program overview slides (both in several languages), may be found on the ME PFML webpage.

Proposed Regulations

On May 20 Maine's Department of Labor (MDOL) published proposed regulations, which will be open for public comment until July 8. Anyone wishing to comment or pose a question may do so on MDOL's rulemaking page until that date. Following the close of this period, MDOL will compile responses to comments and finalize the regulations.

A couple of quick notes on the proposed regulations:

- Employer Count for Program Contributions

  The original law states that "an employer with 15 or more employees" is not required to remit the employer portion (50%) of premium, which left a grey area as to whether this count was based on an employer's nationwide population or only on employees within the state. The proposed regulations indicate that "The employer size for the purposes of determining premium liability for calendar year 2025 is determined by the number of covered employees employed for the employer in the State of Maine on October 1, 2024. The number of employees includes full-time, part-time, seasonal employees and temporary employees."

- Private Plan Applications

  The law provides that employers may apply to MDOL for approval to meet ME PFML obligations through an insured or self-funded private plan. The proposed regulations indicate that the earliest date for submission of a private plan application will be January 1, 2026, and that the earliest effective date of exemption will be April 1, 2026.

  This timing is a departure from what's been seen during the implementation of other states' PFML programs, where the opportunity to apply for a private plan is offered prior to the start of state program contributions. With these dates, even employers planning to sponsor a private plan will be required to contribute to the state program fund for more than a year.

Amendments

On April 18 the governor of Maine approved LD2214, a budget appropriations bill that included minor amendments the ME PFML law (*changes in italics*):

Definitions (MRSA §850-A)

- 'Base period': the first 4 *of the last 5 completed* calendar quarters immediately preceding the first day of an individual's benefit year.
- 'Benefit year': the 12-month period beginning on the first day of the calendar week immediately preceding the *first date of approved family or medical leave.*

Intermittent and Reduced Schedule Leave (MRSA §850-B)

- Leave may be taken by an employee intermittently in increments *equaling* not less than *one day* (this was previously 8 hours), or on a reduced leave schedule otherwise agreed to by the employee and the employer, *except that the employee and employer may not agree for leave to be taken in increments of less than one hour*. The taking of leave intermittently or on a reduced leave schedule may not result in a reduction in the total amount of leave to which the employee is entitled.

Maryland Family and Medical Leave Insurance (MD FAMLI) – Amendments

Our March 20 Update included mention of a potential delay in the effective dates for the Maryland Family and Medical Leave Insurance program (MD FAMLI). On April 25 the governor signed HB571 / SB485, resetting the effective dates as follows:

Contributions begin July 1, 2025, rather than October 1, 2024

- The contribution rate will be set on or before February 1, 2025*, and will be in effect from July 1, 2025 through June 30, 2026.

  ** There is a possibility that the previously announced rate of .9% may change.*

Benefits become payable July 1, 2026, rather than January 1, 2026

- The maximum weekly benefit will be $1,000 for the period July 1, 2026 through December 31, 2026.

The bills make additional changes to the law:

- The definition of 'covered employee' is revised to mean an employee who has worked at least 680 hours *performing services under employment located in the state* over the four most recently completed calendar quarters (for which quarterly reports have been required) immediately preceding the date on which leave is to begin.
- The definition of wages has been updated to correspond with the definition under the state's Unemployment Law, and includes bonuses, commissions, tips and the cash value of all compensation in any medium other than cash (*see exclusions in Labor and Employment §8-101*).

  For a self-employed individual, "wages" are self-employment income, as defined in 26 USC §1402(b), or wages as defined in §8-101 earned from a C corporation or an S corporation if the income, pay, or leave is paid to the owner who is the sole employee of a C corporation or an S corporation.
- An employee's average weekly wage will be calculated as the total wages received by the employee in the highest of the previous four completed calendar quarters (for which quarterly reports have been required), divided by 13.
- The original law included that employers may satisfy MD FAMLI requirements through a private employer plan consisting of employer-provided benefits or insurance through an authorized carrier**, if the private plan is provided to all of the employer's eligible employees and meets or exceeds the rights, protections, and benefits provided to a covered employee under the law.

  The amendments add that the Maryland Department of Labor (MD DOL) will be establishing reasonable criteria for determining which employers are authorized to offer benefits through a private plan, which may include the employer's

  1) number of employees;
  2) capitalization;
  3) bondedness; and
  4) status as a government employer.

  The MD DOL may adopt regulations establishing application and renewal fees for private plans.

  *** The original law stated that a private plan could be a combination of self-funded and insured benefits; this option has been removed*.

More information on the MD FAMLI program may be found on MD DOL's dedicated website.

Minnesota Paid Leave (MN PL)

Amendments

Last May Minnesota HF2 was enacted, establishing the Minnesota Paid Leave (MN PL) program, with contributions and benefits both beginning January 1, 2026. On May 24 the governor approved omnibus bill HF5247, which includes amendments to various sections of the law (MN Stat. Ch. 268B). Below is a summary of the material changes; see our June 9, 2023 Update for a summary of the original law.

Contribution relief for "Small Employers"

The original law includes provisions for "employers with fewer than 30 employees", such as wage exclusion during premium calculation and the availability of assistance grants.

The amendments repeal the small business wage exclusion and replace it with a small employer premium rate. A new subd. 5a under §268B.14 states that the total MN PL contribution rate applicable to small employers will be 75% of the total contribution rate set by the state each year (*the "regular rate" here, for clarity*). Small employers must pay 25% of the "regular rate", and their employees must pay the balance of the total contribution due as calculated using the "small employer rate".

To illustrate:

2026 Contribution Rate ("regular rate"):	.7% of wages*
Small employer total rate:	.525% of wages* (75% of .7%)
Small employer employer contribution:	.175% of wages* (25% of .7%)
Small employer employee contribution:	.35% of wages* (.525% less .175%)

** up to the Social Security maximum. In contrast to this illustration, employers who do not qualify as small employers will be required to contribute 50% of the "regular rate", or .35% of wages in 2026, with employees contributing the remaining 50% (.35% in 2026).*

For this purpose, "small employers" are those with:

1) fewer than 30 employees; and
2) an average wage of less than or equal to 150% of the state's average wage

during the "basis period", defined as the four-quarter period ending September 30 of the prior year.

Important Note: Guidance for calculating both the number of employees and the average wage is provided (*will be §268B.14 subd. 5b and 5c*) – it is worth noting that the calculation of group size will be based on the maximum number of wage records reported by the employer via quarterly reporting – i.e., employee count will be based on the number of employees in each FEIN in Minnesota. This is the same basis for calculating group size for small business grant eligibility.

Definitions Amendments

- 'Base Period' (*clarification; see full definition in §268B.01*): A claimant's Base Period wages will be based upon earnings reported from all employers, not just their current employer, or only one current employer. A claimant's Base Period is calculated once during their Benefit Year.
- 'Benefit Year' (*changes in italics*):

  A claimant's "Benefit Year" is the period of 52 calendar weeks beginning *the effective date of leave* (defined as the first day of absence). For *an effective date of leave* that is any January 1, April 1, July 1, or October 1, the benefit year will be a period of 53 calendar weeks.
  - *For an individual with multiple employers participating in the state plan, "Benefit Year" means the period of 52 calendar weeks beginning the [first day of absence under] any of the multiple employers.*
  - For a private plan, the employer may define their "Benefit Year", which may be:
    - a calendar year;
    - any fixed 12-month period, such as a fiscal year or a 12-month period measured forward from an employee's first date of employment;

  - a 12-month period measured forward from an employee's first day of leave taken; or
  - a rolling 12-month period measured backward from an employee's first day of leave taken.

  Employers are required to notify employees of their Benefit Year within 30 days of the private plan approval and first day of employment.
- *For individuals with multiple employers with at least one employer participating in the state plan and at least one employer participating in a private plan:*
  - *for the employer or employers participating in the state plan, "Benefit Year" means the period of 52 calendar weeks beginning the [first day of absence under] any employer; and*
  - *the employer or employers participating in a private plan may define their benefit year as outlined above.*

- 'Covered Employment' (*localization*): Performing services of whatever nature, unlimited by the relationship of master and servant as known to the common law, or any other legal relationship performed for wages or under any contract calling for the performance of services, written or oral, express or implied.

  Covered employment means an employee's entire employment during a calendar year if:
  - 50% or more of the employment during the calendar year is performed in Minnesota; or
  - 50% or more of the employment during the calendar year is not performed in Minnesota or any other single state within the United States, or U.S. territory or foreign nation, but some of the employment is performed in Minnesota and the employee's residence is in Minnesota during 50% or more of the calendar year.

  This definition was amended to remove reference to an employee whose work is not performed in MN, any other state, or Canada, but the place from where the employee's employment is controlled and directed is based in MN – a significant change.

  This definition does not apply to self-employed individuals, independent contractors, or seasonal employees, as defined, though opt-in will be available.

- 'Covered Individual' (*added*): means either:
  1) an applicant who meets financial eligibility requirements*, if services provided are 'covered employment'; or
  2) a self-employed individual or independent contractor who has elected coverage under §268B.11 and who meets financial eligibility requirements*.

     * *§268B.04 subd. 2: An applicant must have earned at least 5.3% of the state's average annual wage rounded down to the next lower $100 (~$3,600 in wages based on SAWW as of 10/1/23).*
- 'Family Member': this definition:
  - is expanded to include a domestic partner's child; and
  - currently includes "an individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together". This was amended to clarify that this relationship must be personal, and not associated with any compensation.
- 'Typical Workweek' (*amended; for calculation of weekly benefits*): for both hourly and salaried employees, is the average number of hours worked per week by an employee within the last two quarters prior to the date on which an application for benefits is submitted.

Waiting period for benefits / 'Initial Paid Week'

There is no unpaid waiting period for benefits; however, the original law included reference to a "seven-day qualifying event", where the period for which an employee is applying for benefits must be based on a single event of at least seven calendar days' duration. This applies to all leave reasons except for bonding with a new child.

The amendments add a definition for this 'Initial Paid Week':

- For continuous leave, the Initial Paid Week is the first seven days of a leave, which is a payable period for leave types including family care, medical care related to pregnancy, serious health condition, qualifying exigency, or safety leave.
- For intermittent leave, Initial Paid Week means seven consecutive or nonconsecutive, or a combination of consecutive and nonconsecutive, calendar days from the effective date of leave, of which only days when leave is taken are payable.
- The initial week must be paid retroactively after the applicant has met the seven-day qualifying event. The retroactive payment must be included in the first benefit payment to the applicant.

Intermittent Leave

Intermittent Leave must be taken in increments consistent with the established policy of the employer to account for use of other forms of leave, so long as such employer's policy permits a minimum increment of at most one calendar day of intermittent leave. An applicant is not permitted to apply for payment for benefits associated with intermittent leave until the applicant has eight hours of accumulated leave time, unless more than 30 calendar days have lapsed since the initial taking of the leave.

Designation of an Authorized Representative

An employee applying for MN PL benefits may designate an individual to act on their behalf. This individual may be a family member, guardian, or other individual designated by the person or the individual's legal representative, if any, to assist in purchasing and arranging for supports. An authorized representative must be at least 18 years of age.

Ineligible Periods of Leave

An applicant is ineligible for family or medical leave benefits for any portion of a typical workweek:

1) that occurs before the effective date of a benefit account leave;
2) for which the applicant fails or refuses to provide information on an issue of ineligibility (*§268B.07 subd. 2*);
3) for which the applicant worked for pay.;
4) *added* - for which the applicant is incarcerated; or
5) *added* - for which the applicant is receiving or has received unemployment insurance benefits.

Interplay with Other Employment Benefits

Vacation, sick leave, and paid time off

- An employee may use vacation pay, sick pay, or paid time off in lieu of family or medical leave program benefits provided the employee is concurrently eligible and subject to the total amount of leave available (*§268B.04 subd. 5*).
    - An employee is entitled to the employment protections under section §268B.09 for those workdays during which this option is exercised. This also applies to private plans.
- An employer may offer supplemental benefit payments (*defined in §268B.01 subd. 41*) to an employee taking leave under MN PL; however, the choice to receive supplemental benefits lies with the employee. The total amount of MN PL benefits and the supplemental benefits paid must not exceed the employee's usual salary.
- (*added*) An employer may provide an employee with wage replacement during an absence. If the total amount of MN PL benefits and the supplemental benefits paid exceed the employee's usual salary, the employee must refund the excess to either the employer or the Paid Leave Division.

- (*added*) If an employer provides wage replacement to an employee for weeks that should be paid by the Division, the Department of Employment and Economic Development (DEED) may reimburse the employer directly for those weeks.

Disability insurance offset (*added*)

- An employee may receive disability insurance payments in addition to MN PL benefits if the employee is concurrently eligible for both benefits. Disability insurance benefits may be offset by MN PL benefits paid to the employee pursuant to the terms of the disability insurance policy.

Separation, severance, or bonus payments

- The amendments repeal the section of the original law that stated that an applicant is not eligible to receive MN PL benefits for any week the applicant is receiving, has received, or will receive separation pay, severance pay, bonus pay, or any other payments paid by an employer because of, upon, or after separation from employment (*§268B.06 subd. 7*).

Private Plans

Employers may apply for a private plan to provide paid family leave, paid medical leave, or both. An employer with an approved private plan will not be required to remit the contributions associated with the leave type(s) covered under the private plan. The amended law adds the following to the private plan requirements:

- Any insurer authorized to write accident and sickness insurance in Minnesota has the power to issue an insurance product that provides coverage for MN PL benefits.
- Leave eligibility for separated employees: An employee's coverage under a private plan continues while an employee remains employed by the employer. For former employees, coverage for the purposes of benefits applies until the individual is hired by a new employer or 26 weeks pass, whichever occurs first; and if an application for leave is filed by a former employee to a private plan, the plan pays benefits for the totality of the leave. Private plans may not cut off eligibility for a former employee during the course of an approved leave.

  Covered individuals who have been separated from an employer with a private plan for less than 26 weeks will file applications for benefits as follows:
  - if the former employee remains unemployed at the time of need for benefits, the former employee will apply for benefits with the private plan of their former employer; and
  - if the former employee has become employed by a different employer at the time of need for benefits, the former employee will apply for benefits based on the new employer's coverage, whether through the state or through the new employer's private plan.
- Employee transition from one plan to another during approved leave: If an employee is using approved MN PL leave when their employer changes from the state plan to a private plan, from a private plan to the state plan, or from one private plan to another private plan, the plan under which the employee was covered when their benefits were approved is required to continue paying benefits for continuous, intermittent, and reduced schedule leave through the duration previously approved. If the employee requests an extension of their original leave, or recertification is required, the employee may reapply for benefits with their new plan.
- Reporting: Employers covered under a private plan are required to submit quarterly wage detail reporting.

Appeals

The original law includes a high-level section regarding the appeal process; the amendments repeal this section (§268B.08) and add a more robust section outlining the various reasons for appeal, the steps to the appeal process, and the timing for each step (*will be added as §268B.081*).

HF5247 also amends Minnesota Earned Sick and Safe Time; see below.

Reporting Requirement Update

In our March 20 Update we noted that Minnesota's Department of Employment and Economic Development (DEED) had communicated that the quarterly wage and hour reporting required under the Minnesota Paid Leave (MN PL) law (§268B.12) was being delayed from its original effective date of July 1, 2024 until "late 2024".

On April 30 DEED released an update with a revised due date for this reporting of October 31, 2024, with the initial report based on wages paid between July 1, 2024 and September 30, 2024. The announcement also included the following clarifications:

- Wage detail reports must include the first and last name, social security number, wages paid, and hours worked for each employee. This is identical to information provided to the Unemployment Insurance division.
- The Paid Leave Division will leverage the existing Unemployment Insurance (UI) UI Online system to collect wage detail reports for the Paid Leave program.
    - If an employer is covered by the UI program, they will be able to submit a single wage detail file for both programs when they pay their UI taxes. The data used in the UI filing will be used to report wages directly to the Paid Leave program. The employer's UI employer account will be automatically converted into a joint UI/Paid Leave to allow wage detail reports to be submitted using the same process as for UI today.
    - If an employer is not covered by the UI program, they will need to set up a "Paid Leave Only" account. This account will be available in the Spring. The Paid Leave Division will post instructions on the MN PL website as soon as Paid Leave Only accounts are available.
- Premiums do not need to be paid until after the Paid Leave program launches in 2026. The initial wage detail reports are for informational purposes only. The first premiums for Paid Leave will not be due until April 30, 2026, and those initial premiums will only apply to wages earned between January 1, 2026, and March 31, 2026.

Visit the Minnesota Paid Leave website for additional information and resources, including FAQ for employers and for employees, and to subscribe for regular updates.

Minnesota Pregnancy and Parental Leave Act – Amendments

Minnesota's Pregnancy and Parental Leave Act (MPPLA) entitles employees to 12 weeks of unpaid leave for (1) prenatal care, (2) incapacity due to pregnancy, childbirth, or related health conditions, or (3) to bond with a new child within 12 months of birth or adoption. The law applies to all employers and to all employees regardless of length of service.

On May 17 the governor of Minnesota approved omnibus bill SF3852, which includes amendments to the MPPLA effective August 1, 2024.

- Continuation of benefits: The law currently states that coverage under a group insurance or health care policy must continue to be made available to an employee taking leave, but that nothing requires the employer to pay the costs of the insurance or health care while the employee is on leave. The amended language states that coverage must be *maintained* while an employee is on leave, provided that the employee continues to pay their cost share. The amended language was also carried over to the state's Pregnancy Accommodations law (MN Stat. §181.939).
- Interplay with other leave: The law currently states that leave under MPPLA may be reduced by (i.e., runs concurrently with) leave under the FMLA, as well as any paid parental, disability, personal, medical, sick leave, or accrued vacation provided by the employer so that the total leave does not exceed 12 weeks, unless agreed to by the employer. The amendment maintains this, but adds that MPPLA entitlement may *not* be reduced by any period of paid or unpaid leave taken for prenatal care medical appointments.

Oregon Family Leave Act (OFLA) – Regulations Updates

In our March 20 Update we summarized amendments made to Paid Leave Oregon (PLO) and the unpaid Oregon Family Leave Act (OFLA) enacted under SB1515.

As a refresher on some of the OFLA changes, effective July 1, 2024:

- Leave to bond with a new child, leave for the employee's own serious health condition, and leave to care for or a family member (other than a child) with a serious health condition will no longer be qualifying reasons for job-protected leave under OFLA; leave for those reasons will (continue to) be covered only under PLO at the state level.
- Up to a maximum of 12 weeks of OFLA leave may be taken per one-year period* as follows:
  1) Up to 12 weeks to care for a child of the employee or the employee's spouse or domestic partner who is suffering from an illness, injury or condition that requires home care *(whether or not a serious health condition*) or who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency.
  2) 2 weeks to deal with the death of a family member by:
     - Attending the funeral or alternative to a funeral of the family member;
     - Making arrangements necessitated by the death of the family member; or
     - Grieving the death of the family member.

     Bereavement leave is limited to 4 weeks per one-year period and must be completed within 60 days of the date on which the eligible employee receives notice of the loss. This leave is included in the overall 12 week maximum.

  Plus:

  - An *additional* 12 weeks of Pregnancy Disability Leave within any one-year period* for an illness, injury or condition related to the eligible employee's own pregnancy or childbirth that disables the eligible employee from performing any available job duties offered by the covered employer.
  - ***Temporary, effective July 1 through December 31, 2024:*** An eligible employee is entitled to a total of an *additional* two weeks of leave to effectuate the legal process required for placement of a foster child or the adoption of a child. *This provision becomes a qualifying reason for paid leave under PLO effective January 1, 2025*.

  ** See the March 20 Update for information regarding the OFLA one-year period. Also, any exigency leave taken under Oregon's Military Family Leave Act (ORS 659A.090-659A.099) counts against an employee's OFLA entitlement, but remains available even if all OFLA leave has been exhausted.*
- OFLA leave is in addition to and may not be taken concurrently with leave under PLO, but must run concurrently with FMLA if the employee is eligible for, and the reason for leave qualifies under, FMLA.

To address the July 1 transition, Oregon's Bureau of Labor and Industries (BOLI) has filed a Temporary Administrative Order, which states that:

An employer who has designated or approved leave for an employee for a reason previously protected by OFLA (*i.e., leave for bonding, for the employee's own serious health condition, or to care for a family member other than a child*) that is scheduled to extend past July 1, 2024:

1) may (but is not required to) rescind such designation or approval;
2) must, as soon as practicable but no later than June 1, 2024, notify the employee in writing that the leave is not protected by OFLA on and after July 1, 2024*;

   ** If the employee's leave is also protected under the FMLA, it is recommended that this notice clarify that FMLA leave is not impacted*.
3) must provide written information to the employee that informs them of the ability to apply for benefits under Paid Leave Oregon, including contact information for Paid Leave Oregon or the administrator of the employer's private plan.
   - To comply with this, the employer may provide the PLO Model Notice Poster in the language the employer typically uses to communicate with the employee.
   - This notification must be made:

- at the same time the employer rescinds an employee's previous OFLA designation or approval, if applicable; and
- within 14 calendar days of the employer receiving information from an employee that prior to July 1, 2024 would have been sufficient to provisionally designate leave as OFLA-protected leave.

4) may not retaliate or in any way discriminate against the employee with respect to hire or tenure or any other term or condition of employment because the employee has inquired about the provisions of OFLA, submitted a request for OFLA leave, or invoked any provision of OFLA;

Notice to Employees

Employers should be on the lookout for an updated OFLA worksite poster as the effective date of the law's changes approaches; the poster will be available in several languages on BOLI's Required Worksite Posters webpage. The poster must be displayed in each building or worksite in an area that is accessible to and regularly frequented by employees. In the absence of a physical workplace, it is recommended that the poster be posted and/or distributed electronically.

BOLI is also in the process of updating the OFLA website.

Washington Paid Family and Medical Leave (WA PFML) – Regulations Update

The qualifying reasons for leave under the WA PFML law include leave to bond with a child during the first 12 months after the child's birth, or the first 12 months after the placement of a child under the age of eighteen with the employee. On May 14 Washington's Employment Security Department (ESD) adopted an amendatory rule redefining 'placement' to delineate between the date of custody and the date of legal adoption. An employee is eligible to claim WA PFML benefits within 12 months of the date (1) a child is first placed in the employee's home *or* (2) the date adoption is legally finalized (if no leave was taken within 12 months of when the child was first placed in the home).

The amendment is effective June 14, 2024 and will be incorporated into WAC 192-500-195.

Paid Family Leave as a Class of Insurance – Kentucky

On April 5 the governor of Kentucky signed HB179, which immediately amended the state's insurance code (KRS Ch. 304) to establish the Paid Family Leave Insurance Act. The provides that paid family leave insurance may be issued to and purchased by an employer as an amendment or a rider to a group disability income policy, included in a group disability income policy, or issued as a separate group insurance policy.

Family leave insurance must provide for paid benefits for at least two weeks per 52-week period for reasons such as:

- caring for a family member with a serious health condition;
- bonding with a new child within 12 months of birth, adoption, or placement for foster care;
- addressing needs associated with a qualifying exigency;
- caring for a family member who is a service member or first responder injured in the line of duty; or
- for any other reason specified in the policy or contract that is not based on an employee's disability.

Accrued Paid Leave Updates

Connecticut Paid Sick Leave – Amendments

On May 21 the governor of Connecticut signed HB5005 (now Public Act No. 24-8), significantly amending the state's paid sick leave law effective January 1, 2025.

The law currently entitles "service workers" to accrue up to 40 hours of paid time per year to be used for specific reasons. The amendments expand the law to apply to essentially all employers and employees in the state (*see rollout schedule below*), as well as increase the rate of accrual and the qualifying reasons for use.

Below is a comparison of the current and amended law; regulations and other resources clarifying various requirements are expected in the coming months. Employers – both those currently subject to the law and those who soon will be – are encouraged to evaluate their current paid leave policies, and to monitor the Connecticut Department of Labor's dedicated webpage for updated resources.

	Connecticut Paid Sick Leave	
	Current	**Effective January 1, 2025**
Covered Employers	Any person or entity that employs 50 or more individuals in the state, determined annually based on payroll for the week containing October 1. Excludes: • manufacturing businesses (*classified in NAIC sectors 31-33*); and • any nationally chartered recreation, child care and education organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.	Any person or entity that employs • 25 or more individuals in the state on and after January 1. 2025; • 11 or more individuals in the state on and after January 1, 2026; and • 1 or more individuals in the state on and after January 1, 2027 Employer size is determined annually based on payroll for the week containing January 1. Excludes: • self-employed individuals; and • any employer that participates in a multiemployer health plan in which more than one employer is required to contribute and such plan is maintained pursuant to one or more collective bargaining agreements between a construction-related tradesperson employee organization or organizations and employers
Covered Employees	"Service Workers" engaged in specific classes of occupation (*see Conn. Gen. Stat. §31-57r*) who are: 1) paid on an hourly basis; or 2) not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act (FLSA). Excludes "day or temporary workers" who perform work for another on a per diem basis, or on an occasional or irregular basis for only the time required to complete such work, whether such individual is paid by the person for whom the work is performed or	All employees Excludes: • seasonal employees, defined as employees who work 120 days or fewer in any year; and • members of a construction-related tradesperson employee organization that is a party to a multiemployer health plan in which more than one employer is required to contribute and such plan is maintained pursuant to one or more collective bargaining agreements between a construction-related tradesperson employee organization or organizations and employers

	Connecticut Paid Sick Leave	
	Current	**Effective January 1, 2025**
	by an employment agency or temporary help service.	
Collective Bargaining Agreements	Nothing in the law should be construed to 1) diminish any rights provided to any employee under a collective bargaining agreement; or 2) preempt or override the terms of any collective bargaining agreement effective prior to January 1, 2012.	Nothing in the law should be construed to 1) diminish any rights provided to any employee under a collective bargaining agreement; or 2) preempt or override the terms of • any collective bargaining agreement effective prior to January 1, 2012; or • any collective bargaining agreement for family child care providers and personal care attendants (Conn. Gen Stat. Ch. 319pp) entered into on or after July 1, 2012.
Interplay with Company Policies	• An employer will be considered in compliance with the law if the employer offers any other paid leave, or combination of other paid leave that: 1) may be used for the same purposes of the law; and 2) is accrued in total at a rate equal to or greater than the rate required under the law. "Other paid leave" may include, but not be limited to, paid vacation, personal days, or paid time off. • Employers that provide more paid sick leave than is provided under the law may limit the reasons that such additional paid sick leave can be used.	• An employer will be considered in compliance with the law if the employer offers any other paid leave, or combination of other paid leave that: 1) may be used for the same purposes of, and under the same conditions as provided in, the law (as amended); and 2) is accrued in total at a rate equal to or greater than the rate required under the law. "Other paid leave" may include, but need not be limited to, paid vacation, personal days, or paid time off, including unlimited paid time off. • Employers that provide more paid sick leave than is provided under the law may limit the reasons that such additional paid sick leave can be used.
Leave Entitlement	• Employees accrue 1 hour of paid leave for every 40 hours worked. • Time accrues in hourly increments, beginning commencement of employment. • Employees may accrue up to 40 hours per year. "Year" means any 365-day period used by an employer to calculate employee benefits.	In accordance with the effective dates outlined by employer size in “Covered Employers” above… • Employees accrue 1 hour of paid leave for every 30 hours worked. Employees exempt from overtime requirements under the provisions of the Fair Labor Standards Act (FLSA) §213(a)(1), are presumed to work 40 hours each work week for purposes of paid sick leave accrual, except that if an

	Connecticut Paid Sick Leave	
	Current	**Effective January 1, 2025**
		employee's normal work week is less than 40 hours paid sick leave will accrue based upon the hours worked in their normal work week. • Time accrues in hourly increments, beginning commencement of employment. • Employees may accrue up to 40 hours per year. "Year" means any 365-day period used by an employer to calculate employee benefits. • An employer may provide its employees with a greater amount of paid sick leave or provide paid sick leave at a faster rate. Frontloading: An employer may provide its employees with an amount of paid sick leave that meets or exceeds the accrual requirements noted above, and that is available for immediate use at the beginning of the following year.
Reasons for Use	Accrued paid sick leave may be used: 1) for the medical diagnosis, care or treatment of an employee's mental illness or physical illness, injury or health condition, including preventive care, or for a "mental health wellness day"; 2) for the medical diagnosis, care or treatment of an employee's child's or spouse's mental or physical illness, injury or health condition, including preventive care; and 3) where an employee is a victim of family violence or sexual assault, or the parent or guardian of a child who is a victim of family violence or sexual assault, provided the employee is not the perpetrator or alleged perpetrator, for a) medical care or psychological or other counseling for physical or psychological injury or disability; b) obtaining services from a victim services organization; c) relocating due to such family violence or sexual assault; or d) participating in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.	Accrued paid sick leave may be used: 1) for the medical diagnosis, care or treatment of an employee's mental illness or physical illness, injury or health condition, including preventive care, or for a "mental health wellness day"; 2) for the medical diagnosis, care or treatment of an employee's family member's mental or physical illness, injury or health condition, including preventive care; 3) where an employee or an employee's family member is a victim of family violence or sexual assault, provided the employee is not the perpetrator or alleged perpetrator, for a) medical care or psychological or other counseling for physical or psychological injury or disability; b) obtaining services from a victim services organization; c) relocating due to such family violence or sexual assault; or d) participating in any civil or criminal proceedings related to or resulting from such family violence or sexual assault. 4) for closure of an employer's place of business, or a family member's school or place of care by order of a public official, due to a public health emergency; and

	Connecticut Paid Sick Leave	
	Current	**Effective January 1, 2025**
		5) for a determination by a health authority having jurisdiction, an employer of the employee, an employer of a family member, or a health care provider, that the employee or family member poses a risk to the health of others due to the employee's or family member's exposure to a communicable illness, whether or not the employee or family member contracted the communicable illness.

Covered Family Members	• Spouse
	• Child (*biological, adopted, foster, step-, legal ward, or to whom the employee stands in loco parentis)*, who is
	  • under eighteen years of age; or
	  • eighteen years of age or older and incapable of self-care because of a mental or physical disability;
		• Spouse or registered Domestic Partner
		• Child of any age (*biological, adopted, foster, step-, legal ward, or to whom the employee stood or stands or in loco parentis*)
		• Parent (*biological, adoptive, foster, step-, parent-in-law, legal guardian of an employee or an employee's spouse, person who stands or stood in loco parentis to the employee*)
		• Sibling (*related by blood, marriage, adoption or foster care*)
		• Grandparent or Grandchild (*related by blood, marriage, adoption or foster care*)
		• Individual related to the employee by blood or affinity whose close association the employee shows to be equivalent to those family relationships

Use	• Employees may use accrued time after completing 680 hours of work, and may use up to 40 hours per year. • An employee is not entitled to the use of accrued paid sick leave if they did not work an average of 10 or more hours per week for the employer in the most recent completed quarter. • Upon the mutual consent of the employee and the employer, an employee who chooses to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed will not use accrued paid sick leave. • Nothing in the law prohibits an employer from establishing a policy that allows an employee to donate accrued but unused paid sick leave to another employee.	• Employees may use accrued time beginning their 120th calendar day of employment, and may use up to 40 hours per year. • Employers may not require an employee who will use or is using paid sick leave to search for or find another employee to serve as a replacement to work the scheduled hours. • Upon the mutual consent of the employee and the employer, an employee who chooses to work additional hours or shifts during the same or following pay period, in lieu of hours or shifts missed will not use accrued paid sick leave. • Nothing in the law prohibits an employer from establishing a policy that allows an employee to donate accrued but unused paid sick leave to another employee.
Rate of Pay	• Paid sick leave must be paid at the greater of either (1) the employee's normal hourly wage, or (2) the state	• Paid sick leave must be paid at the greater of either (1) the employee's normal hourly wage, or (2) the state minimum fair wage

	Connecticut Paid Sick Leave	
	Current	**Effective January 1, 2025**
	minimum fair wage rate in effect for the pay period during which leave was used. • For any employee whose hourly wage varies depending on the work performed, "normal hourly wage" means the average hourly wage of the employee in the pay period prior to the one in which the employee used paid sick leave.	rate in effect for the pay period during which leave was used. • For any employee whose hourly wage varies depending on the work performed, "normal hourly wage" means the average hourly wage of the employee in the pay period prior to the one in which the employee used paid sick leave.
Notice to Employer	• If an employee's need to use paid sick leave is foreseeable, an employer may require advance notice, not to exceed seven days prior to the date such leave is to begin, of the intention to use such leave. • If an employee's need for such leave is not foreseeable, an employer may require notice of such intention as soon as practicable.	*Removed from law text via amendments; regulations may provide guidance.*
Requests for Documentation	For paid sick leave of three or more consecutive work days, an employer may require reasonable documentation that such leave is being taken for a qualifying purpose.	Employers may not require documentation to support leave taken for a qualifying purpose.
Carryover	Required, up to 40 hours	Required, up to 40 hours, unless time is frontloaded as described above
Termination, Transfer and Rehire	• Payment of unused accrued sick leave upon separation of employment is not required, unless an employee policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination. • Any termination of an employee's employment, whether voluntary or involuntary, will be construed as a break in service. Should any employee subsequently be rehired by the employer following a break in service, the employee will (1) begin to accrue sick leave, and (2) will not be entitled to any unused hours of paid sick leave that had been accrued prior to the employee's break in service unless agreed to by the employer.	• Payment of unused accrued sick leave upon separation of employment is not required, unless an employee policy or collective bargaining agreement provides for the payment of accrued fringe benefits upon termination. • Any termination of an employee's employment, whether voluntary or involuntary, will be construed as a break in service. Should any employee subsequently be rehired by the employer following a break in service, employee will (1) begin to accrue sick leave, and (2) will not be entitled to any unused hours of paid sick leave that had been accrued prior to the employee's break in service unless agreed to by the employer. • If an employee is transferred by an employer to another division, entity or worksite but remains employed by such employer, such employee will retain and may use all paid sick leave accrued or received by the employee while working at such prior division, entity or worksite.

	Connecticut Paid Sick Leave	
	Current	**Effective January 1, 2025**
		• If another employer succeeds or takes the place of an existing employer, each employee of the original employer who remains employed by the successor employer will retain and may use all paid sick leave accrued or received while employed by the original employer.
Notice to Employees	Each employer must, at the time of hiring, provide notice to each employee of the entitlement to sick leave, the amount of sick leave provided, and the terms under which sick leave may be used; that retaliation by the employer for requesting or using sick leave for which the employee is eligible is prohibited; and that the employee has a right to file a complaint with the Labor Commissioner for violation of the law. Employers may comply by displaying a poster in a conspicuous place accessible to employees at the employer's place of business, in both English and Spanish.	Each employer must, at the time of hiring, provide notice to each employee of the entitlement to sick leave, the amount of sick leave provided, and the terms under which sick leave may be used; that retaliation by the employer for requesting or using sick leave for which the employee is eligible is prohibited; and that the employee has a right to file a complaint with the Labor Commissioner for violation of the law. Each employer must comply by: 1) displaying a poster in a conspicuous place accessible to employees at the employer's place of business, in both English and Spanish; and 2) providing written notice to each current employee by January 1, 2025; and 3) providing written notice to each new employee at the time of hire. The Labor Commissioner will create a model of such poster and written notice and make such models available to all employers on the Labor Department's Internet website. For employers that do not maintain a physical workplace or for employees that telework or perform work through a web-based or application-based platform, employers may comply with the posting requirement by sending information via electronic communication or by a conspicuous posting of such information on a web-based or application-based platform. In addition, and in accordance with Connecticut wage statement requirements (Conn. Gen. Stat. §31-13a), with each wage payment employers must provide employees with 1) the number of hours, if any, of paid sick leave accrued by or provided to the employee; and 2) the number of hours, if any, of paid sick leave used by the employee during the calendar year.

	Connecticut Paid Sick Leave	
	Current	**Effective January 1, 2025**
Recordkeeping	*Not stated*	Each employer must retain records of hours of paid sick leave accrued and used an employee for a period of three years and must allow the Labor Commissioner, with appropriate notice and at a mutually agreeable time, access to such record in order to monitor compliance with the law's requirements.
Anti-Retaliation	Employers are prohibited from • terminating any employee, dismissing any employee, or transferring any employee from one worksite to another solely in order to not qualify as an employer under the law; or • taking retaliatory personnel action or discriminating against an employee because the employee (1) requests or uses paid sick leave either in accordance with this law, or in accordance with the employer's own paid sick leave policy, or (2) files a complaint with the Labor Commissioner alleging the employer's violation of the law.	Employers are prohibited from • terminating any employee, dismissing any employee, or transferring any employee from one worksite to another solely in order to not qualify as an employer under the law; or • taking retaliatory personnel action or discriminating against an employee because the employee (1) requests or uses paid sick leave either in accordance with this law, or in accordance with the employer's own paid sick leave policy, or (2) files a complaint with the Labor Commissioner alleging the employer's violation of the law.
Non-Compliance Penalties	• $500 per violation of anti-retaliation provisions • $100 per violation for failure to provide paid sick leave • $100 per violation for failure to provide employees with required notification of their rights under the law The Labor Commissioner may award the employee all appropriate relief, including the payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subject to such retaliatory personnel action or discriminated against.	• $500 per violation of anti-retaliation provisions • $100 per violation for failure to provide paid sick leave • $100 per violation for failure to provide employees with required notification of their rights under the law • $100 per violation of wage statement and recordkeeping requirements The Labor Commissioner may award the employee all appropriate relief, including the payment for used paid sick leave, rehiring or reinstatement to the employee's previous job, payment of back wages and reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subject to such retaliatory personnel action or discriminated against.

Illinois Accrued Paid Leave Updates (State and Local)

Illinois Paid Leave for All Workers Act (PLAWA) – Final Regulations

Illinois' statewide accrued paid leave law, the Paid Leave for All Workers Act (PLAWA), was enacted on January 10, 2023 under SB208 and became effective January 1, 2024. The law applies to most employers and employees in the state, and provides that employees accrue 1 hour of paid leave for every 40 hours worked, for up to 40 hours of leave per year to be used for any reason.

Over the past year the Illinois Department of Labor (IDOL) has been updating their dedicated webpage with information on the new law, the most recent being the posting of the final rules effective April 30, 2024.

Below are a few of the meaningful clarifications provided by the rules.

Note that this is not a full summary of the law or of the final rules; see our February 27, 2023 Update for a summary of the law, as well as our more recent coverage on November 21, 2023 and March 20, 2024.

Eligibility and Localization

- 'Employee': an individual permitted to work in an occupation by an employer and:
  1) whose base of operations, regional office, or headquarters is in Illinois and that employee's work is primarily performed in Illinois, or
  2) if either of the following is true:
     - the work is primarily performed in Illinois for an employer that performs substantial business in the State, markets its services in the State, or maintains a registered agent within the State of Illinois; or
     - the work is primarily performed in Illinois and individual is domiciled in Illinois.
- When considering whether work is performed primarily in Illinois, the Illinois Department of Labor will consider the following factors:
  - The amount of work performed in Illinois compared to the amount of work performed outside of Illinois;
  - Whether the work performed inside of Illinois is isolated, temporary, or transitory; and
  - Whether the work performed outside of Illinois is the of same nature or has the same duties of the work performed in Illinois.
- The definition of 'Employee' includes domestic workers (as defined), but does not include the following:
  - An employee as defined in the federal Railroad Unemployment Insurance Act or the federal Railway Labor Act;
  - A student enrolled in and regularly attending classes in a college or university who is also working less than full-time temporary basis at the same college or university;
  - An employee of a college or university who works for less than 2 consecutive quarters and the employee does not have a reasonable expectation to be rehired by the same employer for the same service in the subsequent calendar year; or
  - A bona fide independent contractor (except an individual working as a domestic worker).

Accrual

Employees accrue a minimum of 1 hour of paid leave for every 40 hours worked, beginning the later of January 1, 2024 or date of hire. For purposes of accrual, employees exempt from overtime under the Fair Labor Standards Act (FLSA) are assumed to work 40 hours in each workweek unless their regular workweek is less than 40 hours, in which case paid leave accrues based on that regular workweek

The rules add:

- An employer may choose to provide leave in smaller, proportional, increments, if the rate of benefit accrual is at least 1 hour of paid leave for every 40 hours worked. Work periods must be counted on a minute-by-minute basis or may be rounded up to the next 15 minutes. An employer may not round down time worked.

- Except as noted above for exempt employees, an employer is required to count all time that an employee works, including overtime hours worked, for purposes of calculating accrual. An employer is not required to count time when an employee is on paid or unpaid leave or other non-compensable time where the employee is not performing work for the employer as time worked for accrual purposes.

Frontloading

As an alternative to accrual, an employer may make available the minimum number of hours of paid leave (40) to an employee on the first day of employment or the first day of the designated 12-month period. Under no circumstances may an employee be credited with an amount of leave that is less than what the employee would accrue based on their typical workweek.

The rules add:

- An employer who frontloads leave is subject to the following requirements:
  - The employer must give written notice to the employee informing the employee of how many paid leave hours that employee is receiving on or before the first day of initial employment or on or before the first day of the initial 12-month period, and before the employer changes the amount of leave the employee receives via frontloading.
    - If an employer chooses a fixed date for the beginning of the 12-month period, such as January 1 or July 1, the employer may pro-rate the amount of frontloaded paid leave time that an employee who begins employment mid-12-month period receives. The employer must then frontload the full 12-month period's worth of paid leave time to that employee at the next regular fixed date.
    - An employer may choose to use each employee's employment start date as the start of that employee's 12-month period.
    - An employer may not retroactively diminish benefits that the employer has already provided to an employee. Therefore, an employer may not recoup or require an employee to repay paid leave time that was frontloaded at the beginning of the 12-month period if the employee's employment ends before the end of the 12-month period.
  - Each 12-month period must renew consecutively for the duration of employment, and an employee who receives frontloaded paid leave on the first day of any 12-month period must continue to receive paid leave hours on the first day of any consecutive 12-month period, unless the employer does all of the following:
    1) gives written notice to the employee at least 30 days prior to the end of the 12-month period, informing them that the 12-month period is changing or ending;
    2) gives the employee written documentation of the number of hours worked during the 12-month period, the number of paid leave hours accrued, the number of paid leave hours taken, and the remaining paid leave hours balance; and
    3) ensures that the changing of the 12-month period does not reduce the number of paid leave hours the employee is otherwise entitled to in a 12-month period.
- With appropriate notice to the employee and documentation, employers may frontload paid leave time for part-time employees at a pro rata amount consistent with the employee's anticipated work schedule for that 12-month period. However, if the employee works more hours than the employer anticipated, the employee is entitled to accrue additional hours at a rate of 1 hour of paid leave for every 40 hours worked in that same 12-month period, up to 40 hours of paid leave. If a part-time employee works fewer hours in the 12-month period than anticipated by their employer, the employer may not diminish or recoup used or unused frontloaded paid leave benefits in any way.
- An employer may provide some of its employees paid leave in form of frontloading, and other employees paid leave via accrual, if the employer's paid leave policy or policies meets all of PLAWA's requirements.

Carryover

- For an employee who accrues paid leave time over the course of a 12-month period, any unused paid leave time will carry over annually from one 12-month period to the next 12-month period unless the employer and employee have mutually agreed that the unused leave will be paid out to the employee at the end of the 12-month period instead of being carried over into the new 12-month period. Employers may establish a reasonable policy restricting employees' ability to carry over more than 40 hours of unused paid leave.
- Employees who receive frontloaded paid leave at the beginning of the 12-month period are not entitled to carry over paid leave time from one 12-month period to the next unless the employer allows them to carry their paid leave time over.

Use of Leave

The rules restate the following:

- An employee is entitled to begin using earned paid leave time 90 calendar days after commencement of employment or March 31, 2024, whichever is later.
- An employee is entitled to use paid leave earned under the law for any reason of the employee's choosing.
    - An employer may not require an employee to provide a reason for taking paid leave time.
    - An employer may not require an employee provide any type of documentation, including a certificate or form, as proof or support for the reason to use the paid leave time.
- An employee may request to use paid leave by making a verbal or written request to the employer consistent with the employer's paid leave policy. An employer's policy may require the employee to provide written notice after making an oral request for paid leave.
    - If an employee's request to use paid leave time is foreseeable, then an employer may require an employee give a maximum of 7 days' prior notice.
    - If an employee's request to use paid leave time is unforeseeable, then the employer may require the employee to provide notice as soon as practically possible after the employee is aware of the necessity of the leave.
- An employee must be allowed to choose:
    - whether to use paid leave earned under PLAWA before using any other leave benefits provided by the employer or state law.
    - whether to use any other leave benefits provided by the employer or state law before using paid leave earned under PLAWA.
- An employer who offers more than one type of leave should confirm and document what category of leave the employee wishes to draw from for any use of leave.
- Employees must have the discretion to determine how many paid leave hours they need to use in a 12-month period except:
    - If an employee's scheduled workday is more than two hours, then the employer may restrict the use of paid leave to increments of no less than 2 hours per day.
    - If an employee's scheduled workday is less than two hours, then the employer may restrict the amount of paid leave used per day to the equivalent of the scheduled workday.
- An employee is not entitled to use more than 40 hours of paid leave in a 12-month period unless the employer allows them to do so.
- An employer may restrict an employee's use of paid leave to the employee's known or anticipated work schedule.
- If an employee takes earned or accrued paid leave under PLAWA, then the employer must continue to provide any health plan coverage for the employee and the employee's family that the employee already had during the duration of the paid leave time.
    - The continuation of any group health plan coverage may not be at a level or at conditions less than if the employee had not taken or used paid leave under PLAWA.

- If the employee is required to pay a premium for the health plan while taking or using paid leave time, then before the use of paid leave the employer must notify the employee in writing that the employee is still responsible for continued payment.

Compliant Employer Policies

The law text states that an employer who provides any type of paid leave policy that satisfies the minimum amount of leave required under §15(a) of the law is not required to modify the policy if the policy offers an employee the option, at the employee's discretion, to take paid leave for any reason.

Section 200.200 of the rules reiterates this, providing confirmation that an existing policy need *only* meet the requirements in §15(a):

- An employer who has a qualifying pre-existing paid leave policy in effect on January 1, 2024, is not required to modify the pre-existing paid leave policy. If, after January 1, 2024, the employer modifies a pre-existing paid leave policy in such a way that it no longer provides a minimum of 40 hours of paid leave to be used for any reason in accordance with Section 15(a)* of the Act, that policy will no longer be considered a qualifying pre-existing paid leave policy.
  - "Qualifying pre-existing paid leave policy" means a bona fide paid leave policy that an employer has enacted prior to January 1, 2024, that, in practice, satisfies the minimum amount of leave required by §15(a)* of the law if the policy offers an employee the option, at the employee's discretion, to take paid leave for any reason.
    - * *§15(a): An employee who works in Illinois is entitled to earn and use up to a minimum of 40 hours of paid leave during a 12-month period or a pro rata number of hours of paid leave under the provisions of subsection (b). The paid leave may be used by the employee for any purpose as long as the paid leave is taken in accordance with the provisions of this Act.*

Local Paid Leave Ordinances (*i.e., Chicago and Cook County*)

PLAWA does not apply to any employer that is covered by a municipal or county ordinance that is in effect on January 1, 2024 that requires employers to give any form of paid leave to their employees, including paid sick time or paid leave.

- An employer to whom the above applies, but who also employs employees who are not covered by the municipal or county ordinance, is required to provide paid leave to those employees in accordance with PLAWA. This includes employers located in municipalities or counties that have opted out of an overlapping jurisdiction's paid leave law.

  Example: Employer A is located in the city of Commerce, Illinois, which has a local paid leave ordinance. Employer A also has a branch location located in the city of Anytown, Illinois, which does not have a local paid leave ordinance. Employer A provides paid leave in accordance with that ordinance to its employees in Commerce. Employer A is required to comply with the Act and this Part in relation to its employees working in Anytown.

- If a municipality or county enacts or amends a local law or ordinance to provide paid leave time, including paid sick leave, after January 1, 2024, and the local law or ordinances provides equal or greater paid leave benefits, rights, and remedies than those under PLAWA, then the employer must comply with the local law or ordinance.
  - If a municipality or county enacts or amends a local law or ordinance to provide paid leave time, including paid sick leave, after January 1, 2024, and the local law or ordinances provides lesser paid leave benefits, rights, or remedies than those under PLAWA, then the employer must comply with the minimum requirements of PLAWA.

Payout of Unused Leave at Separation of Employment

The law states that employers are not required to provide financial or other reimbursement to an employee upon separation from employment for accrued leave that has not been used. *However*, if paid leave under this law is credited to an employee's paid time off bank or vacation account then any unused paid leave must be paid to the employee upon the employee's termination, resignation, retirement, or other separation to the same extent as vacation time under the Illinois Wage Payment and Collection Act (820 ILCS 115/5) and its rules.

Per the rules:

- An employee's existing time off allowance bank or time off account must be kept separate from the accounting of the employee's earned paid leave under PLAWA unless the employer's written policy or practice is to combine such leave.
- If an employer chooses to credit the paid leave provided for under PLAWA to an existing paid leave allowance provided by the employer, this must be communicated to the employee within 30 days after the start of employment or of the effective date of the policy.
    - If an employer chooses to credit the leave provided for under PLAWA to an existing paid leave allowance provided by the employer, any unused paid leave time must be paid to the employee upon an employee's termination, resignation, retirement, or other separation to the same extent that vacation time is paid under the Illinois Wage Payment and Collection Act.
- If an employer does not provide an additional form of paid leave allowance, nor chooses to combine or credit the multiple forms of leave together, then an employer will not be required to pay out, provide financial benefit, or reimbursement for unused paid leave earned under the Act upon an employee's termination, resignation, retirement, or other separation from employment at any time of the year.

    Example: Prior to January 1, 2024, Employer A, who is subject to the Illinois Wage Payment and Collection Act, offers two weeks of paid vacation to all employees. Beginning on January 1, 2024, Employer A allows employees to accrue paid leave under the Paid Leave for All Workers Act, and terms that leave "PLAW Leave." Employer A maintains records of the distinct balance each employee has in the employee's vacation account and in the employee's PLAW Leave account. Because Employer A maintains separate documentation of the vacation leave and PLAW Leave, Employer A does not have to pay out PLAW Leave upon an employee's separation. When Employee A requests to use leave, Employer A should ask Employee A whether they wish to deduct the leave from their vacation balance or their PLAW Leave balance in order to appropriately document Employee A's remaining paid leave balances.

Collective Bargaining Agreements

The law does not affect the validity or change the terms of bona fide collective bargaining agreements (CBA) in effect on January 1, 2024. After that date, the law's requirements may be waived in a CBA, but only if the waiver is set forth explicitly in clear and unambiguous terms.

The law does not apply to any employee working in the construction industry (as defined in the Act) who is covered by a CBA, nor to any employee who is covered by a CBA with an employer that provides services nationally and internationally of delivery, pickup, and transportation of parcels, documents, and freight.

The rules add:

- Employees covered under a bona fide collective bargaining agreement may negotiate minimum standards of paid leave meeting or exceeding what is required by the Act.
- "Construction industry" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, or adding to or subtracting from any building, structure, highway, roadway, street, bridge, alley, sewer, ditch, sewage disposal plant, waterworks, parking facility, railroad, excavation or other structure, project, development,

real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to or fabrication into, any structure, project, development, real property, or improvement herein described of any material or article of merchandise. The definition also includes moving construction-related materials on the job site or to or from the job site, snow plowing, snow removal, and refuse collection.

- If an employee works for a State Agency and is covered by a bona fide collective bargaining agreement in effect on July 1, 2024, then nothing in PLAWA will affect the validity or change the terms of the agreement applying to the employee. Employees covered under a bona fide collective bargaining agreement with a State Agency may only waive PLAWA's requirements of in such agreement:
    1) if the language of the waiver is clear, unambiguous, and explicitly waives the requirements of the Act; and
    2) the collective bargaining agreement is in effect after January 1, 2024.

Notice to Employees and Written Policy

- Employers must post a notice in a conspicuous location on the employer's premises where notices to employees are customarily posted, in English in the languages commonly spoken in the workplace. In addition to displaying a notice in a physical location at the employer's premises, employers who regularly communicate with employees via electronic means must also provide the notice via the employer's regular electronic communication method.

  The notice must also be included in a written document, or written employee manual or policy if the employer has one, and provided to an employee prior to or upon the employee's commencement of employment.

  Note: The model notice is available in several languages on both the Paid Leave for All Workers Act and Required Posters & Disclosures webpages.
- If an employer chooses to impose terms and conditions on employees' use of paid leave time, beyond the provisions explicitly required by the PLAWA, the employer must adopt a reasonable, written paid leave policy, made available in English and in any additional language commonly spoken by the employer's workforce, that, at a minimum, includes the protections of and is consistent with the provisions of the law and its rules. The paid leave policy can be a part of an existing employer manual, existing employer handbook, or a separate document.
    - A written paid leave policy, other than a qualifying pre-existing policy, that is inconsistent with the laws and its rules is invalid, and an employer with such a policy waives its right to notice of employees' use of paid leave time.
    - The employer must provide the paid leave policy to an employee prior to or upon the employee's commencement of employment or March 31, 2024, whichever is later. Employers who regularly communicate with employees via electronic means shall also provide the notice via the employer's regular electronic communication method.
        - If an employer changes the paid leave policy during the course of an employee's employment, then the employer must notify the employee of the updated paid leave policy as soon as practical.
        - An employer must provide employees with written notice within 5 calendar days of any change to the employer's reasonable paid leave policy notification requirements.
    - An employer's policy may require the employee to provide written notice after making an oral request for paid leave.
    - If an employer's paid leave policy has prior notification requirements, those may include the following:
        - If an employee's request to use paid leave time is foreseeable, then an employer may require an employee give a maximum of 7 days' prior notice.
        - If an employee's request to use paid leave time is unforeseeable, then the employer may require the employee to provide notice as soon as practically possible after the employee is aware of the necessity of the leave.

- An employer may deny an employee's request to use the minimum amount of paid leave provided for under the law if all of the following conditions are met:
  - the employer's policy for considering leave requests under PLAWA, including any basis for denial is disclosed to the employee, in writing; and
  - the employer's paid leave policy establishes certain limited circumstances in which paid leave may be denied in order to meet the employer's operational needs for the requested time period; and
  - the employer's policy is consistently applied to similarly situated employees and does not effectively deny an employee adequate opportunity to use all paid leave time they are entitled to over a 12-month period.

Recordkeeping

The law requires that records documenting hours worked, paid leave accrued and taken, and remaining paid leave balance for each employee must be maintained for a period of not less than 3 years. Employers must allow IDOL access to such records, at reasonable times during business hours, to monitor compliance with the law's requirements.

The rules list the following as required elements of these records:

- Name and address;
- Hours worked each day in each workweek;
- Paid leave earned or accrued in each workweek;
- Paid leave taken or used in each workweek;
- Requests by the employee to use paid leave that the employer denied; and
- Remaining paid leave balance in each workweek and upon employee's separation or termination from employment.

Non-Compliance Penalties

- If IDOL determines that an employer owes payment for paid leave hours to an aggrieved employee or did not allow the employee to use earned paid leave hours, then the total amount due to the aggrieved employee will be the following:
  1) the total value of earned paid leave hours owed to the aggrieved employee;
  2) compensatory damages;
  3) a penalty of not less than $500 and not more than $1,000; and
  4) any equitable relief as determined by the Administrative Law Judge pursuant to a hearing conducted under the IAPA.
- If an employer violates any provision of PLAWA (except for posting requirements), then the employer will be subject to a civil penalty of $2,500 per offense, payable to the Paid Leave for All Workers Fund.
  - An employer who violates the posting requirements under the law will be fined a civil penalty of $500 for the first audit violation and $1,000 for any subsequent audit violation.

Chicago, IL Paid Leave and Paid Sick and Safe Leave – Final Regulations, Model Notice

As covered in previous Updates, Chicago's "new" Paid Leave and Paid Sick and Safe Leave ordinance becomes effective July 1. The law replaces the city's current Paid Sick Leave law, and provides that eligible employees accrue one hour of Paid Leave (to use for any reason) and one hour of Paid Sick Leave (to use for specified reasons) per 35 hours worked, for up to a total of 80 hours of paid leave per year.

Chicago's Office of Labor Standards is in the process of updating their website with information on the law. On May 1 the administrative rules were finalized and posted, and include the following clarifications of the law's text (*note that this is not a full summary of the rules*):

- "Benefit Year" is defined as the period of 12 consecutive months that an employer sets for employees to receive Paid Leave and Paid Sick Leave benefits. An employer may set different dates for each covered employee or synchronize all of its employees to have benefits granted at the same time. A qualifying Benefit Year may be based on a calendar year, fiscal year, tax year, contract year or employment anniversary date.
- Compliance via existing employer policy: The law states that employers are not required to provide additional paid leave if their existing policy "grants employees Paid Leave or Paid Sick Leave in an amount and a manner that meets or exceeds the requirements of [the law]".

  The rules clarify that employers whose paid time off policies meet or exceed the following three main requirements are not required to provide additional leave or records beyond what is required to demonstrate compliance with the law:
  1) accrual / grant of hours of Paid Leave and Paid Sick Leave;
  2) carryover of Paid Leave and Paid Sick Leave from one Benefit Year to the next; and
  3) usage of Paid Leave and Paid Sick Leave.
- Eligibility to accrue leave: The law identifies employees eligible to accrue Paid Leave and Paid Sick and Safe Leave as those who work at least 80 hours for an employer within any 120-day period while *physically present within the geographic boundaries of the city*. Once an employee meets this requirement, the employee remains eligible for the duration of their employment with the employer.

  The rules clarify that:
  - Only hours worked within the city count toward accruals, even if the employer is located within the geographic boundaries of the city.
  - Remote workers who meet the definition above are covered by the ordinance even if their employer is physically located outside of the geographic boundaries of the city.
  - Employers are not required to permit accruals while an employee is on paid or unpaid leave of absence.
- Waiting period for use of accrued leave: Paid Leave and Paid Sick Leave accruals begin on an employee's first calendar day of employment; however, an employee may not begin using accrued Paid Sick Leave until after 30 days of employment, and Paid Leave after 90 days.

  The rules state that if an employer elects to offer 80 hours of Paid Leave, as opposed to 40 hours of Paid Leave and 40 hours of Paid Sick Leave, the employee must be permitted to use this leave after 30 days of employment. This applies whether time is accrued or frontloaded.
- Notice to employees: The law includes the notice requirements below; sections 2.09 and 2.10 of the rules provide additional detail.
  - Employers must notify their employees of their rights and responsibilities under the law. Notice must be:
    1) posted in a conspicuous place at each facility where any employee works that is located within the geographic boundaries of the city*, in English and any language spoken by a significant portion of employees**;
    2) provided to each employee with their first paycheck and annually with a paycheck issued within 30 days of July 1**; and

3) provided each time wages are paid, to include the accrual rates of Paid Leave and Paid Sick Leave, leave accrued since the last notification, the amount of leave reduced since the last notification, and any unused leave available for use.
    - Employers may choose a reasonable system for providing this notification, including, but not limited to, listing available paid time off on each pay stub or developing an online system where employees can access their own Paid Leave and Paid Sick Leave information.
    - Employers who credit their employees the applicable Paid Leave and Paid Sick Leave time on a monthly basis may make such notice available on a monthly basis.

* *Employers that do not maintain a business facility within the geographic boundaries of the city are exempt from this posting requirement.*

** *The model notice is available in several languages on the Business Affairs and Consumer Protection's Public Notices webpage.*

- Employers must provide employees with written notice of the employer's paid time off policy, in the employee's primary language, which includes notification requirements, at the commencement of employment and within five calendar days before any change policy requirements.
- Employers must provide employees with a 14-day written notice of changes to the employer's paid time off policies that affect an employee's right to final compensation for such leave.
- Whenever an employee has not been offered a work assignment for 60 days, the employer must notify the employee in writing that they may request payout of their accrued, unused Paid Leave time.

Cook County, IL Paid Leave – Amendment

As summarized in our December 20, 2023 Update, Cook County's Paid Leave ordinance (as amended), applies to all employers in the state, with the exception of:

1) the government of the United States or a corporation wholly owned by the government of the United States; or
2) an Indian tribe or a corporation wholly owned by an Indian tribe; and
3) the government of the State or any agency or department thereof.

On March 14 the Cook County Board of Commissioners approved File #24-1233, amending the ordinance to also exclude school districts organized under the Illinois School Code or park districts organized under the Illinois Park District Code, but only until January 1, 2025. As these districts were expressly excluded from the statewide accrued paid leave law (the Paid Leave for All Workers Act), the delay provides them more time to prepare for compliance.

Minnesota Earned Sick and Safe Time – Amendments

In addition to the changes to Minnesota Paid Leave outlined above, HF5247 made amendments to Minnesota's Earned Sick and Safe Time (ESST) law (MN Stat. §181.9445-§181.9448), which became effective January 1, 2024 (*see our November 21, 2023 Update for our most recent coverage*).

The following changes became effective the day after the law's enactment (i.e., May 25), unless otherwise noted:

Eligibility: the definition of 'Employee' is amended:

- so that an employee is covered under the law if there is the expectation that they will work at least 80 hours in a year for that employer in Minnesota;
- to exclude independent contractors (*already excluded*) as well as:
  - an individual who is a volunteer firefighter or paid on-call firefighter with a department charged with the prevention or suppression of fires within the boundaries of the state; is a volunteer ambulance attendant as defined in MN Stat. §144E.001 subd. 15; or is an ambulance service personnel as defined in §144E.001 subd. 3a who serves in a paid on-call position;
  - an individual who is an elected official or a person who is appointed to fill a vacancy in an elected office as part of a legislative or governing body of Minnesota or a political subdivision; or
  - an individual employed by a farmer, family farm, or a family farm corporation to provide physical labor on or management of a farm if the farmer, family farm, or family farm corporation employs the individual to perform work for 28 days or less each year.
- to no longer exclude individuals employed by an air carrier as a flight deck or cabin crew member who (1) is subject to 45 USC §181-188, (2) works less than a majority of their hours in Minnesota in a calendar year, and (3) is provided with paid leave equal to or exceeding the requirements of the ESST law

Rate of Pay:

The law clarifies that ESST hours are to be paid at the base rate the employee earns from employment; in no case may this rate be less than the state minimum wage or an applicable local minimum wage.

"Base rate" means:

- for employees paid on an hourly basis, the same rate received per hour of work;
- for employees paid on an hourly basis who receive multiple hourly rates, the rate the employee would have been paid for the period of time in which leave was taken;
- for employees paid on a salary basis, the same rate guaranteed to the employee as if the employee had not taken the leave; and
- for employees paid solely on a commission, piecework, or any basis other than hourly or salary, a rate no less than the applicable local, state, or federal minimum wage, whichever is greater.

Base rate does not include commissions; shift differentials that are in addition to an hourly rate; premium payments for overtime work; premium payments for work on Saturdays, Sundays, holidays, or scheduled days off; bonuses; or gratuities as defined by MN Stat. §177.23.

Reasons for Use:

ESST provides that employees may use accrued time:

1) for the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or for preventive medical care;
2) to care for a covered family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or for preventive medical care;
3) for needs associated with the employee's or a covered family member's domestic abuse, sexual assault, or stalking;
4) for needs associated with a public emergency:

a) closure of the employee's workplace due to weather or public emergency or closure of a family member's school or care facility due to weather or public emergency; and

b) when determined by a health authority or health care professional that the employee or a family member is at risk of infecting others with a communicable disease.

5) *NEW* – for an employee's need to make arrangements for or attend funeral services or a memorial, or to address financial or legal matters that arise after the death of a family member.

The amendments add that an employee may *not* use ESST due to weather or public emergency (*4a above*) if:

1) the employee's preassigned or foreseeable work duties during a public emergency or weather event would require the employee to respond to the public emergency or weather event;
2) the employee is a firefighter; a peace officer subject to licensure under MN Stat. §626.84 to §626.863; a 911 telecommunicator as defined in §403.02 subd. 17c; a guard at a correctional facility; or a public employee holding a commercial driver's license; and
3) one of the following two conditions are met:
   a) the employee is represented by an exclusive representative under §179A.03 subd. 8, and the collective bargaining agreement or memorandum of understanding governing the employee's position explicitly references §181.9447 subd. 1, clause 4, and clearly and unambiguously waives application of that section for the employee's position; or
   b) the employee is not represented by an exclusive representative, the employee is needed for the employer to maintain minimum staffing requirements, and the employer has a written policy explicitly referencing §181.9447 subd. 1, clause 4, that is provided to such employees in a manner that meets the requirements of other ESST notices under §181.9447 subd. 9.

Minimum increment of use:

- Original law: Earned sick and safe time may be used in the smallest increment of time tracked by the employer's payroll system, provided such increment is not more than four hours.
- Amended law: Earned sick and safe time may be used in the same increment of time for which employees are paid, provided an employer is not required to provide leave in less than 15-minute increments nor can the employer require use of earned sick and safe time in more than four-hour increments.

Requests for documentation:

The original law provided that employers may request documentation for ESST use exceeding three consecutive days, and outlined what types of documentation should be considered "reasonable" for each qualifying reason for use. The amendments clarify that:

- employers may make a request for documentation after three consecutive *scheduled work* days; and
- if documentation supporting the need for leave due to domestic abuse, sexual assault, or stalking cannot be obtained by the employee in a reasonable time or without added expense, then reasonable documentation may include a written statement from the employee indicating that they are using or have used ESST for this qualifying purpose.

Termination of employment and rehire:

The original law states that payout of accrued but unused ESST is not required upon an employee's separation from employment, but that it must be reinstated and available for use if the employee is rehired within 180 days. The amendments clarify that this reinstatement is not necessary if the employer elected to pay out unused time upon the employee's termination.

More generous employer policies:

The law currently states that nothing in the law should be construed to discourage employers from adopting or retaining earned sick and safe time policies that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements provided under the ESST law (§181.9448 subd. 1(a)). Effective January 1, 2025, the following is added to this section:

- All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required under §181.9446 of the ESST law for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in the ESST law (*except for §181.9446*).
- For paid leave accrued prior to January 1, 2024 (*the effective date of the ESST law*) for absences from work due to personal illness or injury, an employer may require an employee who uses such leave to follow the written notice and documentation requirements in the employer's applicable policy or applicable collective bargaining agreement as of December 31, 2023, in lieu of the requirements outlined in the ESST law (§181.9447 subd. 2 and 3), provided that an employer does not require an employee to use leave accrued on or after January 1, 2024, before using leave accrued prior to that date.

Wage statement requirements:

The original law required that, at the end of each pay period, employers report the amount of ESST hours accrued, available for use, and used during the pay period on an employee's earnings statement in accordance with MN Stat. §181.032.

The amendments remove this requirement from §181.032 and adds the following to the ESST law under §181-9447 subd. 10 (*additions in italics*):

- Employers must retain accurate records documenting hours worked by employees and ESST taken for 3 years, and in accordance with §177.30 of the Minnesota Fair Labor Standards Act. An employer must allow an employee to inspect records relating to that employee at a reasonable time and place.
- *At the end of each pay period, the employer must provide, in writing or electronically, information stating the employee's current amount of:*
  1) *earned sick and safe time hours available to the employee for use; and*
  2) *the number of earned sick and safe time hours used during the pay period.*

  Employers may choose a reasonable system for providing this information, including but not limited to listing information on or attached to each earnings statement or an electronic system where employees can access this information.
  - *An employer who chooses to provide this information by electronic means must provide employee access to an employer-owned computer during an employee's regular working hours to review and print.*
- An employer must allow an employee to inspect the records relating to that employee at a reasonable time and place.
- *Records must be kept for three years.*
- *All records required to be kept under this section must be readily available for inspection by the labor commissioner upon demand. The records must be either kept at the place where employees are working or kept in a manner that allows the employer to comply with this paragraph within 72 hours.*

Remedies:

HF5247 also amends MN Stat. §177.50 regarding enforcement:

- If an employer does not provide ESST or does not allow the use of ESST as required under the law, the employer is liable to all employees who were not provided or not allowed to use ESST for an amount equal to all ESST that should have been provided or could have been used, plus an additional equal amount as liquidated damages.

- If the employer does not possess records sufficient to determine the ESST an employee should have been provided, the employer is liable to the employee for an amount equal to 48 hours of ESST for each year ESST was not provided, plus an additional equal amount as liquidated damages.

New York Paid Sick Leave Amendment – Paid Prenatal Leave

On April 20 New York's legislature enacted the state budget for the 2025 fiscal year, which includes legislation implementing paid prenatal leave effective January 1, 2025.

The new law was written as an amendment to the state's paid sick leave law, and therefore applies to all private employers and their employees in New York.

Effective January 1, 2025:

- Employers must provide their employees 20 hours of "paid prenatal personal leave" per 52-week period.
  - This time is separate from and in addition to paid sick leave employees are entitled to each year (56 hours for employers with 100 or more employees, 40 hours for those with 99 or fewer).
  - While paid sick leave is accrued (unless the employer chooses to frontload), the 20 hours of prenatal leave must be provided "on or after" January 1, 2025, indicating that this time is available to an employee at commencement of employment.
- Leave may be taken for health care services received by an employee during pregnancy or related to their pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with their health care provider.
- Leave may be taken in hourly increments, and must be paid at the greater of the employee's regular rate of pay or the state's minimum wage.
- Unused leave is not required to be paid out upon separation from employment.

Note that, while the new law specifically outlines the points above and amends the sections of the Paid Sick Leave law pertaining to confidentiality, job reinstatement, and anti-retaliation to include reference to prenatal leave, it does not make changes to other sections such as if/when requests for supporting documentation are permissible, parameters around employee notice of need, or how existing company paid sick, PTO or leave policies may satisfy requirements. Updated guidance may address these open items, and may also help employers identify how this leave should be structured appropriately (for example, it may make sense to establish a bank of leave separate from accrued paid sick leave or PTO).

Employers are encouraged to monitor the New York Paid Sick Leave (and possibly Paid Family Leave) websites for updated information.

See additional impacts of the state budget below.

Washington Paid Sick Leave – Amendments

The governor of Washington recently signed legislation amending the state's paid sick leave law.

1) SB5793, signed March 28, makes the following changes effective January 1, 2025:

Reasons for Use

Currently, accrued time may be used:

1) for the employee's mental or physical health reasons, including illness, injury, or to obtain medical diagnosis or preventive care.
2) to provide care to a family member for mental or physical health reasons, including illness, injury, or to obtain a diagnosis or preventive care;
3) if the employee's workplace or their child's school or place of care has been closed for any health-related reason by order of a public official; and
4) if the employee must be absent from work for reasons that qualify for leave under the state's Domestic Violence Leave Act (DVLA).

These reasons for use are expanded to include closure of a child's school or place of care due to the declaration of an emergency by a local or state government or agency, or by the federal government.

Definition of Family Member

The definition of 'family member' is also expanded (*changes in blue*):

- Spouse or state registered domestic partner;
- Child of any age (including biological, adopted, or foster child, stepchild, child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, or a *child's spouse*);
- Parent (including biological, adoptive, de facto, or foster parent, stepparent, legal guardian of the employee or the employee's spouse or domestic partner, or a person who stood in loco parentis to the employee when the employee was a minor child);
- Grandparent;
- Grandchild;
- Sibling;
- *Any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. This does not include an individual who simply resides in the same home with no expectation that the employee care for the individual*.

2) In our August 31, 2023 Update we summarized SB5111, which amended the paid sick leave law so that certain construction workers who, as of their date of separation from employment, have not met their 90th day of eligibility for use of accrued time must be paid the balance of their accrued but unused sick leave at the end of the pay period following separation. This applied to workers covered under NAICS Code 23, but excluding Residential Building Construction Code 2361 effective January 1, 2024.

   On March 13 the governor signed SB5979, which immediately narrowed the group of workers to whom this provision pertains, defining 'construction worker' as a worker "who performed service, maintenance, or construction work on a jobsite, in the field or in a fabrication shop using the tools of the worker's trade or craft". The law defines 'construction industry employer' as an employer in the industry described in NAICS Code 23, but excluding Residential Building Construction Code 2361.

Other News

New York Accommodations and Leave Amendments

In addition to the paid prenatal leave requirements outlined above, New York's FY2025 budget also included the following legislation:

Paid Breaks for Nursing Employees

New York Labor Law Section 206-C requires all public and private employers to provide employees with "reasonable unpaid break time" to express breast milk for up to three years from childbirth, and to designate a clean and secure location for the employee to use for this purpose. Employers must provide employees with a written policy outlining employees' rights under the law at hire, annually, and upon an employee's return to work following the birth of a child, and are prohibited from discriminating or retaliating against any employee choosing to express breast milk in the workplace, or for making a request for accommodation.

Effective June 19, 2024, Part J of A8806-C/S8306-C amends the law so that an employee who chooses to express breast milk in the workplace is entitled to a 30 minute paid break each time the employee has a reasonable need to do so*, for up to three years following childbirth. The employee must be permitted to use existing paid break time or meal time for a break exceeding thirty minutes.

** Current guidance states that employees may take lactation breaks every three hours, but that the employer must accommodate more frequent breaks if needed.*

Employers are advised to check the New York State Department of Labor's (NYS DOL) Breastmilk Expression in the Workplace webpage for updates to the NYS DOL-issued policy and related guidance.

COVID-19 Sick Leave Repeal

Our March 20 Update included a summary of the Centers for Disease Control's updated guidance around COVID-19 and other respiratory viral illnesses, and what impact the change may have to New York's COVID-19 Sick Leave requirements.

As noted, the governor's budget proposal included a repeal of the COVID-19 Sick Leave law effective July 31, 2024. The enacted legislation (A8806-C/S8306-C, Part M) pushed this date by a year, so that employers must continue to provide this leave through July 1, 2025. (*See our March 20 Update and visit the state's website for more information.*)

Please contact your MMA account team members with specific questions about this or other Updates. View past Updates on the Absence, Disability & Life blog at https://mma-adl.com/blog/.