EVOLVING FMLA LAWS – 2026 STATE ROUND-UP

Written By David Ostrowsky

On February 5, 1993, former President Bill Clinton signed the Family and Medical Leave Act (FMLA) into law during a ceremony in the Rose Garden in Washington, DC. It was nothing short of groundbreaking. In the ensuing decades, the FMLA would enable tens of millions of American employees to enjoy job-protected 12-week leave to manage a wide range of personal situations, including the birth of a child, adoption or foster care placement, and medical care for either themselves or a relative. Employees were eligible for FMLA as long as they had worked for their employer for a minimum of 12 months, at least 1,250 hours over the prior 12 months, and worked at a location where the company employed at least 50 employees within 75 miles.

While the legislation was truly monumental—new parents could now take time off from their jobs to bond with their infant children while other employees could put aside work to tend to ailing relatives—there was one problem: While U.S. workers were guaranteed their same position upon returning from FMLA, they were not compensated during the leave. Naturally, many employees, particularly those of limited financial means, have been unable to take full advantage of FMLA, or in some cases, have had to forego it entirely.

However, the past decade has seen a groundswell of momentum among individual states pivoting towards paid FMLA programs. Currently, fourteen states and the District of Columbia have established comprehensive, mandatory state paid family leave programs. While every state has its own stipulations and unique eligibility periods, their respective programs are typically administered via a state-run social insurance fund, with premiums generated via required deductions on employee wages or employers paying a certain amount on the employee's behalf. (The one exception is New York, which provides paid leave using a mandatory private insurance system whereby the state requires employers to purchase paid family and medical leave plans from a private insurance market where insurance companies, including the state-run New York Insurance Fund, offer coverage.)

Mandatory programs require all covered employers in a state to participate, and all but one employs a social insurance policy design that funds these benefits through pooled payroll taxes on employees and/or employers. Meanwhile, nine states have adopted voluntary paid family leave programs whereby employers have the option to purchase a private insurance product to offer paid leave benefits to their workers, but they are not required to do so. Voluntary programs permit businesses to purchase a private insurance product to offer paid leave benefits to their workers, but they are not required to do so. Subsequently, access to benefits under voluntary programs depends on whether an employer has elected to participate.

The movement of individual states providing greater protection for workers on medical leave has only intensified over the first half of 2026 as states such as Delaware, Maine, Minnesota, and Virginia have introduced new PFML (Paid Family Medical Leave) programs, while Colorado, Washington, and Rhode Island have bolstered current laws to further empower employees.

Some of the highlights of those programs include:

Delaware – Effective January 1, 2026, Delaware Paid Leave covers employers with 10 or more paid employees with payments made from insurance premiums. Delaware Paid Leave provides wage-replacement benefits to workers who need time away from their jobs due to a.) Medical Leave; b.) Family Caregiver Leave; c.) Parental Leave; and d.) Qualified Exigency Leave.

**Under the Healthy Delaware Families Act, employers with 10-24 employees are only required to provide parental leave, while employers with 25 or more employees must provide full coverage.

Maine – Effective May 1, 2026, Maine's PFML program offers up to 12 weeks of paid time off for family leave, medical leave, leave to deal with the transition of a family member's military deployment, or leave to stay safe after abuse or violence. Both employers and employees contribute to the paid family and medical leave fund.

Minnesota – Effective January 1, 2026, the Minnesota Paid Leave Act provides most Minnesota workers with up to 12 weeks of paid time off per year, although expecting mothers can take up to 20 weeks, combining medical and bonding leave to recover and spend time with their newborn child. Claims for medical leave can include illness, injury, as well as mental health conditions and recovering from pregnancy. Bonding leave is available to both parents and doesn't have to be taken at the same time, as long as the leave is taken before the child's first birthday. Minnesota's paid leave plan is funded by a payroll tax of 0.88 percent of employees' wages, which is split evenly between employee and employer, though business owners can choose to cover more of the employee's tax burden if they would like.

Virginia – This past April, Virginia established a new PFML program that, beginning in 2028, will guarantee working Virginians have the right to take up to 12 weeks of paid time off for the following life events: caring for a child (birth, adoption, foster care); recovering from a serious health condition; caring for a family member recovering from a serious health condition; military family needs; and domestic violence, sexual assault or stalking. The program will be administered by the Virginia Employment Commission (VEC), and it will be funded by a small payroll contribution shared by covered employers and employees. Workers will be able to start taking leave and receiving benefits on December 1, 2028; employees and employers will start making contributions to the program on April 1, 2028.

Colorado – Effective January 1, 2026, Colorado's paid family and medical leave (FAMLI) program was amended to reduce the premiums and add an extra twelve weeks for employees who are parents of a child receiving inpatient treatment in neonatal intensive care. The FAMLI premium will be reduced from 0.9 percent of an employee's wages to 0.88 percent for 2026. For 2027 and each year thereafter, the state's FAMLI director will set the premium rate annually. Neonatal care coverage is in addition to other leave that may be available under FAMLI. However, neonatal care leave is limited to 12 weeks of leave per infant.

Washington – Effective January 1, 2026, Washington's PFML Act underwent significant changes, particularly regarding the determination of when job protection applies. Some of the core changes included a.) reduced weekly claim minimum; b.) expanded job protection; and c.) FMLA stacking prevention.

Rhode Island – Effective January 1, 2026, qualifying workers will be eligible for a full eight weeks of paid family leave (it had previously been seven weeks), with the income replacement calculated by a formula based on a worker's highest quarter of earnings. Also, the wage replacement rate—how much workers are paid when they take leave—is currently at 60% of wages but will reportedly rise to 70% in 2027 and 75% in 2028.

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From a compliance perspective, employers, particularly those whose workforces spread across multiple states, now face a litany of new issues to monitor. After all, most of these paid family medical leave laws will apply even if an employer has just one employee working in a state with a PFML law. While of course every state's program has unique characteristics, commonalities do exist among them. As such, the following overarching guidelines may be helpful for both employers and sponsors of self-funded health plans in navigating a new employment law landscape.

- Employers need to recognize that they are responsible for notifying employees of their right to take leave. More specifically, once an employer receives a request for leave or becomes aware of a potential need for leave, the employer must advise the employee of their eligibility and the required procedures within five business days of the request.
- Employers need to remember that employees get to elect whether they will take continuous or reduced-schedule leave, consistent with their medical needs and provided the employee and employer can reasonably agree on a schedule.
- Employers need to ensure they properly manage how various state PFML laws exist alongside the federal FMLA statute and their internal paid time off (PTO) policies.
- Employers with workers stationed in multiple states with different PFML laws need to remember that those respective laws could have different definitions of what constitutes "family," contribution rates, and eligibility parameters, etc. ■

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