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Minnesota's New Leave Laws

On May 25, 2023, Minnesota became the 12th state to provide paid family and medical leave (“PFML”). Starting January 1, 2026, eligible employees will be able to apply for up to 20 weeks of paid leave with the Minnesota Department of Employment and Economic Development (“DEED”).

In addition, beginning January 1, 2024, most employees that work within Minnesota will become eligible for a new paid sick leave benefit under the Minnesota Earned Sick and Safe Time Leave Law (“ESST”). ESST will supplant the prior Minnesota paid leave law, which allowed an employee the option to use their own personal sick leave benefits for related purposes and will sunset effective December 31, 2023.

■ Minnesota Paid Family and Medical Leave Law

Covered Employers

Any employer with at least one employee working within Minnesota must provide PFML. This includes most private and public employers such as school districts and city/county public entities. Self-employed individuals and independent contractors may opt into the program. Seasonal hospitality employees (i.e., those that work less than 150 hours per year) are not eligible for PFML benefits.

Eligible Employees

Eligible employees have work and wage requirements. Eligible employees are those persons that either:

- Work at least 50% of their time within Minnesota;



- Do some of their work in Minnesota and reside within Minnesota for at least 50% of the calendar year; or
- Neither work or reside in Minnesota but the place where their work is directed from is located in Minnesota.

In addition, Minnesota employees must earn at least \$3,500 in wages (from a single employer or multiple employers) within a period of 12 consecutive months prior to applying for paid leave.

Types of Leaves

The law classifies eligible leave into two categories (i) family leave, and (ii) other leave, with each providing up to 12 weeks of leave in a benefit period, although an employee may take up to 20 weeks of combined leave in a 12-month benefit period. The qualifying leave events are:

Family leave:

- Serious health condition for the employee.
- Pregnancy and parental leave, including bonding with a new biological, adopted or foster child.
- Care of family member's or military member's serious health condition.

Other leave:

- To care for self or family member's domestic assault, sexual assault, and/or stalking (includes legal assistance and household relocation).
- Qualifying exigencies, such as imminent departure of family member to active military duty.

To be eligible, the qualifying event must have an expected duration of at least seven days (except for bonding with a new child) and will be considered to be taken consecutively unless the event is identified as intermittent on the PFML application.

PFML defines "family member" as the employee's:

- spouse, domestic partner, child (including in loco parentis, legal guardian, and "de facto" parent), parent/legal guardian, sibling, grandparent (including spouse's grandparent), grandchild, son/daughter-in-law; and
- an individual who has a relationship with the applicant that creates an expectation and reliance that the applicant cares for the individual, whether or not the applicant and the individual reside together.

Additional guidance will be necessary on how to properly test or confirm the existence of such a relationship. Presumably, this broad definition incorporates leave for such persons as domestic partners, which is something that FMLA does not cover.

Contributions and Benefits

Starting mid-2024, covered employers will commence submitting wage detail reports to DEED. These reports will outline the quarterly wages paid to PFML eligible employee and their hours worked.

In 2025, employers will be required to provide notices to employees that outline the PFML, including eligibility requirements and how to request leave. DEED will provide language for these notices closer to their distribution deadline.

Starting January 1, 2026, employers will contribute 0.7% of employee wages, although employers can opt to pay the entire amount or elect to have employees pay up to 50% of the required premiums.

The PFML benefit is based upon a percentage of the employee's wages and the state's average weekly wage. Workers can expect to receive:

- 90% of their weekly wages that are less than or equal to 50% of the state's average weekly wage);
- 66% of their weekly wages that is greater than 50% of the state's average weekly wage but less than 100% of the state average weekly wage; or
- 55% of their weekly wages that is more than 100% of the state average weekly wages.

An employer cannot require that the employee use their accrued PTO, sick and/or vacation time at the same time as PFML or instead of PFML. Employees can however choose to use their accrued paid time off ("PTO"), sick and/or vacation time instead of the PFML and the PFML protections will still be in effect for the individual. An employer can choose to provide supplemental benefit payments to compensate employees to their normal compensation amounts.

Starting July 1, 2025, employers will be able to substitute state-approved private plans instead of participating in the state program. Additional guidance on the process will be forthcoming but private plans are expected to include a surety bond.

Notice Requirements and Retaliation Prohibition

Employers are required to post a notice in the workplace about the PFML in both English and the primary language of 5 or more employees. Employers are also required to provide newly hired employees with written notice on their expected PFML benefit amount and instructions on how to apply for the benefits. DEED is expected to produce a template for employers.

Employees are required to provide notice to the employer at least 30 days in advance of their intent to apply for a foreseeable leave or as soon as practicable for an unforeseeable leave. The employer can still require the employee to follow their normal call-in/reporting procedures if they do not unnecessarily interfere with the employee's ability to apply for the leave.

Employers are prohibited from retaliating against employees for utilizing their paid leave. Employees that were hired at least 90 days prior to using their leave have the right to be reinstated with their employer into either their same job or an equivalent job. Similar to FMLA, employees retain access to their health insurance while on paid leave.

■ Minnesota's Earned Sick and Safe Time Leave

As mentioned above, beginning January 1, 2024, most employees that work within Minnesota will become eligible for a new paid sick leave benefit under the ESST. It should be noted that the cities of Bloomington, Duluth, Minneapolis, and St. Paul already have their own paid leave laws that are like ESST. If there is an overlap between an existing paid leave law and ESST, the more protective law is required to apply.

Covered Employers and Employees

Any employer with employees that work within Minnesota is subject to ESST.



Most employees that work at least 80 hours in a year in Minnesota will be eligible for this paid sick leave benefit. However, ESST does provide eligibility exceptions for some persons, such as:

- Independent contractors,
- Federal employees,
- Individuals employed by an air carrier, such as flight deck and cabin crew members, and
- Building and construction employees that are represented by a trade labor organization or union that has submitted a valid waiver of the requirements due to similar paid leave already present in their existing collective bargaining agreement.

Staffing agencies are responsible for providing ESST to their leased employees, not the employer that has contracted for their services.

An employee that is rehired within 180 days of termination must regain their ESST accrued but unpaid balance that existed prior to their departure unless the ESST accrued but unpaid hours were paid to them upon their termination. Employees that are terminated due to a merger and acquisition will retain their accrued but unpaid ESST balance if they are hired by the new owners within 30 days of the ownership change.

Leave Benefit

Starting January 1, 2024, for every 30 hours that an eligible employee works, including overtime hours if the employee is eligible for such time, they earn an hour of paid sick leave, up to 48 hours per year. Any unused and accrued benefits must be carried over into the next year up to an 80-hour maximum. An employer may choose to be more generous than the law requires and allow for additional time to accrue but they cannot choose an amount lesser than what ESST provides.

An employer can also choose to frontload the 48 hours per year instead of having employees accrue the amounts over time. Therefore, the employee would immediately have access to their entire ESST benefit as of the first day of the specified year. If an employer uses the frontload option, the carryover requirement does not apply but an employer may choose to pay out any unused amounts.

Lastly, an employer can choose a different benefit method (e.g., accrual or frontload) for their part-time employees compared to their full-time employees.

Reasons for Leave

Eligible employees will be able to request the paid leave benefit for the following reasons:

- Their own or a family member's mental or physical illness, treatment or preventive care need;
- Their own or a family members domestic abuse, sexual assault or stalking;
- Workplace closure due to weather or public emergency, including closure of a family member's school or care facility for the same reasons;
- Health authority or professional's determination that the employee or their family member is at risk of infecting others with a communicable disease.

The term “family member” under the Law includes the following persons:

- Child (biological, foster child, adult child, legal ward, of whom employee is legal guardian or in loco parentis);
- Spouse or registered domestic partner;
- Sibling, step sibling or foster sibling;
- Biological, adoptive or foster parent, stepparent or person who was loco parentis for employee when they were a minor child;
- Grandchild, foster grandchild or step grandchild;
- Grandparent or step grandparent;
- Child of a sibling of the employee (e.g., employee’s niece/nephew);
- Sibling of the employee’s parents (e.g., employee’s aunt/uncle);
- Child-in-law or sibling-in-law;
- Any other family members listed above of an employee’s spouse or registered domestic partner;
- Any other individual related by blood or whose close association with the employee is equivalent to a family relationship; and
- One person designated on an annual basis by the employee.

Notice and Disclosure Requirements

At the end of each payroll period, employers must provide a tally to each employee of the ESST hours that they have accrued, currently available, and those used. This information must be reported in the employees’ earnings statements.

By January 1, 2024, employers must provide their existing employees with notice of their ESST rights and benefits. This notice will be due to new hires at the start of their employment. The notice must be made available in English and other language if the employee’s primary language is not English. The employer must also include this notice in their employee handbook if the employer provides one to employees.

Employer Action

PFML

Employers should begin to determine if they have employees that will be eligible for this future leave benefit. Creating a process to track eligibility would be prudent and to develop a process to provide the required written notice to new hires.

Employers may want to review their existing leave policies and handbooks to see if there is any potential overlap with the new requirements. This may be especially important for multi-state employers that have attempted to create uniform leave policies to satisfy the different leave laws in these jurisdictions.

DEED is currently drafting frequently asked questions and additional guidance for employers and employees. Employers may want to sign up for their newsletters to keep up with the most recent updates.



ESST

Employers should take the following steps now:

- Update their existing payroll systems with the ability to calculate ESST time as it is accrued and used. Further, the system should be updated so that payroll stubs provide an ongoing balance for employees of what ESST time is earned, used and still available.
- Develop rehire and termination processes to track the termination reason and the amount of time that has lapsed since the date of termination and rehire. It may be prudent to incorporate information on the status of their ESST benefits (e.g., either returned to them or ineligible for return) in correspondence to the rehired employee.
- For employees that work in Minneapolis and are subject to the Minneapolis Wage Theft Prevention Ordinance, include ESST benefits in their pre-hire notices for new hires and any compensation change notices for existing employees.
- Modify handbooks to incorporate the required ESST language. Distribute the required notice to new hires and existing employees.
- Update existing leave policies to see if they are already sufficient to cover ESST requirements or if additional benefits must be provided. Identify any type of concurrent leaves that may apply with ESST (e.g., Family Medical Leave Act (“FMLA”) and ESST).
- Educate managers on the ESST requirements and the proper process for employees to request such leave.