

EMPLOYER FAQs AS MARYLAND BECOMES 10TH STATE TO PROVIDE PAID FAMILY LEAVE

Insights
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Maryland will soon be the tenth state to offer paid family leave to employees, continuing a trend that is expected to roll across the country in the next few years. This comes after the Maryland legislature's April 9 vote to override Governor Hogan's veto of the legislation. Under the new law, eligible employees will receive up to a weekly maximum of \$1,000 for up to 12 weeks of leave on an annual basis. Additionally, employees taking leave will receive job protection for taking advantage of the paid leave benefits. The payroll tax to fund the program will take effect on October 1, 2023, and paid leave will be available on January 1, 2025. Here are a series of FAQs to assist employers with your compliance obligations.

Which employers are affected?

Any entity that employs at least one individual in Maryland across the public and private sectors.

Who can receive paid leave?

An employee who has worked at least 680 hours over the 12-month period immediately preceding the date on which leave is to begin is eligible to receive paid leave. This applies to part-time and full-time employees.

What are the benefits?

There are two main benefits: paid leave and job protection.

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- **Paid leave** – The law offers up to 12 weeks annually of paid time off to take care of a new child, one’s own medical problems, or a family member’s serious illness or military deployment. A parent could get up to 24 weeks if medical leave is needed during pregnancy, followed by parental leave after childbirth.
- **Job protection** – Employers cannot discharge, demote, or otherwise discriminate or take adverse action against an individual who has filed for, applied for, or received benefits under the new law, inquired about rights and responsibilities under the new law, communicated an intent to file a claim, complaint, or appeal under the new law, or testified or intends to testify in a proceeding under the new law.

How will the benefit be funded?

This paid leave will be funded for a payroll tax that will be split between employees and employers (with 15 or more employees). The payroll tax will go into effect on October 1, 2023, at a yet to be determined rate. The tax collected will fund the Family and Medical Leave Insurance Fund.

How will employees receive the benefit?

Eligible employees have to submit an application for benefits to the administering agency. This is similar to the process for receiving unemployment benefits.

How much will employees receive?

The benefits will replace 90% of weekly wages for the lowest-income workers and a smaller percentage for higher-paid workers, and are capped at \$1,000 per week.

What if the employer already offers greater paid leave?

If the employer already offers greater benefits through a collective bargaining agreement or an existing policy, the new law does not diminish the employer’s existing obligations.

The employee has to exhaust all employer-provided leave before receiving benefits under the new law.

Are there any exemptions for employers?

If an employer satisfies the requirements of the new law through a private employer plan consisting of employer-provided benefits, insurance, or a combination of the two, and if the private employer plan is offered to all eligible employees, and meets or exceeds the benefits under the new law, the employer is exempted from the requirements of this new law. Employers will have to submit their private employer plan to the Maryland Department of Labor for approval.

Is there a notice requirement?

Yes, employers must provide written notice to each employee of the rights and duties under this law. This includes the right of an eligible employee to receive benefits under the new law, the procedures for filing a claim for benefits, the employee's responsibilities during the leave, the employee's right to file a complaint for alleged violations, the employee's right to job protection, and a description of prohibited acts and related penalties.

Will there be a poster to satisfy posting requirements?

The Maryland Department of Labor will likely roll out a suggested poster in the near future.

When does the law go into effect?

The payroll tax will go into effect on October 1, 2023 and paid leave will be available starting on January 1, 2025.

What steps must employers take?

There are three basic steps employers should take in the near future.

- **Review and Update Current Policies** – Take a look at your current policies. If you offer greater benefits than the new law provides, your analysis pretty much ends here. If you do not, determine whether you would like to make any changes to the policies to claim exemption from the new law, with enough time to submit your policies to the Maryland Department of Labor before the Family and Medical Leave Insurance Fund payroll tax goes into effect on October 1, 2023.
- **Follow Developments** – If your policies are such that you will be participating in the Family and Medical Leave Insurance Fund, follow the Maryland Department of Labor

for information on the payroll tax, the exact amount, and the exact employer-employee split.

- **Be Ready to Take Action** – If your policies are such that you will be participating in the Family and Medical Leave Insurance Fund, be ready to implement the payroll tax on October 1, 2023 and timely give required notice to your employees regarding their benefits, rights, and obligations. If your policies are such that you will not be participating in the Fund, be ready to submit your policies to the Maryland Department of Labor.

With the payroll tax going into effect on October 1, 2023, you have plenty of time to complete a review of your current policies and consult with your Fisher Phillips attorneys to determine the right course of action. For more information about compliance with the new law, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Washington, D.C. metro office](#). Make sure you are subscribed to [Fisher Phillips' Insight system](#) to receive the most up-to-date information.