

GET READY! MICHIGAN'S PAID MEDICAL LEAVE ACT WILL BE HERE BEFORE YOU KNOW IT

Insights
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In one of his last acts in office, former Governor Rick Snyder signed Michigan's Paid Medical Leave Act into law, which will for the first time require employers in the state to provide paid sick leave to their workforces. Although the statute was just signed on December 14, the effective date of the new law is right around the corner: March 29, 2019. What do employers need to know about this significant development?

EXECUTIVE SUMMARY: WHAT DOES THE LAW REQUIRE?

The Michigan Paid Medical Leave Act (MPMLA) will require covered employers (those entities employing 50 or more individuals) to provide eligible employees an opportunity to accrue paid medical leave at the rate of at least one hour of leave for every 35 hours worked, for up to 40 hours per benefit year.

WHICH EMPLOYEES ARE ELIGIBLE?

Eligible employees include all individuals (full-time and part-time) who provide service to the employer and for whom the employer is required to withhold federal income taxes. There are, however, a number of specific exemptions to this rule. For example, those employees considered overtime exempt under FLSA 13(a) (i.e., "white collar" exempted), seasonal employees employed for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer, and those covered by a collective bargaining agreement.

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Sarah Moore

Of Counsel

440.740.2145

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It is important for you to identify who your eligible employees are under MPMLA because of the number of specific exemptions under the law. For example, employees who work primarily out of state may qualify for an exemption, while others working out of state may be covered by MPMLA.

FOR WHAT REASONS CAN LEAVE BE TAKEN?

Paid time may be taken for physical or mental illness, injury; health condition; medical diagnosis, care or treatment; or preventative care, for either the employee or a member of the employee's family. The paid leave may also be taken by the employee if they or a family member are the victim of domestic violence or sexual assault; to care for a child whose school or care facility has been closed by order of a public official; for closure of the employee's place of business by order of a public official; or due to exposure to communicable disease that could jeopardize the health of others. Other reasons include: relocation; to meet with an attorney; to participate in a lawsuit involving domestic violence or sexual assault; or to receive services from a victim services organization.

WHO IS CONSIDERED A "FAMILY MEMBER" UNDER THE LAW?

The MPMLA defines family member as including biological or adopted/foster children; stepchildren or legal wards or to whom the employee stands in loco parentis; a parent (biological, adoptive, foster, step, legal guardian, or person who stood in loco parentis when the employee was a minor child); a spouse; grandparents; siblings (biological, foster, adopted); and any person to whom the employee is married under the laws of any state.

WHAT IS THE "BENEFIT YEAR" UNDER THE LAW?

The relevant benefit year under the MPMLA may be different for eligible employees; it is defined as any consecutive 12-month period used to calculate an eligible employee's benefits.

IS FRONT LOADING PERMISSIBLE?

Under the new law, front loading of the paid leave will be allowed. That said, the timing of front loading is not as clear

under the law, and we recommend reviewing the issue with an attorney before implementing any such system.

HOW MUCH LEAVE IS CARRIED OVER EACH YEAR?

Carryover of up to 40 hours of unused accrued paid time from one benefit year to another is mandated under MPMLA. That said, you may cap an employee's use of time at 40 hours per year regardless of the carry over provision.

WHEN CAN EMPLOYEES USE ACCRUED TIME?

Eligible employees must be allowed the ability to use time as it is accrued. Eligible employees hired after March 29 will begin to accrue time on day one of their employment, but you can require them to wait until the 90th calendar date after commencing employment to begin to use their accrued time. You must permit eligible employees to use their accrued time in one-hour increments, unless you have a written policy in an employee handbook that provides longer-use increments (e.g. half- or full-day increments).

IS THERE ANYTHING ELSE TO KNOW?

- While you may offer a more generous paid leave policy, there is no legal obligation to do so.
- Although the law suggests recordkeeping for one year, we recommend retaining records associated with MPMLA for at least three years given that this is a new law.
- As written, the law appears to apply to any employer doing business in Michigan for employees working in Michigan, with the exception of the federal government and other states. Any employer outside of Michigan with workers in Michigan fall under the MPMLA requirements for its Michigan employees.

WHAT SHOULD EMPLOYERS DO NOW?

You should work with an attorney to update your employee handbooks in preparation for the MPMLA taking effect in just a few short weeks. In addition, those handling your benefits should examine how to prepare for the recordkeeping that the MPMLA requires.

You will also need to display a poster in a conspicuous area that contains specific information about the MPMLA. While no private right of action exists for noncompliance with the MPMLA, employees may file complaints with the State of Michigan Department of Licensing and Regulatory Affairs within six months of a violation. The agency will attempt informal resolution first, but may impose penalties (up to \$1,000) and award payment for non-compliant employers.

If you have any questions, please contact your Fisher Phillips attorney or the authors of this alert.

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