

## STATE PAID FAMILY LEAVE LAWS

Changes in state and municipal paid family leave and paid sick leave laws have been rampant across the country. Many state and local governments are stepping in because of the lack of federal action. The Tax Cuts and Jobs Act of 2017 includes a tax credit for employers that offer paid family leave benefits; however, many employers will not qualify for the tax credit because of their plan rules.

It has become increasingly difficult for multi-state employers to track all the potential paid family and sick leave rules that affect their employees. Mercer's 2018 Absence and Disability Management Survey indicates that 64 percent of respondents have had to devote additional resources to handle leaves of absence because of the sheer number of regulations.

The Mercer survey asked employers how they approach complying with state and local leave laws:

- 65 percent track and comply with the laws and regulations that apply to their locations

- 38 percent use a third-party vendor to help manage these local rules

Some employers have decided to change their paid leave policies to comply with state or local paid leave laws. Twelve percent of survey respondents have a national leave policy that complies with the most generous existing leave laws that impact their organization.

This *Benefit Advisor*:

- Reviews how these different laws may affect employers
- Provides tips on how to manage leave laws internally
- Develops steps for complying with Michigan's Paid Medical Leave Act

Until the federal government acts, employers need to identify the state or local laws that apply to their employees and devote resources to complying with those laws.



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## OVERVIEW ON HOW DIFFERENCES IN LAWS MAY AFFECT EMPLOYERS

State and local leave laws often have different provisions. Some employers offer a national leave policy that complies with the most generous state or local law that impacts their employees. However, this approach can be costly.

Most employers comply with the paid leave laws only in locations they have employees. Any time they hire a new employee, employers need to make sure to check paid leave laws in the area.

To help assure you are complying with all pertinent regulations, create a grid of all the states where you have employees and check the leave laws. Keep all the states you have employees on your grid, because a state may pass a new paid family leave law. It will serve as a reminder to keep an eye out for activity in that state. On the grid, list all applicable states and then have rows for the following common differences in these types of laws:

- **Eligible employer** – some laws will limit eligibility to employers that are subject to the FMLA or possibly exclude governmental employers.
- **Eligible employees** – these laws define which employees you have to offer paid leave differently. Some exclude part-time employees, others do not.
- **Required benefit** – these laws are all different. In many, eligible employees may accrue paid medical leave based on hours worked. For example, employees may earn an hour

of paid leave for every 30 or 40 hours worked.

- **Eligible family members** – most of these laws allow paid leave for the serious health condition of a family member, but they may have different definitions of who is an eligible family member.
- **Eligible reasons for leave** – some state laws mirror the FMLA reasons for paid leave; other state laws allow additional reasons for a person to take paid leave. For example, some state laws allow paid leave to attend a child’s school activities.
- **Limitations** – most of these laws have caps on the amount of paid leave you must provide.
- **Substitutions** - in some cases, state laws will recognize an employer’s paid time off policies as meeting the requirements if they are equal to or more generous than state requirements.
- **Funding** - employers fund many of the paid leave benefits. In some states, such as New York, the benefits are funded through an employee payroll tax.
- **Required documents** – the documents you can request from employees to prove they are taking paid leave vary. Some state laws require you to retain these records.
- **Miscellaneous provisions** - leave a place to note odd provisions in each state law.



Once you complete your state law grid, you have a good resource to build a process for managing state leave laws. You should also build a similar chart for paid sick leave at a municipal or local level. This is a bit harder because some of these laws are written to apply to cities and others might apply to counties. For example, both Cook County, Illinois, and New York City have sick leave laws. You need to identify the county or city regulations that affect your work locations.

How do you identify these laws? HR knowledge products, such as ThinkHR, likely summarize them. You can also ask legal counsel or purchase software to help you understand each law’s requirements. For example, the Reed Group offers a software product that tracks state and municipal leave laws. This software can be a worthwhile

investment to keep you abreast of all state and local leave laws.

Employers with employees scattered across the country may want to consider outsourcing leave

of absence management. Be sure your outsourcing vendor monitors state and local paid leave laws.

## TIPS ON HOW TO MANAGE LEAVE LAWS INTERNALLY

Once you have a grid of all the state and local laws that affect your employees, you need to figure out how to integrate these provisions into your leave of absence management process. This process can get difficult, especially if your organization is

decentralized. On the other hand, with a decentralized process, a location needs to focus only on the leave laws and policies that affect that area.

The key is to integrate each law that affects your employees into your leave management process. You will likely use your HRIS or even your payroll system as part of the process. After you have identified state or local laws that apply, determine the steps you need to take to comply with them:



- Do you have to withhold contributions from an employee's pay? For example, New York State's paid family leave is funded through employee payroll contributions. If this is the case, contributions should be set up through your payroll vendor. In addition, these New York contributions must be used to pay a New York paid family leave insurance carrier (in many cases, this will be your disability carrier)
- For which employees do you have to accrue paid family leave hours? For those types of policies, you need to work with your payroll vendor to determine how to track accrued hours. If there is a maximum on hours accrued, make sure to account for it. Also figure out how to account for any rollover of accrued hours the law requires.
- Decide whether you want to create a code for ineligible employees. For example,

employees working 20 or fewer hours a week are not eligible for the state leave benefit. Can you create a code so that when employees need time off you can tell immediately whether they are eligible for state or local leave benefits?

You should then look at your process for handling time-off requests. In most organizations, a request for three or more days off because of a medical condition triggers an employer to send

FMLA documentation. A request for extended time off for a medical condition can trigger the short-term disability claim process. However, some of these paid leave laws will apply to any eligible leave request. In some cases, any time-off request needs to trigger a look at possible state or local paid leave regulations. You need to look at how your organization handles time off requests and determine the best way to comply with local or state laws.

You should also integrate any state leave law that applies. For this you need to review each law:

- Is a notice required when you grant paid leave? If so, make sure you have a note to add it to the leave of absence communication package that you send to the employee.
- Is there a claim process to apply for benefits under the state paid leave law? If so, include that claim process in your employee communications.

- Are required documents different from those used in the FMLA or disability claim process? If so, make sure to note this for any employee eligible for the state paid family leave law.
- Consider adding leave of absence communications explaining state leave laws, such as directions on how to make a claim. You could include simple statements confirming whether the employee qualifies for the paid family leave benefit. For example, in Michigan, 40 or more hours of paid time off complies with state law. You may want to add that to communications. For example, you may add a statement because our organization offers X number of PTO days, we comply with the Michigan Paid Medical Leave Act.

The fact is managing all these separate leave law possibilities takes an eye for detail. HR team members that manage these leaves need the time to sort through all the details. Their training should include an explanation of all your internal leave rules as well as state and local laws. Also make sure your team follows the absence management process consistently.

### STEPS FOR COMPLYING WITH MICHIGAN'S PAID MEDICAL LEAVE ACT

Michigan employers are now facing compliance with the Michigan Paid Medical Leave Act. The Michigan Attorney General and possibly the Michigan Supreme Court will address the constitutionality of amendments

made to this law. First, employers need to determine whether this law even applies to them. It applies to any employer subject to the Family Medical Leave Act (FMLA) that is not specifically excluded in the law. The Michigan law does specifically exclude the United States government, other states or political subdivisions of other states. The law is effective as of March 29, 2019. The Michigan Department of Licensing and Regulatory Affairs (LARA) recently released FAQs related to this law. The FAQs can be found at <http://www.wnj.com/Publications/State-Issues-Paid-Medical-Leave-Act-and-Workforce>.

Unless your organization is excluded, you will need to comply. If you already offer employees 40 hours of paid time off (PTO) each benefit year, you are complying with the law. PTO can include, but is not limited to, paid vacation, days, paid personal days and paid time off. However, it is a good idea to ask a local employment attorney to review your PTO policy to make sure it complies with state law.

If you don't offer all employees a minimum of 40 hours of PTO a year, you will need to delve into this law in more detail. First, you need to identify the classes of employees that do not have 40 hours of PTO during the year. Does the law specifically exclude any of those employees? A detailed list of ineligible employees can be found at [http://www.legislature.mi.gov/\(S\(1vf2rtego-11zmxj31dqwfhn1\)\)/mileg.aspx?page=GetObject&objectname=mcl-Act-338-of-2018](http://www.legislature.mi.gov/(S(1vf2rtego-11zmxj31dqwfhn1))/mileg.aspx?page=GetObject&objectname=mcl-Act-338-of-2018).



Once you exclude employees that already qualify for 40 hours of PTO and the ones the law specifically excludes, you will need to find a way to class the remaining employees so that you can monitor and comply with this law. This will be very specific to your payroll system or HRIS. You will need a way to identify these employees so that they can accrue hours and receive paid family leave.

The accrual schedule is one hour of paid medical leave for every 35 hours worked. The leave is capped at 40 hours each benefit year. Your organization can designate the benefit year. The benefit year must be a consecutive 12-month period. If you offer all eligible employees 40 hours of paid family leave as of the beginning of the benefit year or when an employee is eligible, then there is no need to accrue hours. If your organization experiences high turnover, you will likely want to accrue hours, rather than just offering 40 hours up front.

If you accrue hours, you must rollover any unused accrued paid leave at the end of the benefit year into the next year. The employee is limited to 40 hours of paid family leave time during a benefit year. The rollover simply allows the employee to start the benefit year with whatever accrued hours are rolled over.

Once you have created a process for accruing hours, you need to consider how employees will take paid family leave in your organization. It probably makes sense for them to use your current process for requesting time off. In addition,

you will need to consider how you can access accrued time off to let employees know whether they have any time off remaining for paid family leave. The allowable reasons for Michigan Paid Medical Leave listed below are not the same as those allowable under FMLA leave:

- An employee's serious health condition (including mental health) and preventive care visits
- An eligible family member's serious health condition (including mental health) and for preventive care visits
- If the employee or eligible family member is a victim of domestic violence or sexual assault
- If a public health official closes an eligible employee's primary workplace because of a public health emergency.
- If an employee needs to care for a child because the school or place of care is closed due to a public health emergency.
- If an employee or family member contracts a communicable disease and must stay isolated to avoid jeopardizing the health of the community.

The list of family members employees can take leave to care for under the Michigan Paid Medical Leave is different from the FMLA list as follows:

- A biological, adopted or foster child; a step child or legal ward or a child for whom the employee acts as a parent

- A biological, adoptive or foster parent; a step parent or legal guardian of an eligible employee or a spouse. Anyone who acted as a parent when the eligible employee was a child.
- A legally wed spouse
- A grandparent
- A grandchild
- A biological, adopted or foster sibling

You should amend your time off policy to comply with the Michigan Paid Medical Leave Act. Under this act, employees cannot use accrued leave until they've been employed for 90 days. You must give employee 3 days to provide documentation proving that time off was for a Michigan paid leave reason. Employees can take paid leave in one-hour increments unless your policy has a different amount for leave purposes.

Finally, communication is important for all employees. The media covered the process for passing and amending this law. Many employees may assume this time off is over and above the PTO time you already provide. You need to explain that employees with at least 40 hours of PTO will not receive any additional paid time off under the Michigan paid medical leave law.

Employees that are new to the benefit will need more information. You will need to explain your leave policies. They will need to understand the accrual formula and call-in procedures. You will need to define when paid leave can be used and for which family members. You will also need to provide the details on required documentation and other provisions under your leave policy.

The state law requires employers to post a notice of the details of Michigan paid family leave by March 29, 2019. You can find a copy of the notice at <http://www.wnj.com/Publications/State-Issues-Paid-Medical-Leave-Act-and-Workforce>.

The law requires employers to retain records related to compliance with the Michigan Paid Medical Leave Law for at least one year.

### CONCLUDING THOUGHTS

The Michigan law highlights how complex it will be to comply with just one state's paid family leave law. Employers with employees in multiple states need to be vigilant. Many states are passing paid leave laws and, in some cases, local governments are also requiring paid sick time.

It is becoming increasingly difficult to manage leaves of absence with so many state and local laws. Many employers in multi-state environments outsource leaves of absence solely to assure they are complying with state and local laws.

If outsourcing is not an option, make sure your organization devotes the necessary time and resources to managing leaves of absence efficiently. It takes a team effort to ensure you are meeting all requirements when you manage the process internally. MMA



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