

New Paid Family Leave Laws Sprout in Maryland, District of Columbia, Virginia Region

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Both Maryland and Virginia have joined the District of Columbia in enacting laws relating to paid family and medical leave for private-sector workers.

Following in the footsteps of the District of Columbia, the Maryland law will create a mandatory statewide benefit that will be funded by payroll taxes. In contrast, the Virginia law will create a voluntary benefit program whereby employers may choose to purchase insurance plans to provide paid family and medical leave benefits to employees if they so wish.

Employers across the Washington Metropolitan Region should take stock of their approach to providing family and medical leave. Area employers may need to offer paid family and medical leave benefits to at least some of their workforce.

District of Columbia

D.C.'s [Universal Paid Leave Act](#) provides for paid leave funded by payroll taxes for the following reasons:

- Family leave – To care for a family member with a serious health condition;
- Medical leave – To care for an employee's own serious health condition (including, on and after October 1, 2021, the occurrence of a stillbirth and the medical care related to a miscarriage);
- Parental leave – To bond with the employee's child after the child's birth, placement of a child with an employee for adoption or foster care, or placement of a child with an employee who will legally assume and discharge parental responsibility; and
- Pre-natal leave – For covered pre-natal medical care following the diagnosis of pregnancy by a healthcare provider and prior to the birth of the child.

Until July 1, 2022, the maximum number of leave weeks are:

- 8 workweeks of parental leave;
- 6 workweeks of family leave;
- 6 workweeks of medical leave; and
- 2 workweeks of pre-natal leave.

Starting on July 1, 2022, these maximums will increase to:

- 12 workweeks of parental leave;
- 12 workweeks of family leave;
- 12 workweeks of medical leave; and
- 2 workweeks of pre-natal leave.

The D.C. Council is considering legislation to delay the date on which these maximums

will increase to October 1, 2022 (and to make other changes to the Universal Paid Leave Act). Once the new maximums take effect, there will be an overall cap of 12 weeks of Universal Paid Leave Act leave available to each eligible D.C. employee per year.

Covered employers are those that are required to pay unemployment insurance on behalf of employees in the District. Covered employees are those that (1) spend at least 50 percent of the employee's work time in the District or (2) work for an employer based in the District and regularly spend a substantial amount of work time in the District, but no more than 50 percent of their work time in another jurisdiction.

While this law does not offer employees job-protected leave, other applicable law(s) may apply job protections during the time of leave, such as the federal Family and Medical Leave Act or the District of Columbia Family and Medical Leave Act. Employers are prohibited from taking any action to interfere with, restrain, or deny the exercise of employee rights related to this law.

Maryland

The Maryland General Assembly passed, over the governor's veto, the [Family and Medical Leave Insurance Program](#) (also known as the Time to Care Act of 2022).

The Program will be established on June 1, 2022. Employer and employee benefit contributions through payroll taxes will be announced in 2023, and contributions to the fund will be collected beginning October 1, 2023.

Employees will be able to utilize the job-protected paid leave beginning on January 1, 2025.

The new Time to Care Act of 2022 provides benefits to replace a portion of a covered individual's income and job-protected leave for the following reasons:

- To care for a child during the first year after the child's birth or after the placement of the child through foster care, kinship care, or adoption;
- To care for a family member with a serious health condition;
- Because the covered individual has a serious health condition that results in the covered individual being unable to perform the functions of the covered individual's position;
- To care for a service member who is the covered individual's next of kin; or
- Because the covered individual has a qualifying exigency arising out of the deployment of a service member who is a family member of the covered individual.

The maximum amount of leave a covered individual may take is 12 weeks per year (the year begins the day the employee files an application for benefits). However, a covered individual may receive an additional 12 weeks of leave for their own serious health condition during the same year even if they have utilized leave to care for a child following the child's birth or placement.

Any employee who worked at least 680 hours in the prior 12 months is eligible to utilize the benefits and leave provided by this new law. Covered employers that must provide leave are those that employ one employee in the state, although only employers with at least 15 employees, with limited exception, must contribute to the Program.

Employees who take leave are entitled to continued employee health benefits during leave and to reinstatement to an equivalent position, unless terminated for cause or reinstatement would cause substantial and grievous economic injury to the employer's operations and certain advance notice is provided. Much of the law seems to be inspired by the federal Family and Medical Leave Act, including required advanced notice for foreseeable leave and allowable intermittent leave. Employers must provide notice to employees of entitlements under this law beginning in 2023.

Implementing regulations from the Maryland Department of Labor are expected. They may give clarity to the new law's requirements that employees use all employer-provided leave that is not required by law *before* receiving benefits under the law.

Virginia

Virginia's Private Family Leave Insurance Act permits employers, on a voluntary basis, to purchase insurance policies that provide benefits to replace a percentage or portion of a qualifying employee's income loss due to:

- The birth of a child or adoption of a child by the employee;
- The placement of a child with the employee for foster care;
- The care of a family member of the employee who has a serious health condition; or
- Circumstances arising out of the fact that the employee's family member who is a service member is on active duty or has been notified of an impending call or order to active duty.

The policies can be written as an amendment or rider to a group disability income policy, included in a group disability income policy, or written as a separate group insurance policy purchased by an employer.

Overall, paid family and medical leave benefits will affect nearly every employer in the Washington Metropolitan Region. Employers still have time to consider the implications and actions required to comply with the new laws in Maryland and Virginia.

Jackson Lewis attorneys are available to answer your questions about these laws and how they fit within your existing leave and benefit policies.

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