

The “State” of Family and Medical Leave Laws in the Wake of COVID-19

Labor & Employment Workforce Watch

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The COVID-19 pandemic highlighted a disparity between existing employee leave entitlements under the federal Family and Medical Leave Act (“federal FMLA”) and the scope of family and medical needs typically giving rise to employee leave requests. Seeking to bridge this gap, state legislatures have both expanded existing leave laws and enacted new ones, with the result generally being greater leave benefits for more employees at the state level.

State Law Expansion of Paid Leave

Historically, the number of states and localities with paid family and/or medical leave laws was limited. In recent years, we have seen an uptick in state legislation providing paid sick and/or medical leave to private employees, presumably to fill a perceived void caused by the absence of a similar paid leave program under federal law. The COVID-19 pandemic appears to have catalyzed this sea change in state leave laws.

A myriad of states, including, for example, New York, Colorado, Maine, and New Mexico, passed new paid leave laws during the COVID-19 pandemic, in each case, taking effect in 2020, 2021, or 2022. Many of these new state laws provide employees in the private sector with paid leave relating not only to their own health condition, but also to care for a family member suffering from a health condition. Additionally, these new paid leave programs generally define the term “family member” more broadly (e.g. to include siblings, grandchildren, grandparents, and domestic partners), when compared against the federal FMLA. In many cases, paid leave is also available under the state law programs due to a wider range of qualifying reasons. For example, Colorado and New Mexico extend paid leave benefits to cover time away from work to obtain legal or counseling services, where the employee or the employee’s family member has been a victim of domestic violence or sexual assault.

Rather than legislate a new form of employer-provided paid leave, other states passed laws that leverage existing (or newly implemented) employer time off policies to expand the scope of paid leave benefits available to employees. For example:

- At least through July 1, 2023, Georgia will require that employers with paid sick leave policies permit use of such leave not only to care for their own, but also a covered family member’s, illness, injury, or health condition; and
- Illinois now requires employers who voluntarily provide personal sick leave benefits, including paid leave, to allow employees to use such benefits for additional family-related activities, such as ensuring that a covered family member’s basic hygiene, nutritional, and safety needs are met or being physically present to provide emotional support to a covered family member in certain circumstances.

Unpaid Leave Benefits Revisited by the States

Many states have laws that provide employees with unpaid family and medical leave benefits akin to that available under the federal FMLA. Typically, the state law benefits extend to situations where employees would not otherwise be covered under the federal FMLA (e.g., the employee works for a small employer, the employee cannot satisfy the eligibility requirements, or the employee's reason for leave is not a leave-qualifying event).

Over the course of the COVID-19 pandemic, a number of states amended their unpaid family and medical leave laws to provide greater coverage and/or expanded benefits to private employees. These states went about these efforts in a variety of ways, including, by way of example, the following:

- Expanding employer coverage to include employers with fewer employees;
 - For example, California expanded employer coverage from employers with 50 or more employees to include those with *as little as five* employees.
 - Similarly, Connecticut's law, which previously applied to employers with 75 or more employees, now applies to any employer with at least one employee, regardless of where that employee is located (note, however, only employees residing or working in Connecticut are eligible for such benefits).
- Lowering the burden for employee eligibility by reducing or eliminating hour requirements and/or shortening the required time period of prior employment;
 - For example, the District of Columbia, which previously required employees to have worked 1,000 hours during the preceding 12-month period to be eligible for leave, reduced its hour requirement to now cover any employee who has worked 1,000 hours during any consecutive or non-consecutive 12-month period in the last seven years prior to the leave.
 - Connecticut reduced the number of months an employee must be employed by the employer to be eligible for leave from 12 months to just three months and eliminated the requirement that employees work 1,000 hours in the prior 12 months—such that employees no longer need to meet *any* hour requirement to be eligible for leave.
- Expanding the qualifying reasons for which employees may take leave;
 - Oregon added as qualifying reasons for leave, the following: caring for an employee's child because of the closure of a school or child care provider in the event of a public health emergency, and dealing with a family member's death by attending the funeral or funeral alternative, making necessary arrangements, or grieving.
 - California, among other expansions, extended certain paid leave benefits previously available only to employees who are victims of domestic violence, sexual assault or stalking to employees who are victims of *any* crime that caused physical injury or caused mental injury and a threat of physical injury.
- Broadening the definition of "family member" to include additional people for whom employees may take family-related leave;
 - For example, following the trend of new paid family leave programs described above, California widened the definition of "family member" to include grandparents, grandchildren, siblings, and domestic partners.
 - Similarly, Maine expanded its scope of family members to include grandchildren and the grandchildren of the employee's domestic partner.
- Increasing the duration of leave allowed.
 - For example, Connecticut recently amended its existing law, which permits employees to take up to 12 workweeks of leave for family and medical reasons, to allow employees to take up to two *additional* weeks of leave during the applicable 12-month period for a serious health condition that occurs during pregnancy.
 - Oregon similarly amended its law, which previously allowed up to 12 weeks of family- and medical-related leave, to allow female employees to take up to an *additional* 12 weeks of leave in the same 12-month period for a pregnancy- or childbirth-related disability.

Key Takeaways

Given the trend toward more expansive federal, state, and local leave laws, employers should stay up-to-date on the new developments in this area to ensure they are in compliance. In addition, employers, especially employers with employees in multiple states, should consider these new laws when updating their employee handbooks and leave policies.

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