

Labor and Employment Alert: Michigan Enacts a State-Wide Paid Sick Leave Law

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In December 2018, Michigan enacted its Paid Medical Leave Act (PMLA), which becomes effective in March 2019. Michigan becomes the eleventh state (joining Arizona, California, Connecticut, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont and Washington) with a mandatory sick leave law. The PMLA requires most employers of 50 or more employees to provide paid medical leave for personal or family health needs.

Eligible Employees

The PMLA applies only to “eligible employees” and excludes several categories of workers from coverage. The PMLA does not apply to: (1) individuals exempt from overtime under the Fair Labor Standards Act because they are a bona fide executive, administrative, or professional employee or an outside salesman; (2) individuals whose primary work location is not in Michigan; (3) individuals employed for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer; (4) individuals who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year; or employees covered by collective bargaining agreements entered into before March 2019.

Accrual, Use, and Carry-Over of Paid Medical Leave

Employees accrue leave at a rate of at least one hour of leave for every 35 hours worked (unless the employer frontloads the leave as described below). An employer is not required to allow an employee to accrue more than one hour of leave in a calendar week. An employer may limit an employee’s accrual of leave to not less than 40 hours per “benefit year,” which is any consecutive 12-month period used to calculate an employee’s benefits. An employer is not required to allow an employee to carry over more than 40 hours of unused, accrued leave from one benefit year to another benefit year. An employer also is not required to allow an employee to use more than 40 hours of leave in a single benefit year.

Leave begins to accrue upon the later of March 2019 or commencement of an employee’s employment. An employee may use leave as it accrues. However, an employer may require an employee to

wait until the 90th calendar day after commencing employment before using accrued leave. Leave is paid at the greater of the employee's normal hourly wage or the Michigan minimum wage.

Frontloading Paid Medical Leave

As an alternative to the accrual method, an employer may provide at least 40 hours of leave to an employee at the beginning of a benefit year (which may be pro-rated). If frontloading, the employer is not required to allow carry-over of any unused leave to another benefit year.

Existing Paid Time Off Policies

An employer may continue to use paid time off policies. There is a rebuttable presumption that an employer complies with the PMLA if the employer provides at least 40 hours of paid leave each benefit year. "Paid leave" includes paid vacation days, paid personal days, and paid time off (PTO).

Using Paid Medical Leave

An employer must allow an employee to use paid medical leave for:

- The employee's or employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment; or preventative medical care.
- Medical care or psychological or other counseling for physical or psychological injury or disability resulting from domestic violence or sexual assault; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in related court proceedings.
- For closure of the employee's primary workplace or child's school or daycare due to a public health emergency or because the employee or family member has been quarantined.

Employee Notification

An employee must comply with the employer's usual and customary notice, procedural, and documentation requirements for requesting leave. An employer must give an employee at least 3 days to provide the documentation. An employer may discipline or discharge an employee for failing to comply with those requirements.

Employer Notification Requirements

Employers must display a poster in a conspicuous place that is accessible to employees containing: (1) the amount of paid medical leave required; (2) the terms under which leave may be used; and (3) the employee's right to file a complaint with the Michigan Department of Licensing and Regulatory Affairs for any violation of PMLA.

Employers also must retain for at least one year records documenting the hours worked and paid medical leave taken by employees.

Enforcement and Remedies

Employees may file a claim alleging a violation of the PMLA with the Michigan Department of Licensing and Regulatory Affairs within six months after the violation. The department may impose penalties of \$1,000 for failing to provide paid medical leave and \$100 for failing to post the required PMLA poster. The department may also grant an employee payment of all paid medical leave improperly withheld.

Conclusion

Employers should review their current paid leave policies and determine whether they comply with the PMLA. If not, employers will need to adopt a paid medical leave policy that does. Contact your Vorys lawyer if you have questions about the Michigan PMLA or paid sick leave law requirements in other jurisdictions.