

## MICHIGAN'S PAID MEDICAL LEAVE ACT

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Michigan's Paid Medical Leave Act ("PMLA" or "Act") takes effect on Friday, March 29, 2019. Michigan now requires covered employers to provide paid medical leave to its Michigan employees.

### Provisions of the Act

Under the Act, entities (other than the federal or state government) that employ 50 or more individuals are required to provide paid medical leave to eligible employees. The law defines "employees" broadly, and includes only twelve specific exemptions. These exemptions include independent contractors, "white collar" overtime exempt employees under the Fair Labor Standards Act, employees who are covered under collective bargaining agreements, seasonal workers (jobs lasting less than 25 weeks), and part-time employees who averaged fewer than 25 hours per week in the previous calendar year.


Eligible employees currently employed by covered employers will begin to accrue paid leave as of the effective date of the Act, i.e. March 29, 2019. Following this date, any eligible employee who is newly hired will begin to accrue paid leave as of their date of hire. Paid leave accrues at a rate of at least one hour for every 35 hours the employee works. However, an employer can limit the rate of accrual to one hour per week (regardless of how many hours are worked

that week) and can cap paid leave at 40 hours per benefit year. Employees who accrue PMLA time by hours worked are permitted to carry over up to 40 hours of unused paid medical leave from one benefit year to another.

Employers who "front-load" paid leave instead of having it accrue throughout the year may prohibit employees from carrying over unused PMLA hours to the next. "Front-loading" means providing at least 40 hours of paid medical leave to an eligible employee at the beginning of a benefit year (e.g., calendar or anniversary date). PMLA hours may be prorated for eligible employees hired during a benefit year.

In general, employees are permitted to use paid leave as it accrues, but an employer can prohibit a new hire from using paid leave until his or her 90th day of employment. Employees are permitted to use their paid medical leave for any of the following reasons:

- The employee's own or family member's mental or physical illness, injury, or health condition, including medical diagnoses, care, treatment, or preventative medical care;
- If an employee or the employee's family member is the victim of domestic violence or sexual assault, they may use paid leave for medical care, psychological or other counseling,



to obtain victim services, to relocate, to obtain legal services, or to participate in legal proceedings related to the domestic violence or sexual assault; or

- Due to closure of the employee's workplace or the employee's child's school or place of care by order of a public health official due to a public health emergency or if a health authority or healthcare provider determines the presence of the employee or family member would jeopardize the health of the community.

The PMLA definition of "family member" is more expansive than the FMLA definition and includes a child, parent, spouse's parent, spouse, grandparent, grandchild, or sibling. For children and parents, the relationship can be either biological, adoptive, foster, step, legal guardian/ward, or in loco parentis. Siblings includes biological, adoptive, or foster siblings.

Although the PMLA allows employees to take paid leave in one-hour increments, an employer with a written policy providing for different increment blocks (typically larger), can enforce that policy. For example, if an employer's handbook requires employees to take paid time off in one-half day increments, the PMLA allows employers to employees to take PMLA leave in that increment as well.

Employers must, however be careful of falling into a trick-bag due to Family Medical Leave Act ("FMLA") requirements. The federal FMLA supersedes the PMLA and requires covered leaves to be taken in no greater than one hour increments. Therefore, PMLA leaves which overlap FMLA leaves must be given in one hour increments regardless of the PMLA's written policy exception. As an alternative to reducing all PMLA leaves to one hour increments and to avoid confusion or a latent violation, an employer may consider limiting the larger increment blocks to the obvious non-FMLA type leaves (e.g., emergency closings).

Either way, an employer does not have to pay any accrued but unused time at the end of the benefit year or at the end of the employee's employment.

## Frequently Asked Questions

**Q: My company already provides paid time off to our employees. Do I have to provide an additional 40 hours of sick leave?**

A: No. There is a rebuttable presumption that an employer is in compliance with the Paid Medical Leave Act if the employer provides at least 40 hours of paid leave to eligible employees each benefit year, including paid vacation days, paid sick days, and other paid time off.

**Q: What is a "benefit year" under the Act?**

A: The Act defines "benefit year" as any consecutive 12-month period used by an employer to calculate an employee's benefits. This could be a calendar year, rolling year, anniversary date, etc.

**Q: For purposes of accrual, do paid holidays or vacation time count as "hours worked"?**

A: No. Employees will accrue paid medical leave at a rate of one hour for every 35 hours actually worked. (But remember, employers can limit this to one hour per week!) Hours worked does not include hours taken off work for paid leave, including paid vacation days, holidays, or other paid time off, unless the employer chooses to include nonworking time.

**Q: If I provide each eligible employee with 40 hours of paid medical leave on the first day of the benefit year, can they carry any hours over to the next year?**

A: No. "Front-loading" paid leave allows employers to prohibit carryover of hours.

**Q: How much are employees paid for PMLA leave?**

A: Leave is paid out at the greater of the minimum wage or the employee's normal hourly rate or base wage, excluding any overtime, tips, commissions, bonuses, etc.

## Frequently Asked Questions continued

**Q: If an employee quits with unused paid PMLA leave but is later rehired, do we have to credit the employee for previously accrued and unused time?**

A: No. Paid medical leave will begin to accrue again at the date of rehire.

**Q: Does the employee have any notice obligations when using paid medical leave?**

A: Yes. Employees must follow the employer's usual and customary notice, procedural, and documentation requirements for requesting leave. An employer must provide employees with at least 3 days to provide documentation. Once again, employers must be cognizant of the FMLA requirements which may also apply to a PMLA leave. For example, the FMLA mandates that an employee must be given at least 15 days to provide the certification of the health care professional.

**Q: What limits are there on the types of documentation employers can require?**

A: Employers cannot require the documentation to disclose detail of the medical condition, domestic violence, or sexual assault.

**Q: What forms of documentation are permitted for leave taken due to domestic violence or sexual assault?**

A: The Act states that a police report, signed statement from a victim and witness advocate, or court documentation are all sufficient for purposes of taking paid medical leave.

**Q: Does the Act contain any recordkeeping requirements?**

A: Yes. Covered employers must retain records documenting hours worked and paid medical leave taken by their employees. These records must be maintained for at least one year.

**Q: Does the PMLA contain any posting requirements?**

A: Yes. Covered employers must post a poster, prepared by the Michigan Department of Licensing and Regulatory Affairs ("LARA") in a conspicuous place at their location.

**Q: What are the penalties for noncompliance?**

A: LARA is charged with enforcement of the PMLA including investigating complaints by employees. Employees may file a claim with LARA within 6 months of the employer's alleged violation of the Act. If LARA discovers a violation, it can recover payment for the withheld medical leave in addition to monetary fines. There is no right to file a lawsuit in court over PLMA violations.

## What Does the Future Hold?

On February 13, 2019, State Senator Stephanie Chang asked Michigan Attorney General Dana Nessel to issue a formal opinion on whether or not the PMLA was enacted in an unconstitutional manner. The Michigan legislature adopted the paid sick leave and minimum wage ballot proposals, and later in the same legislative session, made significant amendments. Attorney General Nessel has requested public comments, which indicates she may weigh in on the Act's constitutionality. As of right now, however, the Act is still set to take effect on March 29, 2019.

## Conclusion

In order to properly prepare for the Act's effective date, employers with 50 or more employees should review their existing paid time off policies, if any, and ensure that they are in compliance with the new law and that all eligible employees are covered. If employers do not currently provide paid time off, they must adopt a policy that complies with the PMLA and be ready to implement it effectively.

If you have further questions or need assistance in revising or drafting policies, please feel free to contact any member of Bodman's Workplace Law Group.

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