



Law & Policy Group

GRIST

Minnesota passes paid family and medical leave law

By Rich Glass and Katharine Marshall
July 10, 2023

In this article

[Covered employers](#) | [Funding and contributions](#) | [Qualifying leave](#) | [Leave duration](#) | [Wage-replacement benefits](#) | [Employee rights](#) | [Private plans](#) | [Coordination with other leave](#) | [Required notices](#) | [Administration](#) | [Enforcement](#) | [Small business provisions](#) | [Employer actions](#) | [Related resources](#)

With enactment of [2023 Ch. 59 \(HF 2\)](#), Minnesota is the latest state to establish a paid family and medical leave (PFML) program. Contributions — initially set at 0.7% and capped at 1.2% of wages up to the Social Security taxable wage base — are evenly split between employers and employees. Contributions and benefits will start on Jan. 1, 2026. Covered employees may take up to 12 weeks of medical leave for a serious health condition and up to 12 weeks of family leave to bond with a new child, care for a family member, manage a qualifying exigency or address safety-related matters. However, combined medical and family leave cannot exceed 20 weeks in a benefit year. Covered employers can participate in the state program or maintain an approved private plan for one or both types of leave; private plans may be insured or self-funded. The PFML program is separate and apart from the state's [sick and safe leave law](#) (2023 Ch. 53), effective in 2024.

Covered employers

The PFML law applies to all employers (including state and local governmental employers) with at least one employee engaged in covered employment, which includes these employees:

- 50% or more of their employment in the calendar year occurs in Minnesota
- 50% of their employment in the calendar year does not occur in Minnesota, any other state, or Canada, but they reside at least half the time in the state
- 50% of their employment in the calendar year does not occur in Minnesota, any other state, or Canada, but their employment is controlled and directed in the state

Certain seasonal hospitality employees are excluded. To qualify for the exclusion, these employees cannot work more than 150 days in any 52-week period for an employer whose receipts in any six months of the past calendar year averaged no more than 33% of the employer's receipts during the other six months of that year. To claim the exclusion, the employer must certify certain information to the Department of Employment and Economic Development (MN DEED) and provide a notice to each employee.

Funding and contributions

The law creates a special revenue fund, administered by the Family and Medical Benefit Insurance (FMBI) Division. The state will provide more than \$650 million to seed this fund, enabling both contributions and benefits to start on Jan. 1, 2026.

Contributions — initially set at 0.7% — cannot exceed 1.2% of wages up to the [Social Security maximum taxable wage base](#) (\$160,200 in 2023). Employers can charge employees 50% of the required contributions. Starting in 2027, the FMBI Division will adjust the annual premium rate by July 31 of every year, taking into account benefit utilization and the revenue fund's balance. Certain small businesses are eligible for a contribution reduction; see the [Small business provisions](#) discussion below for more details.

The definition of “wages” subject to PFML premium contributions is borrowed from the state's unemployment insurance code (MN Stat. [§ 268.035, Subd. 29](#)) and includes:

- All compensation, including commissions, tips, gratuities, back pay and on-call pay
- Bonuses, awards and prizes
- Severance payments
- Vacation and holiday pay
- Sickness and accident disability payments (except for employer payments made after six months of leave, workers' compensation payments and insured plan payments)
- Cash value of housing, utilities, meals, exchanges of services, and any other goods and services provided to compensate an employee

Employers must submit wage reports and pay premiums quarterly. Penalties apply for late reports; see the [Enforcement](#) section.

Qualifying leave

To take either medical or family leave, an employee must be unable to perform work due to the qualifying reason. Medical leave is for a serious health condition or pregnancy-related medical care, which includes prenatal care or incapacity due to pregnancy or recovery from childbirth, stillbirth, miscarriage, or related health conditions.

Serious health condition. The law defines a serious health condition as a physical or mental illness, injury, impairment, condition, or substance use disorder involving any of the following:

- Inpatient care in a hospital, hospice or residential healthcare facility
- Continuing treatment or supervision by a healthcare provider for at least seven days or a period of incapacity due to pregnancy, a chronic health condition, a permanent or long-term health condition for which treatment may not be effective, or an absence to receive certain multiple medical treatments
- Examinations and evaluations to determine if a serious health condition exists

Absences related to pregnancy and chronic health conditions do not require treatment by a healthcare provider for at least seven full calendar days to qualify for medical leave.

Qualifying family leave reasons include:

- **Bonding:** to bond with an employee's biological, adopted, or foster child in the 12 months after the birth or placement
- **Family care:** to care for a family member who has a serious health condition or is a military member
- **Qualifying exigency:** to handle matters related to a military family member's active-duty service or notice of an impending call or order to active duty (with the US armed forces, National Guard or Reserves)
- **Safety:** to get medical attention or counseling, receive help from a victim services organization, seek relocation, or take legal action related to domestic abuse, sexual assault, or stalking of the employee or a family member

Family member. Covered family members include:

- Employee's biological, step-, adopted or foster children; children in legal or physical custody or under guardianship; and individuals for whom an employee stands *in loco parentis* or is a *de facto* parent (no age limit)
- Employee's or employee's spouse's biological, adoptive, foster or step-parents or legal guardians; individuals who acted as a *de facto* parent or stood *in loco parentis* to an employee or an employee's spouse during childhood
- Employee's spouse or domestic partner (an undefined term under Minnesota law)
- Biological, adoptive, *de facto*, foster or step-grandparents of an employee and an employee's spouse (although not entirely clear)
- Employee's biological, adoptive, *de facto*, foster or step-grandchildren

- Employee's siblings
- Employee's son-in-law or daughter-in-law
- An individual whose relationship with an employee creates an expectation and reliance that an employee will care for the individual, whether or not they reside together

Note that Minnesota's new sick and safe leave law defines family members differently. That law includes siblings-in-law, a sibling's children and one annually designated individual.

Leave duration

Eligible employees may take up to 12 weeks of medical leave and 12 weeks of family leave, but combined leave cannot exceed 20 weeks in the benefit year. A benefit year is generally the 52 calendar weeks starting at the leave's outset. Leaves starting on the first day of January, April, July or October may have a 53-week benefit year. Minimum leave duration is one workday per workweek.

Bonding leave. Bonding leave generally must end within 12 months of the birth or placement of a child. If a newborn is hospitalized longer than the birth mother, the 12-month period begins when a child leaves the hospital. For the placement or adoption of a child, bonding leave can begin before the actual placement or adoption in certain circumstances.

Intermittent leave. Employees may take intermittent leave by providing notice as soon as practicable. For leave related to a serious health condition, intermittent leave is available only if it is reasonable and appropriate to the needs of the individual with the serious health condition. No similar restriction applies to any other type of leave. An employer may cap intermittent leave at 480 hours (the equivalent of 12 weeks) per 12-month period and require the employee to take any remaining leave continuously.

Wage-replacement benefits

Benefits will become available on Jan. 1, 2026, with no weekly minimum wage replacement and a maximum equal to the state average weekly wage (SAWW), currently set at \$1,287 and scheduled to increase to \$1,337 on Oct. 1, 2023. By June 30 of every calendar year, the MN DEED will adjust the weekly maximum, which will apply to benefit years beginning on or after the last Sunday in October. No benefit waiting period applies, and benefit payments occur weekly.

Eligible employees. Full- and part-time employees are eligible for PFML, as long as they have a qualifying leave reason preventing them from performing regular work and wage credits of at least 5.3% of the state average annual wage over the base period (the most recently completed four quarters). Using current numbers, this is an income of approximately \$3,500 in the base period. The FMBI Division ultimately will determine an employee's eligibility for benefits on receipt of a completed application. For a discussion about the application process, see the Administration section below.

Benefit calculation. The wage replacement benefit depends on a covered employee's average weekly wage (EAWW) relative to the SAWW. For the benefit calculation, the EAWW in the highest quarter of the base period is used:

- **If the EAWW is less than or equal to 50% of the SAWW**, the weekly benefit amount is 90% of the EAWW.
- **If the EAWW is more than 50% of the SAWW but no more than 100% of the SAWW**, the weekly benefit amount is 90% of one-half of the SAWW, plus 66% of the EAWW exceeding one-half of the SAWW.
- **If the EAWW is more than 100% of the SAWW**, the weekly benefit amount is 90% of one-half of the SAWW, plus 66% of the remaining one-half of the SAWW, plus 55% of the EAWW above the SAWW.

Benefits are paid weekly, subject to the benefit maximum (the SAWW).

Example 1. XYZ Co. has three employees eligible for PFML benefits, Alan, Betty and Carol. Average weekly wages are \$500 for Alan, \$1,000 for Betty and \$2,000 for Carol. Using the current SAWW of \$1,287 for illustrative purposes only (the SAWW for the initial 2026 benefit year will be different), here are the weekly PFML benefit amounts:

- Alan: $\$500 \times 0.90 = \450
- Betty: $[\$643.50 \times 0.90] + [(\$1,000 - \$643.50) \times 0.66] = \$579.15 + \$235.29 = \814.44
- Carol: $\$579.15 + [\$643.50 \times 0.66] + [(\$2,000 - \$1,287) \times 0.55] = \$579.15 + \$424.71 + 392.15 = \$1,396.01$, reduced to \$1,287.00 (100% of the SAWW)

Minimum period for benefits to be payable. All leaves except child-bonding leave must be based on a single qualifying event lasting at least seven calendar days.

Proration. Benefits are prorated if an employee works on leave days, uses other paid leave that is not considered supplemental or takes intermittent leave.

Offsets, disqualifications. An individual receiving workers' compensation or Social Security disability benefits generally is not eligible for PFML benefits. Workers' compensation benefits less than PFML benefit amounts will offset the PFML benefits. An individual receiving Social Security disability benefits may receive PFML benefits if either the individual was receiving Social Security benefits every month of employment during the base period or a healthcare provider indicates the individual can perform the job's essential functions with or without a reasonable accommodation.

PFML benefits generally are not available to employees receiving separation, severance or bonus payments when employment ends. However, if those payments are less than the PFML benefit, the payments will offset the PFML benefit.

Taxation. PFML benefits are subject to state income tax, which an employee can elect to have withheld from benefit payments.

Employee rights

During leave, employers must maintain all group health plan coverage for covered employees and dependents as long as employees continue to pay their share of the cost. The term “group health plan” is undefined by statute; additional guidance would be helpful. On return from leave, employees with at least 90 days of service are entitled to a position with benefits, pay, and other employment terms and conditions equivalent to the position held before the leave. This includes any pay or benefits an employee may have received during the leave period, absent taking leave. PFML does not count as a break in service for pension and other retirement plans.

An employer may deny job restoration only in these circumstances:

- An employee is laid off during the leave, and the employer can prove that the employee would have been laid off, absent the leave.
- An employee’s shift has been terminated, and the shift was not filled by another employee.
- An employee was hired for a specific term or project, and employment would not have continued beyond the end of leave.
- An employee works in the construction industry under a collective bargaining agreement and waives the right to reinstatement (waivers are otherwise void by law).

The law protects employees from employer discrimination, retaliation and interference with an application for leave. Penalties apply for violations; see the [Enforcement](#) section. An employer may not require an employee to find a replacement worker during leave.

Private plans

With FMBI approval, employers may substitute a private plan meeting or exceeding the law’s requirements. A private plan may be self-funded or insured and can cover only one or both types of leave. Approved private plans covering both types of leave exempt an employer (and covered employees) from contributing to the state’s PFML revenue fund. Employers cannot require employees to pay more for the private plan than they would otherwise pay for the state program.

Employers choosing a private plan for one but not both types of paid leave must contribute to the state revenue fund as follows:

- **State medical leave program and private plan for family leave.** Employers pay an annual premium of 0.4% of covered wages — 50% of which can be charged to employees — to the FMBI Division.

- **State family leave program and private plan for medical leave.** Employers pay an annual premium of 0.3% of covered wages — 50% of which can be charged to employees — to the FMBI Division.

Private plans may pay benefits aligned with a payroll cycle instead of weekly. Self-funded plans must obtain a surety bond. An approval and oversight fee of \$250–\$1,000 (varying by employer size) applies for the initial application and if/when the employer amends the plan. Private plans must be in effect for at least one year and continue until withdrawn by an employer or terminated by the FMBI Division. Employers must maintain all applicable records for at least six years.

For a private plan, an employer has the option of designating the benefit year as a calendar year, a fixed 12-month period (e.g., a fiscal year), a 12-month period starting on the first day of leave or a rolling 12-month period measured backward from the first day of leave. Employers must notify employees about the designated benefit year at these times:

- Within 30 days of the plan's approval
- On the date of hire

Penalties apply to noncompliant private plans; see the [Enforcement](#) section below.

Coordination with other leave

Employers cannot require employees to use or exhaust accumulated paid vacation, paid sick leave, or other paid time off (PTO) under an employer policy before or during an approved PFML. Employers can designate salary continuation, vacation leave, sick leave or other PTO as supplemental benefits that employees can opt to use to top off PFML benefits, up to 100% of the EAWW. Alternatively, an employee can choose to use paid vacation, paid sick leave, PTO or disability insurance payments in lieu of PFML benefits, in which case employment protections provided by the law apply.

Employers can require PFML to run concurrently with leave under the federal [Family and Medical Leave Act](#) and the state's [pregnancy and parenting leave law](#) when those laws also apply. The law does not diminish longer or more generous leave benefits under a collective bargaining agreement or an employer policy.

Required notices

Employers have four major notice requirements:

- Post in a conspicuous location in the workplace a notice about the law's rights and duties, written in English and any other language that is primary for at least five employees or independent contractors at that workplace.
- Provide employees within 30 days of employment or premium collection (whichever is later) a detailed paper or electronic notice describing available benefits, required deductions, and other

important information, and collect an acknowledgement of receipt or a signed statement indicating a refusal acknowledge receipt.

- By Dec. 1, 2025, and when later offering jobs to seasonal hospitality employees, notify them about their ineligibility for PFML benefits, and collect an acknowledgement of receipt or a signed statement indicating refusal to acknowledge receipt.
- Include PFML employee deductions and employer premium contributions on earnings statements.

The FMBI Division will develop uniform notices in the five most common languages spoken in the state. For notices provided electronically, employees must have access to an employer-owned computer during regular workhours to review and print the notice.

Employers with private plans have separate notice requirements; see the [Private plans](#) section above.

The employer notice provisions will take effect Nov. 1, 2025. Employer notice failures are subject to penalties; see the [Enforcement](#) section below.

Employee notice. Employers may require at least 30 days' advance notice for foreseeable leave. For unforeseeable leave, employees must provide notice as soon as practicable. Employers may require employees to comply with the notice procedures and requirements that apply to other types of leave, as long as those requirements do not interfere with an employee's PFML rights. Employees can give notice via a text message or orally in person or by telephone, as long as they sufficiently describe the leave's anticipated timing and duration.

Administration

Claim application. Covered employees can file an application with the FMBI Division to establish a benefit account as early as 60 days before leave starts. After reviewing an applicant's eligibility and determining the benefit amount, the division must "promptly" (an undefined term) notify the employer about an approved application. Applicants may appeal a determination within 60 days after the determination is sent.

Claim substantiation. The FMBI Division requires certification of the reason for leave. Certifications of serious health conditions must include:

- The date when the serious health condition began
- The serious health condition's probable duration
- Appropriate medical facts within the knowledge of the licensed healthcare provider

Depending on the certification, additional requirements may apply:

- **A family member's serious health condition certification** must have a statement indicating the covered individual needs to care for a family member and the estimated amount of time needed.

- An **intermittent leave certification for a family member's serious health condition** must include an estimate of the amount of time required to care for the individual and an explanation of how the leave would be medically beneficial.
- An **intermittent leave certification for an employee's serious health condition** must include a healthcare provider's reasonable estimate of the leave's frequency and duration, an estimated treatment schedule, and an explanation of how the leave would be medically beneficial.

Here are the certification requirements for other types of leave:

- For **medical care due to pregnancy**, a statement from the healthcare provider documenting the need for pregnancy-related medical care and the recovery period
- For **newborn bonding**, a birth certificate or similar document from a healthcare provider
- For **adoption/foster care child bonding**, documentation from a healthcare provider, adoption/foster care agency or similar entity determined by the FMBI Division
- For **qualifying exigencies**, a copy of active-duty orders, other military documentation or other documents permitted by the FMBI Division
- For **safety leave**, a court record or other documentation signed by a victim's services organization, attorney, police officer, or antiviolence counselor

Enforcement

The FMBI Division can investigate alleged violations, audit employer records and private plans, and file civil suits. Employees may also sue. In a civil lawsuit, potential liability includes:

- Two times the amount of actual damages, plus interest
- Reasonable attorney fees and other costs
- Injunctive and other appropriate relief

Employers are not liable for a denied claim unless they unlawfully interfere with the application. In addition to civil actions, the FMBI Division may impose a lien, levy or setoff for employer contribution failures. Punitive damages are not available.

Statutory penalties. Employer notice failures are subject to a penalty of \$50–\$300 per employee. Penalties for retaliation and interference range from \$1,000 to \$10,000 per violation. Employers must submit quarterly wage detail reports; late fees are \$10 per employee with a \$250 minimum. Those fees are canceled if an employer submits the report within 30 days of a demand from the FMBI Division. No more than two cancelations are allowed every 12 months. Penalties for retaliation and interference range from \$1,000 to \$10,000 per violation. Noncompliant private plans are subject to a penalty of \$1,000 for the first violation and \$2,000 for each subsequent violation.

Small business provisions

Two allowances are available to small employers. While the law is not entirely clear, employer size appears to be based on nationwide headcount.

Reduced employer premium. Employers with fewer than 30 employees have a wage exclusion, which reduces their required premium amount. Employees at these employers do not receive a contribution reduction. Wages used for computing quarterly employer contributions are reduced by the premium rate otherwise owed by an employer multiplied by the lesser of:

- \$12,500 multiplied by the number of employees
- \$120,000

After the first 20 employees, the per-employee wage exclusion is reduced by \$12,000.

Grants to offset replacement labor costs. Employers with no more than 30 employees and less than \$3,000,000 in gross annual revenues are eligible for grants if they hire a temporary worker (or increase an existing employee's wages) to substitute for an employee on PFML. The grant is up to \$3,000 per employee, with a \$6,000 maximum per employer per calendar year. Eligible employers must apply to the FMBI Division, and available funds are limited to \$5 million per calendar year.

Employer actions

Minnesota joins 12 other states (plus Washington, DC, and Puerto Rico) requiring paid leave for an employee's own serious health condition or disability. All of these jurisdictions — except Hawaii and Puerto Rico — also require paid leave for qualifying family or caregiving reasons. For more details, see [2023 state paid family and medical leave contributions and benefits](#) (Feb. 1, 2023).

While awaiting regulations and other guidance on Minnesota's program, employers have work to do. Here are some steps to take before 2026:

- Consider the law's requirements for future workforce planning.
- Determine which employees are covered by Minnesota's PFML program.
- Review existing PTO programs and address coordination with Minnesota's PFML law.
- Examine whether a private plan (fully insured or self-funded) makes sense.
- Make appropriate changes to the payroll system, including quarterly wage reports and electronic premium payments for state plan coverage and revised payroll earnings statements.
- Train staff members and build a communication strategy, which includes required notices and acknowledgements.

- Watch for guidance, sample notices/documents and other developments from the FMBI Division.

Neither the PFML law nor the paid sick and safe law preempts local leave laws or ordinances. Four of Minnesota's five largest cities ([Bloomington](#), [Duluth](#), [Minneapolis](#) and [St. Paul](#)) currently have paid sick and safe leave ordinances. Employers in those localities should take special care to coordinate leave benefits required by both state and local laws.

Related resources

Non-Mercer resources

- [2023 Ch. 59, HF 2](#) (MN Legislature, May 24, 2023)
- [2023 Ch. 53, SF 3035, Art. 12](#) (MN Legislature, May 24, 2023)
- MN Stat. [§ 268.035, Subd. 29](#), Definition of wages for unemployment insurance purposes
- MN Stat. [§ 181.940 et seq.](#), Parenting leave and accommodations law
- [Paid family and medical leave in the United States](#) (Congressional Research Service, Feb. 28, 2023)
- [Family and Medical Leave Act](#) (Feb. 5, 1993)

Mercer Law & Policy resource

- [2023 state paid family and medical leave contributions and benefits](#) (Feb. 1, 2023)

Other Mercer resources

- [Life, absence & disability benefits](#)
- [Employers revisit time-off benefits](#) (June 3, 2021)
- [Think globally, comply locally: How employers navigate leave laws](#) (Nov. 15, 2018)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.