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Virginia enacts paid family and medical leave mandate

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In this article

[Covered employers and individuals](#) | [Funding](#) | [Qualifying leave](#) | [Leave duration](#) | [Wage-replacement benefits](#) | [Employee rights](#) | [Private plans](#) | [Coordination with other leave](#) | [Required notices](#) | [Administration](#) | [Enforcement](#) | [Self-employed individuals](#) | [Federal tax issues](#) | [Employer actions](#) | [Related resources](#)

Virginia is the first state since 2023 to [enact](#) a law (2026 Chs. [981/1093](#), SB 2/HB 1207) establishing a mandatory paid family and medical leave (PFML) insurance program. By October 1, 2027 (and annually thereafter), the [Virginia Employment Commission](#) (VEC) will set the contribution rate, based on wages and capped at the [Social Security taxable wage base](#) (SS Max). Contributions — evenly split between employers and employees, with an exception for certain small employers — will start on April 1, 2028. Benefits will first become available on December 1, 2028. Covered individuals may take up to 12 weeks of paid leave for medical and family reasons in a benefit year. Covered employers must participate in the state program or maintain an approved private plan.

Virginia joins 14 other states (plus Washington, DC, and Puerto Rico) that require paid leave for an employee's own serious health condition or disability. Except for Hawaii and Puerto Rico, all of these jurisdictions also require paid leave for qualifying family or caregiving reasons.

On a historical note, four years ago Virginia [established](#) private family leave insurance. This voluntary coverage remains available for employers wishing to offer wage replacement for qualifying family leave (child bonding, care for a family member with a serious health condition,

and military exigency). It is unclear, however, whether this option will remain useful once the mandatory PFML program takes effect. Virginia is the first state to transition from allowing voluntary paid family leave insurance to requiring PFML, which may present some nuances as the program is developed. For more details, see [State paid family and medical leave contributions and benefits](#) (February 6, 2026).

Covered employers and individuals

Covered employers. The law applies to all employers (including local but not state governmental employers) with at least one employee working in Virginia. The law does not apply to employers and employees covered by [federal railroad unemployment insurance](#).

Covered individuals. All employees of covered employers (e.g., full- and part-time, seasonal, and temporary employees) are covered by the program. Self-employed individuals who reside in the state may opt in. For related issues, see the [Self-employed individuals](#) section.

Covered individuals are eligible for PFML benefits if they meet the [earnings threshold](#) required by the state's unemployment compensation law: earnings in the highest two quarters in the base period that meet or exceed the lowest amount in Column A of the [benefit table](#) (currently \$3,000). The base period is the first four of the last five completed calendar quarters immediately before the first day of the individual's benefit year. Covered individuals must also be authorized to work in the US at the time they apply for PFML.

Funding

Contributions to the Family and Medical Leave Insurance (FAMLI) Trust Fund start April 1, 2028. Employers can deduct up to 50% of the required contribution from wages. Employers with 10 or fewer employees are not required to contribute but must remit employee contributions to the Fund. It is unclear whether employer size is based on state or national headcount; clarification from regulators would be welcome.

The law sets forth no initial contribution rate or overall limit. Instead, the VEC will set the rate annually by October 1 for the following calendar year. For 2028 and 2029, the VEC must base contribution rates on sound actuarial principles. For 2030 and beyond, the VEC must first certify and publish:

- Total benefit and administration expenditures for the prior fiscal year
- The Fund's fiscal year-end balance
- The contribution rate adjustment required to ensure the Fund's projected balance stays at or above 40% of total expenditures

Wages above the SS Max (\$184,500 in 2026) are not subject to contributions. While the new law does not define “wages,” the [unemployment compensation statute](#) defines the term as “all remuneration paid ... including commissions, bonuses, tips, back pay, dismissal pay, severance pay and any other payments made by an employer to an employee during his employment and thereafter and the cash value of all remuneration payable in any medium other than cash.”

Required contributions that employers fail to make will be subject to interest at 1.5% per month until payment. Default payments will be collected by civil action and may be brought against any officer, employee, or agent in their personal capacity for willful failures to pay.

Qualifying leave

The law provides six PFML qualifying events:

- **Addition of a child:** to bond with a child in the first year after birth, adoption, or placement through foster care
- **Covered individual care:** for a covered individual’s serious health condition
- **Family care:** to care for a family member with a serious health condition
- **Care for a covered service member:** to care for a family member or next of kin who is a covered service member with a serious health condition connected to military service
- **Qualifying exigency:** to handle matters related to a family member’s active-duty military service or notice of an impending call or order to active duty in the Armed Forces (including the reserves and Virginia National Guard)
- **Safety services:** to seek safety services for the covered individual or a family member related to domestic violence, harassment, sexual assault, or stalking; examples include legal or law-enforcement assistance, medical treatment, recovery services, mental health counseling, victim services, relocation, and home security services

A serious health condition is an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition involving inpatient care in a hospital, hospice, or a residential medical care facility or continuing treatment by a healthcare provider. The definition is similar to that found in [federal FMLA regulations](#).

A family member is defined as any of these covered individual relationships (including step, foster, or adopted):

- Spouse or domestic partner
- Child, sibling, or parent
- Grandchild or grandparent

- Any individual (i) who regularly resides in the covered individual's home or where the relationship creates an expectation that the covered individual care for such individual, and (ii) who depends on the covered individual for care

In-laws are not included in the family member definition. Virginia does not have a domestic partnership registration process so the PFML law provides a definition, requiring a domestic partner to be at least 18 years of age and meet either of these requirements:

- Unilateral dependence or mutual interdependence with the covered individual evidenced by a nexus of factors
- Registration as a domestic partner with any domestic partnership registry maintained by the employer of either party or in any US jurisdiction (e.g., neighboring Washington, DC)

For more details on domestic partnership issues, see [Domestic partner benefits remain popular but present challenges](#) (August 20, 2025).

Leave duration

Eligible employees may take up to 12 weeks of PFML in a benefit year. A benefit year starts on the first day of leave and extends for 52 calendar weeks, except that the benefit year is 53 weeks if filing of a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. Bonding leave is available during the first year after the child's birth or placement.

An employee may take intermittent or reduced schedule leave for all qualifying events. The law does not specify a minimum increment. Employees must notify employers beforehand of their schedule, to the extent practicable, and must make a reasonable effort to avoid unduly disrupting employer operations. Intermittent and reduced schedule leave benefits are proportionally prorated.

Wage-replacement benefits

Benefits will become available December 1, 2028. A covered individual's wage replacement benefit will be 80% of the employee's average weekly wage (AWW) — based on total wages received during the base period — up to 100% of the state AWW, [currently \\$1,507.01](#). By September 30 of each year, the VEC will adjust the weekly maximum to take effect the next January 1. There will be a \$100 weekly minimum (or the individual's AWW, if less than \$100). No waiting period will apply, except for self-employed individuals electing coverage more than 26 weeks after becoming self-employed.

Claims are payable for at least eight hours of leave accrued in one work week unless the VEC sets a lower threshold. The first benefit payment will be made no later than two weeks after the initial

claim approval or the leave start date, whichever is later. Subsequent benefit payments will occur biweekly.

Employee rights

During PFML, employers must maintain all healthcare benefits for employees and dependents under the same conditions that applied before the leave, and employees must continue to pay their share of the cost. It is unclear whether healthcare benefits are limited to medical coverage or include other types (like dental, vision, health FSA). The law does not address whether other benefits — like paid vacation time, sick time, bonuses, advancement, and seniority — continue to accrue during leave.

Employees with at least 120 days of service are entitled to the same or equivalent position with equivalent seniority, status, benefits, pay, and other employment terms and conditions on return from PFML.

The law protects employees from retaliatory personnel action, which includes discrimination, interference, or punishment for engaging in any actions under the PFML law. Absence control policies that lead to discipline, discharge, or other adverse action for PFML are impermissible. Penalties apply for violations; see the [Enforcement](#) section below.

Private plans

With VEC approval, employers may substitute a private plan as long as it includes PFML rights, protections, and benefits equal to or greater than the public program, and employee contributions do not exceed the amount they would otherwise pay for the state program. Benefits must be made available to all eligible covered employees throughout their employment. This suggests private plans do not have to cover qualifying events occurring after employment separation. Confirmation in VEC regulations would be helpful. Employers and employees with approved private plans do not contribute to the FAMI Trust Fund.

Private plans may be self-insured or insured. Self-insured plans must provide documentation showing financial capacity sufficient to meet all claim obligations. Insured plans must be with an insurer approved by the VEC. Approval must be renewed every two years. Contested private plan PFML benefit determinations and denials can be appealed to the VEC and, thereafter, to a court of competent jurisdiction. The agency will annually determine its related administrative costs that private plans must reimburse.

The VEC may withdraw private plan approval for these violations:

- Failure to pay benefits on a timely basis or at all
- Misuse of private plan money

- Reporting failures
- Noncompliance with other PFML provision

Penalties as determined by the VEC will apply to noncompliant private plans.

Coordination with other leave

PFML runs concurrently with leave taken for qualifying reasons under [federal FMLA](#). Employers can require PFML benefit payments to run concurrently with, or be otherwise coordinated with, disability or family care leave under a collective bargaining agreement or employer's policy with advance written notice. However, any CBA or employer policy adopted after January 1, 2027 cannot diminish an employee's PFML rights, which are inalienable. The law doesn't address PFML coordination with employer-provided accrued paid leave or the state's recently enacted [paid sick and safe leave law](#).

Required notices

Employer notice. Employers have two major notice requirements:

- Post in a conspicuous place at each workplace a poster — to be provided by the VEC — in English, Spanish, and any language that is the first language spoken by at least 5% of the workforce.
- Provide a written notice upon hire, annually thereafter, when an employee requests leave, and when an employer knows of an employee's intent to take leave. The notice must include a summary of employee rights, the amount of benefits available, the claim procedure, information on job protection and benefits continuation, the discrimination/retaliation prohibition, and a statement of the right to file a complaint.

The VEC is authorized to issue regulations on how employers should provide notices, which presumably will include samples.

Employee notice. Covered individuals must notify the employer as soon as practicable of the need for PFML. No minimum time frame is required, even for foreseeable leave.

Administration

The VEC will administer the program. Claims for the public plan will be made to the VEC with supporting certifications and other documentation as may be required. The PFML law leaves claims processing, contribution remittance and other reporting details to the VEC, which is charged with producing implementation rules and regulations by April 1, 2028, and with conducting a public education program. By December 1, 2028, the VEC must also create a public

dashboard that includes the number of claims filed and approved, as well as average approval times. Starting on April 1, 2030, the VEC must provide the state legislature — known as the General Assembly — an annual report including participation data, premium rates, fund balances and outreach efforts. Already, the VEC has published an [FAQ](#).

Enforcement

Covered individuals can sue over an employer's retaliatory or discriminatory actions, or failure adhere to required employment protections. Damages are available equal to: lost wages or, if no wages are lost, actual monetary losses (e.g., the cost of providing care) up to 12 weeks of wages plus interest; and an equal amount of liquidated damages; and other appropriate equitable relief like employment, reinstatement, or promotion. The Department of Labor and Industry (DOLI) has investigative powers and can institute administrative proceedings or refer violations to the state attorney general to seek damages for covered individuals in court. Civil action can also be brought against an employer for failure to make required contributions to the FAMLI fund.

Covered individuals who make false statements also have potential liability. The VEC can seek repayment of erroneously paid benefits. In addition, such persons are subject to the following:

- Prosecution for a Class 1 misdemeanor and PFML disqualification for five years, if willful or with intent to commit fraud
- PFML disqualification for three years, if reckless or willful failure to report a material fact

Self-employed individuals

Self-employed individuals — including sole proprietors, partners, and joint venturers — who reside in the state may opt into the program. A 52-week waiting period will apply if they delay opting in for 26 or more weeks after becoming self-employed.

- **Coverage elections.** Self-employed individuals must initially elect PFML coverage for at least three years by filing a notice of election with the VEC. Coverage is effective on the filing date. Coverage withdrawals must occur within 30 days after the end of the three-year period, but the VEC has discretion to provide other circumstances allowing withdrawal. A withdrawal will take effect no sooner than 30 days after the notice filing.
- **Funding.** Self-employed individuals must cover the total contribution rate (both the employee and employer portions). They must also provide documentation of work authorization in the US.

Federal tax issues

Upon PFML claim filing, the VEC will notify covered individuals about federal tax treatment and provide the option of having federal income tax withheld from benefit payments.

The Internal Revenue Service (IRS) clarified the federal tax treatment of PFML benefits in [Revenue Ruling 2025-4](#) for contributions and benefits under a state PFML program. Subsequent guidance ([Notice 2026-6](#)) provided additional transitional relief for the 2026 tax year. The guidance does not address tax treatment of approved private plans. For details, see [IRS clarifies taxation of state and DC PFML contributions, benefits](#) (January 13, 2026).

Under [Pub. L. No. 119-21](#), commonly known as the “One Big Beautiful Bill Act,” the employer tax credit for providing PFML benefits became permanent. In addition, several eligibility changes in the law broaden availability. Of note, employers subject to state-mandated PFML programs may qualify for the credit. For background, see [One Big Beautiful Bill includes employer-friendly provisions](#) (July 8, 2025). Additional perspective is available in [Section 10 of Top 10 health, fringe and leave benefit compliance and policy issues in 2026](#) (October 30, 2025).

Employer actions

Employers should consider taking these steps before contributions start on April 1, 2028:

- Take into account the law’s requirements for future workforce planning.
- Compare existing PTO and other paid leave programs with Virginia’s requirements, and address coordination with those benefits.
- For employers with voluntary family leave insurance in place, consider whether to drop the coverage or incorporate it in a compliant private plan.
- Evaluate whether a private plan (fully insured or self-funded) makes sense as an alternative to the state program.
- Review payroll and other administrative systems to ensure proper salary-reduction contributions, quarterly wage reporting and electronic premium payments.
- Train staff members on the law’s requirements and build a communication strategy for required notices.
- Look for upcoming VEC guidance, sample notices, and other developments, particularly on topics not addressed in the law.

Related resources

Non-Mercer resources

- 2026 Chs. [981/1093](#), SB 2/HB 1207 (Virginia General Assembly, April 22, 2026)
- [Virginia PFML FAQ](#) (Virginia Employment Commission)
- [Pub. L. No. 119-21](#), the One Big Beautiful Bill Act, § 70304 (Congress, July 4, 2025)
- [26 USC § 45S](#) (PFML tax credit)
- [29 USC § 2601 et seq.](#) (Federal FMLA statute)
- [Notice 2026-6](#) (IRS, December 17, 2025)
- [Revenue Ruling 2025-4](#) (IRS, January 15, 2025)
- [29 CFR § 825.100 et seq.](#) (Federal FMLA regulations)

Mercer Law & Policy resources

- [Paid family and medical leave — snapshots across the US \(slide deck\)](#) (February 6, 2026)
- [State paid family and medical leave contributions and benefits](#) (February 6, 2026)
- [IRS clarifies taxation of state and DC PFML contributions, benefits](#) (January 13, 2026)
- [Top 10 health, fringe and leave benefit compliance and policy issues in 2026](#) (October 30, 2025)
- [Domestic partner benefits remain popular but present challenges](#) (August 20, 2025)
- [One Big Beautiful Bill includes employer-friendly provisions](#) (July 8, 2025)

Other Mercer resource

- [Life, absence, and disability benefits](#)

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