



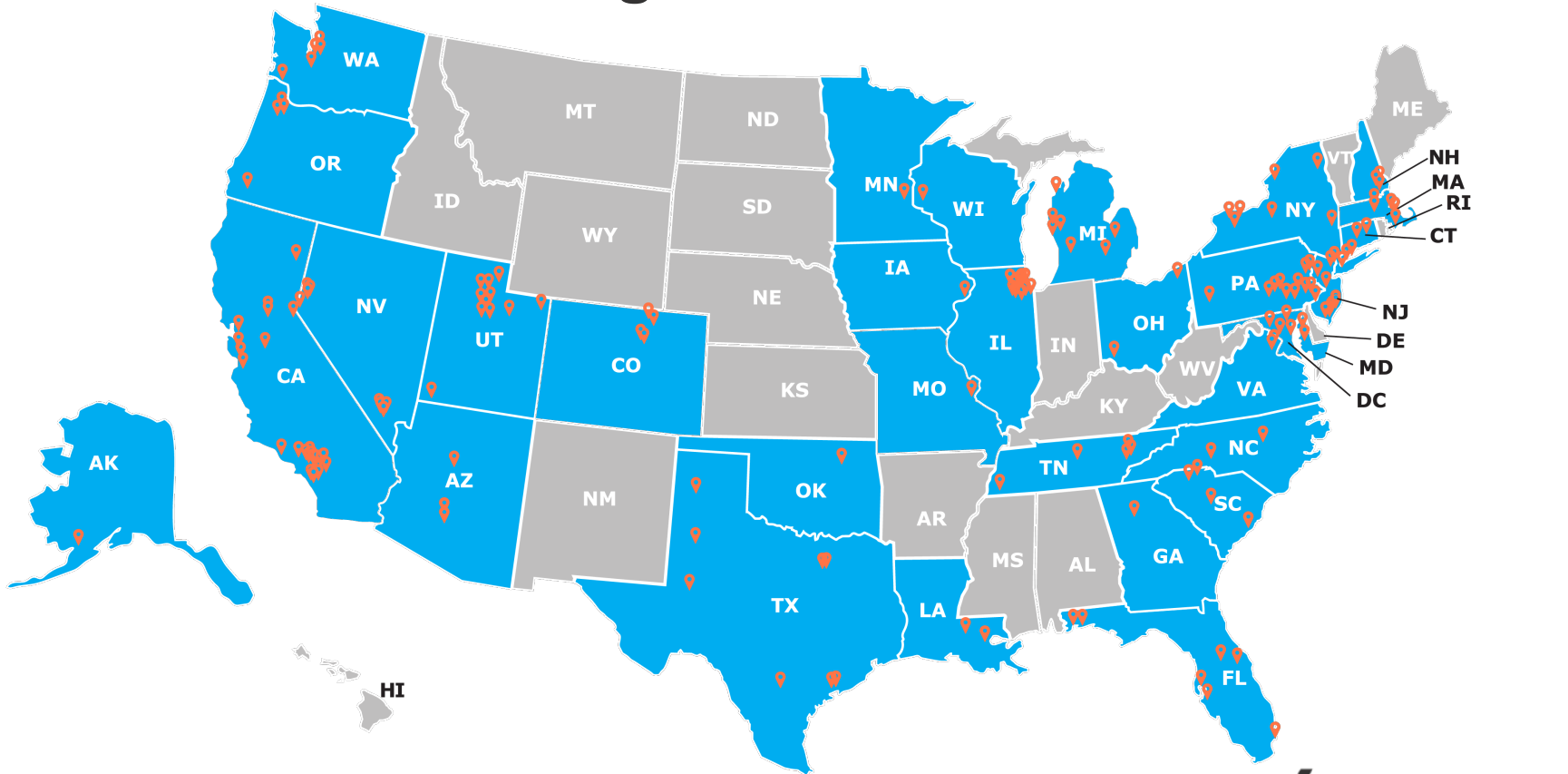
Welcome to Our Webinar Series
**Maryland Mandatory Paid
Leave Law Review**

Doug Desmarais Esq.
Smith & Downey

June 23, 2022



Welcome to Our Regional Alera Partner Firms!





Questions?

During the webinar if you have any questions, please feel free to...

- 🗨 Zoom Chat: Enter questions via the “Chat” feature in the Zoom meeting

Reminders

1. Slides and resources will be emailed after the webinar and are available on silbs.com/events
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UPCOMING

Workplace Wellness Programs and Compliance with DOL & EEOC Rules

July 13th, 2 PM – 3 PM EST
Speaker: Stacy Barrow, Esq.

Grow Through Benchmarking: 2022 Survey Results Reveal

July 21st, 2 PM – 3 PM EST

Q3: What's Trending in Compliance

August 18th, 2 PM – 3 PM EST

BTR's 2022 Employer Technology Survey Results & Key Findings

September 14th, 2 PM – 3 PM EST

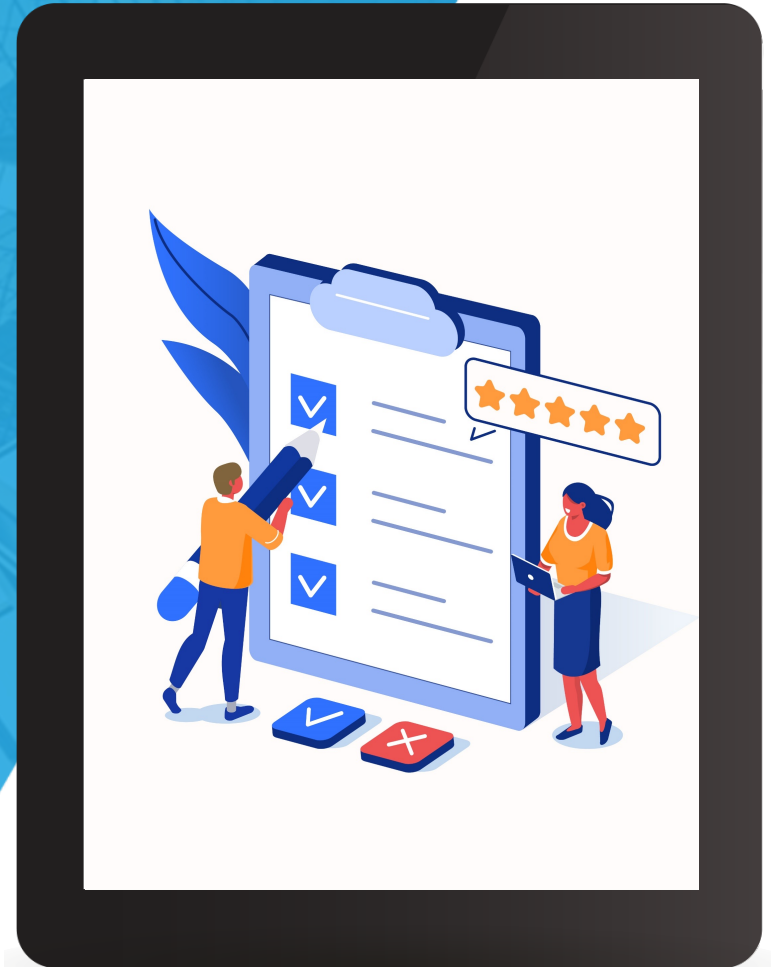
Webinars



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If you are a Mid Atlantic employer with 50 or more employees, then you are invited to participate in the 2022 Mid Atlantic Benchmarking Survey

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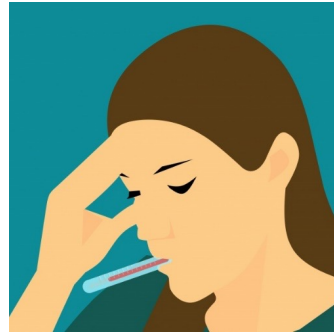


Welcome

Doug Desmarais Esq., *Smith & Downey*

Maryland Time to Care Act: What You Need to Know

June 23, 2022



Your Presenter: Douglas W. Desmarais

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Note that this presentation is intended as a general discussion of the law and is not intended as legal advice for any particular situation.

Overview

- Requires Maryland employers to provide paid family and medical leave (FML) to eligible employees for covered reasons
- Maryland joins nine states and the District of Columbia with paid FML laws
- Act establishes a Fund into which employers and employees make contributions, and from which the state pays for benefits

How Did We Get Here?

- March 31, 2022 - Senate Bill 275 (the Act) passed the legislature and was submitted to the governor
- April 8, 2022 - Governor Hogan vetoed the bill
- April 9, 2022 - Legislators in the Maryland General Assembly voted to override the veto and ultimately passed the Act
- June 1, 2022 – Effective Date of the Act...(but don't panic!)

Who is a Covered Employer?

- Act applies to all public and private employers with 1+ employees, including private schools
- May be eligible for an exemption under the Act if the employer provides eligible employees with benefits and/or insurance that meets/exceeds requirements of Act
- Must submit a request to the Maryland DOL to be approved for exemption

How are Benefits Funded?

- The Act establishes the Maryland Family and Medical Leave Insurance Fund (the “Fund”)
- Fund is administered by the Maryland Secretary of Labor. DOL will adopt regulations for the Fund by **June 1, 2023**
- Both employers (with 15+ employees) and employees are required to contribute to the Fund
- Employee contributions made through payroll deductions
- **Contributions begin on October 1, 2023**



Who Controls the Fund?

- The State Treasurer is custodian of the Fund and will manage the Fund in accordance with MD DOL regulations
- **The Fund will consist of:**
 - Employee Contributions
 - Self-Employed Individual Contributions
 - Employer Contributions
 - Money paid for reimbursing benefits paid in error
 - Interest earned on money in the Fund
 - Money received by the Fund from any other source



When do Benefits Begin?

- **January 1, 2025** – eligible employees may begin taking benefits
- Benefits are paid directly by the State
- Employees are paid partial wage replacement based on a range of \$50 to \$1,000 per week (may increase over time to account for inflation)
- Pay scale varies based on income, with lower-income workers receiving the highest portion of their income, up to 90%.



How Much do Employers Have to Contribute?

- Good question! (*We don't know...*)
- **June 1, 2023** - DOL will set the total rate of contribution
- Contributions will involve (1) a portion paid from each employee's wage and (2) a portion paid by the employer
- Neither party's portion can exceed 75% of the total contribution

What if We Want to be Generous?

- Employers may choose to pay a portion of an employee's required contributions
- It is unclear whether an employer can elect to pay a portion of the contribution for some employees but not others

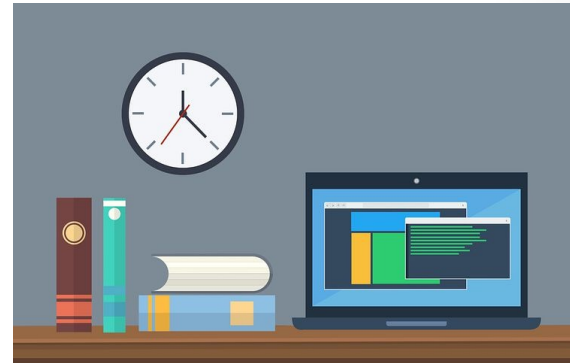


Will Contribution Rates Increase Over Time?

- Potentially!
- Every 2 years a cost analysis will be conducted to review the cost of maintaining solvency and paying benefits
- Secretary of Labor will make recommendations regarding the appropriate total rate of contribution and the appropriate cost-sharing formula between employers and employees

Who is a Full-Time Employee?

- Full-time and Part-time employees are eligible
- Employees are eligible if they worked at least **680 hours** in the 12-month period immediately preceding the date the leave begins
- Example – FT employee working 40 hours/week is eligible after approximately 17 weeks



Are Part-Time Employees Covered?

- Yes!
- 680-hour threshold means that many part-time employees will qualify
- For example, an employee who works 14 hours per week will qualify for benefits within one year of part-time employment



What are Qualifying Reasons to Use Leave?

- **Parental Leave** – Care for a newborn child or child newly-placed for adoption, foster care, or kinship care, during the first year after child's birth, adoption, or placement
- **Employee's Own Serious Health Condition**
 - Attend to a serious health condition that results in the employee being unable to perform the functions of their position
- **Family Member's Serious Health Condition**

Qualifying Reasons, Cont.

- **Next of Kin Service Members**
 - Care for a service member with a serious health condition resulting from military service who is the employee’s “next of kin”
- **Military Exigencies** – Attend to a qualifying exigency arising out of the deployment of a service member who is a family member of the covered employee



What is a “Qualifying Exigency”?

- **The employee is a family member of a “service member” and needs leave:**
 - (1) Because the service member received notice of deployment within 7 days before the deployment is to begin
 - (2) To attend military events and related activities related to the active duty of the service member
 - (3) To arrange, provide, or attend childcare or school activities, only when the service member is on active-duty call or active-duty status



Qualifying Exigency, Cont.

- **The employee is a family member of a “service member” and needs leave...**
- (4) To make financial and legal arrangements for the service member’s absence, or because of the absence
- (5) To attend to counseling that (a) is needed due to the active duty or call to active-duty status of the service member and (b) is provided by an individual who is not a licensed health care provider
- (6) To spend up to 15 calendar days with a service member who is on short-term temporary rest and recuperation leave during the period of deployment

Qualifying Exigency, Cont.

- **The employee is a family member of a “service member” and needs leave...**
- (7) To attend post-deployment activities for a period of 90 days immediately following termination of active status
- (8) To attend to matters related to the death of the service member while on active-duty status
- (9) To arrange for or provide alternative care for a parent of the service member when the parent is incapable of self-care and the covered active duty or call to active duty necessitates a change
- (10) Because of any other issues that arise out of active duty or a call to active duty that an employer and covered employee agree should be covered

What is a “Serious Health Condition”?

- An illness, injury, impairment, or a physical or mental condition that involves:
 - (1) Inpatient care – hospital, hospice, residential health care facility
 - (2) continued treatment by a licensed health care provider or
 - (3) continued treatment or supervision at home by a licensed health care provider (LHCP) or other competent individual under the supervision of LHCP
- Includes conditions that continue over an extended period of time and require intermittent treatment

“Treatment” includes...

- ✓ Exams or testing – determine extent of the condition
- ✓ Ongoing or periodic evaluations
- ✓ Actual treatment



Who is a Family Member?

- **Child**
 - Biological
 - Adopted
 - Foster
 - Stepchild
 - Child for whom the employee has legal/physical custody or guardianship
 - Child for whom the employee stands in “loco parentis”
 - Ward of the employee or the employee’s spouse
- **Parent – of the Employee or the Employee’s Spouse (i.e., “In-Laws”)**
 - Biological
 - Adoptive
 - Foster
 - Stepparent
 - Legal guardian
 - Individual who acted as a parent or stood in “loco parentis” to the employee or employee’s spouse when they were a minor

Family Members, Cont.

- **Spouse**
- **Grandparent or Grandchild**
 - Biological
 - Adopted
 - Foster
 - Step-Grandparent/Child
- **Sibling**
 - Biological
 - Adopted
 - Foster
 - Step-Sibling



How Much Leave is Available?

- Employees can generally take up to **12 weeks** of Paid Family Medical Leave (PFML) per year
- Employees may take an **additional 12 weeks (i.e., up to 24 weeks/year)** if they use parental leave and need additional time for their own serious health condition, **or vice versa**
- Leave runs concurrently with any federal FMLA



Can Leave be Taken on an Intermittent Basis?

- **Yes!**
- Employees must:
 - make a “reasonable effort” to schedule leave in a manner that does not unduly disrupt operations
 - Provide employer with reasonable and practicable prior notice of the reason for which intermittent leave is necessary
 - Take intermittent leave in increments of 4+ hours

Do Employees Receive Other Benefits While on Leave?

- **Yes!**
- Employers must provide health benefits in the same manner as they do for federal FMLA



How does this leave interact with our other paid leave programs?

- **Law is “gray” on this area – look to regulations**
- Employers may already have certain paid leave programs in place – e.g., short-term disability, paid parental leave, Maryland Healthy Working Families Act
- Employees must “exhaust all employer-provided leave” that is available before receiving these paid Family Medical Leave benefits
- But this section is not to be construed to reduce weeks of leave for which benefits may be paid

Is Leave Job-Protected?

- **Yes!**
- Employers required to provide job protection and “restore the covered individual to an equivalent position of employment,” upon return from leave.



Are There Any Exceptions to Job Protection?

- Employees may be fired for “Cause” while on leave
- Employer may deny comparable restoration if (1) the denial is necessary to prevent *substantial and grievous economic injury* to the employer; (2) the employer notifies the individual; and (3) if the employee is already on leave, the employee elects not to return after receiving such notice

Do Employees Have to Provide Advance Notice of Leave?

- If need for leave is foreseeable: employer can require the employee provide written notice at least 30 days before taking the leave
- If the need for leave is not foreseeable, the employer can require:
 - Notice be provided as soon as practicable
 - Employees must comply with employer's regular requirements for requesting or reporting other leave

Do We Have to Provide Employees' Notice of the Law?

- Employers must inform employees of their rights under the Act in writing upon hiring **and each year following**
- When employee requests Family Medical leave or when employer knows that employee's leave may be for a Family Medical reason, employer must notify the employee of eligibility **within five business days**
- DOL will develop standard notices

How Will we Know if an Employee Receives Benefits?

- Employees submit applications for benefits directly to the State
- The State is required to notify employers within 5 business days after an employee files a claim
- The State may request additional information from employer to confirm employee eligibility



How Does an Employee Apply for Benefits?

- Employees completes application and provides certification for a claim
- Certification for serious health condition must include:
 - Date condition began
 - Probable duration
 - Appropriate facts within knowledge of licensed health care provider
 - If for family member – statement that employee needs to care for family member and estimate of time required
 - If for employee's own condition – statement employee unable to perform essential functions of the position
 - For intermittent leave – expected duration

...But do We Really Have to Comply?

- **Employees cannot waive rights under the Act.** Any agreement to waive benefits is “null and void.”
- **Employer Policies** – May provide for greater benefits, but not fewer
- **Collective Bargaining Agreements** – May provide for greater benefits, but not fewer

Key Differences MD and DC

Maryland

- Job protected
- Up to 24 weeks/year
- Requires employees to use employer-provided benefits before receiving MD paid family leave benefits
- Covers same events as DC + additional qualifying events related to covered military servicemembers

District of Columbia

- Not job protected
- Max of 8 weeks/year
- Employer discretion to determine how employer-provided benefits coordinate with paid family leave – can receive ER and DC benefits simultaneously

Key Differences MD and FMLA

Maryland

- Job Protected
- Up to 24 weeks/year
- Eligible if worked 680 hours in last 12 months
- “Family” includes in-laws (spouse’s parent), grandparent, grand-child, sibling

FMLA

- Job Protected
- Up to 12 weeks/year
- Eligible if worked 12 months and 1,250 hours in last 12 months
- “Family” only includes spouse, parent, child

Key Differences MD and FMLA

Maryland

- Unknown if special rules for schools
- Must use any other ER paid benefits before using MD FML benefits [*need regs to clarify further*]
- May deny job restoration to prevent “substantial and grievous economic injury”
- Notice to EEs upon hire & at least once a year

FMLA

- Special rules for “instructional staff” in schools
- May require concurrent use of some other benefits (e.g., vacation)
- May only deny job restoration for “Key Employees” to prevent substantial and grievous economic injury
- Notice to EEs upon hire

Where Can We Find More Detailed Rules?

- Regulations are being developed by the DOL
- These regulations “shall” be consistent with the federal FMLA regulations and relevant state laws “to the extent they do not conflict” with the Act

What Does This Mean for Schools?

- FMLA regulations contain special rules for “instructional employees”
 - Leave near end of semester
 - Intermittent leave
 - Designating/counting leave and ability to ask employees to remain on leave
- Not clear whether similar regulations will apply under Maryland Family Medical Leave
 - **Consider reaching out to MD DOL on this issue**

Where Can We Find Application Forms, etc.?

- Maryland Department of Labor is tasked with establishing procedures and forms for filing claims for benefits
- Forms should eventually be available on the MD DOL website: <https://www.dllr.state.md.us/>



How Will the Act be Enforced?

- MD Secretary of Labor can receive complaints, conduct investigations, & bring lawsuits for non-compliance
- Penalties for failure to contribute include: (1) payment of the amount in contributions owed plus interest; (2) a penalty of no more than twice the amount owed; and (3) an audit
- Civil penalties may also be sought for general non-compliance - \$1,000 per employee



Can Employees Sue?

- Yes – But must file complaint with MD DOL first and receive an Order
- Employee may bring a lawsuit within 3 years to enforce the order
- Prevailing employee may receive up to: (1) 3x value of lost wages and damages; (2) punitive damages; (3) attorneys' fees; and (4) injunctive relief



What's Next? Could My Local County/City Enact a Similar Law?

- Not after June 1st!
- Act preempts the authority of a local jurisdiction in MD to enact a local paid family and medical leave insurance program

Recap – Important Dates

- **June 1, 2022** – Effective Date
- **June 1, 2023** – DOL to set rates of contribution and regulations
- **October 1, 2023** – Contributions Begin
- **January 1, 2025** – Benefits Begin



QUESTIONS?



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