

A New World For Minnesota Employers: Minnesota Concludes Legislative Session and New Requirements for Employers Abound

by Ryan E. Mick

The Minnesota Legislature recently concluded its 2023 session with the passage of a comprehensive paid family medical leave bill [Mn Chapter 59](#) and an omnibus labor bill [Mn Chapter 53](#) that will impose significant new obligations on Minnesota employers. Governor Walz promptly signed all bills.

Dorsey's [prior e-update](#) focused on Minnesota's impending ban on new non-competition agreements between employers and employees. The legislature also passed a statewide sick and safe leave requirement, a paid family and medical leave program that includes new protected leave rights for Minnesota employees, and expanded protections for pregnant and nursing employees, among other new provisions targeting certain industries (such as meat packers and the construction industry). The legislature also passed a recreational marijuana bill, which will further complicate drug testing and discipline for Minnesota employers.

Expanded Pregnancy and Nursing Protections Effective July 1, 2023 (included in Mn Chapter 53)

Under existing law, employers that employ over 21 employees must provide reasonable break times each day to an employee who needs to express breast milk. Effective July 1, 2023, all employers with more than one employee must comply with the statute. In addition, an employer's right to require nursing breaks to run concurrent with scheduled break times has been curtailed, and the former exception for breaks that would unduly disrupt the employer's operations has been revoked. An employee's right to breaks to express breast milk is no longer limited to the 12 month period following birth of a child.

The new law also expands the statutory list of potential reasonable accommodations for pregnant employees to expressly include temporary leave of absence, modification of work schedule or job assignments, and more frequent or longer breaks, in addition to transfer to a less strenuous or hazardous position, seating accommodations, or limits to

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heavy lifting.

Employers must give notice of these provisions upon an employee's request and must provide information regarding employee rights and remedies in any employee handbook. The Minnesota Department of Labor and Industry is required to provide uniform notice language.

All Minnesota Employers Must Provide Paid Sick and Safe Leave Effective January 1, 2024 (included in Mn Chapter 53)

While employers in Minneapolis and St. Paul (and some other localities) have been subject to paid sick and safe leave requirements for some time, effective January 1, 2024, all Minnesota employers will be required to provide that benefit.

Under the new law, full-time, part-time and temporary employees are entitled to earned sick and safe leave, provided the employee works at least 80 hours in a year for that employer in Minnesota.

Employees will be entitled to accrue at least one hour of earned sick and safe time for every 30 hours worked, up to a legally required 48 hours of earned sick and safe time per year. Employees must be permitted to carry over unused sick and safe time year to year, up to 80 total hours. There is a limited front-loading option as an alternative to accrual based on hours worked.

Employers must keep accurate records of accrued sick and safe time for each employee.

Accrual commences on the first day of employment and earned sick and safe time may be used as it accrues.

Employees must be permitted to use earned sick and safe time broadly, including for the employee's own physical or mental illness or injury; to care for a family member; absences due to domestic abuse, sexual assault or stalking of the employee or a family member; seeking legal advice or participating in any criminal or civil legal proceeding related to domestic abuse, sexual assault or stalking; the closure of employee's place of business due to weather or public emergency; absences due to providing care for family members whose school or place of business has been closed due to weather or public emergency; or an inability to work caused by circumstances analogous to the COVID pandemic. For purposes of the law, "family member" is defined broadly to include an employee's child (including foster child, adult child, or child to whom the employee stands *in loco parentis*), spouse or domestic partner, siblings (including foster or stepsiblings), parents (including foster parents, stepparents, or any person who stood *in loco parentis* to the employee), grandparents or grandchildren, aunts, uncles, nieces, nephews, "any other individual related by blood or whose close association with the employee is the equivalent of a family relationship," and "up to one individual annually designated by the employee."

An employer may require reasonable notice (up to 7 days) of the need to use earned sick

and safe leave time, but only pursuant to a written policy containing reasonable procedures for employees to provide such notice. Notably, if the need for leave is unforeseeable, employers may not require more notice than is “practicable” for the employee.

Employers may not retaliate against an employee for exercising rights under the statute and must maintain the employee’s insurance coverage during any period of sick and safe leave. Employees must be returned to a position at the same rate of pay, and with all pre-leave benefits and seniority, upon conclusion of sick and safe leave.

Employers must give notice of sick and safe leave rights to current and new employees, either by a posting in the workplace or by providing notice directly to employees in hard-copy or electronic form. The Minnesota Department of Labor and Industry is required to provide a uniform employee notice form.

The law also imposes confidentiality obligations on employers who learn private information associated with an employee’s need for protected leave.

Employers need not pay out accrued but unused sick and safe time upon termination, but must reinstate an employee’s sick and safe time bank upon rehire within 180 days. Successor employers, including business purchasers, must honor employees’ sick and safe time banks. The law also provides for either the Commissioner of Labor and Industry or the individual employee to bring a claim within 3 years of the alleged violation.

An employer’s existing PTO practices likely will suffice to provide the required sick and safe leave benefit, provided the policy or practice satisfies the requirements of the new law (i.e., number of hours, carry over, notice limits, use of leave). *Significantly, the new sick and safe leave entitlement is in addition to the paid family medical leave benefit described below.*

All Minnesota Employers Must Provide Protected Family and Medical Leave Effective January 1, 2026¹

The vast majority of Minnesota employees (including those employees who may work outside of Minnesota for the majority of their time but whose work is “controlled and directed” from Minnesota) will be entitled to paid family and medical leave (“PFML”) benefits under a state-run insurance program administered by the Department of Economic Development. The program will be funded by a new payroll tax currently set at 0.7%. In the event that an employer chooses to participate in the state-run PFML program, the law allows employers to deduct 50% percent of the payroll tax from their employee’s wages. Employers may be able to substitute a private plan for the state-run benefit, but all employers will be required to provide protected leave for employees concurrent with their entitlement to benefits. The Department of Commerce is granted the authority to certify any substitutions of private plans.

Effective January 1, 2026, Minnesota employees will be entitled to protected leave for up to 12 weeks for an employee’s own serious health condition and 12 weeks for bonding,

safety leave, family care or qualifying exigency leave (military service and related leave), up to a total of 20 weeks of protected leave in any benefit year. Employees are protected by the statute's reinstatement rights ninety days from the date of hire.

Employees may use PFML leave on an intermittent basis, for up to 480 hours in any 12-month period. There is no undue hardship exception, but an employee must provide a schedule of days off as soon as practicable and must make a reasonable effort to schedule intermittent leave to avoid disruption to an employer's operations. (However, an employer's ability to enforce this requirement is virtually nonexistent.)

In determining an employee's eligibility for benefits:

- "Serious health condition" for purposes of an employee's self-care or care of a family member is similar to the FMLA;
- "Safety leave" means leave from work because of domestic abuse, sexual assault or stalking of an employee or the employee's family member, including seeking medical attention or victim services, seeking relocation, or participating in legal proceedings.
- "Family members" are defined broadly to include an employee's spouse or domestic partner, child (including foster child, child to whom the employee stands *in loco parentis* or "de facto parent"), siblings, parents or a spouse's parents (including foster parents, stepparents, or any person who stood *in loco parentis*), grandparents or a spouse's grandparents, grandchildren, son-in-law or daughter-in-law, or any individual "who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together."

As a general rule, eligibility for leave requires a seven-day qualifying event. An employer may require reasonable notice, including at least 30 days' notice for foreseeable leave, or as much notice as practicable if 30 days is not possible.

Employees are entitled to protected leave for any day for which they have been deemed eligible for PFML benefits, as well as any day for which the employee cannot work and has applied for benefits in "good faith." Good faith is defined as "anything that is not knowingly false or in reckless disregard of the truth." (It is unclear what rights an employee may have if they fail to provide reasonable notice but have applied for benefits other than based on a knowing falsehood.) Thus, employers likely will be required to determine an employee's eligibility for protected leave in the absence of a benefits eligibility determination from the state, given the potential for significant lags between an employee's need for leave and their application for benefits (or the determination thereof). It also is unclear what obligations an employer will have to provide protected leave in the event of an appeal from an initial benefits determination.

Employers may not interfere with an employee's use of leave or application for benefits or retaliate against an employee for exercising rights under the statute. Employers are subject to rigorous requirements to return the employee to the same or virtually identical position at the conclusion of protected leave, subject to limited exceptions if the employee's employment would have terminated regardless of leave status. Employers must maintain the employee's insurance coverage during any period of protected PFML

leave. Although employers may require the employee to pay their share of premiums, an employer's obligations if an employee fails to do so are unclear.

An employer may require that state-mandated PFML run concurrently with federal FMLA leave, to the extent possible, but employers should note that if an employee's PFML leave is not FMLA-qualifying, the employee would have additional FMLA rights in the event of a later FMLA-qualifying leave. Further, unlike the federal FMLA benefit, there is no threshold minimum number of employees before an employer is covered. Employees can choose to use other available benefits (PTO or vacation) in lieu of PFML benefits, but an employer may not require an employee to do so. An employee's PFML leave benefits are in addition to sick and safe leave benefits available under state law or local ordinances. Thus the actual duration of protected leave may be substantially more than 12/20 weeks.

Employers must post notice of benefits under the new statute in the workplace and must provide written notice (in the employee's primary language) of benefit and leave eligibility, as well as premium deductions to be made by the employer.

Employers have new wage detail reporting obligations and are required to maintain statutorily required employee earnings statements, including tax deductions for PFML benefits premiums, for at least 3 years.

For employment practitioners, release of claims under the PFML statute are subject to the MHRA's 15-day rescission period.

Minnesota employers face fundamental changes as a result of the new laws passed in the 2023 Legislative Session. Employers can implement necessary changes thoughtfully, so some of the more onerous obligations have extended effective dates and will require administrative rulemaking to implement. Executives and HR professionals should thoroughly analyze these new significant requirements and consult with their legal advisors to ensure they take the steps necessary to come into compliance. Dorsey's Labor and Employment team will discuss these new laws (and others) at our annual symposium in August.

¹This is a complex bill with various effective dates applicable to the Department of Economic Development and other government agencies but the Employer's obligation to provide leave and to commence withholding is January 1, 2026.