

# Employee Benefit ■ Plan Review

## Minnesota Enacts Paid Family and Medical Leave and Earned Paid Sick Leave; Bans Nearly All Non-Compete Covenants

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**M**innesota recently enacted three new laws that directly affect Minnesota employers: Paid Family and Medical Leave, Earned Paid Sick Leave and legislation effectively banning most non-compete covenants. This article discusses the new legislation.

### PAID FAMILY AND MEDICAL LEAVE

Minnesota's Paid Family and Medical Leave Act (PFMLA) provides paid benefits for family leave and medical leave for qualifying employees beginning on January 1, 2026.

The PFMLA will apply to nearly all private and public Minnesota employers, regardless of size. The law covers both full-time and part-time workers who, during the calendar year:

- (1) Work at least 50 percent of their time within Minnesota;
- (2) Work 50 percent or more of their time in another state or Canada, but perform some work in Minnesota and reside in Minnesota during 50 percent or more of the calendar year; or
- (3) Work less than 50 percent of their time in Minnesota, Canada or another state but

whose work is directed or controlled by a place based in Minnesota.

PFMLA does not apply to certain seasonal workers.

### Funding

PFMLA benefits operate as an insurance-style benefit to be funded by premiums paid for by both employees and employers. Employees must apply for paid benefits with the State of Minnesota, which will determine: (1) whether an employee is eligible for paid leave; and (2) if so, the amount of benefits the employee may receive.

An employee's paid leave benefits are portable from employer to employer, meaning that a recently hired employee may count income earned during the base period from a previous Minnesota employer.

### Eligibility and Amount of Leave

Employees are generally eligible for up to 12 weeks of PFMLA leave. If employees foresee the need for leave, they must provide at least 30 days' advance notice, or notice as soon as practicable otherwise.

Employees are eligible for PFMLA leave in the following situations:

- (1) Their own serious health condition (including pregnancy);
- (2) To care for a family member (which is broadly defined) with a serious health condition;
- (3) Bonding (time spent by an employee in conjunction with the birth, adoption, or foster care placement of an employee's child);
- (4) Safety leave (leave because of domestic abuse, sexual assault or stalking of the employee or an employee's family member for qualifying reasons); or
- (5) A qualifying exigency for a designated need arising from an employee's active-duty military service.

An employee who was employed for at least 90 days before taking leave will be entitled to reinstatement to their job or an equivalent job upon their return. Employees are also entitled to keep their health insurance coverage while on leave.

### Required Reports

Beginning on July 1, 2024, employers must submit quarterly wage-detail reports to the State detailing employee names, total wages (rounded to the next lower whole dollar amount) and number of hours worked. The report must include all employees who were employed during the payroll period that includes the 12th day of each calendar month. Employers must submit a report even when no wages are paid during a calendar quarter.

### Exceptions

Employers may be exempt from the PFMLA if they receive approval to provide benefits through a private plan. Employees would receive the same benefits and leave time but would apply for benefits through the private plan. Employers participating in an approved private plan will be exempt from paying some or all required PFMLA premiums.

### EARNED PAID SICK LEAVE

Minnesota has also enacted the Earned Paid Sick Leave law that requires all employers to provide paid sick leave to eligible employees effective January 1, 2024. Employees are eligible for sick leave if they perform at least 80 hours of work in a year.

#### Accrual

Employees are entitled to accrue up to 48 hours of paid sick leave per year, earning a minimum of one hour for every 30 hours worked. Employees may carry over accrued but unused sick leave into the following year, but employers may cap total accrual of sick leave at 80 hours.

Employers may also “front-load” 48 hours of paid sick leave to employees. Employers must “cash out” unused sick leave under the “frontload” method unless they frontload 80 hours of paid sick leave.

Under the law, employees begin accruing sick leave immediately upon hire and may use sick leave as it is accrued.

#### Qualifying Reasons

Employees may use paid sick leave for any of the following reasons:

- (1) Their own mental or physical illness, injury, or other health condition;
- (2) To care for a family member (which is broadly defined) with a mental or physical illness, injury or other health condition;
- (3) Absences due to domestic abuse, sexual assault or stalking of the employee or employee's family member for qualifying reasons;
- (4) Closure of the employee's place of business due to weather, public emergency or the need to care for a family member whose school or place of care has been closed because of weather or public emergency;
- (5) The employee is unable to work or telework because the employer

prohibits them from going to work due to public health concerns or the employee is seeking or awaiting results of a diagnosis of a communicable disease related to a public emergency; or

- (6) Because health authorities or a health care professional has determined the presence of the employee or a family member in the community would jeopardize the health of others, even if the employee or family member has not actually contracted the disease.

### Written Policy and Certification

If the use of sick leave is foreseeable and an employer has a written policy, then employees are obligated to provide up to seven days' advance notice. If the need for leave is unforeseeable, employees must provide notice as soon as reasonably practicable. An employer that does not have a written policy may not deny the use of sick leave for failure to provide notice.

Employers may require reasonable documentation certifying that the need for leave is for a qualifying reason if the employee uses sick leave for more than three consecutive days.

### Benefits, Pay and Notice

Employers must continue an employee's insurance coverage during leave, although employees may be required to continue paying any employee portion of such benefits. Employees are entitled to reinstatement at the same pay, plus any automatic adjustments that may have occurred, and to retain all terms and conditions of employment.

Employers must provide notice to all employees, including within an employee handbook. Employers may use a uniform employee notice prepared by the Minnesota Department of Labor.

### Other Requirements

Employers must provide earnings statements to all employees at the

end of each pay period that list the total number of paid sick leave hours accrued and available for use, and the total number of hours used during the pay period.

The Paid Sick Leave law does not preempt existing city ordinances; employers must provide employees the benefit that is most generous.

### NON-COMPETE COVENANT BAN

In addition, Minnesota recently enacted legislation effectively banning non-compete covenants for all workers, which took effect July 1, 2023. The legislation is not retroactive.

#### Non-Compete Definition

Under the law, a covenant not to compete is an agreement between an employer and employee “that restricts the employee, after termination of the employment, from performing: work for another employer for a specified period of

time; work in a specified geographic area; or work for another employer in a capacity that is similar to the employee’s work for the employer that is party to the agreement.” The ban applies to all employees and independent contractors.

#### Exceptions

Non-disclosure covenants, trade secret covenants and non-solicitation covenants are excluded. In addition, employers may enter into non-compete covenants in connection with the sale of a business or with former parties involved in a business, if the restrictions are geographically and temporally reasonably limited.

#### Choice of Law

Employees may not be required to agree to any choice of law provision that substantively differs from Minnesota law, or to adjudicate any claims outside of Minnesota.

### WHAT EMPLOYERS SHOULD DO NOW

Minnesota employers should prepare for these changes to Minnesota’s employment laws. Employers should review and revise their current template restrictive covenant agreements to remove non-compete covenants. Employers should also review their paid sick leave policies, or implement new policies, to ensure compliance with the Earned Paid Sick Leave law. Employers should also be aware of their obligations under the PFMLA and begin preparing to comply with the wage reporting requirements starting July 1, 2024. 🌐

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