

Are You Ready for the Michigan Paid Medical Leave Act?

3/7/2019

Practices: Employment, Labor & Benefits

Executive Summary

Outgoing Michigan Governor Rick Snyder signed into law the Michigan Paid Medical Leave Act (the “Act”) in December 2018. Effective March 29, 2019, private sector employers who employ 50 or more individuals (whether or not those individuals work in Michigan) must offer paid sick leave under the Act to “eligible” employees whose primary work location is in Michigan. Your company should take immediate steps to ensure it complies with the Act.

ARE YOU COVERED?

First, you must analyze whether your company employs the requisite number of individuals to be covered by the Act. Although the Act does not spell this out, the Michigan Department of Labor’s Wage and Hour Division has said that even individuals employed outside Michigan count toward the 50-individual threshold. Individuals also count toward that threshold regardless of full- or part-time status or the number of hours they work. The Act does not apply to the United States government, other states or political subdivisions of other states.

DO YOU ALREADY GIVE ENOUGH LEAVE?

Next, you should determine whether your current paid leave offering surpasses that required by the new law; if an employer provides employees with at least 40 hours of paid leave per benefit year, there is a rebuttable presumption that the employer is in compliance with the Act. (A “benefit year” is any 12-month period the employer chooses). The Act requires accrual of 1 hour of paid leave for every 35 hours worked, or 40 hours of paid leave per benefit year for full-time employees. Employees may carry over up to 40 hours of accrued, unused leave to the next benefit year. Alternatively, an employer can provide employees with all 40 hours of leave at the beginning of the benefit year (or a pro-rated amount for employees beginning work mid-year) and then does not have to allow carryover of accrued, unused leave.

HOW DOES PAID LEAVE WORK?

An employer may require use of leave under the Act in minimum one-hour increments, or in such increment as is spelled out in a written policy. The amount of pay given for leave is, generally, the employee’s normal hourly wage or base wage. Overtime, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay and gratuities are not considered in calculating pay for leave pursuant to the Act. Regardless of whether paid leave is accrued or front-loaded, an employer need not pay an employee for accrued, unused leave upon termination, regardless of the reason for the termination.

DO YOU ALLOW LEAVE FOR THE RIGHT REASONS?

Under the Act, leave must be given for:

- mental or physical illness, injury or health condition, or the diagnosis, care or treatment of same, or preventive care, whether for the employee or employee's family member;
- issues related to domestic violence or assault involving the employee or employee's family member; and
- closure of the employee's workplace or employee's child's school for various reasons, or if the employee or employee's family member is determined by a public official to put others at risk for communicable disease.

The Act defines "family member" fairly broadly. In general, it includes any person for whom the employee stands *in loco parentis*, anyone who stood *in loco parentis* for the employee when the employee was a child, and the employee's spouse, grandparents, grandchildren and siblings.

WHICH EMPLOYEES MUST RECEIVE LEAVE?

You will then determine which employees are entitled to paid leave. In general, all employees whose primary work location is Michigan are entitled to leave under the Act, unless they fall within an exception. The following types of employees are not entitled to leave under the Act:

- executive, administrative, professional and outside sales employees (basically, employees exempt from overtime under federal law);
- employees covered under a collective bargaining agreement;
- employees who averaged less than 25 hours per week in the prior calendar year;
- employees who worked 25 weeks or less in a job that was scheduled to last 25 weeks or less;
- certain transportation workers and railroad employees;
- government employees; and
- certain variable-hour employees.

WHEN DO EMPLOYEES BECOME ENTITLED TO LEAVE?

Employees must begin accruing leave on the later of March 29, 2019, or their first day of employment. An employer can require new employees to wait 90 days before using accrued leave, but they begin accruing it immediately.

NOW WHAT?

Ensure that all employees entitled to leave receive it. Also, comply with the notice requirement of the Act by displaying the required poster in your workplace. That poster is found at:

https://www.michigan.gov/documents/lara/Paid_Medical_Leave_Act_Poster_644565_7.pdf.

Finally, there are a few other matters to consider. These include:

- Employee notification requirements: the Company may require employees to follow its standard notification and documentation requirements for other leaves of absence, and may discharge an employee who does not comply.

- Documentation of leave for domestic violence or sexual assault: an employer must accept certain forms of documentation, must not require the employee to disclose details and must treat related information confidentially.
- Records retention: retain records related to your Company's compliance with the Act for at least one year.
- Penalties for violating the Act: payment for paid leave that was "improperly withheld" and a fine of up to \$1,000, plus up to \$100 per violation for failing to comply with the posting requirement.

Please let us know if you have any questions about how to comply with the Act.