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Connecticut to Offer Paid Family and Medical Leave

On June 25, Connecticut enacted a law that will provide workers in the state with 12 weeks of paid family and medical leave annually beginning in 2022. Funded by an employee payroll tax, the measure also allows two additional weeks of benefits for workers incapacitated by pregnancy. Employers should consider how best to integrate this new benefit into existing leave programs.

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Background

Connecticut's Family and Medical Leave Act (CFMLA) currently requires private employers with 75 or more employees to allow eligible employees to take up to 16 weeks of unpaid leave during a 24-month period for certain family- and health- related reasons, such as the birth of a child, the employee's own or a family member's serious health condition, or to serve as an organ or bone marrow donor. To be eligible for CFMLA leave, employees must have worked for: (1) a covered employer for a total of 12 or more months; and (2) at least 1,000 hours during the 12 months preceding the leave.

Paid Family and Medical Leave Act

When Governor Ned Lamont signed Public Act No. 19-25 on June 25 amending the CFMLA, Connecticut became the seventh state to enact a paid family leave program. Starting in 2022, Connecticut will join neighboring New York, Massachusetts and Rhode Island — along with California, New Jersey, and Washington as well as the District of Columbia — in providing paid family leave benefits.

A newly created quasi-public agency — the Paid Family and Medical Leave Insurance Authority (authority) — will oversee Connecticut's Family and Medical Leave Insurance (FMLI) program. The authority, rather than the state Department of Labor, will be responsible for implementing and administering the FMLI program, including paying benefits.

Funding

The state-administered program would be fully employee-funded through a payroll tax of 0.5%. Payroll subject to the new tax would be capped at the amount of annual earnings subject to Social Security taxes, currently \$132,900. Employers will be responsible for deducting and withholding the tax beginning in January 2021. Employee contributions will be held — and benefits paid starting in 2022 — by the FMLI Trust Fund.

Coverage

Almost all private-sector employers with at least one employee will be covered by the new law. Nonpublic elementary and secondary schools are exempt, as are the state, municipalities, and local or regional boards of education. While not covered *per se*, self-employed individuals and sole proprietors will be able to opt into the program.

Eligibility

In a significant shift from the CFMLA, the new law eliminates the minimum hours worked criterion from its benefits eligibility requirements — and replaces it with a minimum earnings test and reduced service requirement. To be eligible for paid leave benefits, an individual must have:

- Earned at least \$2,325 during the highest earning quarter in a base period (i.e., the first four of the five most recently completed quarters)
- Worked for their employer for at least three months immediately preceding a request for leave

Paid leave benefits

The new law provides up to 12 weeks of paid leave over a 12-month period for covered workers who take extended time off for a qualifying reason. Workers with a serious pregnancy-related health condition that results in incapacitation would be eligible for an additional two weeks of paid leave — up to 14 weeks in total.

Qualifying reasons

Under the new law, Connecticut employees will be eligible for paid leave for reasons such as:

- Birth of the employee's son or daughter
- Placement of a child with the employee for adoption or foster care
- Care of a covered family member with a serious health condition.
- Their own serious health condition
- Organ or bone marrow donation
- A qualifying exigency arising out of a family member's active duty or call to active duty in the armed forces

Notably, the new law expands the definition of family members for whom an employee can take paid leave. For these purposes, covered family members include children, parents, spouses, domestic partners, siblings, grandparents, grandchildren, and anyone else related by blood or affinity who has a close association with the employee shown to be the equivalent of those family relationships. Newly

covered family members include individuals related by blood, marriage, adoption, and foster relationships.

Weekly benefit

Qualifying employees would be eligible to receive a total weekly benefit of up to 60 times the state minimum wage. Subject to that cap, employees could receive 95% of their base weekly earnings up to an amount equal to 40 times the state minimum wage and 60% of their base weekly earnings above an amount equal to 40 times the state minimum wage.

Based on Connecticut's scheduled minimum wage hikes, employees could receive a maximum of \$780 a week when benefits first become available on January 1, 2022, and up to \$900 a week when the state's minimum wage hits \$15 an hour in 2023. Benefits payments for parental bonding leave may be available earlier if administratively feasible.

Buck comment. On May 28, 2019, Governor Lamont signed Public Act No. 19-4, incrementally raising Connecticut's current minimum hourly wage of \$10.10 to \$15.00 in 2023. When the state's paid leave benefits first become available, the state minimum hourly wage will be \$13.00, increasing to \$14.00 on July 1, 2022, and \$15.00 on June 1, 2023 with annual adjustments for inflation thereafter.

The new law indicates that benefits may be reduced if the paid leave program lacks sufficient funding to sustain the above levels.

Substituting employer-provided leave

If an employer provides paid leave for fewer than 12 workweeks, the additional leave necessary to attain the required 12 workweeks of leave under the new law may be provided without pay or with pay through the FMLI program. Eligible employees may elect, or employers may require them, to use accrued employer-provided vacation, personal, family, medical or sick leave while on FMLI leave. However, employers must allow employees to retain at least two weeks of any such leave.

Covered employees may receive wage replacement benefits concurrently with employer-provided benefits, provided the employee's total compensation does not exceed his or her regular rate of compensation. However, they may not receive benefits under the state program concurrently with unemployment compensation, workers' compensation or any other state or federal program that provides wage replacement.

Employee notices

Employees will have to notify the authority of the need for benefits. If required by the authority, employers will have to confirm the need for leave and certify the employee's compensation level.

Employers will be required to notify employees at the time of hire and annually thereafter about their leave entitlement and right to file a claim for benefits, starting July 1, 2022. Employers will also be required to inform employees that the law prohibits retaliation against any employee for requesting or

using family and medical leave and of their right to file a complaint with the state labor commissioner for violation.

Private plan option

Connecticut's new law allows an employer to apply for an exemption if it provides a private plan with the same or greater number of weeks of benefits, at least the same level of wage replacement for those weeks, for the same reasons, at the same cost and under the same conditions as the state plan, and satisfies certain other conditions, but only if it has been approved by a majority vote of the employer's employees. Employees enrolled in an approved private plan will not contribute to the FMLI Trust Fund, but the employer may withhold a portion of their wages that corresponds to the contribution rate for the public plan for the purpose of administering an approved plan.

In closing

Employers that operate in Connecticut should consider the impact paid leave will have on their employment policies and payroll practices.

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