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Virginia Enacts Paid Family and Medical Leave Insurance Program

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In late April 2026, Virginia enacted a new Paid Family and Medical Leave Insurance Program (PFML). Like many other state paid family and medical leave programs, Virginia's PFML will be funded through payroll contributions paid by employers and employees, with rates set annually by the Virginia Employment Commission (VEC). Payroll contributions begin April 1, 2028, and benefit payments begin December 1, 2028.

Key details of the new law are described below.

Contributions and funding

The program is funded through employer and employee payroll contributions. Employers with 11 or more employees must remit the full per-employee contribution to the state; such employers may deduct from each employee's wages up to 50% of the per-employee contribution (or a lesser percentage as may be agreed upon with the employee). Employers with 10 or fewer employees must deduct from each employee's wages 50% of the per-employee contribution rate applicable to larger employers and remit that amount to the state, with no additional employer contribution required. Deductions may not reduce an employee's wages below the applicable minimum wage. Contribution rates will be set by the VEC no later than October 1, 2027, and annually thereafter.

Benefit amounts

The weekly benefit amount is 80% of the employee's average weekly wages, subject to a statutory maximum. Employees may take leave on an intermittent schedule, with benefits prorated accordingly. Employees taking leave on an intermittent schedule are required to make reasonable efforts to avoid undue disruption to business operations when scheduling PFML leave.

Coverage

Beginning December 1, 2028, covered employees may take up to 12 weeks of paid leave for the following reasons:

- Caring for a new child during the first year after birth, adoption or placement of the child through foster care.
- Caring for a family member with a serious health condition.
- Addressing the employee's own serious health condition that prevents them from performing their job functions.
- Caring for a covered service member who is the covered individual's next of kin or other family member.
- Qualifying exigency leave arising from a family member's active duty service or call to active duty in the Armed Forces.
- Seeking safety services, such as legal or law enforcement assistance, medical treatment, relocation, and home security services for the covered individual or a family member, related to domestic violence, harassment, sexual assault or stalking. Leave taken for this reason is capped at four weeks per benefit year.

"Serious health condition" means an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition involving inpatient care or continuing treatment by a healthcare provider. "Family member" includes a child, grandchild, grandparent, parent, sibling, spouse or domestic partner (including step, foster or adopted relationships), as well as any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for such individual, and who depends on the employee for care. The definition does not include an individual who simply resides in the home with no

expectation that the employee care for the individual.

Employer notice obligations

Employers must provide written notice to each employee at hire, annually, and when the employee requests PFML or when the employer "acquires knowledge of an employee's intent to take [PFML]." The notice must address:

- The employee's right to benefits and how they may be used
- Benefit amounts
- Claims procedures
- Job protection and benefits continuation rights
- Anti-discrimination and anti-retaliation protections
- The right to file a complaint

Employers must also display a VEC-provided poster in a conspicuous location in English, Spanish and any language spoken as a first language by at least 5% of the workforce.

Job restoration and benefits continuation

Employees employed for at least 120 days before taking PFML are entitled to restoration to the same or an equivalent position upon return, including equivalent seniority, status, pay, benefits, and other terms and conditions of employment, including fringe benefits and service credits upon return from leave. Employers must also maintain healthcare benefits during leave.

Anti-discrimination and anti-retaliation protections

Employers may not discriminate or retaliate against employees for filing, applying for or using benefits; communicating an intent to file a claim or complaint; assisting in any investigation; or informing others of their PFML rights. Protections extend to good-faith, but mistaken, allegations of violations.

Coordination with FMLA and private plans

As with other state programs, leave taken under the PFML program that also qualifies under the federal Family and Medical Leave Act (FMLA) will run concurrently with PFML leave. Employers may apply to the VEC to satisfy their PFML obligations through a private plan offering equal or greater benefits. Approval must be renewed every two years, with disclosure of benefit changes and payment of a fee

Enforcement and liability

Employers that violate job restoration, benefit continuation or anti-retaliation obligations may be liable for:

- Lost wages, benefits or other compensation (or actual monetary losses up to 12 weeks of wages)
- Interest
- Equal liquidated damages, unless the employer proves a good-faith violation

Courts may also order equitable relief, including reinstatement and promotion.

Next steps

Employers should audit current leave policies against the new requirements and determine whether to participate in the state program or pursue a private plan. Handbooks and leave policies should be updated to

reflect the law, including FMLA coordination language. Employers should also prepare the required notice and stay tuned for the VEC-provided workplace poster. HR teams and managers should be trained on the new obligations, including anti-retaliation protections. Finally, employers should also monitor VEC rulemaking, as implementing regulations must be promulgated by April 1, 2028.

If you have questions about the PFML, please contact the Cooley employment team or one of the lawyers listed below.

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