

MODEL STATE PAID FAMILY LEAVE STATUTE

Section 1: Definitions

As used in this Act:

- (1) “Department” is the [XX] Department of the [State of XX].

Issue for Advocate: Choosing the Department Responsible for Administering the Program

- (2) “Director” is the Director of [XX] Department.

- (3) “Employer” is as defined in [state minimum wage act or federal Fair Labor Standards Act (29 USC § 203(d))].

Issue for Advocates: Defining Employer

- (4) “Covered individual” is any person who has [fill in eligibility standard]
- (a) Contributed \$[X] dollars to the paid leave system or worked [X] hours in the past year;
 - (b) Meets the administrative requirements outlined in this Act and in regulations;
 - (c) Establishes an application year; and
 - (d) Submits an application.

Issue for Advocates: Setting the Eligibility Standard

- (5) “Family member” is
- (a) A biological, adopted or foster child, stepchild or legal ward or a child to whom the employee stands *in loco parentis*;
 - (b) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee’s spouse or domestic partner or a person who stood *in loco parentis* when the employee or the employee’s spouse or domestic partner was a minor child;
 - (c) A person to whom the employee is legally married under the laws of [your state];
 - (d) Grandparent or step-grandparent of employee or employee’s spouse or domestic partner;
 - (e) Grandchild or step-grandchild of employee or employee’s spouse or domestic partner;
 - (f) A biological, foster, or adopted sibling or the spouse or domestic partner of such a sibling;

- (g) A domestic partner; or
- (h) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Issue for Advocates: Broader Definition of Family Members and Using Existing Legal Definitions

- (6) “Serious health condition” is an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.

Issue for Advocates: Definition of “Serious Health Condition”

- (7) “Application year” is the twelve-month period beginning on the first day of the calendar week in which an individual files an application for family leave insurance benefits.
- (8) “Family and medical leave insurance benefits” are the benefits provided under the terms of this Act.
- (9) “Qualifying exigency leave” is leave for the family member of a service member for any of the following reasons:
 - (a) Leave needed because of short notice (7 days or less) of deployment;
 - (b) Leave to attend military events and related activities;
 - (c) Leave to attend child care and school activities if and only if the leave is required due, indirectly or directly, to the active duty call or active duty status of the family member;
 - (d) Leave to make financial and legal arrangements for the service member’s absence or because of the absence;
 - (e) Leave to attend counseling provided by someone other than a healthcare provider, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member;
 - (f) Leave to spend time with a service member who is on short-term, temporary rest and recuperation leave during the period of deployment. Eligible employees may take up to five days of leave for each instance of rest and recuperation;
 - (g) Leave to attend post deployment activities; or
 - (h) Any leave related to issues that arise out active duty or a call to active duty that an employer and employee agree should be covered.

Section 2: Eligibility for Benefits

Beginning [X date], family and medical leave insurance benefits are payable to an individual who:

- (1) Meets the definition of “covered individual” included in this Act; and
- (2) Meets one of the following requirements:
 - (a) Because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement;
 - (b) Is caring for a family member with a serious health condition;
 - (c) Has a serious health condition that makes the covered individual unable to perform the functions of the position of such employee;
 - (d) Is caring for a qualifying service member who is the covered individual’s next of kin; or
 - (e) Has a “qualifying exigency” arising out of the deployment of a family member of the covered individual.

Issue for Advocates: Including Notification to Employer as a Requirement
Issue for Advocates: Including the Military FMLA Reasons

- (3) Benefits are payable to an individual who is not currently employed, but who is a covered individual meeting one of the requirements listed in (2)(a)-(e) of this section.

Issue for Advocates: Covering Individuals Who are Not Currently Employed

Section 3: Duration of Benefits

- (1) The maximum number of weeks during which family leave insurance benefits are payable in an application year is 12 weeks, except if a covered individual receives benefits under Section 2 (2)(c), then that individual can receive an additional 12 weeks of benefits under Section 2 (2) (a), (b), (d), or (e).

Issue for Advocates: Duration of Leave
Issue for Advocates: Allowing More Than One Period of Leave in a Year for Different Purposes

- (2) Benefits are not payable for the first five consecutive calendar days in an application year that a covered individual meets the eligibility requirements of Section 2 (1) and (2).

- (3) If the covered individual uses 10 or more days of paid family and medical leave benefits in an application year, the covered individual will be paid for the 5 day waiting period. The waiting period need only be served once every application year. Employers may not force an employee to use accrued leave (such as vacation or sick leave) during the waiting period.
- (4) The first payment of benefits must be made to an individual within two weeks after the claim is filed and subsequent payments must be made semimonthly thereafter.

Issue for Advocates: Waiting Period

Section 4: Amount of Benefits

The amount of family and medical leave insurance benefits shall be determined as follows:

- (1) The weekly benefit shall be [X dollars] per week.

Issue for Advocates: Setting the Benefit Amount

- (2) Family and medical leave benefits are not payable for less than one day or eight consecutive hours of family and medical leave taken in one work week.

Issue for Advocates: Requiring a Minimum Amount of Leave

- (3) If the Internal Revenue Service determines that family and medical leave insurance benefits under this Act are subject to federal income tax and an individual elects to have federal income tax deducted and withheld from benefits, as described in Section 13, the Department shall deduct and withhold the amount specified in the federal internal revenue code in a manner consistent with [fill in laws of state].

Section 5: Contributions

- (1) Payroll taxes shall be authorized in order to finance the payment of benefits under the family and medical leave insurance program.

Issue for Advocates: Setting the Contribution Level and Determining Who Pays

- (2) The [state investment board or other state entity responsible for making investment or other financial decisions for the state] shall be responsible for determining the amount

Issue for Advocates: Protecting Funds in the Account from Other Uses

of payroll taxes that will be necessary to finance the family and medical leave insurance program. Payroll taxes shall be paid by employers and employees in the ratio of [XX] in an amount to be determined by the [state investment board or other state entity above].

Section 6: Leave and Employment Protection

- (1) After a period in which a covered individual receives family and medical leave insurance benefits or earns waiting period credits under Section 3 (2), the covered individual is entitled to be restored to an equivalent position of employment in the same manner as an employee entitled to leave under [state or federal FMLA law], with the employer from whom leave was taken under the conditions described in Section 6 (2), provided that the covered individual meets the standards for reinstatement.

Issue for Advocates: Setting the Employer Size Threshold for Job Protection

Issue for Advocates: Setting an Hours Worked Threshold for Guaranteed Employment Reinstatement

- (2) The covered individual entitled to family and medical leave insurance benefits shall have their employment benefits continued in a manner identical to that required under the federal Family and Medical Leave Act for the time that the covered individual is absent from work and receiving family and medical leave insurance benefits.

Issue for Advocates: Continuing Benefits while Receiving Paid Family and Medical Leave Benefits

- (3) This section shall be enforced as provided in [X - Could be state FMLA, state civil rights law, or state unemployment law].

Section 7: Discrimination Prohibited

An employer, temporary help company, employment agency, employee organization, or other person may not discharge, expel, demote, or otherwise discriminate or take adverse employment action against a person because he or she has filed, applied for, or used benefits provided for under this Act or communicated to the employer an intent to file a

claim, a complaint, or an appeal, or has testified or is about to testify or has assisted in any proceeding, under this Act, at any time, including during the waiting period and the period in which the person receives family and medical leave insurance benefits under this Act. This section shall be enforced as provided in [- Could be state FMLA, state civil rights law, or state unemployment law].

Issue for Advocates: Importance of Non-Discrimination Provision

Section 8: Coordination of Benefits

- (1) (a) If time taken with wage replacement under this Act also qualifies as a reason for leave under the federal or state FMLA, time paid for pursuant to this Act shall run concurrently with leave taken under the federal or state FMLA.
- (b) An employer may require that payment made pursuant to this Act be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer must give individuals in its employ written notice of this requirement.
- (2) (a) This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for any of the purposes in Section 2 (2).
- (b) An individual's right to leave under this Act may not be diminished by a collective bargaining agreement entered into or renewed, or an employer policy adopted or retained, after []. Any agreement by an individual to waive his or her rights under this Act is void as against public policy.

Issue for Advocates: Employers' Own Programs or Programs Required through Collective Bargaining Agreements

Issue for Advocates: Coordinating Paid Leave with Unemployment Insurance Payments

Section 9: Enforcement

Section 10: Erroneous Payments and Disqualification for Benefits

- (1) A covered individual is disqualified from family and medical leave insurance benefits for one year if the individual willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this Act.
- (2) If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave benefits is rejected after benefits are paid, the Department may seek repayment of benefits from the recipient. The Director shall exercise his or her discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

Section 11: Elective Coverage

- (1) A self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this Act for an initial period of not less than three years or a subsequent period of not less than one year immediately following another period of coverage. The self-employed person must file a notice of election in writing with the Director, as required by the Department. The election becomes effective on the date of filing the notice.
- (2) A self-employed person who has elected coverage may withdraw from coverage within thirty days after the end of the three-year period of coverage, or at such other times as the Director may prescribe by rule, by filing written notice with the Director, such withdrawal to take effect not sooner than thirty days after filing the notice.

Section 12: Family and Medical Leave Insurance Program

- (1) The Department shall establish and administer a family and medical leave insurance program and pay family and medical leave insurance benefits as specified in this Act.
- (2) The Department shall establish procedures and forms for filing claims for benefits under this Act. The Department shall notify the employer within five business days of a claim being filed pursuant to this Act.

- (3) The Department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records so long as an individual consents to the disclosure as required under state law.
- (4) Information contained in the files and records pertaining to an individual under this Act are confidential and not open to public inspection, other than to public employees in the performance of their official duties. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records on the presentation of the signed authorization of the individual.
- (5) The Director may adopt rules as necessary to implement this Act. In adopting rules, the Director shall maintain consistency with the rules adopted to implement the federal Family and Medical Leave Act, and [state family and medical leave law], to the extent such rules are not in conflict with this Act.

Section 13: Federal Income Tax

- (1) If the internal revenue service determines that family leave insurance benefits under this Act are subject to federal income tax, the Department must advise an individual filing a new claim for family leave insurance benefits, at the time of filing such claim, that:
 - (a) The internal revenue service has determined that benefits are subject to federal income tax;
 - (b) Requirements exist pertaining to estimated tax payments;
 - (c) The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified in the federal internal revenue code; and
 - (d) The individual is permitted to change a previously elected withholding status.
- (2) Amounts deducted and withheld from benefits must remain in the family leave insurance account until transferred to the federal taxing authority as a payment of income tax.
- (3) The Director shall follow all procedures specified by the federal internal revenue service pertaining to the deducting and withholding of income tax.

Section 14: Family and Medical Leave Insurance Account Funds – Establishment and Investment

- (1) The family leave insurance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes of the family and

medical leave insurance program. Only the Director of the Department or the Director's designee may authorize expenditures from the account.

- (2) Whenever, in the judgment of the [X], there shall be in the family and medical leave insurance account funds in excess of that amount deemed by [X] to be sufficient to meet the current expenditures properly payable there from, [X] shall have full power to invest, reinvest, manage, contract, sell, or exchange investments acquired with such excess funds in the manner prescribed by [state law].

Section 15: Intermittent Leave Schedule

- (1) An employee shall be entitled, at the option of the employee, to take this leave on an intermittent leave schedule, except that the employee shall not be entitled to an intermittent leave schedule for a period exceeding 24 consecutive weeks unless shown to be medically necessary.
- (2) The employee shall make a reasonable effort to schedule intermittent leave so as not to disrupt unduly the operations of the employer. The employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member, in a manner which is reasonable and practicable. Leave taken on an intermittent leave schedule shall not result in a reduction of the total amount of leave to which an employee is entitled.

Issue for Advocates: Intermittent Leave Schedule

Section 16: Reports

Beginning [X date], the Department shall report to the legislature by September 1st of each year on projected and actual program participation, premium rates, fund balances, and outreach efforts.

Section 17: Public Education

The Department shall conduct a public education campaign to inform workers and employers regarding the availability of paid family and medical leave. The Department may use a [X] proportion of the funds collected for the paid family and medical leave program in a given year to pay for the public education program. Outreach information shall be available in English and other languages spoken by more than [X]% of the state's population as that group's primary language.

Issue for Advocates: Public Education

Section 18: Sharing Technology

The agency is encouraged to use state data collection and technology to the extent possible in order to keep the cost of the program down and to integrate the program with existing state policies.

Section 19: Severability

If any provision of this Act or its application to any person or circumstance is held invalid, the remainder of the Act or the application of the provision to other persons or circumstances is not affected.

Section 20: Effective Date

- (1) This statute shall take effect immediately except that [all provisions relating to payment of benefits] shall take effect [6-12] months following enactment.
- (2) In the case of a collective bargaining agreement in effect on the effective date prescribed by Section 20 (1), this Act shall apply on the earlier of the date of the termination of such agreement; or the date that occurs 12 months after the date of the enactment of this Act.
- (3) All rules and regulations necessary for implementation of this statute shall be promulgated within 120 days of enactment.

Issue for Advocates: Effective Date