MN ASSOCIATION OF CHARTER SCHOOLS

MINNESOTA PAID FAMILY & MEDICAL LEAVE – 2026 IS COMING UP FASTER THAN YOU THINK

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Presented By:

James Olney, J.D.
SVP | Managing Employment Attorney

Isaiah Mitchell
Employee Benefits Consultant
Isaiah.Mitchell@usi.com

www.usi.com

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Paid Family and Medical Leave

Three cost impacts of PFML:

1. Hard dollar cost: premiums
   - Money doesn't exist in current budgets for premium costs
2. Soft dollar cost: increased incident rate of leaves
   - PFML provides more reasons for job-protected leave than under FMLA
3. Soft dollar cost: increase duration for individual leaves
   - Because PFML is paid, and because it is paid richly for lower wage workers, leaves are likely to be longer

- Possible soft dollar costs include:
  - Overtime
  - Staffing agency fees
  - Increased stress on coworkers
  - Lower team productivity

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Paid Family and Medical Leave

Covered employers and employees

- Benefits first become available 1/1/2026, although some rights and obligations begin 11/01/2025
- Covers <u>all employers</u> regardless of size, except for federal governmental employers and self-employed individuals
- Eligible employees are those who are in "covered employment" and have earned 5.3% of the state's average annual wage over the previous 52 weeks
- With two exceptions (*seasonal hospitality, railroad*), "covered employment" for a covered employer includes any employee (*regardless of FT/PT status*) who either:
  - Performs 50% or more of their work in Minnesota, or
  - 1) is a MN resident for 50% or more of the year, 2) performs "some" employment in MN during the year, and 3) has no single state in which 50% or more of their work is performed throughout the year
    - "Some" is not defined
    - Not covered example: MN resident works 80% in ND and 20% in MN
    - Covered example: MN resident works 40% in ND, 40% in SD, and 20% in MN

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Paid Family and Medical Leave

Leave amount and protections

- Provides up to 20 weeks per year of job-protected time off
  - No more than 12 weeks can be used for any single leave need
  - Time can be used intermittently
- Employees have a right to reinstatement to same position or true equivalent
  - Same/equivalent position includes compensation, scheduling, geographic location, etc.
  - Right to reinstatement begins 90 days after date of hire
  - No right to reinstatement if employee would have lost employment had they been continuously employed
- Employers are prohibited from interfering with, obstructing, or impeding employee efforts to see benefits or take leave
- Employees cannot waive rights to pursue or receive benefits under the law (*much like unemployment or workers' compensation*)
- Agency penalties and civil lawsuits can be consequences of failing to reinstate, interfering with claims, etc.

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Paid Family and Medical Leave

Reasons for which leave can be taken and benefits received

1. An employee's serious health condition
   - The definition of "serious health condition" is similar to the FMLA's definition, and specifically includes "telemedicine" and examinations to determine if serious health condition exists
2. Medical care related to an employee's pregnancy
   - Includes prenatal care, recovery from childbirth, stillbirth, and miscarriage
3. Bonding (*includes time off in connection with adoption and foster care placement*)
   - Ends 12 months after birth, unless baby remains in hospital longer than mom
   - DEED FAQ indicates that "employees welcoming children in 2025 are still eligible for leave and benefits in 2026, so long as leave is taken within 12 months of child's birth/adoption/foster placement"
4. Family care for a family member's or military family member's serious health condition
5. Qualifying exigencies arising from a family member's military active duty
6. Safety for employees/family members who are the victims of domestic assault, sexual assault, or stalking

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Definition of "family members"

- "Family members" for whom leave can be taken include:
  - Spouse
  - Child (includes foster child, *in loco parentis*, legal guardian, and "de facto" custodians)
  - Parent/legal guardian (includes foster parent, *in loco parentis*, legal guardian, and "de facto" custodians)
  - Domestic partner
  - Sibling
  - Grandparent (including spouse's grandparent)
  - Grandchild
  - Son / daughter-in-law
  - Any "individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together"

Paid Family and Medical Leave

Employer notice requirements

- Employer notices to employees
  - Post the official DEED notice(s) in English and primary language of 5 or more employees
    - Employers substituting private plans may have post modified notice containing private plan details
    - Modified notice will need to be either prepared by or approved by DEED
  - Within 30 days of hire or 30 days before the start of premium collections from employee paychecks, provide employees with individualized written notices in the primary language of the employee that includes:
    - An explanation of availability of benefits and right to reinstatement, the amount of premium deductions, specific employer information, instructions on how to file a claim for benefits, and contact information for DEED
    - The individualized notice can be in paper or electronic format, and employees must acknowledge receipt
  - Paystubs must reflect any premium deductions and amounts paid by the employer

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Employee notice requirements

- Employee notice to employer
  - At least 30 days in advance of foreseeable leaves
  - As soon as practicable for unforeseeable leaves
  - As soon as practicable if need for leave changes (e.g., frequency, duration, etc.)
  - May be required to follow normal call-in/reporting procedures and be disciplined for failing to do so
  - Employees cannot be required to find a replacement to cover their absences
- Employees can file benefit applications with state up to 60 days prior to date that leave needs to begin (e.g., in anticipation of childbirth, surgery, etc.)

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State program notice requirements to employers

- Once DEED determines an applicant is entitled to benefits, it will provide formal notice to the applicant's employer(s) of the benefit award that includes, at a minimum:
  1. The name of the applicant;
  2. That the applicant has applied for and received benefits;
  3. The week the benefits commence;
  4. The weekly benefit amount payable; and
  5. The maximum duration of benefits.
- The statutes empower DEED to develop additional information and notice requirements that it may provide to employers
- Private insurers/TPAs may provide more/better information

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Benefit payments

- Employees must have sufficient base period wages to qualify for payments
  - Base period = previous 4 completed calendar quarters; employees new to the workforce or who have been out for long enough may not qualify for benefits
- Benefits eligibility usually (but not always) requires a "seven-day qualifying event"
  - Once an employee misses 7 combined days of work, they qualify for benefits
  - Benefits are payable retroactive to the 1st day of absence
  - Bonding benefits are not subject to the 7-day qualifying event requirement and are payable immediately
- PFML program works like STD/unemployment/work comp, in that employees will usually receive less than 100% of their regular wages
- Leave time is paid at a percentage of the employee's regular wages based on their highest earning quarter and capped at a max equal to 100% of the state's average weekly wage
  - Starting 10/1/2024, the state's average weekly wage is $1,372 (*this amount is revised annually*)
  - The benefits paid are subject to income tax in varying amounts depending on the reasons benefits are being paid, and federal vs. state withholdings

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Benefit payments (con't)

- Benefit amount received will be determined by the following formula applied to the applicant's average weekly wage during the high quarter of the base period:
  1. 90% of wages that do not exceed 50% of the state's average weekly wage; plus
  2. 66% of wages that exceed 50% of the state's average weekly wage but not 100%; plus
  3. 55% of wages that exceed 100% of the state's average weekly wage.
- Traditional STD usually pays at 60%, so except for higher wage earners, state program will pay higher
- Examples for employee with different average weekly wages:
  - $576.92/week (*$30,000/year*) = $519.23 (*90% of the employee's regular weekly wages*)
  - $807.69/week (*$42,000/year*) = $697.46 (*86% of the employee's regular weekly wages*)
  - $1,500/week (*$78,000/year*) = $1,140.30 (*76% of the employee's regular weekly wages*)
  - $2,500/week (*$130,000/year*) = $1,372 (*formula result exceeds state max, so result is capped at state's max, which = 55% of the employee's regular weekly wages*)

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Benefit payment (con't)

- For employers that participate in state program but also have separate STD program, the state program is considered to be the primary payer and will pay first, and then the STD program might pay on top of the state payment to reach the STD plan's benefit payout level (e.g., 60%, etc.).
  - Using example from previous slide, since employee receives 83% of their average weekly wage, a 60% employer STD plan probably wouldn't supplement
- Employers can choose to allow their paid leave programs (e.g., paid parental leave, PTO, etc.) to be used to supplement payments received through the state program so that, through the combination of payments, employees receive their full wages.
  - Employers wanting to allow supplementation should amend their paid leave policies to explicitly state that they can be used as a supplement.
  - If an employer doesn't allow supplementation, employees can choose to use available sick, PTO, etc., in lieu of receiving state benefits (*e.g., to receive 100% pay*)

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Premium costs of participating in the state program

- Premium costs are based on a percentage of an employee's wages up to the FICA annual maximum *($176,100 for 2025, but is reset annually)*
  - Premiums don't have to be paid on wages above the FICA annual max
- Employers can cover the full premium costs, or can deduct up to 50% of the premiums from employee wages (*i.e., employees can pay no more than 50% of the premiums*)
  - If private plan premiums are **higher** than state rates, employees can only be required to pay up to 50% of state rates
  - If private plan premiums are **lower** than the state rate, employees can probably only be required to pay 50% of lower private premiums
  - Employee shared portion of premiums can't drop EE pay below minimum wage
- Premium rates will be reviewed and reset by DEED each year by July 31st
  - 2026 rates have been set at .88% of FICA wages (at least .44% must be paid by ER)
    - Small employers (fewer than 30 EEs) must pay at least .22% (EEs will still pay .44%)

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Substituting a private plan in lieu of participating in state program

- Employers can substitute a private plan approved by the state
  - DEED says it will begin accepting applications from employers to substitute private plans "in the spring of 2025"
  - Employers substituting a private plan will have to pay a fee to DEED for initial plan approval (*and upon any amendment*)
    - $250 for employers with fewer than 50 employees
    - $500 for employers with 50-499 employees
    - $1,000 for employers with 500+ employees
- Employers seeking to self-fund must file a surety bond along with its application to use private insurance to opt out of the state's program
  - Surety bond must be:
    - "in an amount equal to the employer's annual premium that it would otherwise be required to pay to the family and medical benefit insurance account"
    - "issued by a surety company authorized to transact business in Minnesota"

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Substituting a private plan in lieu of participating in state program (con't)

- Rights, benefits, and protections offered through private programs must meet or exceed those provided through the state
- Insurers must have plan designs preapproved by DEED before being offered to employers
- Employers can choose to have a partial state plan and a partial private plan (for instance, using a private plan for the medical benefits, while using the state plan for the family benefits)
  - Premium rates for separate components of plan: .61% for medical benefits, .27% for family benefits

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Substituting a private plan in lieu of participating in state program (con't)

- Can employers use self-funded, self-administered program as a substitute?
  - Maybe, but the plan will need a formal plan document to be submitted and approved by the state
  - The plan will need to submit annual compliance reports that includes, amongst other things:
    - total eligible claims
    - the number and percentage of claims attributable to each category of benefit
    - claimant demographics by age, race or ethnicity, gender, average weekly wage, occupation, and the type of leave taken
    - the percentage of claims denied and the reasons the claims were denied
    - average weekly benefit amount paid for all claims and by category of benefit
    - changes in the benefits paid compared to previous fiscal years
    - processing times for initial claims processing, initial determinations, and final decisions
    - average duration for cases completed
    - the number of cases remaining open at the close of the year
  - The plan will need to continue making benefits available for up to 26 weeks post-employment termination

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Substituting a private plan in lieu of participating in state program (con't)

- Private plan coverage and former employees
  - Former employees with a covered claim during their unemployment period must submit their benefits application "with the private plan of their former employer"
  - Coverage under the private plan continues until the former employee is hired by a new employer or 26 weeks have passed, whichever period is shorter (but see next bullet-point)
  - If a former employee applies and is approved for benefits, the private plan must pay benefits "for the totality of the leave", and private plans "may not cut off eligibility for a former employee during the course of the approved leave"
- If an employer changes plans (i.e., state-to-private, private-to-state, private-to-new-private) while an employee is on a covered leave, the plan in place at the start of the leave must continue paying through the end of the approved leave period
  - Leave extensions beyond the initially approved period can be paid by new plan
- Successor employers will have to maintain previous company's private plan for at least 90 days

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Paid Family and Medical Leave

Voluntarily terminating a private plan and joining the state program

- Employer must formally notify DEED in writing at least 30 days prior to the plan's termination date
- Employer must also notify employees of the plan termination at least 30 days in advance
- Within 7 days of the private plan termination, the employer must notify employees that the private plan is terminated and that employees are covered by the state plan
  - Presumably, the notification will need to include information about the state plan, accessing it, etc.
  - Presumably, a new notice/poster will need to be posted and a new individual notice provided to employees (*although this 7-day notice may suffice if properly written*)
- Employers can go from public program to private plan anytime they want, but…
- …employers terminating private plan and entering state program must remain covered by the state plan and pay premiums to the state for at least 3 years

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Planning considerations

- Where will the money come from to pay your premiums?
- Will you cover any portion of the employee premiums?
- Will you participate in the public program or opt for a private plan?
- If you have an existing STD plan, will you keep it in place?
- If you have an existing paid parental leave benefit, will you keep it in place?
- How will you coordinate your other leave policies (*e.g., PTO, MPLA, FMLA, unpaid personal leave, etc*.) with PFML?
- How will you manage the likelihood of more employee leaves that are longer in duration?

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Date	Compliance Step
2024	
Prior to October 31, 2024	▪ Employers who didn't have unemployment insurance (UI) tax accounts had to formally set up a Paid Leave Only account with Department of Employment and Economic Development (DEED) – Religious organizations and nonprofits generally can opt out of UI taxes and self-fund unemployment claims – Accounts can be set up from this Unemployment Insurance page ▪ Employers with existing UI tax accounts didn't do anything, since DEED automatically converted their UI employer accounts to joint UI/Paid Leave accounts
October 31, 2024	▪ Employers had to submit their first wage detail report using the UI system for wages paid between 7/1/24 – 9/30/24 ▪ Employers with existing UI accounts simply submitted their usual UI wage detail reports
2025	
Early 2025	▪ Employers should begin deciding whether to enroll in private program or state program ▪ DEED will begin accepting applications from employers to substitute private plans "in the spring of 2025"
November 1, 2025	▪ Formal DEED notice must be posted and provided individually to current employees, and then individually to newly hired employees within 30 days of their date of hire ▪ Employers should consider adding PFML policies to their handbooks ▪ Employers should consider establishing internal HR protocols / practices for processing leave requests and tracking approved leaves
2026	
January 1, 2026	▪ Benefits become available/payable ▪ Employers begin collecting premiums through payroll deductions (unless employers choose to cover full cost)
April 30, 2026	▪ First quarter premiums due from employers

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Thank you!

Questions?

Isaiah Mitchell
Employee Benefits Consultant
Isaiah.Mitchell@usi.com

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