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Updated Guidance on Minnesota's Paid Leave Law

As previously reported, Minnesota's Paid Leave Law ("PLL") goes into effect January 1, 2026. PLL requires employers to provide covered employees with up to 20 weeks of paid leave to care for themselves or their family members. PLL will be paid for by payroll taxes and premium payments from both employers and employees. The first premium payment is due on or before April 30, 2026. A private plan option will be available and is required to be the same or more generous than the PLL requirements.

■ Minnesota's Department of Employment and Economic Development ("MN DEED")

MN DEED recently released new guidance for employers and employees.

For employees, the guidance addresses the two types of available state-funded leaves – family leave and medical leave. Employees will be eligible for up to 12 weeks per benefit year for each type of leave, but limited to a maximum of 20 weeks of paid leave per benefit year. Employees that have the PLL qualifying event of acquiring a new child either through birth, adoption, or foster care in 2025 will still be eligible to apply for family leave under the PLL in 2026 if the leave is used within the first 12 months of acquiring the new child.

For employers, MN DEED's updated guidance requires covered employers to register with MN DEED's Unemployment Insurance Division ("UID") and establish a "Paid Leave Only" employers account by October 31, 2024. October 31, 2024 is also the due date for the first wage detail report submission and should cover wages paid between July 1, 2024 and September 30, 2024. Subsequent wage detail report submissions will be due on a fiscal quarterly basis. Employers who already submit wage detail reports to UID will not need to provide a second report for PLL purposes. Finally, starting November 1, 2025, employers will be required to provide a workplace notice of the employees' PLL rights. MN DEED has yet to provide a model notice for this purpose.

■ Approved PLL Amendments

Additionally, new PLL amendments have recently been signed into law and are summarized as follows:

Premiums

- Based upon actuarial guidance, the original 0.7% payroll tax on employers will most likely increase to 0.88%; up to half of this amount may be shared with employees. In response to the actuary's findings, MN DEED's commissioner was provided with the power to annually adjust the premium rates contingent upon actuarial results.
- Employers that have 30 or fewer employees and pay an average weekly wage to employees that is equal to or less than 150% of Minnesota's average weekly wage (\$1,337 per week as of October 1, 2023) can pay a smaller employer premium rate of 0.75%, with the employer's portion of the contribution capped at 0.1875% (1/4th of the 0.75%). These smaller employers may also apply for assistance grants from MN DEED.
- Employers and employees will have 30 calendar days from the MN DEED or private plan administrator decision date regarding an awarded PLL benefit to request an administrative review of the decision. MN DEED will then issue a hearing notice to the parties and a hearing officer will hold a recorded, private hearing and provide a written decision, including their reason for the decision and findings of fact. A request for reconsideration can be filed by either party and a subsequent hearing will be heard before the same hearing officer. Upon completion of the reconsideration hearing, either party can appeal the decision with the Minnesota Court of Appeals.

Definitions

- For employer's participating in the MN DEED's state program, "benefit year" is defined as the 52 calendar weeks beginning the effective date of the leave. However, private plans can have their own definition of a "benefit year," such as calendar year, any fixed 12-month period, a 12-month period measured forward from the employee's first day of leave, or a rolling 12-month period backwards from the employee's first day of leave.
- Independent contractors and self-employed individuals can opt into coverage for paid leave benefits. MN DEED's commissioner will need to develop procedures to allow this option.
- The definition of "family member" is expanded to include the child of a domestic partner. This joins the current list of potential family members: spouse or domestic partner, child (biological, adopted, foster, stepchild, child in loco parentis, guardianship, or de facto custodian), applicant's parent or legal guardian, sibling, grandchild, grandparent or spouse's grandparent, son or daughter-in-law, and an individual who has a personal relationship with the applicant that creates an expectation and reliance that applicant care for the individual without compensation.

Intermittent Leave

- A covered individual's initial paid week occurs when they take a combination, either consecutively or non-consecutively, of seven leave days. Intermittent leave must be taken in increments consistent with the employer's existing leave policy and have a minimum increment of one calendar day of leave.

Calculation of Benefits

- The amendment changes the benefits calculation from an examination of whether the person receives an hourly rate or salary to benefit payments based upon the average hours the covered employee worked during the two quarters prior to filing the application for benefits. The final benefit amount will be based upon the percentage of the applicant's average weekly wage.
- Employers can supplement the employee's wages on top of their PLL benefits. But if the employee receives more than their usual income, they must return such excess supplemental payments to their employer.

Retroactive Benefits

- Benefits take effect on the Sunday of the calendar week when a benefit application is filed. Applicants that are incapacitated or fail to timely apply for benefits through no fault of their own can request retroactive payment of benefits longer than the seven days prior to the Sunday when their application was filed. The amendment also stipulates that employees unable to work due to incarceration or while receiving unemployment insurance will not be able to utilize PLL benefits for the affected time.

Reinstatement

- The amendment requires that when the employee can return to work, they must be put back into a position with the same overtime pay rate and overtime hour opportunities as the position that they worked prior to receiving the leave. If overtime opportunities changed for similarly classed employees, this reinstatement requirement does not apply.

Employer Plan Changes

- If an employer switches from the MN DEED program to a private plan or vice versa, the prior plan stays in effect until the request is approved. Extensions or change requests that are made during the transition period will apply to the new plan. Terminated employees must receive coverage the earlier of 26 weeks following termination or until they secure another job.

Data Privacy

- The amendments require that, in general, information collected for PLL purposes, such as recorded testimony or exhibits for benefits determination, must be kept private. Disclosure of such information will usually require a court order. However, state and federal agencies, employers, and healthcare providers may be able to access certain permitted information based upon the applicable need.

■ Employer Action

To incorporate this new guidance and changes in the PLL, employers should:

- Register with MN DEED and establish "Paid Leave Only" employers account by October 31, 2024. All employers that are subject to the PLL, including those that will eventually choose to go with a private plan, must take this course of action.
- By October 31, 2024, determine if the first wage detail report is due to MN DEED and, if applicable, submit.



- Recognize requirements that will apply in 2025, such as posting in the workplace and updating employee handbooks or any other leave related policies. It may be prudent to provide additional leave language for a child newly acquired in 2025 but eligible for PLL benefits in 2026.
- Recalculate the premium amount that will be due starting in 2026 with the higher required contribution amount. This may require updating payroll and other electronic systems with the updated amounts.