

# Maryland Moves to Revise Paid Family and Medical Leave Insurance Program Implementation Dates, Raise State Minimum Wage

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Maryland's 2023 legislative session has concluded with new legislation impacting Maryland employers. Governor Wes Moore (D) has already signed into law the Fair Wage Act of 2023, accelerating the minimum wage rate in Maryland to \$15 per hour, effective January 1, 2024. The Maryland General Assembly has also passed modifications to Maryland's Family and Medical Leave Program, which currently awaits the governor's signature.

## Changes to Maryland's Paid Family and Medical Leave Insurance Program

The Maryland General Assembly recently passed [Senate Bill \(SB\) 828](#), modifying several provisions of Maryland's Family and Medical Leave Insurance (FAMLI) program established by the [Time to Care Act in 2022](#).

Importantly, SB 828 pushes back several dates governing the implementation of the Time to Care Act. The date for covered employers—those with fifteen or more employees—to begin contributing to the program has been delayed *from October 1, 2023, until October 1, 2024*. SB0828 also delays implementation of the date when employees can submit claims for benefits from January 1, 2025, until *January 1, 2026*. Despite these changes, the Maryland secretary of labor will be required to set the total rate of contribution for employers and employees on or about October 1, 2023. This rate will be in effect from October 1, 2024, until June 30, 2026. This rate may not exceed 1.2 percent of an employee's wages.

SB 828 also makes changes to the cost-sharing formula for funding benefits under the FAMLI fund. The 2022 Time to Care Act initially contemplated a dual cost-sharing formula that split contributions between employers and employees on a 75-to-25 percent basis but allowed the party bearing the 75 percent burden to vary between the employer and the employee as determined by a biennial study by the Maryland Department of Labor. SB 828 does away with the prior method in favor of setting the cost-sharing formula at a 50-50 split: employers contributing 50 percent of the total rate of contribution for each covered employee and covered employees contributing the other 50 percent.

SB 828 also updates the Time to Care Act's definitions to include domestic partners as covered "family member[s]" and expand the qualifying reasons for which individuals may apply for FAMLI benefits. The reasons include taking time to care for *or bond with* a child "during the first year after the child's birth," as well as the same amount of time off for individuals adopting or fostering a child. Additionally, employees may use

benefits “to care for a family member with a serious health condition,” “to attend to a serious health condition that results in the covered individual being unable to perform the functions of the covered individual’s position,” “to care for a service member with a serious health condition resulting from military service who is the covered individual’s next of kin,” or “to attend to a qualifying exigency arising out of the deployment of a service member who is a family member.”

The bill also permits individuals greater flexibility with respect to when they can apply for FAML I benefits. It allows employees to file applications for benefits sixty days before the anticipated start date of a leave and up to sixty days *after* the start date of a leave. Notably, the bill modifies the 2022 law, so that it no longer requires employees to exhaust or use paid vacation, sick leave, or other paid time off provided under their employers’ policies before or while receiving FAML I benefits. However, employers may require that FAML I benefits be coordinated with other benefits or leave. A covered individual and an employer may agree to use paid leave and FAML I benefits to replace up to 100 percent of the covered individual’s average weekly wage during the FAML I leave period.

SB 828 also reduce the specificity required in leave certifications that individuals will need to provide to support FAML I leave benefits. While individuals must specify whether their leave will be taken continuously or intermittently, they no longer need to provide a statement certifying they are undergoing a “serious health condition.” Instead, they need only certify that they are “unable to perform the functions” of their positions. SB 828 does not affect the requirement that individuals must provide employers at least thirty days’ advance written notice of their intention to take leave.

Maryland employers are awaiting FAML I regulations that are expected to be announced by the Maryland Division of Labor and Industry on or about June 1, 2023.

### **Acceleration of Increases to Maryland’s Minimum Wage**

On April 11, 2023, Governor Moore signed into law [SB 555](#), the Fair Wage Act of 2023. The Fair Wage Act repeals Maryland’s annual state minimum wage increases that were based on employer size and changes to the Consumer Price Index scheduled for 2025 and 2026. Instead, the Fair Wage Act mandates a uniform \$15 hourly minimum wage for all employers, effective as of *January 1, 2024*, accelerating by two years the start date requiring all Maryland employers to pay \$15 per hour.

Maryland employers may also want to note minimum wage developments at the county level. On July 1, 2023, Montgomery County’s hourly minimum wage rates will increase in line with the county’s 2017 [Bill No. 28-17](#) to the following levels:

- Large employers (more than 50 employees): **\$16.70**
- Mid-sized employers (11-50 employees): **\$15.00**
- Small employers (10 or fewer employees): **\$14.50**

Both Montgomery County and the state of Maryland have issued new minimum wage and overtime posters to reflect the minimum wage rates as of January 1, 2023. Maryland employers may want to ensure that their payroll systems and postings are up to date to anticipate these new hourly minimum wage rates.

Ogletree Deakins’ [Washington, D.C., office](#) will continue to report on developments with respect to regulations and other guidance regarding Maryland FAML I and Maryland pay rates and will post updates on the firm’s [Leaves of Absence, Maryland](#).

and [Wage and Hour](#) blogs as additional information becomes available. Important information is also available via the firm's [webinar](#) and [podcast](#) programs.