

EMPLOYEE LEAVE BACKGROUND

The Minnesota Parental Leave Act and the federal Family and Medical Leave Act (FMLA) are the two primary laws that govern employee leave. Minnesota's parental leave law allows six weeks of unpaid leave for the birth or adoption of a child and applies to employers with 21 or more employees. To be eligible for leave, an employee must have worked for at least 12 months prior to the request and worked at least one-half of the hours of a full-time position. The employer also must continue to make health care coverage available to the employee but may require the employee to pay. Upon returning to work, an employee is entitled to the same position or a position with comparable duties and pay. Finally, the employee must be allowed to take any accrued sick leave in addition to the six weeks unpaid leave; however, an employer may reduce the six weeks by any period of paid parental leave or disability leave.

The FMLA provides up to 12 weeks of unpaid leave for the birth or adoption of a child or a serious health condition of the employee or the employee's family member. The FMLA generally covers employers with 50 or more employees. Employees are eligible if they have worked for the employer for at least 12 months, at least 1,250 hours during the most recent 12 months, and are employed at a site where the employer employs at least 50 employees within a 75-mile radius. Similar to Minnesota law, an employer must continue to provide the same health care benefits that the employee received during regular employment but may require the employee to pay. In addition, the employer may substitute accrued vacation, personal or family leave for FMLA leave. An employee taking FMLA leave also is entitled to return to the position held prior to taking leave or an equivalent position with the same pay, benefits and terms of employment.

Paid parental leave. In 2000, the Children's Defense Fund proposed a voluntary paid parental leave program jointly financed by the state and employers. Under this approach, to get reimbursed by the state, employers with 50 or more employees would have to offer at least 26 weeks of paid and unpaid leave. Employers with fewer than 50 employees would have to offer at least six weeks of paid leave. Employers that participate in this program would be eligible for reimbursement of half their payment to the employee; however, an employer must pay an employee at least \$100 per week and may not be reimbursed more than \$250 per week.

In addition, in 2000, the U.S. Department of Labor adopted regulations that allow states to pay unemployment insurance (UI) benefits to workers who take leave for birth or adoption of a child; however, the regulations were repealed November 10, 2003.

The business community opposes paid parental leave for two reasons. First, proponents have not demonstrated a need for paid leave. The U.S. Department of Labor's 2000 Update of the Family and Medical Leave Survey shows that only a few parents need leave but don't take it due to financial reasons. For example, 2.4 percent of the workforce needed leave but were unable to take it. Of the 2.4 percent, 9.3 percent (0.22 percent of the total) needed leave for birth or adoption. Of the 0.22 percent, 77.6 percent (0.17 percent of the total) cited financial need as the reason for not taking leave. That means only 0.17 percent of the workforce needed leave for birth or adoption but did not take it due to financial reasons.

Second, many employers offer paid leave without a mandate. The 2000 Update of the Family and Medical Leave Survey estimates that 17 percent of employers offer full pay to parents who are on leave to care for a newborn, 23 percent of employers offer pay depending on the circumstances, and 6.0 percent offer partial pay. Enacting a state-financed paid leave program could cause employers to stop their current paid leave programs and rather shift the costs to the state. In addition, a 2005 Society of Human Resource Management survey of employers found that 30 percent of employers offer paid parental leave.

Minnesota paid parental leave study: In 2002, the Department of Economic Security completed a paid parental leave study. A survey was sent to 3,370 Minnesota employers and 1,880 responded. The results were significantly different from the national surveys on parental leave. According to the study, only 3 percent of Minnesota businesses offer paid parental leave. However, businesses also indicated that vacation (52 percent), sick leave (39 percent), temporary disability insurance (21 percent) and paid

personal leave (14 percent) could be used for parental leave. It is not clear why the state survey results differ from similar federal surveys.

California law: In 2002, California became the first state with a paid parental leave law. The new parental leave law expands a current California disability compensation program that provides wage loss compensation to individuals unemployed due to sickness or injury. It is financed through an employee payroll tax. The law provides up to six weeks of wage loss benefits to individuals who are unable to work due to the employee's own sickness or injury, the sickness or injury of a family member, or the birth, adoption or foster care placement of a new child. The new benefits are paid for by an increase in the employee payroll tax.

Other leave laws: Beyond parental leave, Minnesota has a variety of other leave laws.

- School Conference and Activity Leave: All employers must provide up to 16 hours of school conference and activity leave per child if the conference or activity cannot be rescheduled outside of work hours. The employee can substitute paid vacation or other appropriate paid leave for the unpaid leave.
- Sick or Injured Child Care Leave: Employers that offer sick leave benefits must allow employees to use it to care for a sick or injured child.
- Bone Marrow Donation Leave: Employers must provide up to 40 hours of paid leave to employees who donate bone marrow. This law applies to employers with 20 or more employees.
- Civil Air Patrol Service Leave: Employers must grant unpaid leave for an employee to provide services as a member of the civil air patrol unless the leave would unduly disrupt employer operations.
- Military Leave: Employers must grant up to 10 working days of unpaid leave to an employee whose immediate family member, as a member of the U.S. armed forces, has been injured or killed while engaged in active service. In addition, an employer must grant unpaid leave to attend military ceremonies to an employee whose immediate family member has been ordered into active service in support of a war or other national emergency. The employer may limit the amount of leave provided under this subdivision to the actual time necessary for the employee to attend a send-off or homecoming ceremony for the mobilized service member, not to exceed one day's duration in any calendar year.

Sick Leave Benefits: In 2007, a bill was introduced that would have required employees to accrue paid sick leave benefits. Depending on the size of the employer, as well as the number of hours worked, employees would accrue paid sick leave time. The bill also expanded the scope of current law by allowing sick leave time to be used to care for all family members, not just children, and it allowed for unused sick leave time to carry-over into subsequent years. According to a 2006 poll conducted by the Society for Human Resource Management, 74 percent of employers already have paid sick leave policies, 50 percent of employers provide paid personal days, and 53 percent of employers provide paid time off. Thus, employers are already offering a myriad of different programs for their employees to utilize for sick leave, and therefore, a state mandate requiring an accrual program for paid sick leave is not necessary.

Voting Leave: Employers also must allow employees who are eligible to vote to be absent during the morning of election day for the purpose of voting. This requirement applies to a regularly scheduled state primary or general election, an election to fill a vacancy in the office of U.S. senator or representative, or an election to fill a vacancy in the office of state senator or representative.

Some employers have reported abuse of this provision. Employees ask for the entire morning off to vote and since the law does not limit or define what "morning" means, employers have little choice but to allow the morning off. Wisconsin and Iowa have addressed this situation. Wisconsin's law limits time off to three consecutive hours, requires the employee to notify the employer before election day, and allows the

employer to designate the time for the absence. Iowa's law allows time off only if the employee does not have three consecutive hours available to vote when they are not required to be at work. In these situations, the employee must request time off from the employer and the employer may designate the time for the absence.