

# HR COMPLIANCE OVERVIEW



## Considerations for Multistate Employee Leave Policies

Employers often want to create an employee leave policy that applies to all their workers, regardless of the state in which they work. Uniform multistate policies are appealing because they are relatively easy to administer, when compared with a raft of different rules for different locales. Fairness is also a compelling feature of uniform policies, as such policies provide the same leave benefits to all workers.

However, given the patchwork of complicated and conflicting employee leave laws in effect across the United States, drafting a policy that complies with all the legal requirements a multistate employer may be subject to is a tricky endeavor. This Compliance Overview examines the challenges of designing and implementing multi-jurisdictional employee leave policies, so employers may evaluate whether such an approach best serves their organization.

## Types of Employee Leave

- Federal Family and Medical Leave Act leave (unpaid)
- State-mandated unpaid family and medical leave
- State-mandated paid family and medical leave
- State-mandated paid sick leave
- State-mandated paid leave for any reason
- Other state-mandated employee leave, such as prenatal/pregnancy leave, bereavement leave, voting leave, jury duty leave and military leave
- Local leave laws

### LINKS AND RESOURCES

- U.S. Department of Labor [webpage](#) on FMLA
- U.S. Department of Labor [chart](#) of state PFML laws
- U.S. Department of Labor [webpage](#) on paid leave

## Highlights

- ☑ State leave laws vary tremendously.
- ☑ To be compliant across jurisdictions, uniform policies must adopt the most generous version of each leave requirement.
- ☑ Policies must be updated to keep up with changes in the law.

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# HR COMPLIANCE OVERVIEW



## Employee Leave in the United States: The Legal Landscape

U.S. employers contemplating a multistate employee leave policy must understand the types of leave laws that might apply to them. The federal [Family and Medical Leave Act](#) (FMLA) is the only nationwide leave law generally applicable to private employers. The FMLA requires employers with at least 50 employees to provide 12-26 weeks of unpaid leave to eligible employees for specific reasons relating to the health and welfare of the employees and their family members. A less frequently applied federal law, the [Uniformed Services Employment and Reemployment Rights Act](#) (USERRA), provides protections to employees on leave from work to serve in the military.

In the absence of more comprehensive federal leave laws, states have passed their own complicated and often conflicting mandates.

### **State FMLA**

Many states chose to augment the federal FMLA by enacting their own unpaid family and medical leave laws that broaden the FMLA leave benefit in varied ways—for example, by expanding the types of employers and employees who are covered or by allowing leave for additional purposes beyond what the FMLA requires.

### **State Paid FMLA**

Over a dozen states and the District of Columbia have enacted paid family and medical leave (PFML) mandates, and an additional two states—New Hampshire and Vermont—have implemented voluntary PFML insurance programs. PFML legislation typically creates a state-run insurance program funded by contributions from employers, employees or both.

### **State Paid Sick Leave/Leave for Any Reason**

In addition, nearly 20 states have passed paid leave laws requiring paid time off for various reasons relating to the health and safety of employees or their families or for any reason at all.

### **Other State Leave Mandates**

States have also enacted laws that require employee leave for specific purposes, such as:

- Prenatal care;
- Pregnancy disability;
- Child bonding;
- Children’s school activities;
- Public health emergencies;
- Support for victims of domestic violence and other crimes and their family members;
- Bereavement;
- Organ and blood donation;
- Jury duty;
- Voting;
- Military deployment; and
- Military deployment of a family member.

Some state FMLA, PFML and paid sick leave statutes incorporate one or more of the types of leave listed above. A state PFML law might include pregnancy disability or child bonding as qualified reasons for leave, for instance.

# HR COMPLIANCE OVERVIEW



## Local Laws

Employers should be aware that localities like counties and cities have also enacted employee leave laws across the country, and employers within those jurisdictions must comply with them.

## Features of Employee Leave Laws

Employers hoping to adopt a uniform leave policy should look closely at the characteristics of all the leave laws they are subject to. Laws creating PFML, paid sick leave and other leave benefits vary significantly from state to state, as do the compliance burdens they impose. Some of the important items employers should watch for in employee leave laws are outlined in the chart below.

| Key Feature                          | Considerations  |
|--------------------------------------|---|
| Employers covered by the requirement | <ul style="list-style-type: none"><li>• Are smaller employers exempt, or are they exempt for an initial period?</li><li>• Are grants available for small employers?</li><li>• Does the law require a smaller leave benefit from smaller employers than larger employers? (This can be especially true for paid sick leave.)</li></ul> |
| Employee eligibility for leave       | <ul style="list-style-type: none"><li>• Is eligibility for leave conditioned on a minimum of hours worked (a waiting period)?</li><li>• Is eligibility for leave conditioned on a minimum of wages earned?</li><li>• Are part-time and temporary workers eligible for the leave benefit?</li></ul>                                    |
| Qualified reasons for leave          | <ul style="list-style-type: none"><li>• How is “family member” defined in the relevant law? Does the definition include nonfamily members who have the equivalent of a family relationship with the eligible employee?</li></ul>  |
| Length of leave                      | <ul style="list-style-type: none"><li>• How much leave is required by the law?</li><li>• Are different amounts of leave permitted depending on the reason for the leave?</li></ul>  |
| Compensation                         | <ul style="list-style-type: none"><li>• Is the leave paid? While paid sick leave and PFML laws will always require that leave be compensated, laws requiring leave for reasons like jury duty, voting and organ donation vary on pay.</li><li>• Are smaller employers allowed to provide the leave without pay?</li></ul>             |

# HR COMPLIANCE OVERVIEW



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| <b>Continuation of benefits</b>                 | <ul style="list-style-type: none"><li>• Is the employer required to continue the employee’s health benefits while they are on leave? Do other benefits (including leave) continue to accrue during the leave?</li></ul>  |
| <b>Funding for paid leave</b>                   | <ul style="list-style-type: none"><li>• Is the leave funded by employers, employees or both? Who bears most of the cost—employers or employees?</li></ul>  |
| <b>Job protection</b>                           | <ul style="list-style-type: none"><li>• Are employees entitled to job restoration when they return from leave?</li><li>• Is there a minimum work period before a job restoration requirement is triggered?</li></ul>   |
| <b>Interaction between leave laws</b>           | <ul style="list-style-type: none"><li>• Does the leave run at the same time as leave required under other laws?</li><li>• Can benefits be “topped off” or combined with other, employer provided leave benefits, such as paid sick leave or paid time off? (This is often a feature of PFML programs.)</li></ul> |
| <b>Interaction with employer-provided leave</b> | <ul style="list-style-type: none"><li>• Does the law permit private PFML plans maintained by employers?</li><li>• Can leave requirements be satisfied with employer paid-time-off plans?</li></ul>   |

## Highest Common Denominator

The factors described in the chart above illustrate how uneven state leave laws can be in their generosity to employees. A uniform policy might make sense if an employer’s operations are limited to states with similar employee leave requirements or no requirements at all. However, where different state leave laws apply and essential elements of those laws differ, the employer will have to adopt the most employee-friendly version of each legal requirement—a highest common denominator—for its policy to be uniform and legally compliant.

To see how this plays out in practice, consider the following example:

The Grocery Town supermarket chain, with workers in Maryland and the District of Columbia, would like to implement one PFML policy for all of its employees by July 1, 2025, the date contributions begin for Maryland’s new PFML program. The Maryland PFML program is funded by equal employer and employee contributions (for employers with at least 15 employees), but the district PFML is funded entirely by employers. To have a uniform policy, Grocery Town would have to bear the full cost of the PFML premium for its Maryland workers, even though this expense is not required by Maryland law.

# HR COMPLIANCE OVERVIEW



The district and Maryland PFML programs differ in other respects as well. For instance, the district's program does not offer employees job protection, but the Maryland program does. To be uniform, Grocery Town's policy would have to provide job protection to its district employees, just as it does for its employees in Maryland.

The two PFML programs also vary in the length of leave they require. In the district, employees may take a maximum of 14 weeks of leave per year (in certain circumstances, depending on the reasons for leave), while in Maryland, the yearly maximum is 24 weeks (again, depending on the reasons for leave). A uniform multistate policy would see Grocery Town providing 24 weeks of leave to all its employees.

This example illustrates just a few contrasting requirements of the District of Columbia and Maryland PFML laws. A comprehensive uniform employee leave policy that covers both regions, additional states, or involves additional forms of leave could disadvantage an employer even further.

## Key Considerations

Deciding whether to adopt a uniform, multi-jurisdictional leave policy is a complex assessment. Step one is for employers to take stock of all legal leave requirements that apply in all jurisdictions where they have workers.

Next, employers should identify the most employee-friendly features of these requirements and understand that with a uniform policy, the most generous features will have to be applied across their workforce. This analysis should help the employer get a sense of the cost of their proposed multi-jurisdictional policy and, in turn, help them conclude whether that cost outweighs the administrative ease and equity the policy would offer.

Finally, employers should appreciate that employee leave is currently a highly dynamic area of the law, with new laws and rules being passed and existing requirements amended frequently. Regardless of whether they adopt a uniform plan, employers should keep abreast of developments in the law and alter their policies accordingly to stay compliant.