

# The Maryland Family and Medical Leave Insurance (“FAMLI”) Program

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# Maryland FAML I Program

- Maryland's Time to Care Act enacted April 9, 2022, and amended twice
- ❑ Provides eligible employees with 12 weeks of “leave and benefits” for qualifying events, with the possibility of an additional 12 weeks of leaving and benefits for baby bonding (for a possible total of 24 weeks of paid leave) in a 12-month period
  - ❑ Administered by the Maryland DOL's new FAML I Division and funded by contributions from employers and employees
  - ❑ Applies to all employers with at least one employee in Maryland

# Important Dates

- ❑ July 1, 2025 – Employers must begin collecting payments and submitting payroll information to the state of Maryland.
- ❑ October 1, 2025 – Employers must begin making contributions to the State to fund the Program.
- ❑ January 1, 2026 – Employers are required to notify employees of potential eligibility for leave and benefits.
- ❑ July 1, 2026 – Employees can begin applying for and receiving leave and benefits.

# Delay the FMLI Program Implementation?

- ❑ The Maryland Department of Labor recently proposed extending the timeline for implementation of the program:
- ❑ January 1, 2027 – Employers must begin collecting payments and submitting payroll information to the state of Maryland.
- ❑ January 1, 2028 – Employees can begin applying for and receiving leave and benefits.

# Delay the FMLI Program Implementation?

Any change to the current timeline would require legislative action by the Maryland General Assembly.

- ❑ SB355 – calls for a two-year delay
- ❑ No other bills pending regarding delaying implementation!
- ❑ General Assembly sits through April 7, 2025

## How is FAMLI funded?

Employee & employer contributions beginning July 1, 2025

- ❑ Rate of contribution determined annually but is capped at 1.2% of employee's wages, up to Social Security wage base (\$2,113 in 2025).
- ❑ Split 50-50, but the employer may elect to pay employee share
- ❑ Small employers (fewer than 15 employees) are only required to submit the employee portion of the contribution
- ❑ Employers submit quarterly wage and hour reports for covered employees
- ❑ If an employer fails to make the deductions, it will be responsible for the employee contributions and may not recoup from the employee

# What benefits do eligible employees receive?

- ❑ Up to 90% of their wages up to a maximum of \$1,000 per week
- ❑ Employees will be able to request up to 12 weeks within a 12-month period
- ❑ An employee may be eligible to take up to 24 weeks off in a single 12-month period if they need to take care of their own serious health condition and welcome a new child in the same year
- ❑ Employees may take leave and benefits on an intermittent basis (must be taken in 4-hour increments)



# How is FMLI coverage provided?

- ❑ Employers can choose to offer FMLI through:
  - ❑ The state plan or
  - ❑ A private plan – two kinds of private plans:
    - ❑ A commercial plan fully insured by a private insurer, or
    - ❑ A self-insured plan with benefits paid by the employer.
- ❑ All employers are automatically enrolled in the state plan but can opt out and chose a private plan.
- ❑ Employers **cannot** opt out of:
  - ❑ Quarterly wage reporting
  - ❑ Appeals process

## How much does FAMILI cost?

- ❑ Costs under the state plan:
  - ❑ Employers with fewer than 15 employees: 0.45% of covered wages up to the Social Security cap may be collected from employees.
  - ❑ Employers with 15 or more employees: 0.45% of covered wages up to the Social Security cap may be collected from employees + 0.45% paid by the employer.
- ❑ Employers can choose to pay any portion of the employee portion.
- ❑ Costs under a private plan: no more than the state plan

# Choosing the right plan

- ❑ Considerations for choosing the right plan
  - ❑ The state plan: easiest, least flexible, not necessarily the cheapest option
  - ❑ A private plan: more flexible but needs more analysis; cheaper
    - ❑ A private plan can be bundled with other kinds of leave.
    - ❑ A private plan can be tailored to employer involvement.
    - ❑ A self-funded plan can be the cheapest option, but there are lots of legal requirements.
    - ❑ Cost considerations: Employee contributions, employer contributions, administrative costs, benefit payments

## DIY-ing FAMILI coverage

- ❑ A self-funded plan can be administered by a third party or by the employer.
- ❑ Some requirements of a self-funded plan:
  - ❑ Must seek approval from the MDOL: annual certification for the first three years; once every three years afterwards
  - ❑ Surety bond equal to one year's expected future benefits
  - ❑ Employee contributions must be held separately from employer's general assets.
  - ❑ Record retention: five years
  - ❑ Must operate the plan for at least one year with 30 days' prior notice of termination

## Who is an eligible employee?

- ❑ Employees who have worked at least 680 hours of qualified employment in Maryland in the 12 months prior to the date leave starts
- ❑ Employment does not need to be with the same employer
- ❑ For the most part, if an employer is paying unemployment insurance contributions in Maryland for an employee, that employee is covered by FAML I
- ❑ Employees who work in Maryland are eligible even if they do not live in Maryland or if the employer is out of state
- ❑ Independent contractors\* and federal government employees are excluded from FAML I eligibility

# What is a qualifying event?

Leave for the purposes of

- ❑ Welcoming a child into their home, including through adoption and foster care
- ❑ Caring for themselves, if they have a serious health condition\*
- ❑ Caring for a family member's serious health condition\*
- ❑ Making arrangements for a family member's military deployment

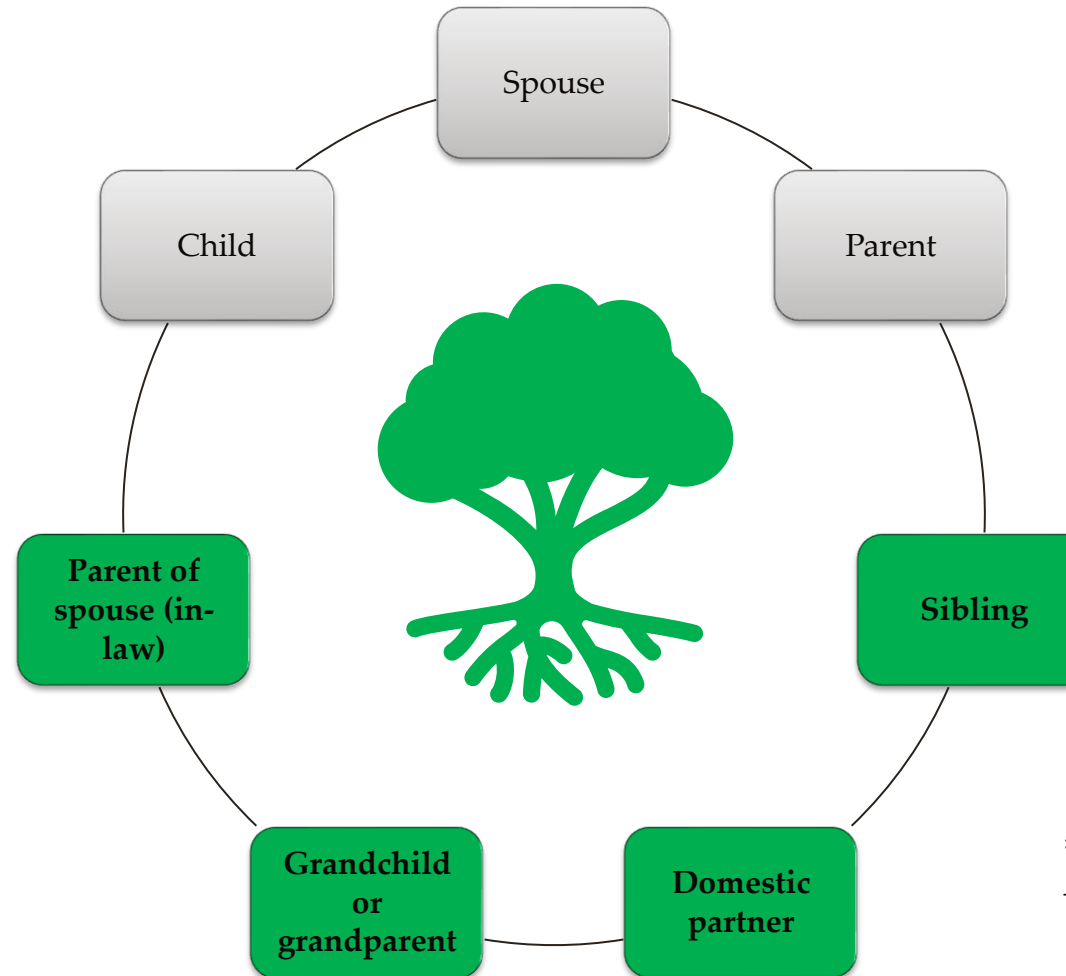
\*A serious health condition must be certified by a licensed health care provider and the definition tracks the FMLA definition

# Who is considered a family member of an employee?

- ❑ the spouse or domestic partner of the employee
- ❑ a child, sibling, grandchild, or grandparent of the employee\*
- ❑ a parent of the employee or the employee's spouse\*
- ❑ a person for whom the employee, or the employee's spouse, has court appointed decision making authority over
- ❑ an individual who acted as a parent or stood in loco parentis to the employee or the employee's spouse when the employee or the employee's spouse was a minor
- ❑ a child for whom the employee has court appointed decision making authority over and/or who lives with the employee
- ❑ a child the employee has assumed the obligations of a parent for without formal adoption proceedings.

\* Including biological, adopted, foster or step-

# FAMLI family member compared with FMLA family member:



\*Green are included in FAMLI but not FMLA definition



## Is there job protection for this leave?

Yes, there is job protection even when leave does not coincide with FMLA leave

- While taking eligible FAMILI leave, an employee may be terminated only for cause
- When returning from leave, the employee must be reinstated to their job, unless the employer determines that reinstatement will cause “substantial and grievous economic injury” to their operations and has notified the employee of the same.

# Important information for employers

- ❑ Employers must provide notice to employees upon hire, annually, and within 5 days of a request for leave and benefits
- ❑ Employees must provide employers with 30 days notice for foreseeable leave or as soon as practicable for unforeseeable leave
- ❑ The Division will electronically notify employers when a claim is filed (if using state plan)
- ❑ Employers cannot require employees to use their PTO prior to taking FAMLI leave

# Important information for employers

- The FAML I Division may mandate the use of approved templates and forms, including :
  - Employer notice to employee templates
  - Claim application form, certification of qualifying event forms, proof of relationship template, good cause exemption form, and intermittent leave use template
  - Request forms, reconsideration scheduling template, decision templates, and good cause exemption form.

# Navigating FMLI and Existing Leave Policies



- ❑ Employers cannot require employees to use “General Purpose leave,” meaning PTO, sick leave, or vacation, before or while using FMLI leave
- ❑ Employers may permit employees to top off their FMLI benefits with such leave to reach 100% of their pay
- ❑ If an employer provides “Alternative FMLI Purpose Leave,” which is leave that is specifically limited to a FMLI purpose (paid parental leave or paid medical leave), the employer may require employees to use that concurrently

# Navigating FMLI and Existing Leave Policies

Short-Term and Long-Term Disability programs,

- FMLI is primary, with STD and LTD used only to get up to full wage-replacement
- Because that is not how STD and LTD currently operate (with most plans only providing 2/3 of wages), the Division believes the STD and LTD market will evolve to achieve this result

# Navigating FAML I & FMLA

- ❑ An event may qualify for leave through both FMLA and FAML I, in which case the leaves should run at the same time
- ❑ If an employee declines to apply for benefits under this program while on designated leave under the FMLA, the FMLA leave will still count against the employee's 12-week entitlement to benefits
- ❑ There will be cases when an event only qualifies for FAML I, and the employee does not use any FMLA time while taking FAML I

# Questions?

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