

MODEL STATE PAID FAMILY AND MEDICAL LEAVE INSURANCE STATUTE

Note: Drafting a new paid family and medical leave insurance bill requires state-specific research, analysis of underlying state and/or local law, consideration of complex policy issues, as well as an understanding of administrative capacity. We are available to do any necessary legal research and drafting, and to work with you to customize the below model.

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Section 1: Definitions

As used in this Act:

- (1) “Alternative base period” is the last 4 completed calendar quarters immediately preceding the first day of the individual's application year and any weeks in which wages were paid to the individual in the incomplete calendar quarter in which the individual filed a claim for benefits.
- (2) “Application year” is the 12-month period beginning on the first day of the calendar week in which a covered individual files an application for family and medical leave insurance benefits.
- (3) “Average weekly wage” is one-thirteenth of the wages paid during the quarter of the covered individual's base period or alternative base period in which the total wages were highest.
- (4) “Base period” is the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's application year; provided that if the first quarter of the last 5 completed calendar quarters was included in the base period applicable to any individual's previous application year, the individual's base period shall be the last 4 completed calendar quarters.
- (5) “Child” is, regardless of age, a biological, adopted or foster child, stepchild or legal ward, a

child of a domestic partner, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor.

- (6) “Committed relationship” is a relationship in which the covered individual, and the domestic partner of the covered individual, share responsibility for a significant measure of each other's common welfare. This includes, but is not limited to, any relationship between individuals of the same or different sex that is granted legal recognition by a State, Political Subdivision, or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).
- (7) “Covered individual” is any person who:
- (a) Meets one of the following requirements: [Note: Contact us for questions regarding any alternative approaches.]
 - (i) Earned [X amount] from work in the State during the person’s base period or alternative base period prior to submitting an application; or [Note: We recommend using an earnings amount that will automatically adjust annually, such as a percentage of the statewide average weekly wage, rather than a specific dollar amount.]
 - (ii) Is self-employed, elects coverage, and meets the requirements of section 13; [Note: This language and bill allows self-employed workers to opt-in to coverage. Alternatively, we can help draft language and modify the bill to automatically cover self-employed persons within the scope of the program.]
 - (b) Meets the administrative requirements outlined in this Act; and
 - (c) Submits an application.

“Covered individual” shall include former employees who have been separated from employment for not more than 26 weeks at the start of the individual’s paid family and medical leave and who satisfy the requirements of this subsection.

- (8) “Department” is the [X]. [Note: For assistance with determining a department or agency to administer the paid family and medical leave insurance program established by this bill, please contact us—see page 1 for contact information.]
- (9) “Director” is the Director of the Department.
- (10) “Domestic partner” is an adult in a committed relationship with another adult.
- (11) “Employee” is as defined in [state wage and hour law]. [Note: This definition should be as broad as possible to ensure that all employees who work in the state are included within the scope of the Act’s protections, including employees who have been historically carved out of employment protections, such as domestic workers and agricultural workers. If there is not a good cross-cite to existing state law “employee” definitions, it is possible to draft a

new one—we are happy to help with such drafting.]

- (12) “Employer” is as defined in [state law with the broadest possible definition of employer, or if no state law is usable, can consider use of the Fair Labor Standards Act, 29 U.S.C. 203(d) or a new definition that we can help to draft.]
- (13) “Family and medical leave insurance benefits” are the benefits provided under the terms of this Act.
- (14) “Family member” is
- (a) A child;
 - (b) A biological, adoptive or foster parent, stepparent or legal guardian of a covered individual or a covered individual’s spouse or domestic partner, or a person who stood *in loco parentis* when the covered individual or the covered individual’s spouse or domestic partner was a minor child;
 - (c) A person to whom the covered individual is legally married under the laws of any state, or a domestic partner of a covered individual;
 - (d) A grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the covered individual or the covered individual’s spouse or domestic partner; or
 - (e) Any other individual related by blood or whose close association with the covered individual is the equivalent of a family relationship.
- (15) “Health care provider” is any person licensed under Federal law, any state law, or the laws of another country wherein the person practices to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel, clinical social workers, [licensed/professional] counselors, or [certified/licensed] midwives. [Note: State law, as well as partners working on behavior/mental health or maternal health issues in your state, should be consulted on proper language for ensuring counselors and midwives are included, and documentation/forms should be available in multiple languages to accommodate non-US/non-English speaking health care providers.]
- (16) “Interference” means any action that may have the effect of preventing or discouraging an employee from exercising any right guaranteed under this Act, including, but not limited to:
- (a) Failing to comply with the requirements of section 10 of this Act;
 - (b) Failing to provide an employee with complete and accurate information related to an application for family and medical leave insurance benefits as may be required from an employer pursuant to section 15;
 - (c) Failing to accurately and timely complete and return an application for family and medical leave insurance benefits as may be required from an employer pursuant to section 15; or
 - (d) Providing the Department with inaccurate or incomplete information about an employee’s wages or employment as it relates to the employee’s eligibility for family

and medical leave insurance benefits.

- (17) “Paid family and medical leave” is leave taken from employment, self-employment, or availability for employment in connection with family and medical leave insurance benefits under this Act.
- (18) “Qualifying exigency leave” is leave based on a need arising out of a covered individual’s family member’s active duty service or notice of an impending call or order to active duty in the armed forces, including, but not limited to:
- (a) Providing for the care or other needs of the military member’s child or other family member;
 - (b) Making financial or legal arrangements for the military member;
 - (c) Attending counseling, military events or ceremonies;
 - (d) Spending time with the military member during a rest and recuperation leave or following return from deployment;
 - (e) Making arrangements following the death of the military member;
 - (f) Arranging for alternative care for a family member of the military member when the family member is incapable of self-care and the active duty or call to active duty status of the military member necessitates a change in the existing care arrangement for the family member;
 - (g) Providing care for a family member of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the family member is incapable of self-care and the need to provide such care arises from the active duty or call to active duty status of the military member;
 - (h) Admitting to or transferring to a care facility a family member of the military member when admittance or transfer is necessitated by the active duty or call to active duty status of the military member; or
 - (i) Attending meetings with staff at a care facility, such as meetings with hospice or social service providers for a family member of the military member, when such meetings are necessary due to circumstances arising from the active duty or call to active duty status of the military member but not for routine or regular meetings.
- (19) “Retaliatory personnel action” means denial of or interference with any right guaranteed under this Act, including, but not limited to, any threat, discharge, suspension, demotion, reduction of hours or pay, any other adverse action against an employee for the exercise of any right guaranteed herein, or reporting or threatening to report an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency. Retaliatory personnel action shall also include interference with or punishment for in any manner participating in or assisting an investigation, complaint, proceeding, or hearing under this Act.
- (20) [Note: This definition should be amended to conform to state law. Partners working on domestic violence issues in your state should be consulted here.] “Safe leave” is any leave

because the covered individual or the covered individual's family member is the victim of domestic violence, the victim of stalking, or the victim of sexual assault. Safe leave under this section applies if the covered individual is using leave to protect the covered individual or the covered individual's family member by:

- (a) Seeking an order for protection pursuant to [state law];
- (b) Seeking medical care, mental health counseling, or both for the covered individual or the covered individual's family member to address physical or psychological injuries resulting from the act of domestic violence, stalking, or sexual assault;
- (c) Making the covered individual's or the covered individual's family member's home secure from the perpetrator of the act of domestic violence, stalking, or sexual assault, or seeking new housing or shelter to escape said perpetrator;
- (d) Seeking legal assistance to address issues arising from the act of domestic violence, stalking, or sexual assault, or attending and preparing for court-related proceedings arising from said act or crime;
- (e) Seeking services from a victim services organization; or
- (f) Taking other steps necessary to protect or restore the covered individual's or the covered individual's family member's physical, mental, emotional, and economic well-being while recovering from domestic violence, stalking, or sexual assault.

(21) "Serious health condition" is an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider [OR "Serious health condition" is as defined at section 101(11) of the Family and Medical Leave Act, 29 U.S.C. 2611(11) or the state FMLA].

(22) "Statewide average weekly wage" is as defined in [state law]. [Note: This definition should reference the state law—such as the unemployment insurance law—that provides for the average weekly wage for all workers across the state, rather than for the individual covered worker.]

Section 2: Eligibility for Benefits

Beginning [DATE], a covered individual has the right to take paid family and medical leave and to receive family and medical leave insurance benefits pursuant to this Act if the individual:

- (1) Meets the definition of "covered individual" under section 1(7) of this Act; and
- (2) Meets one of the following requirements:
 - (a) Because of birth, adoption or placement through foster care, is caring for a new child within 12 months of the anticipated birth, adoption or placement of that child, or has a need to be absent from work before an actual placement of a child in order for the placement for adoption or foster care to proceed;
 - (b) Is caring for a family member with a serious health condition;
 - (c) Has a need for leave due to a serious health condition, including, but not limited to, pregnancy or pregnancy loss;

- (d) Because of any qualifying exigency leave;
- (e) Has a need for safe leave; or
- (f) Any reason set forth in [the state FMLA, if there is a state-level FMLA statute].

Section 3: Duration of Benefits

- (1) (a) The maximum number of weeks for which a covered individual may take paid family and medical leave under section 2(2)(c) and for which family and medical leave insurance benefits are payable under section 2(2)(c) in an application year is [X weeks]. [Note: At minimum, we recommend that the maximum duration for medical leave and benefits not be less than 12 weeks. And a number of states go beyond a 12-week maximum for medical leave purposes.]
 - (b) The maximum number of weeks for which a covered individual may take paid family and medical leave under section 2(2)(a), (b), (d), (e), or (f) and for which family and medical leave insurance benefits are payable under section 2(2)(a), (b), (d), (e), or (f) in an application year is [X weeks]. [Note: At minimum, we recommend that the maximum duration for family leave and benefits not be less than 12 weeks, as is the case in most state programs. However, you may wish to go beyond that.]
 - (c) The maximum number of weeks for which a covered individual may take leave under (a) and (b) of this subsection in the aggregate is [X weeks] in an application year. [Note: We strongly recommend allowing for leave and benefits to be taken for more than 12 weeks cumulatively, as most state programs have done in at least some circumstances. Alternatively, here you may specify that benefits are payable for up to an additional four (or more) weeks to a covered individual with a serious health condition related to pregnancy or childbirth.]
- (2) The first payment of benefits must be made to an individual within [X] weeks after the claim is filed, or within [X] weeks of the first day of the approved claim, whichever is later, and subsequent payments must be made [every two weeks] thereafter. Family and medical leave insurance benefits are payable as of the commencement of a covered individual's paid family and medical leave.

Section 4: Amount of Benefits

- (1) The amount of family and medical leave insurance benefits shall be determined as follows:
 - (a) The weekly benefit shall be determined as follows:
 - (i) The portion of the covered individual's average weekly wage that is equal to or less than [X] percent of the statewide average weekly wage shall be replaced at a rate of [Y] percent; and
 - (ii) The portion of the covered individual's average weekly wage that is more than [X] percent of the statewide average weekly wage shall be replaced at a rate of [Z] percent.
 - (b) The maximum weekly benefit is the statewide average weekly wage. [Note: This

language establishes a graduated wage replacement rate that would replace a worker's wages up to a certain amount at a greater percentage than wages above that amount, thus ensuring that low-paid workers can afford to take paid family and medical leave. Alternatively, here you may specify that the maximum weekly benefit is a percentage of the statewide average weekly wage.]

- (2) Family and medical leave insurance benefits are not payable until the covered individual accumulates at least four hours of family and medical leave.
- (3) The benefit amount of a covered individual taking paid family and medical leave from employment shall be based on the proportion of the covered individual's typical workweek spent at the job or jobs from which the covered individual is taking paid family and medical leave, up to the maximum total benefit established in this section. A covered individual with multiple jobs may elect whether to take leave from one job or multiple jobs.
- (4) (a) Family and medical leave insurance benefits pursuant to section (2)(2) shall be reduced by the amount of benefits that a covered individual received under [state unemployment insurance law].
(b) During any period of leave pursuant to section 2(2)(c), family and medical leave insurance benefits shall be reduced by the amount of benefits or wage replacement that a covered individual receives under workers' compensation under [state workers' compensation law], other than for partial disability under [state workers' compensation law], or under other state or federal temporary or permanent disability benefits law. The Director shall adopt regulations to establish additional requirements concerning the coordination of family and medical leave insurance benefits with workers' compensation benefits for partial disability under [state workers' compensation law].

Section 5: Contributions

- (1) Payroll contributions shall be authorized for the exclusive purpose of financing the payment of benefits under the family and medical leave insurance program and implementing and administering the family and medical leave insurance program.
- (2) Beginning on [DATE], for each employee, an employer shall remit to the Family and Medical Leave Insurance Fund contributions in the form and manner determined by the Department.
- (3) (a) From [DATE] to [DATE], the contribution amount is a percentage of wages per employee to be determined by the [state investment board or other state entity/official responsible for making investment or other financial decisions in the state]. [Note: This subsection specifies the contribution rate for the program's first year. Alternatively, you could work with a fiscal partner to determine an initial contribution rate to get the program up and running.]

- (b) Annually, for the [YEAR] calendar year, and each calendar year thereafter, not later than [DATE], the [state investment board or other state entity/official above] shall set the contribution rate for the coming calendar year based on a percent of employee wages and at the rate necessary to obtain a total amount of contributions equal to one hundred thirty-five percent of the benefits paid during the previous fiscal year plus an amount equal to one hundred percent of the cost of administration of the payment of those benefits during the previous fiscal year, less the amount of net assets remaining in the fund as of June 30th of the current calendar year. [Note: This subsection specifies the contribution rate following the program's first year. The contribution should adjust annually to ensure that the program is sustainable.]
- (4) (a) A self-employed person who elects coverage under this Act shall pay only [X] percent of the contribution required for an employee by this section on that individual's income from self-employment. [Note: This subsection assumes an elective approach for self-employed persons and will need to be modified if self-employed persons are automatically covered. We recommend that self-employed persons only be required to pay the employee portion of the contribution. We are also happy to discuss alternative approaches to ensure that contributions are fairly distributed.]
- (b) A self-employed person who elects coverage under this Act shall remit the contribution amount required by this section directly to the Department, in the form and manner required by the Department by rule. [Note: It is important to include self-employed persons within the scope of the paid family and medical leave program. We are happy to discuss different approaches.]
- (5) An employer may deduct up to [X] percent of the contribution required for an employee by this section from that employee's wages and shall remit 100 percent of the contribution required by this section from both the employer and those employees to the Family and Medical Leave Insurance Fund. [Note: This subsection specifies the portion of contributions that employers may withhold from employees.]

[Note: If politically necessary, subsections (b) and (c) below could be included to exempt employers under a certain size from remitting the employer portion of contributions. However, employees of those employers would still be covered and would still have to pay their portion of the contribution. Alternatively, this subsection could be used to offer a reduced contribution rate to employers under a certain size. Exempting small employers from contributing to the program or offering such employers a reduced contribution rate are options to overcome pushback related to small business participation costs. Some paid family and medical leave programs collect employer contributions from all covered employers, regardless of size, and have still been shown to include significant benefits to small businesses.]

- (b) An employer with fewer than [X] employees may deduct up to [X] percent of the contribution required for an employee by this section from that employee's wages and shall remit [X] percent of the contribution required by this section to the Family and

Medical Leave Insurance Fund.

- (c) To determine an employer's number of employees pursuant to this subsection, all of an employer's employees shall be counted, including full-time, part-time, and temporary employees in [state] and all out-of-state employees.]
- (6) An employer that fails or refuses to make contributions as required in this section shall be assessed [X] percent of its total annual payroll for each year it so failed to comply in addition to any amounts previously owed, or fraction thereof, in addition to the total amount of benefits paid to covered individuals for whom it failed to make contributions. The rate of assessment imposed by this subsection shall be adjusted for the [YEAR] calendar year and annually thereafter consistent with section 5(3)(b). Assessments collected pursuant to this subsection shall be deposited in the Family and Medical Leave Insurance Fund.
- (7) An employer's failure or refusal to remit contributions to the Family and Medical Leave Insurance Fund as required in this section shall not affect an individual's eligibility for paid family and medical leave and family and medical leave insurance benefits pursuant to this Act.

Section 6: Intermittent or Reduced Leave Schedule

- (1) A covered individual shall be entitled, at the option of the covered individual, to take paid family and medical leave on an intermittent or reduced leave schedule in which all of the leave authorized under this Act is not taken sequentially. Family and medical leave insurance benefits for intermittent or reduced leave schedules shall be prorated.
- (2) The covered individual shall make a reasonable effort to schedule foreseeable paid family and medical leave under this section so as not to unduly disrupt the operations of the employer. The covered individual shall provide the employer with prior notice of the schedule on which the covered individual will be taking the leave, to the extent practicable. Paid family and medical leave taken under this section shall not result in a reduction of the total amount of leave to which a covered individual is entitled beyond the amount of leave actually taken.
- (3) Nothing in this section shall be construed to entitle a covered individual to more leave than required under section 3 of this Act.

Section 7: Leave and Employment Protection

- (1) Any covered individual who exercises their right to paid family and medical leave shall, upon the expiration of that leave, be entitled to be restored by their employer to the position held by the covered individual when the leave commenced, or to be restored to an equivalent position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment including fringe benefits and service credits that the

covered individual had been entitled to at the commencement of leave.

- (2) During any leave taken pursuant to section 2 of this Act, the employer shall maintain any health care benefits the covered individual had prior to taking such leave for the duration of the leave as if the covered individual had continued working continuously from the date the individual commenced the leave until the date the individual returns from paid family and medical leave; provided, however, that the covered individual shall continue to pay the covered individual's share of the cost of health benefits and that the employer shall continue to pay the employer's share of the cost of health benefits as required prior to the commencement of the leave.
- (3) This section shall be enforced as provided in section 20.

Section 8: Retaliatory Personnel Actions Prohibited

- (1) It shall be unlawful for an employer or any other person to commit interference or restrain or deny the exercise of, or the attempt to exercise, any right protected under this Act.
- (2) An employer, temporary help company, employment agency, employee organization or other person shall not take retaliatory personnel action or otherwise discriminate against a person because that person exercised rights protected under this Act. Such rights include but are not limited to the right to request, file for, apply for or use benefits, or take leave provided for under this Act; communicate to the employer or any other person or entity an intent to file a claim, a complaint with the Department or courts, or an appeal, or that the person has testified or is about to testify or has assisted in any investigation, hearing or proceeding under this Act, at any time, including during the period in which the person receives family and medical leave insurance benefits under this Act; inform any person about any employer's alleged violation of this Act; and the right to inform any person of the person's rights under this Act.
- (3) It shall be unlawful for an employer's absence control policy to count paid family and medical leave taken under this Act as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action.
- (4) Protections of this section shall apply to any person who mistakenly but in good faith alleges violations of this Act.
- (5) This section shall be enforced as provided in section 20.

Section 9: Coordination of Benefits

- (1) (a) Leave taken with family and medical leave insurance benefits under this Act that also qualifies as leave under the federal [or state] FMLA shall run concurrently with

- leave taken under the federal [or state] FMLA, as applicable.
- (b) An employer may require that family and medical leave insurance benefit payments made pursuant to this Act be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of a short-term disability policy, or a separate bank of time off designated solely for the purpose of family and medical leave in accordance with this Act, under a collective bargaining agreement or employer policy. The employer must give employees written notice of this requirement.
 - (c) Notwithstanding this subsection, under no circumstances shall an employee be required to use or exhaust any accrued vacation leave, sick leave, or other paid time off prior to or while receiving family and medical leave insurance benefits under this Act. However, a covered individual may choose to use any accrued vacation leave, sick leave, or other paid time off while receiving family or medical leave insurance benefits under this Act, unless the aggregate amount a covered individual would receive would exceed the covered individual's average weekly earnings. Nothing in this subsection requires an employee to receive or use additional paid time off as described in this section.
- (2) (a) This Act does not diminish an employer's obligation to comply with any of the following that provide more generous leave and/or more generous benefits:
- (i) a collective bargaining agreement;
 - (ii) an employer policy;
 - (iii) an employment contract; or
 - (iv) any applicable local, state, or federal law.
- (b) An individual's rights, privileges, or remedies to leave and benefits under this Act may not be diminished by a collective bargaining agreement entered into, retained, amended, or renewed, or an employer policy adopted, amended, or retained, after the effective date of this Act.
- (c) This Act does not diminish an individual's rights, privileges, or remedies under a collective bargaining agreement, employer policy, or employment contract, as applicable; and
- (d) Any agreement by an individual to waive the individual's rights under this Act is void as against public policy.

Section 10: Notice

- (1) Each employer shall provide written notice pursuant to this section to each employee upon hiring and annually thereafter. An employer shall also provide written notice to an employee when the employee requests leave under this Act, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under section 2(2) of this Act. Such notice shall include: (a) the employee's right to family and medical leave insurance benefits under this Act and the terms under which it may be used; (b) the amount of family and

medical leave insurance benefits available; (c) the procedure for filing a claim for benefits; (d) the right to employment restoration and benefits continuation under section 7 of this Act; (e) that discrimination and retaliatory personnel actions against a person for requesting, applying for or using family and medical leave insurance benefits is prohibited under section 8 of this Act; and (f) that the employee has a right to file a complaint for violations of this Act.

- (2) Each employer shall also display and maintain a poster in a conspicuous place accessible to employees at the employer's place of business that contains the information required by this section in a form approved by the Department; provided, however, that in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based or app-based platform.
- (3) All notices required by subsections (1) and (2) shall be provided in English, the language typically used in communications between the employer and an individual employee, and any other language that is the primary language of at least [X] percent of employees at a workplace, provided that such notice has been provided by the Department. The Director may adopt regulations to establish additional requirements concerning the means by which employers shall provide such notice.
- (4) Any employer that violates subsection (1) to (3) shall be assessed \$[X] per day per employee for each violation. Assessments collected pursuant to this subsection shall be deposited in the Family and Medical Leave Insurance Fund.
- (5) Employees shall provide notice to their employers as soon as practicable of their intention to take leave under this Act; provided, however, that when the need for leave is foreseeable, employees shall not be required to provide more than [X] days' notice to their employer.

Section 11: Appeals

- (1) The Director shall establish a system for an aggrieved individual to appeal any determination of their claim for family and medical leave insurance benefits within 90 days of receiving notice of the determination. In establishing such system, the Director may utilize any and all procedures and appeals mechanisms established under the [state unemployment compensation law; we can help research if the unemployment compensation appeal mechanisms provide a strong basis for this program]; provided, however, that employers shall not be a party to any appeal pursuant to this subsection. [Note: Unlike unemployment insurance, paid family and medical leave insurance programs are not experience rated, so the employer is differently situated than under unemployment insurance. To ensure that workers have full access to their rights to leave and benefits administered by the State, employers should not be involved in appeals.]

- (2) Following receipt of the Department's final determination on appeal, an aggrieved individual may seek judicial review in a court of competent jurisdiction. [Note: As written, individuals need to exhaust the administrative process prior to seeking judicial review. You may wish to remove this exhaustion requirement.]
- (3) The Director shall implement procedures to ensure confidentiality of all information related to any claims filed or appeals taken to the maximum extent permitted by applicable laws.

Section 12: Erroneous Payments and Disqualification for Benefits

- (1) A covered individual may be disqualified from family and medical leave insurance benefits for up to one year if the individual is determined by the Director to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this Act.
- (2) If family and medical leave insurance benefits are paid erroneously or as a result of willful misrepresentation, or if a claim for family and medical leave insurance benefits is rejected after benefits are paid, the Department may seek repayment of benefits from the recipient. The Director shall exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

Section 13: Elective Coverage

[Note: This section will not be needed if self-employed persons are automatically covered within the scope of the program.]

- (1) A self-employed person, including an independent contractor, sole proprietor, partner, or joint venturer, may elect coverage under this Act for an initial period of not less than three years; provided, however, that a self-employed person who elects coverage shall become eligible for family and medical leave insurance benefits immediately when that individual has met the requirements of section (1)(7)(a)(i), including wages earned from work in employment and self-employment. The self-employed person must file a notice of election in writing with the Director, as required by the Department. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed person must agree to supply any information concerning income that the Department deems necessary.
- (2) A self-employed person who has elected coverage may withdraw from coverage within 30 days after the end of the three-year period of coverage, or at such other times as the Director may prescribe by rule, by filing written notice with the Director, with such withdrawal to take effect not sooner than 30 days after filing the notice.
- (3) A person who has elected coverage under this section shall be excused from their obligations under this section, as the Department shall prescribe by rule, if:

- (a) The person is no longer a self-employed person; or
- (b) The person no longer works in [state].

Section 14: Family and Medical Leave Insurance Program

- (1) The Department shall establish and administer a family and medical leave insurance program, collect contributions, and pay family and medical leave insurance benefits as specified in this Act. The provisions of this Act shall be administered and implemented by the Department. The Department shall be the entity that collects contributions, processes and determines claims for family and medical leave insurance benefits, and administers appeals to the Department pursuant to section 11. [Note: We recommend working with the implementing agency in your state to determine whether it would be helpful to ensure that the agency can work with other state government agencies or departments to administer specific functions of the program. We can assist with modifying this language as needed.]
- (2) The Department shall notify the employer within five business days of a claim being filed pursuant to this Act. The Department is not required to receive any acknowledgment or response from an employer before processing the applicants claim.
- (3) The Department may use information sharing and integration technology to facilitate the disclosure of relevant information or records to the extent permitted under state and federal privacy and confidentiality laws, so long as an individual consents to the disclosure as required under state law.
- (4) Information contained in the files and records pertaining to an individual under this Act are confidential and shall not be disclosed or made open to public inspection, other than to public employees in the course of official duties, to other agencies as necessary for administration of the program or as otherwise required by law. However, the individual or an authorized representative of an individual may review the records or receive specific information from the records upon the presentation of the individual's signed authorization.
- (5) The Director shall adopt reasonable rules as necessary to implement this Act.

Section 15: Certification

- (1) As provided by this section, the Department shall establish reasonable procedures and forms for filing claims for benefits under this Act and shall institute forms and procedures that are not unduly burdensome to an individual claiming benefits. Such forms, including medical certification forms, shall be available in English, [X, X,] and other languages spoken by more than [X%] of the state's population.
- (2) An individual may file an application for family and medical leave insurance benefits no more than 60 days before the anticipated start date of paid family and medical leave and no

more than 90 days after the start date of paid family and medical leave. The Department shall waive the 90-day filing deadline for good cause. Exact dates of absence are not required for the Department to process a claim, and claim data may be adjusted through a claims modification process as established by the Department.

- (3) Certification for a covered individual taking leave under section 2(2)(a) shall be sufficient if the covered individual provides, as applicable:
 - (a) The child's birth certificate;
 - (b) A document stating the child's birth date issued by the health care provider of the child or the health care provider of the person who gave birth;
 - (c) A document issued by the health care provider of the child, an adoption agency involved in the adoption, or by other individuals, as determined by the Department, that confirms the adoption or anticipated adoption and the date of adoption or anticipated adoption;
 - (d) A document issued by the health care provider of the child, a foster care agency involved in the placement, or by other individuals, as determined by the Department, that confirms the placement or anticipated placement and the date of placement or anticipated placement; or
 - (e) A voluntary acknowledgement of parentage. [Note: State law should be consulted on proper language for ensuring acknowledgments of parentage are included as acceptable certification.]
- (4) Certification for a covered individual taking leave under section 2(2)(b) shall be sufficient if it states the date on which the family member's serious health condition commenced, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider as required by the Department, a statement that the covered individual is needed to care for the family member, and an estimate of the amount of time that the covered individual is needed to care for the family member.
- (5) Certification for a covered individual taking leave under section 2(2)(c) shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider as required by the Department.
- (6) Certification for a covered individual taking leave under section 2(2)(d) shall be sufficient if it includes:
 - (a) A copy of the family member's active-duty orders;
 - (b) Other documentation issued by the Armed Forces; or
 - (c) Other documentation permitted by the Department.
- (7) [Note: The language in this section may need to be tailored to conform to state law. Partners working on domestic violence issues in your state should be consulted here.] Certification for a covered individual taking leave under section 2(2)(e) shall be sufficient if the covered individual provides:

- (a) A police report indicating that the covered individual or covered individual's family member was a victim of domestic violence, sexual assault, or stalking;
 - (b) A court document indicating that the covered individual or covered individual's family member is involved in legal action related to domestic violence, sexual assault, or stalking;
 - (c) A signed statement from an attorney, member of the clergy, victim and witness advocate, or a medical or other professional affirming that the covered individual or covered individual's family member is a victim of domestic violence, sexual assault, or stalking; or
 - (d) The covered individual's statement, which need not be notarized or in any particular form, affirming that the covered individual or the covered individual's family member is a victim of domestic violence, sexual assault, or stalking and that the leave was taken for a safe leave purpose as defined in this Act.
- (8) Notwithstanding subsections (3) to (7), the Department shall accept alternative certification for any leave under section 2(2) that demonstrates the covered individual's need for leave for a purpose specified under section 2(2).
- (9) An application for family and medical leave insurance benefits, including certification pursuant to this section, must be submitted online, by mail, or by another method approved by the Department.
- (10) Any medical, health, or other personal information required under this section shall be confidential and shall not be disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section shall be construed to require a covered individual to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

Section 16: Income Tax

- (1) If the federal Internal Revenue Service determines that family and medical leave insurance benefits under this Act are subject to federal income tax, the Department shall inform an individual filing a new claim for family and medical leave insurance benefits, at the time of filing such claim, that:
- (a) The federal Internal Revenue Service has determined that benefits are subject to federal income tax; and
 - (b) Requirements may exist pertaining to estimated tax payments.
- (2) Family and medical leave insurance benefits pursuant to this Act are [not] subject to state income tax. [Note: State income tax does not need to be applied to family and medical leave insurance benefits.]

Section 17: Family and Medical Leave Insurance Account Fund – Establishment and Investment

- (1) The Family and Medical Leave Insurance Fund is created in the custody of the [X, such as the state financial officer]. Expenditures from the Fund may be used only for the purposes of the family and medical leave insurance benefits program established by this Act. Only the Director of the Department or the Director's designee may authorize expenditures from the Fund.
- (2) Whenever, in the judgment of the [X, such as the state financial officer], there shall be in the Family and Medical Leave Insurance Fund an amount of funds in excess of that amount deemed by [X, such as the state financial officer] to be sufficient to meet the current expenditures properly payable there from, [X, such as the state financial officer] shall have full power to invest, reinvest, manage, contract, sell or exchange investments acquired with such excess funds in the manner prescribed by [state law]; provided, however, that any revenue yielded from such investments, reinvestments, contracts, sales, or exchanges shall be deposited in the Family and Medical Leave Insurance Fund.

Section 18: Reports

Beginning [DATE], the Department shall submit a report to the legislature by [DATE] of each year that includes projected and actual program participation by section 2(2) purpose; age, gender, race and ethnicity, primary language, residential zip code, average weekly wage, occupation, and employment type (full- or part-time, self-employed, or recently separated) for each applicant and for each individual with an approved claim; average weekly benefit; average leave duration by section 2(2) purpose; contribution rates; current and projected fund balances; processing times for initial claims processing and determinations; number of appeals filed and outcomes related to appeals; average length of time between application and receipt of benefits; a description of the Department's outreach efforts; and, for leaves taken under section 2(2)(b), category of family member for whom leave was taken to provide care.

Section 19: Public Education

By [DATE], and for as long as the Family and Medical Leave Insurance Program continues, the Department shall conduct a public education campaign to educate workers and employers about the program and availability of family and medical leave insurance benefits under this Act, including certification requirements pursuant to section 15. The Department may use [X%] of the funds collected for the family and medical leave insurance benefits program in a given year to pay for the public education program. Outreach information shall be available in English, [X, X,] and other languages spoken by more than [X%] of the state's population. [Note: To support public education of the family and medical leave insurance program, it may be helpful to authorize the Department to re-grant a portion of the funds set aside for public education to

community-based organizations.]

Section 20: Enforcement

- (1) Any individual who believes that their rights under this Act have been interfered with, restrained, or denied in violation of this Act or that the individual has been discharged or otherwise discriminated against in violation of this Act may, within [X, such as 24] months after the violation occurs or the individual should reasonably have known that the violation occurred, whichever is later:
 - (a) File a complaint with the Department alleging the violation; or
 - (b) Bring a civil action in a court of competent jurisdiction.

- (2) The Department shall process complaints filed pursuant to subsection (1)(a) in the same manner as complaints filed under [state law] are processed. If the Department finds that an employer has violated section 7 or 8 of this Act, the Department shall:
 - (a) Order the employer to take action to remedy the violation, which may include:
 - (i) Providing the requested family or medical leave;
 - (ii) Reinstating an employee;
 - (iii) Providing for up to 2 years of back pay;
 - (iv) Interest on the amount described in clause (iii) calculated at the prevailing rate;
 - (v) Liquidated damages equal to the sum of the amount described in clause (iii) and the interest described in clause (iv);
 - (vi) Paying reasonable actual attorney fees to the complainant; and
 - (vii) Any other relief the Department deems appropriate; and
 - (b) Assess the employer a penalty of not less than \$[X], with such assessments to be deposited in the Family and Medical Leave Insurance Fund.

- (3) An individual or the Department may bring a civil action in a court of competent jurisdiction against an employer for violation of section 7 or 8 of this Act. Such action may be brought by an individual aggrieved by a violation of section 7 or 8 of this Act without first filing a complaint with the Department. The court may order payment of damages caused by the violation, liquidated damages, reasonable costs including attorney fees, and legal and equitable relief as the court deems appropriate. A civil action brought after the completion of an administrative proceeding under subsection (2) shall be commenced within [X, such as 24] months after the completion of such proceeding. [Note: As written, individuals need to exhaust the administrative process prior to filing a civil action. You may wish to remove this exhaustion requirement.]

Section 21: Interagency Coordination and Sharing Technology

The Department is encouraged to use state data collection, technology, outreach and educational efforts to the extent possible and to integrate the family and medical leave insurance program with existing and future state policies, programs, and practices, including but not limited to

policies, programs, and practices that serve populations intended to be served by the family and medical leave insurance program and data that promotes program effectiveness, efficiency, and utilization. Nothing in this Act should be interpreted as interfering with such coordination efforts. The state shall report on these coordination efforts on an annual basis beginning [YEAR].

Section 22: Severability

If any provision of this Act or its application to any person or circumstance is held invalid, the remainder of the Act or the application of the provision to other persons or circumstances is not affected.

Section 23: Effective Date

- (1) This statute shall take effect on [X date, as soon as possible]. [Note: For help establishing an implementation timeline, please contact us. Typically, there is a period for implementation (getting the program staffed, rulemaking, etc.); a period of collecting premiums to get the fund up and running; and a subsequent period in which benefits begin, although the period of collecting premiums prior to benefits could be reduced or eliminated by use of state funds or a state budget allocation.]
- (2) All rules and regulations necessary for implementation of this statute shall be promulgated within [X months] after enactment.

Section 24: Private Plans

[Note: Most paid family and medical leave insurance programs allow employers to apply for approval of a private plan through which the employer can fulfill its obligations under the program, such as private, commercial insurance or regulated self-insurance. To ensure that workers have full access to the program, regardless of whether their employer is covered through the state or private plan, strong safeguards are necessary. If you wish to include private plans in your paid family and medical leave insurance bill, please contact us—see page 1 for contact information.]

Please note that this document does not constitute legal advice.

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