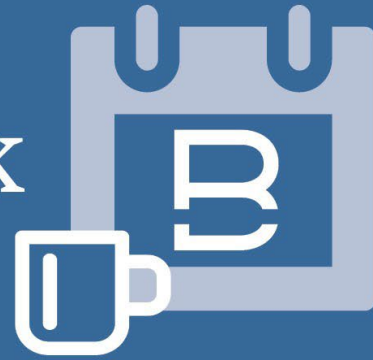


The Work Week

Bassford Remele Employment Practice Group



August 5, 2024

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

[Bassford Remele Employment Practice Group](#)

Calculating ACA Lookback Under Minnesota's Pregnancy and Parental Leave Act

[Wynne C. S. Reece](#)

Last Thursday, we saw yet another change for all Minnesota employers, in a year of seemingly continuous and important employment-law shifts. On August 1, 2024, amendments to Minnesota's Pregnancy and Parental Leave Act ("PPLA") took effect. In conjunction with Minnesota's impending Partial Paid Family and Medical Leave Law ("PFML"), set to take effect on January 1, 2026, last week's amendments to the PPLA are aimed at significantly enhancing parental leave and health insurance benefits for employees. But the amendments have an equally significant impact on employers. And, while the paid family and medical leave will not be required until January 2026, pregnant workers can immediately start taking prenatal medical leave without it counting against their parental leave, and their employers must also offer continuity in their health benefits during pregnancy and parental leave. Under previous law, there was a carve-out for some who did not fall under FMLA. PPLA takes a clear, corrective measure, in line with Minnesota policy.

First and foremost, PPLA applies to all Minnesota employers – public and private sector, regardless of size; yes, you read that right. This means that small and large businesses must comply with the law, unlike some previous regulations that exempted smaller employers.

At a high level, PFML is structured to supplement FMLA by mandating that employers provide partial wage replacement for at least 12 weeks, but up to 20 weeks, of paid parental leave to new parents, regardless of gender, to care for newborn or newly adopted children. Press around its drafting suggests that it is aimed at promoting gender equality in caregiving and ensuring that all parents can bond with their children without the financial strain of unpaid leave. In addition to parental leave, the law requires that

employers maintain health insurance coverage during the leave period, ensuring continuous access to healthcare for employees and their families.

What remains somewhat grey about the immediate efficacy, is whether or not parental leave that falls outside the scope of FMLA, such as employer-offered policies or leave permitted under state law but not federal law, would count for those employers who utilize the Affordable Care Act (“ACA”) lookback method when assessing an employee’s status. In short, the language around supplementation suggests that an employer would count non-FMLA leave as service hours for this purpose.

But let’s take a closer look. The ACA includes provisions that require applicable large employers (“ALEs”) to provide health insurance coverage to full-time employees or face potential penalties. One of the critical components in determining which employees are considered full-time under the ACA is the “lookback period,” or more commonly referenced as the “ACA lookback method.” This measurement method is used by employers to determine whether an individual counts as a full-time employee under the ACA, and, consequently, whether the individual is eligible for benefits such as health insurance. Under the ACA, full-time employees are entitled to receive health-insurance benefits.

Resources and guidance generally point to the PPLA and PMFL being designed to work alongside FMLA, thus establishing that non-FMLA leave service hours would be considered in the calculation as well rather than excluded. With that said, the Minnesota Department of Employment and Economic Development (“DEED”) does clarify that while the requirements for FMLA and PMFL are different, “[e]mployers can require that leave taken under the Paid Leave program run concurrently with leave taken for the same purpose under the federal Family and Medical Leave Act.” It should also be noted, that PMFL is distinguished from Earned Safe and Sick Time (ESST), which can be a topic for another time. Taken together, there does not seem to be any indication that PMFL would replace or otherwise detract from FMLA, or vice versa.

Employers can make employees aware of their rights under evolving laws by implementing a comprehensive communication strategy that includes regular updates and educational resources. This strategy could involve distributing updated employee handbooks or informational pamphlets outlining key benefits and legal rights, hosting informational sessions or workshops, and providing access to online resources such as company intranet sites or email newsletters. Employers should ensure that human resources staff are well-informed and available to answer questions, and they may also invite legal or healthcare professionals to provide expert insights. While this may seem counterintuitive in some instances, Minnesota is a state that heavily favors employees and even a baseless allegation can land an employer in a world of paperwork.

This legislation reflects Minnesota’s commitment to supporting families and aligning with progressive trends in employee benefits. By mandating paid parental leave and sustained health insurance, Minnesota aims to foster a more inclusive and supportive work environment. The law not only benefits employees but also helps employers by enhancing employee satisfaction, retention, and productivity. This approach

recognizes the critical role of parental support in child development and the overall well-being of Minnesota families, and suggests that employers who do the same will be looked highly upon.

At [Bassford Remele](#), our employment group regularly monitors the rapidly changing Minnesota employment laws and routinely counsels clients as these legislative changes take effect. Please reach out with any questions!

LEARN MORE ABOUT OUR EMPLOYMENT PRACTICE » »
