Home Health Care: An Overview of Paid Family and Medical Leave

In the HCM industry, a common question asked by home health care employees is what constitues as paid family time off and medical leave? This article answers those FMLA questions and more!

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Your 12-year-old daughter needs an x-ray for her orthodontic consultation. Your cousin has an alimony hearing and wants you to come along for moral support. Then your brother, stuck in bed with the flu, asks you to take his dog Spoteria to her appointment for a long-overdue flea treatment. Do these paid family and medical leave circumstances have anything in common? In the HCM software (payroll and human resources) world, they do. A common question is: which of these is your home health care agency required by Federal or state law to grant paid time off (PTO) for? Until about 15 years ago, the answer was, none of them. Then, in 2004, California kicked off the growing state trend to provide paid leave to employees for family and medical reasons. To date, eight more states and a slew of localities enforce some type of paid family and medical leave program, with Congress now considering a national paid leave law. For home health care agencies, this is an emerging trend to follow.

Which States Offer Paid Family Leave?

California wasn't exactly the first to offer paid family leave. Since 1993, the Federal FMLA (Family and Medical Leave Act), has been granting qualified employees up to 12 weeks of **unpaid** time off during any 12-month period to attend to the serious health condition of the employee, parent, spouse, child, for pregnancy or care of a newborn child, or for adoption or foster care of a child. Many states enacted similar leave laws, even expanding the coverage offered by FMLA, but sticking to the unpaid model including Colorado, Connecticut, Hawaii, Maine, Oregon, Vermont, and Wisconsin. What California did introduce, though, was mandated **paid** family and medical leave. Next to hop on the bandwagon were New Jersey and Rhode Island with paid leave laws that took effect in 2009 and 2014, respectively. In fact, on February 19, 2019, New Jersey's governor signed an extensive expansion of the 10-year-old leave program, granting employees more time to care for a newborn or sick relative and to receive more of their pay while on leave. Read Viventium's coverage of this expansion here. The newer kids on the block were New York in January 2018 and Maryland in February 2018. And at the beginning of 2019, Washington State began collecting insurance premiums to fund its paid leave law which will take effect in 2020. Not to be outdone, Washington D.C.'s paid leave takes effect July 2020,

and Massachusetts will collect premiums starting July 2019 for PTO to take effect in 2021. Finally, on March 31, 2019, Michigan will become the first Midwest state to enact a Paid Medical Leave law. The National Partnership for Women and Families has a useful summary of some state leave laws here.

Who Pays for the Paid Time Off During Paid Family and Medical Leave?

At first glance, we might think a paid leave law means the **agency** has to pay. In Maryland and DC, indeed, it does. In California and Rhode Island, the leave insurance premiums are funded by **employee** contributions only. Other states have various formulas through which the agency and employee share the cost. For example, in New Jersey and New York, employees' own disability benefits are jointly funded by employees and agencies. On the other hand, paid family leave is funded by employees only.

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What Qualifies for Paid Family and Medical Leave?

As you can guess, states vary in defining qualifying reasons for paid family and medical leave. Generally, the time can be used to:

1. Care for your own disability or a family member's serious medical condition
2. Bond with or care for a new child through birth, adoption, or fostering

Some states also offer paid family and medical leave for reasons related to active military duty or domestic/sexual abuse.

After reviewing the laws, we have some results on scenarios that qualify for Paid Family and Medical Leave:

Generally, you can't use your paid family and medical leave for that dental x-ray since orthodontics wouldn't qualify that as a severe medical condition. If your spouse is the child's parent and they're on military duty, you stand a good chance of getting that time as paid leave in New York, Washington State, and Massachusetts. And if your appointment is after March 31, 2019, and you work in Michigan, you get the time off - paid - if you can provide that the braces are preventative care and not just cosmetic. The alimony hearing also depends. Generally, it would not qualify for paid family and medical leave. But if your cousin were the victim of domestic violence, then going along to the alimony hearing would probably earn you paid leave in New Jersey. It would also be covered by Maryland and Michigan (after March 31, 2019) if the hearing were for your spouse, child, parent, grandparent, grandchild, or sibling – but not cousin. And Spoteria? Sorry, but she's just going to have to get her flea appointment rescheduled. No state provisions cover pet care – yet.

What's Trending in Paid Family and Medical Leave in 2019?

At least 10 states have proposals in their legislatures for some form of paid family and medical leave laws, including Connecticut, Minnesota, New Hampshire, and Oregon. The Standard Insurance Company's state chart can help multi-state agencies prepare for emerging developments. Also, numerous local governments have already enacted paid leave laws including New York City (NY), San Francisco (CA), Austin (TX) and Duluth (MN).

My prediction: Over the next 2 years, the HCM issue to be debated the most in local legislatures will be paid sick leave, paid medical leave, and paid family leave.

Significantly, Capitol Hill is not to be left in the dust. On February 12, 2019, the latest version of a national paid family leave program to cover new parents, caretakers, and workers with health problems was introduced. The so-called FAMILY (Family and Medical Insurance Leave) Act, originally proposed in 2013, would create national insurance funded by both agencies and employees to provide 12 weeks of paid family and medical leave to employees. This follows on the heels of President Trump's State of the Union speech in which he called for "a plan for nationwide paid family leave so that every new parent has the chance to bond with their newborn child." National paid family leave will likely occupy a substantial share of the limelight in the upcoming 2020 Presidential election. **All HR and payroll policies should be reviewed with your legal counsel for compliance.*

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