



# Changes in Maryland Law: What to Know

July 2023



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# Agenda

SB 555 Fair Wage Act

SB 516 Cannabis

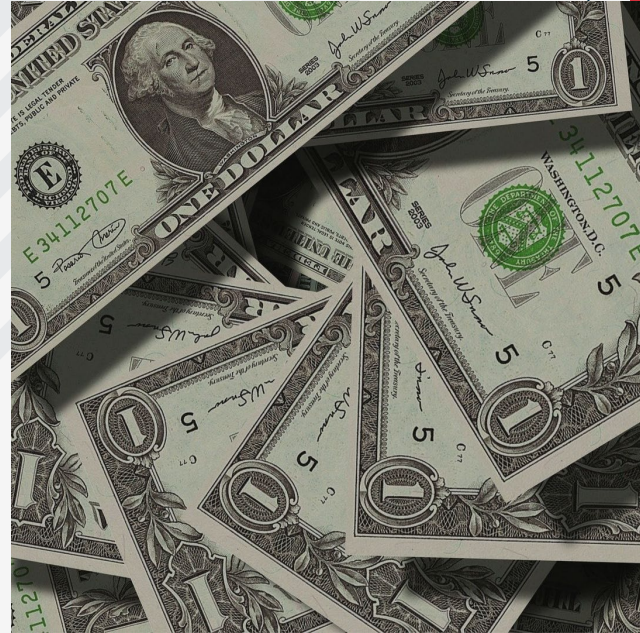
SB 591 Noncompete and  
Conflict of Interest  
Provisions

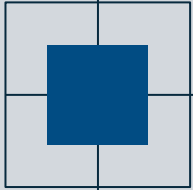
SB 828 Family and Medical  
Leave Insurance  
Program (FAMLI)

SB 540 Civil Rights  
Enforcement – Powers of  
Attorney General

SB 555

# Fair Wage Act of 2023





# SB 555 - Fair Wage Act

## Date Effective

July 1, 2023.

## Small Employer

Defined as employer who employs 14 or fewer employees.

§3-413(a)(2)

## Government

Minimum wage rates are applicable to a governmental unit.

§3-413(a)(2)

## Employees Subject to Both State and Federal Minimum Wage

Employers must pay higher wage (either state or federal).

If employee is only subject to the state minimum wage, employer must pay the greater of the highest minimum wage under the federal act or the state minimum wage.

§3-413(b)

# SB 555 - Fair Wage Act

## Minimum Wage Rate

Jan. 1, 2023	Jan. 1, 2024
\$13.25	\$15.00

For employees under the age of 18, employers may pay a wage = 85% of the state minimum wage.

## Minimum Wage Rate for Small Employers

Jan. 1, 2023	Jan. 1, 2024
\$12.80	\$15.00


SB 591

Noncompete  
and Conflict of  
Interest  
Provisions





## SB 591– Noncompete and Conflict of Interest Provisions

- ⚖️ Noncompete or conflict of interest provision in any employment contract (or similar document/agreement) that:
    - 🔍 Restricts the ability of an employee to enter into employment with an employer, or;
    - 🔍 Become selfemployed in the same or similar business or trade,
  - ⚖️ Shall be void as against public policy
  - ⚖️ Effective Oct. 1, 2023
- 



# §B 59 1– Noncompete and Conflict of Interest Provisions



## Application

Applicable to an employment contract (or similar document/agreement) concerning an employee who earns equal to or less than 150% of the state minimum wage.



## Location

Irrelevant if the employment contract (or similar document/agreement) was entered into in Maryland or not.



## Exception

There is an exception for any employment contract (or similar document/agreement) with respect to taking or use of a client list or other proprietary client-related information.

SB 540

Civil Rights  
Enforcement -  
Powers of the  
Attorney General (AG)



# SB 540 – Civil Rights Enforcement

## Powers of the AG

### Investigate, Prosecute, and Remediate

Any conduct that constitutes a civil rights violation, including:

- ✚ Discrimination in public accommodation
- ✚ Discrimination by persons licensed or regulated by the MD Department of Labor
- ✚ Discrimination in leasing or commercial property
- ✚ Discrimination in employment
- ✚ Discrimination in housing
- ✚ Aiding, abetting, or attempting discriminatory act or obstructing compliance

### Obtain Equitable Relief to Stop Civil Rights Violations

The AG can seek:

- ✚ Permanent or preliminary injunction
- ✚ Temporary restraining order
- ✚ Order enjoining defendant from engaging in civil rights violations
- ✚ An order requiring any appropriate action

AG must provide 7 days notice of relief sought.

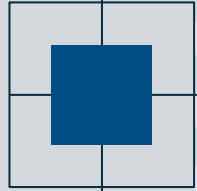
### Obtain a Civil Penalty

The AG may seek a civil penalty to vindicate public interest. It shall not exceed \$10,000 for first violation and \$25,000 for second violation.

The AG may also obtain restitution, including:

- ✚ Reimbursement for cost of investigation and litigation
- ✚ To any aggrieved person

# SB 540 – Civil Rights Enforcement



## Restrictions

AG is precluded from bringing civil rights action on behalf of individual or against:

- ⚖ Political subdivision;
- ⚖ Unit of the state/local government;
- ⚖ Employee or against entity identified as part of political subdivision or unit of state or local government

Must be commenced within 3 years after discovery, occurrence, or termination of alleged civil rights violation.

If AG obtains settlement agreement, no action can be filed with respect to conduct that agreement covers (other than to enforce agreement).

- ⚖ AG has 3 years to obtain relief for an alleged breach of settlement agreement.

## Process

AG may intervene in civil action concerning civil rights violation if they certify that case is of general importance.

Before initiating civil action, AG shall conduct a preliminary investigation to determine whether reasonable cause exists to believe that any person committed a civil rights violation. This may include:

- ⚖ Subpoenas for witnesses;
- ⚖ Administration of oaths;
- ⚖ Examination of individuals under oath
- ⚖ Compel production of records, books, papers, contracts, and other documents.

\*\*Note: Information obtained through subpoena is not admissible in later criminal proceeding against person who provided the evidence.



Effective Oct. 1, 2023

SB 5 16

Cannabis



# SB 516 - Cannabis

Governor

## Alcohol, Tobacco, and Cannabis Commission

7-member commission, appointed by Governor with advice of Senate

## Maryland Cannabis Administration

Director appointed by Governor with advice of Senate

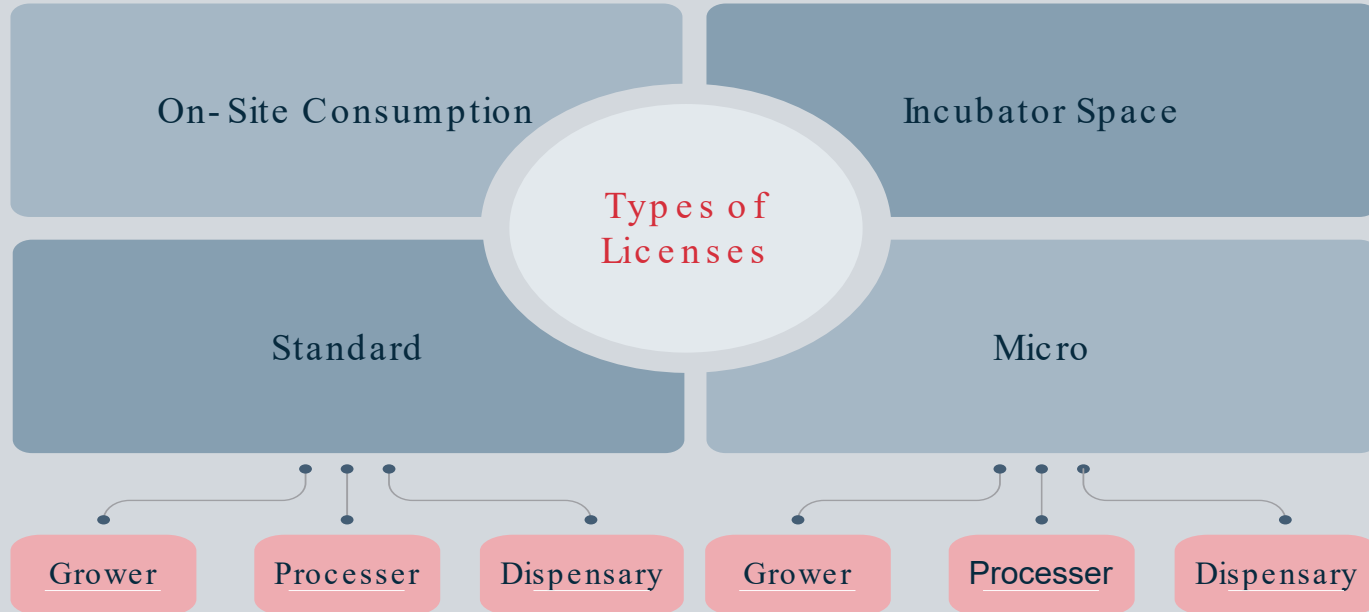
## Advisory Board on Medical and Adult Use Cannabis

Considers matters submitted by Maryland Cannabis Administration, Governor, Commission, or General Assembly. Provide recommendations to Commission.

## Office of Social Equity

Promote and encourage full participation in regulated cannabis industry by people from communities that have previously been disproportionately impacted by war on drugs.

# SB 516 - Cannabis



# SB 516 - Cannabis

July 1, 2023

Emergency Regulations must be set by Maryland Cannabis Administration

On or before  
July 1, 2024

Nonemergency Regulations must be set by Maryland Cannabis Administration.

Minimum standards for licensed growers to protect rights of growers and employees concerning:

- Grievances
- Labor disputes
- Wages/Rates of pay
- Hours
- Other terms or condition of employment.

The standards shall (at a minimum) protect State's interests by prohibiting a labor organization from engaging in picketing, work stoppages, boycotts, or any other economic interference with operation of licensed growers.



# SB 516 - Cannabis

## Struck § 36-1301(A) and (F)

Removes provision permitting employer (including state or subdivisions thereof) from denying employment or contract to individual or disciplining an employee or contractor for testing positive for cannabis, if test was conducted in accordance with employer's established drug policy.

## Struck § 36-1301(C)

Removes provision preventing State from denying employment or contract to an individual for prior conviction of nonviolent cannabis offense that does not involve distribution to minors.

## Struck § 36-1301(E)

Removes provision permitting government employer to discipline employee or contractor for ingesting cannabis in the workplace or working while impaired by cannabis.

## Struck § 36-1303

Removes provision preventing agency or political subdivision of State from relying on violation of federal law related to cannabis as sole basis for taking adverse action against a person.

# Language Removed from HB 556 (2023)

16            ~~(F) NOTHING IN THIS SECTION MAY BE CONSTRUED TO PREVENT OR~~  
17 ~~PROHIBIT ANY EMPLOYER FROM DENYING EMPLOYMENT OR A CONTRACT TO AN~~  
18 ~~INDIVIDUAL OR DISCIPLINING AN EMPLOYEE OR A CONTRACTOR FOR TESTING~~  
19 ~~POSITIVE FOR THE PRESENCE OF CANNABINOIDS OR CANNABINOID METABOLITES~~  
20 ~~IN THE URINE, BLOOD, SALIVA, BREATH, HAIR, OR OTHER TISSUE OR FLUID OF THE~~  
21 ~~EMPLOYEE'S OR CONTRACTOR'S BODY, IF THE TEST WAS CONDUCTED IN~~  
22 ~~ACCORDANCE WITH THE EMPLOYER'S ESTABLISHED DRUG TESTING POLICY.~~

# Language Removed from HB 556 (2023)

- Employers and the Maryland Chamber of Commerce objected to removal of the employer protection language.

- Attorney General opined in March 2022 (regarding HB 1 & HB 837 (2022 legislative session)) that: “Neither bill limits any existing requirements or authority of an employer with respect to maintaining a drug free workplace or prevents an employer from making employment decisions based on an employee’s or employment applicant’s use or positive drug test for the presence of cannabis, which remains a prohibited controlled substance under federal law. Neither bill appears to contain any provisions establishing a protected class for employment for users of cannabis.” AND...

“Neither bill appears to contain any prohibition against an employer making an employment-related decision or taking disciplinary action against a prospective or existing employee for the use of, or testing positive for the presence of, cannabis. Additionally, neither bill contains any restriction against an employer from discriminating against a prospective or current employee based on the use of, or positive test for, cannabis.”

# MMCC Patient FAQ

- “Maryland law does not prevent an employer from testing for use of cannabis (for any reason) or taking action against an employee who tests positive for use of cannabis (for any reason). ”
  - Maryland Medical Cannabis Commission, Patient FAQ, [https://mmcc.maryland.gov/Pages/patients\\_faq.aspx](https://mmcc.maryland.gov/Pages/patients_faq.aspx)
- Unlike other states (e.g., New York), Maryland does not have a law that prohibits employers from taking employment actions based on any off - duty conduct . . . YET.

# Maryland's Drug Testing Law

- An employer with a legitimate business purpose may require an employee or job applicant to submit to a test for use or abuse of controlled substances or alcohol. Md. Code Ann., Health - Gen. § 17-214(b)(1), (h).
- Controlled substances are those listed in Schedule I through V under the Federal Controlled Substances Act. Md. Code Ann., Crim. Law § 5-101(g)(1).
- Tests must be performed at state - approved laboratory and employer must inform the individual of the name and address of the testing facility. COMAR 10.10.10.05; Md. Code Ann., Health - Gen. § 17-214(b)(1).

# Pre - Employment

- Employers that want to conduct pre - employment drug tests must register with Office of Health Care Quality at the Department of Health and Mental Hygiene.
- Employers may use single - use tests meeting FDA requirements at an appropriate collection site. Md. Code Ann., Health- Gen. § 17-214(a)(9), (b)(2).
- If the result is positive, the sample must be sent to a state - approved lab for testing. Md. Code Ann., Health - Gen. § 17-214(d).



# Positive Tests

- The employer must send the individual:
  - a copy of the lab results;
  - a copy of the employer's written policy on the use or abuse of controlled substances or alcohol;
  - notice of rights to request independent testing of the same sample or results; and
  - notice of intent to take disciplinary action up to and including termination.
- The information must be sent within 30 days of the test by certified mail or personal delivery. Md. Code Ann., Health - Gen. § 17-214(c).
- Applicants or employees who request an independent follow-up test must pay for the cost of the new test. Md. Code Ann., Health - Gen. § 17-214(e)(2).

# Practicable Problems with Marijuana Testing

- Presence does not necessarily mean impairment.
- A positive test does not mean that the person is currently under the influence of marijuana.
- Marijuana can be detected in blood, saliva, urine, and hair based on prior usage.
- Heavy users can test positive for up to a month (or more).
- No BAC or “breathalyzer” equivalent.
- No current test can tell the line between impairment and non-impairment.
- Can supervisors spot impairment?

# Training Considerations

- **Reasonable suspicion Management Training**
  - Required by some states.
  - Specific, articulable symptoms of impairment.
  - Presents a safety danger to self or others.
  - An opportunity to challenge the basis for the determination.
  - Mandatory supervisor training or certification.
  - Mandatory referral to counseling instead of termination.

- **Cognitive Impairment Tests**
- **Use of Reasonable Suspicion Observed Behavior Report**

**Example: New Jersey Workplace Impairment Recognition Act (WIRE) required positive test and evidence-based documentation of physician signs of impairment during work**

# Marijuana Related Convictions and Hiring

Not recommended to use as a bar  
to hiring decisions.

- Equal Employment Opportunity Commission.
- Permitted only when (1) job related for position in question and (2) consistent with a business necessity.

Requires Individualized inquiry

- nature and gravity of the offense;
- time that has passed since the conviction and/or completion of sentence;
- and
- the nature of the job held or sought.

# Accommodations

- Duty under the Americans with Disabilities Act (ADA) and the Maryland Fair Employment Practices Act (FEPA) to accommodate employees.
- BUT, the ADA does not provide protection for an individual who is currently engaging in the use of illegal drugs.
- As long as marijuana remains illegal under federal law, courts have concluded that medical marijuana use is not protected by the ADA .
- Cannot use medical marijuana as a pretext for an issue with underlying disability.

# Accommodations (Con't)

- Consider the positions for which off - duty usage could be an accommodation.
- Make clear that use on property and/or during work hours is strictly prohibited and does not qualify as an accommodation.
- Determine what jobs are “safety-sensitive” to permit an accommodation:
- Examples:
  - “substantial bodily injury, property damage or death ”
  - “might endanger the integrity of our Nation’s borders or the life of the citizenry ”
  - “particularly dangerous if performed under the influence of drugs or alcohol”
  - “the risk to public safety is substantial and real ”
  - “public safety is genuinely in jeopardy ”

# How does this apply to cannabis?

- Employers need not tolerate any employee's use of marijuana in the workplace. 42 U.S.C. § 12114(c)(4); 29 C.F.R. § 1630.16(b).
- Since marijuana is still illegal under Federal law, employers need not reasonably accommodate the current use of marijuana under the ADA.
- BUT, be careful to ensure the facts indicate current use. *Shirley v. Precision Castparts Corp.*, 726 F.3d 675 (5th Cir. 2013); *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182 (9th Cir. 2001); *Scott v. Harrah's LLC*, 2017 WL 1927927 (D. Nev. May 9, 2017).
- The ADA covers recovering or recovered drug users. 29 C.F.R. § 1630.3(b).

# Federal Contractors

- Drug Free Workplace Act of 1988
- Requires some federal contractors and grantees to agree that they will provide a drug - free workplace as a pre - condition of receiving a contract or grant from a federal agency.
- Applies to: (1) Federal contracts of \$100K or more; and Federal grantees.
- Requirements:
  - Written policy statement;
  - Establish a drug - free awareness program;
  - Inform employees of personal reporting obligations;
  - Notify contracting agency of any violations;
  - Take direct actions against violators; and
  - Maintain an on - going good faith effort at compliance.



# What now ?

- Employers should review and update drug and alcohol policies (including pre-employment testing).
- Employers should ensure they have a state-compliant testing procedure and determine whether federal requirements apply (i.e., as a federal contractor or grantee).
- Before taking an adverse action, employers should:
  - Determine the issue (i.e., on -premises, working hours, suspected influence, or positive test issue).
  - Determine if it is a recreational v. medical - use issue.
  - If a medical - use issue, determine if there is a duty to otherwise accommodate the health condition.
  - Determine if there is a bright -line rule and, if not, conduct analysis to determine no pretext.

SB 828

Family and  
Medical Leave  
Insurance  
Program (FAMLI)



# SB 828 - FAMLI

## What Employers are Covered?

Any public or private entity that employs at least one individual in Maryland.

Self-employed individuals can choose to participate in the Program.



Private Employer Plan/Exemption: Employers can **seek an exemption** from the Program if they can establish that they provide eligible employees benefits and/or insurance that meets or exceeds the benefits and protections under the program.

Employers must submit their plan for review and approval from the MD Dept. of Labor, Licensing and Regulation (DLLR). If approved, employer is exempt from contributing.

## Who Gets Paid Leave?

Employees who have worked at least 680 hours over the 12-month period immediately preceding date on which employee's leave it to begin.

The application year is the 12-month period beginning on the Sunday of the calendar week for which benefits are approved.

# SB 828 - FAMLI

## Benefits for Covered Individuals



Up to 12 weeks of paid time off per year for the following reasons:

- 🏠 Care/bond with new child for first year after birth
- 🏠 **Serious health condition** that results being unable to perform functions of their position
- 🏠 Care for a **family member** with a serious health condition
- 🏠 Care for a service member who is next of kin with a **serious health condition resulting from military service**
- 🏠 A **qualifying exigency** arising out of deployment of a service member who is a family member



### Job Protection

While on leave, employees may only be terminated for cause .

Employers must restore the individual to an equivalent position of employment upon return from leave.

However, employer may deny job restoration if:

- 🏠 Necessary to prevent substantial and grievous economic injury to operations of employer
- 🏠 Employer notifies individual of intent to deny restoration of position when employer determines economic injury would occur
- 🏠 Leave has begun and individual elects not to return to employment after receiving notice of the employer's intention not to restore position



### Benefits Continuation

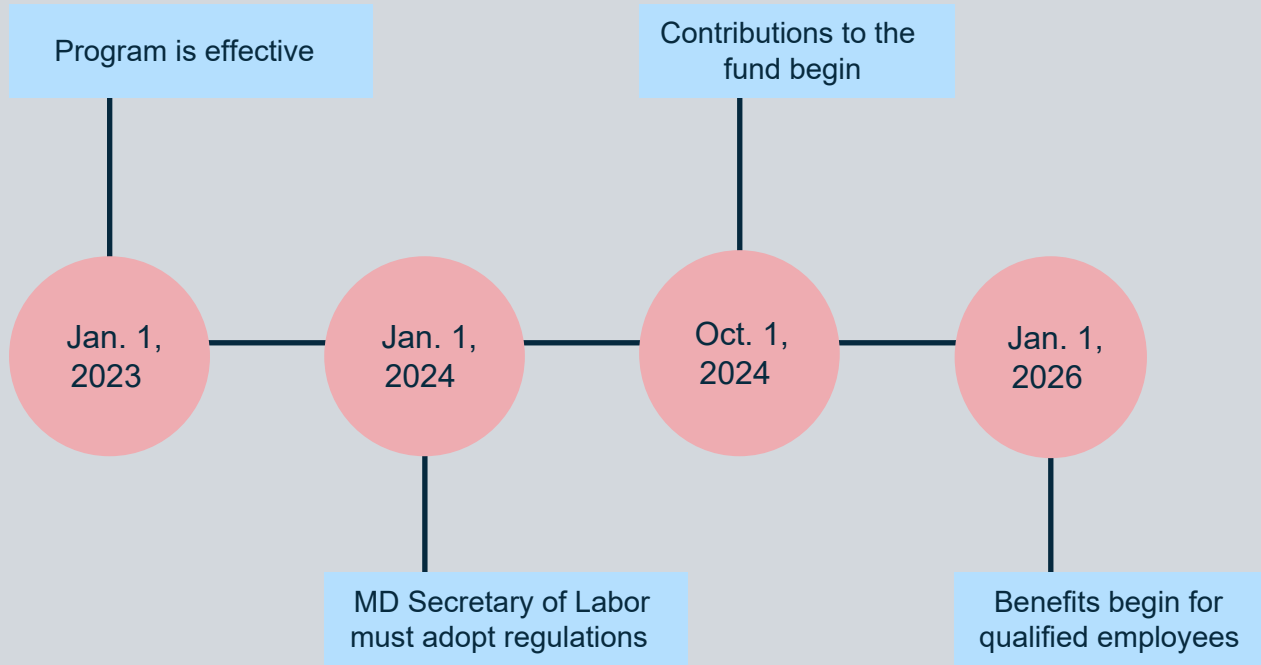
Employer health benefits must be continued while employee is receiving benefits.

# SB 828 – FAMLI (Definitions)

<p>Serious Health Condition</p>	<p>An illness, injury, impairment, physical, or mental condition that involves:</p> <ul style="list-style-type: none"><li>inpatient care</li><li>continued treatment by a licensed health care provider</li><li>continued treatment or supervision at home by a licensed health care provider or other competent individual under the supervision of a licensed health care provider</li></ul>
<p>Family Member</p>	<p>In relation to the covered individual:</p> <ul style="list-style-type: none"><li>biological child, adopted child, stepchild or a child for whom the covered individual has legal or physical custody, guardianship, or acted in loco parentis (regardless of age)</li><li>biological parent, adoptive parent, foster parent, stepparent, or legal guardian, ward, or individual who acted in loco parentis (including of the covered individual's spouse)</li><li>spouse or domestic partner</li><li>biological grandparent, adopted grandparent, foster grandparent, or step-grandparent</li><li>biological grandchild, adopted grandchild, foster grandchild, or step-grandchild</li><li>biological sibling, adopted sibling, foster sibling, or stepsibling</li></ul>
<p>Qualifying Exigency</p>	<p>Certain reasons for leave needed by a family member of a service member including:</p> <ul style="list-style-type: none"><li>service member has received notice of deployment within 7 days before the deployment is to begin</li><li>attend military events including family support programs</li><li>arrange, provide, or attend child-care or school activities when the service member is on active duty</li><li>make financial and legal arrangements for the service member's absence</li><li>attend counseling</li><li>spend up to 15 days with a service member who is on short-term temporary R&amp;R during the period of deployment</li><li>attend post-deployment activities for a period of 90 days immediately following termination of active status</li><li>attend matters related to the death of a service member while on active-duty status</li><li>arrange for or provide alternative care for a parent of the service member</li><li>any other issues that arise out of active duty or a call to active duty that an employer and employee agree should be covered</li></ul>

# SB 828 - FAMLI

## Important Dates



# SB 828 - FAMLI

## Funding Benefits



The **employer** and **employee** are required to contribute an equal amount (50%), of the total rate of contribution.

The employer will deduct the employee's contribution from their wages.

The employer **may elect to pay all or a portion of the employee's contribution.** If so, the employer must inform the employee of the portion being paid by the employer and their new contribution portion.

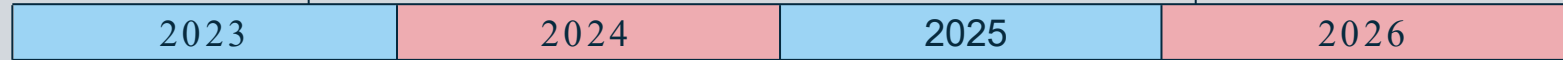
# SB 828 - FAMLI

## Determining Rates (Payroll Tax)

Before Oct. 1, 2023, Secretary is required to set total rate of contribution.

\*\*May not exceed 1.2% of employee's wages and shall be applied to wages up to and including the Social Security wage base

On or before Feb. 1 each year, Secretary shall set total rate of contribution that will be in effect for 12 - month period beginning immediately following July 1.



Payroll tax taxes take effect Oct. 1, 2024.

Payroll tax in effect with original rate until June 30, 2026.



# SB 828 - FAMLI

## How Employees Receive Paid Leave Benefit

### Step 1: Employee Submits Application for Benefits to DLLR

Between 60 days before anticipated start of leave, and 60 days after start of leave.

Application includes:

- (1) Intended first date of leave, and declaration on if leave will be continuous or intermittent
- (2) Date which the reason for leave commenced
- (3) Probable duration of condition
- (4) Facts regarding condition

### Step 2: After Filing Application



DLLR is required to approve/deny claim and notify individual and employer **within 10 business days after filing** .

DLLR will notify employers within 5 days that employee:

- (1) Has filed claim
- (2) Application has been processed
- (3) Determination regarding claim has been made
- (4) An appeal has been filed
- (5) A change has been made to a claim.



### Step 3: Payment of Benefits



DLLR's first payment of benefits to employee will be made within 5 business days after application is approved or leave is started (whichever is later).

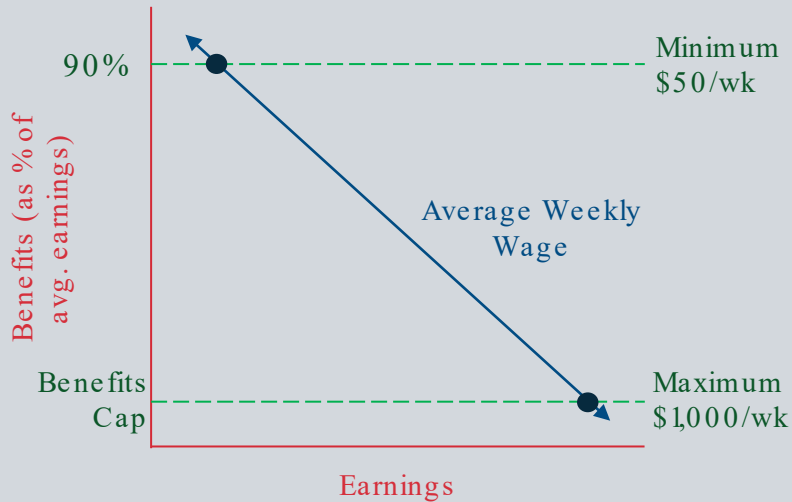
Employees may not be required to use or exhaust all employer - provided leave under an employer policy before, or while, receiving benefits.



Employees may seek benefits **beginning Jan. 1, 2026** .

# SB 828 - FAMLI

## Illustration of Benefits



## Benefit Calculation

Decreasing percentage of wages paid as employee's income increases.

Lowest paid workers get a minimum of \$50/week. Highest paid workers are capped at \$1,000/week.

$$\text{Average Weekly Wage} = \frac{\text{Total Wages an Employee Receives Over the Prior 680 Hours}}{\text{Number of Weeks Worked}}$$

Wages means all compensation that is due for employment including hourly wage or salary, commission, compensatory pay, severance pay, standby pay, tip or gratuity, holiday or vacation pay, or any other paid leave (including sick leave).

\*\*Benefits received under TTCA + any additional paid leave cannot = more than 100% of the covered individual's average weekly wage.

# SB 828 - FAMLI

## Types of Program Benefits



### Continuous or Intermittent Leave

If intermittent, leave must:

- 🏠 Be taken in no less than 4-hour increments
- 🏠 Reasonable prior notice provided
- 🏠 Employee must make reasonable effort to schedule leave to not disrupt employer's operations



### Foreseeable Leave

Employer may require employee to provide notice at least 30 days prior before leave commences.



### Unforeseeable Leave

Employee must provide notice as soon as practicable and comply with employer's notice or procedural requirements for requesting or reporting other leave (if requirements do not interfere with employee's ability to use leave under the Program).

# SB 828 - FAMLI

## Notice/Posting Requirement

Employers are required to provide written notice at of employee's rights and duties at following times:

- ☞ Time of hire
- ☞ Annually
- ☞ When employer has knowledge that employee's leave may be for a covered reason

Notice must include:

- ☞ Right to receive benefits
- ☞ Procedures for filing a claim
- ☞ Employee's responsibilities regarding notifications and penalties for noncompliance
- ☞ Right to file complaint for alleged violations
- ☞ Right to job protection
- ☞ Description of prohibited acts and related penalties

# SB 828 - FAMLI

## Rules Regarding Disclosure of Information

DLLR will not disclose information relating to individual who has applied for or received Program benefits except to:

- 🔗 A public employee in the performance of their official duties
- 🔗 The individual to whom the information relates
- 🔗 If an authorized representative has signed authorization of the individual to whom the information relates, the authorized representative

# SB 828 - FAMLI

## Rules Regarding Discrimination and Retaliation

It is unlawful to discharge, demote, or otherwise discriminate, or retaliated against an individual because they have:

- 🏠 Filed for, applied for, received benefits, or taken family or medical leave under the Program
- 🏠 Inquired about the rights and responsibilities under the Program
- 🏠 Communicated to the person an intent to file a claim, a complaint, or an appeal under the Program
- 🏠 Testified or intends to testify or otherwise has assisted in a proceeding under the law

# SB 828 - FAMLI

<u>Non-Compliance Error, Complaint, Penalty, or Appeal</u>	<u>How Issue is Addressed</u>
<b>Failure to Make Contributions</b>	Assess amount due (+ interest), assess an additional amount up to 2x contribution withheld, and order an audit of employer
<b>Benefits Paid in Error</b>	DLLR can seek repayment when benefits were paid in error as result of willful misrepresentation. Repayment may be waived by Secretary.
<b>False Statement</b>	Individual who willfully makes false statement will be disqualified from receiving benefits for 1 year. Employer who willfully causes false statement to be made or willfully fails to report material fact will be fined \$1,000/occurrence.
<b>Complaints and Private Right of Action</b>	Employees who believe that employer has violated the Program's requirements may file written complaint with DLLR Secretary.
<b>Appeals</b>	DLLR will establish a program for appeals for people who are denied for benefits. Must be filed within 30 days.

# SB 828 - FAMLI



## How Should Employers Prepare?

- 🏠 Review current paid leave policies to assess if you already provide benefits that meet or exceed those required by Act
  - 🏠 If not, assess whether you want to change your policies to seek and qualify for exception
- 🏠 If you are not participating in the fund, be ready to submit your policies to DLLR with sufficient time to get exempted before Oct. 1, 2024 payroll tax contribution obligation begins
- 🏠 If you are participating in the fund, stay up to date on all developments
  - 🏠 Be prepared to implement payroll tax on Oct. 1, 2024 and provide timely notice to employees of benefits, rights, and responsibilities under the Act



# Religious Accommodations

- *Groff v. Dejoy*
  - This case involved an USPS employee who requested an accommodation so he may observe the sabbath. Ultimately, he resigned due to USPS inability to accommodate his requests.
  - Under prior precedent, employers were instructed to provide a religious accommodation unless that accommodation created “more than a *de minimis* cost” on the employer; this language appeared in the Supreme Court’s decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977).

- Now, employers must “show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.” *Groff*, 600 U.S. at 18. It is not enough to consider an accommodation; employers must make an actual effort to accommodate. “Title VII requires that an employer reasonably accommodate an employee’s practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations.”
- the analysis must be exhaustive and consider alternative options in order to eliminate the conflict between the employee’s religion and workplace requirements. “[I]t would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options, such as voluntary shift swapping, would also be necessary.”

- The Court opined that today's ruling will have little effect on how the Equal Employment Opportunity Commission (EEOC) will view such cases. The Court stated, in fact, that the EEOC has always focused on Title VII's accommodation requirements to not only assess whether an undue hardship exists, but whether "temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs" could alleviate the hardship on employers.
- Employers should take note that they have a duty to reasonably accommodate employees' sincerely held religious beliefs, and that duty to accommodate carries a now higher burden to show that such an accommodation will create an undue hardship. While each request requires an individualized assessment, employers should be cautious before they deny any request for accommodation, and should likely seek advice of counsel before making any final decision.

# Questions?

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