

Maine Enacts First-of-Its-Kind Paid Leave Law

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By [Susan Gross Sholinsky](#) and [Nancy Gunzenhauser Popper](#)

On May 28, 2019, Maine Governor Janet Mills signed “[An Act Authorizing Earned Employee Leave](#)” (“Law”), which requires private employers to provide paid leave to their employees. Scheduled to take effect on January 1, 2021, the Law is unique in that it does not limit the purposes for which employees may use their leave time; rather, employees may use leave *for any reason*.

Covered Employers and Employees

The Law applies to all private employers, for profit and nonprofit, with more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year. Both full-time and part-time employees must be allowed to earn paid leave under the Law. Seasonal employees are not covered by the Law. Additionally, employees who are covered by a collective bargaining agreement (“CBA”) as of January 1, 2021, are not covered under the Law until the CBA expires. At the time the CBA expires, the Law will apply to such employees.

Accrual and Carryover of Leave Time

Under the Law, employees will accrue one hour of paid leave for every 40 hours worked, up to a maximum of 40 hours of paid leave per year. Accrual begins at the commencement of employment; however, an employer may require new employees to wait 120 days prior to using their accrued time. In contrast to other states’ paid leave measures, the Law does not include any provisions for carryover of unused accrued time to the following year. Thus, without further guidance, the annual leave allowance appears to be a “use it or lose it” benefit. Additionally, the Law is silent on whether there is any requirement to pay out any accrued, unused paid leave upon termination of employment.¹

Employers must compensate employees for paid leave time at the same hourly rate that they normally earn.

¹ Maine law currently does not require the payout of accrued vacation time upon termination, unless an employer’s policy specifically provides that benefits will be paid upon termination. See [Maine Bureau of Labor Standards FAQs](#).

Notice Requirements

Except where it is not feasible to provide notice, such as in the case of an emergency or sudden illness, the Law requires employees to give “reasonable” notice to their supervisor of their intent to use paid leave. The Law’s mandate that “[u]se of leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer” suggests that employers may implement appropriate notice requirements, though the statute provides no further guidance on compliant notice procedures.

Notably, the Law does not impose any obligation on employers to post or otherwise provide notice to employees of their rights concerning paid leave. Similarly, the Law does not create a recordkeeping requirement. However, it is possible that the Maine Department of Labor will adopt such mandates before the Law’s effective date.

Employee Protections

While the Law does not contain an anti-retaliation provision, it does prohibit employers from depriving an employee of “any employee benefits accrued before the date on which the leave commenced.” Further, an employee’s use of paid leave as provided for by the Law “may not affect the employee’s right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees.”

Preemption

The Law prohibits cities and other political subdivisions from enacting their own paid leave mandates.

What Maine Employers Should Do Now

With some 18 months to prepare before the Law takes effect, employers should do the following:

- Develop policies or review current paid-time-off policies to ensure compliance with the Law. If you already provide comparable or greater paid leave benefits to your employees, you do not need to change your policies, as long as any notice requirements contained therein are “reasonable.”
- Train management, payroll, and human resources staff on any new or revised policies or procedures that they will need to follow as a result of the Law.

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For more information about this Advisory, please contact:

[Susan Gross Sholinsky](#)

New York

212-351-4789

sgross@ebqlaw.com

[Nancy Gunzenhauser Popper](#)

New York

212-351-3758

npopper@ebqlaw.com

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