

Maddin Hauser's
Employment Law
Symposium

**LEAVE IT TO US:
EMPLOYER'S GUIDE TO LEAVE LAWS**

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Overview

- Deciphering the Alphabet Soup – FMLA, ADA, PMLA, PTO
- Recent Federal and State Developments and How They Impact Your Existing Policies
- 2024 Trends in Practice

OVERVIEW

- The Alphabet Soup – Understanding the various acronyms for leave laws
- Recent developments in federal and Michigan leave laws
- Trends we see among employers



INTRODUCTION

- Characteristics of Leave:
 - Paid v. Unpaid
 - Legally Required v. Discretionary
 - Earned v. Accrued
 - Use it or Lose it v. Paid Out



THE ALPHABET SOUP

DECIPHERING THE LETTERS

Full Name	Acronym
Family Medical Leave Act	FMLA
Americans with Disabilities Act of 1990, as Amended	ADA
Pregnant Workers' Fairness Act	PWFA
Providing Urgent Maternal Protections for Nursing Mothers	PUMP Act
Michigan's Persons with Disabilities Civil Rights Act	PWDCRA
Michigan's Paid Medical Leave Act	PMLA
Paid Time Off	PTO

FEDERALLY REQUIRED LEAVE – FMLA

The Basics:

- Unpaid, legally required
- Applies to employers with 50 or more employees
- 12 weeks of leave in a 12 month period
- Can be coordinated with other leave

FEDERALLY REQUIRED LEAVE - FMLA

Eligible Employees receive 12 weeks of leave in a 12-month period for:

- Birth or placement of a child with employee for adoption or foster child care, and to bond with newborn or newly-placed child;
- Care for spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- Serious health condition that makes employee unable to perform essential functions of job; or
- Any qualifying exigency arising out of the fact that a spouse, daughter, son, or parent is a military member on covered active duty or called to covered active duty status.

FEDERALLY REQUIRED LEAVE - FMLA

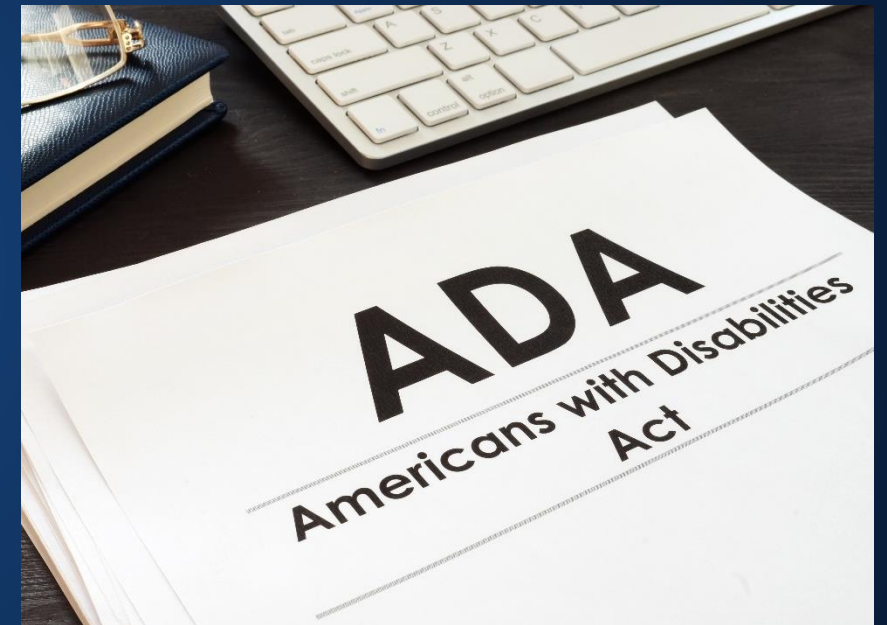
Coordination with Other Leaves:

- FMLA is the floor
- Option to run paid leave concurrently with FMLA
- Apply the standard uniformly

FEDERALLY REQUIRED LEAVE - ADA

The Basics:

- Applies to employers with 15 or more employees
- Reasonable accommodation to employees with disabilities unless doing so would create an undue hardship to the employer or pose a direct threat to the health and safety of the employee or others in the workplace
- Unpaid leave can be considered a “reasonable accommodation”



STATE MANDATED LEAVE - PWDCRA

The Basics:

- Unpaid, mandated
- Applies to employers with one or more employees
- Employees must make request within at least 182 days of having reason to know of need for accommodation
 - Employer must provide unpaid leave unless leave poses an undue hardship on the employer

STATE MANDATED LEAVE - PMLA

The Basics:

- Paid, mandated, accrued OR earned
- Applies to employers with 50 or more employees
- Eligible employees are non-exempt employees who worked an average of 25 hours per week in the previous calendar year

STATE MANDATED LEAVE - PMLA

The Structure:

Accrual	Lump Sum
<ul style="list-style-type: none">• One hour for every 35 Hours worked• Up to 40 hours carry over• Not required to permit an employee to use more than 40 hours in a single benefit year	<ul style="list-style-type: none">• 40 hours of paid medical leave at the beginning of the benefit year• May be prorated• No mandatory carry over

STATE MANDATED LEAVE - PMLA

- Presumption of Compliance
- Fill-In-The-Gap Policies
- Employer Policies
 - 90-Day Introductory Period
 - One-Hour Increment Default
 - Notice, Procedure, and Documentation

STATE MANDATED LEAVE - PMLA

Uses:

- Physical or mental illness, injury, or health condition of employee or family member;
- Medical diagnosis, care, or treatment of employee or family member;
- Closure of employee's primary workplace by order of public official due to public health emergency;
- Care of employee's child whose school or place of care has been closed by order of public official due to public health emergency;
- Employee or family members' exposure to communicable disease that would jeopardize health of others as determined by health authorities or health care provider; and
- Care, counseling, victim services, relocation, and/or participation in a civil or criminal proceeding after domestic violence and sexual assault.

STATE MANDATED LEAVE – CRIME VICTIM LEAVE

- Unpaid, mandatory
- Unpaid leave of absence to attend judicial proceedings related to a crime
- Job protection – cannot threaten to discharge or discipline an employee who is a victim and subpoenaed by a prosecuting attorney to attend court
- Applies to “victim representatives”
- Separate from PMLA

OTHER COMMON TYPES OF LEAVE - PTO

- Vacation Days
- Personal Time
- Unpaid Sick/Medical Leave
- Holidays
- Bereavement Leave
- Parental Leave
- Jury Duty/Witness
- Caregiver
- Voting Time
- Paid Leave for School Activities



RECENT DEVELOPMENTS

EARNED SICK TIME ACT V. PAID MEDICAL LEAVE ACT

- Earned Sick Time Act (“ESTA”) adopted in 2018
- Amended in December 2018 by passage of the Paid Medical Leave Act (“PMLA”)
- Oral arguments heard on December 7, 2023



PUMP ACT

Providing Urgent Maternal Protections for Nursing Mothers

- Applies to all employers, with some exceptions
- Provides additional remedies against employers who violate the employee's right to a reasonable break time and space to pump

PWFA

Pregnant Workers Fairness Act

- Applies to public and private sector employees with 15 or more employees
- Mirrors and expands protections contained in ADA



IMPACTS ON YOUR EXISTING POLICIES

UPDATES TO YOUR HANDBOOKS

- Have you increased your workforce triggering any new laws?
 - E.g., crossed the 50 employer threshold
- Do you need to include a PWFA policy?



UPDATES TO YOUR PRACTICES

- Do you have an appropriate private space for nursing mothers?
- Are you considering merging your vacation and sick leave?
- Do you have a procedure in place to engage in the interactive process where there is a request under the ADA, PWDCRA, or PWFA?

TRENDS OBSERVED IN PRACTICE

2024 STATISTICS

- Average Number of Days:
 - 11 paid vacation days
 - 8 sick days
 - 7.6 holidays
- Parental Leave
 - 17% of companies offered paid parental leave
 - 89% offer some form of unpaid parental leave



TRENDS TO CONSIDER

- Maternity leave → Parental leave
- Combining paid sick leave and vacation
- Unlimited Paid Time Off
- Flex Time

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THANK YOU



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