



February 16, 2025

Maryland General Assembly
Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: SB 785 Labor and Employment - Unpaid Parental Leave - Definition of Employer (Support)

Honorable Madame Chair, Vice Chair and Committee Members,

First, I would like to thank Senator Ready for his sponsorship and support of 785 Labor and Employment - Unpaid Parental Leave - Definition of Employer (Support).

My name is Christine V. Walters, J.D., MAS, SHRM-SCP, SPHR. I am a former human resources practitioner and for the last 22 years have managed my own practice as an HR consultant and employment law attorney. I am before you today to ask for your support to correct what I believe was an inadvertent and unintended overlap in employer coverage between Maryland's Parental Leave law and the federal Family and Medical Leave Act (FMLA).

Maryland enacted our unpaid parental leave law in 2014 via Senate Bill 737. At that time, the bill read that it was "FOR the purpose of providing certain employees a certain number of workweeks of unpaid parental leave..." Those "certain" employees were described as those employed by employers that employ at least 15 and fewer than 50 employees. Why fewer than 50?

The federal Family and Medical Leave Act provides unpaid leave for a variety of reasons, including for new parents. The bill's FN explained, "Generally, an FMLA-covered 'employer' is a private-sector employer that employs 50 or more employees." That definition was incomplete. The FMLA covers employers that employ 50 or more employees for 20 or more weeks in the current or the preceding calendar year.

The bill's fiscal note read, "**Small Business Effect:** Meaningful. Approximately 4,440 small businesses are affected." I believe that number does not include all the small business covered by this unintended consequence. Maryland's small businesses that employ 15 to 49 employees may be concurrently covered under Maryland's Parental Leave Act *and* the federal Family and Medical Leave Act (FMLA). Here's how.

Like the FMLA, Maryland's law covers employers that employ 15 to 49 employees in the current or the preceding calendar year. Let me describe two common scenarios that result in a small employer being covered under both laws.

Scenario 1: An employer employed 50 or more employees for 26 weeks between January 1, 2024, through July 1, 2024. Effective July 1, 2024, the employer had a reduction in force. For the period covered from July 1 to the present, the employer has employed 15 – 49 employees.

For the period covered from July 1, 2024, through December 31, 2025, this employer will continue to be covered under FMLA because it employed 50 or more employees for 20 or more weeks in 2024. It will also be covered under Maryland's Parental Leave Law during the period covered from approximately November 18, 2024, after it employed 15 - 49 employees for at least 20 weeks, through December 31, 2025.

Scenario 2. This is basically the reverse of the above scenario. An employer employed 15 - 49 employees from January 1, 2024, through July 1, 2024. Effective July 1, 2024, the employer was awarded a new contract, hired new staff, and has employed 50 or more employees since that date.

For the period beginning 20 weeks after July 1st, or from about November 18, 2024, through December 31, 2025, this employer will be covered under the FMLA. It will also continue to be covered under Maryland's Parental Leave law for the period covered from July 1, 2024, through December 31, 2025 because it employed 15 – 49 employees for 20 or more weeks in 2024.

So what? What are the negative consequences, if any, if an employer is concurrently covered under both laws. Here are just some.

Inequitable results.

- Today, Employer A and Employer B each employ 40 employees. But for 20 weeks in early 2024, Employer B employed 50 or more employees so must comply with both laws today and for the rest of this calendar year.
- Today, Employer A and Employer B each employ 100 employees. But for 20 weeks in early 2024, Employer B employed 15 – 49 employees so must comply with both laws today and for the rest of this year.
- Despite the fact that both employers A and B employ the same number of employees today and may continue to do so through the rest of this year, one has a greater leave obligation than the other.
- In addition, a small employer with 15 - 49 employees today, who is covered under both laws, must assume the time and cost of administering both laws, but not a large employer with 500 employees that is covered only under the FMLA. As to what that cost is, unfortunately the FN to SB 737 in 2014 did not provide an estimated cost to small business but only wrote, “employers may experience increased costs.”

If an employer is covered under both laws, how is the leave under each to be administered?

- Are the leaves under each law stacked or do they run concurrently?

- If the leave is stacked, which leave must be administered first, the 12 weeks of federal FMLA leave, followed by the six weeks of Maryland parental leave or vice versa?
- Does the answer depend upon the reason leave is taken? For example, if an employee takes 12 workweeks of FMLA leave for his or her own serious health condition, would the employee still be able to use 6 workweeks of parental leave but if the FMLA leave was taken for parental leave, would that be counted against the parental leave entitlement under Maryland's law?
- Maryland's law reads that the six weeks of leave be provided in "any year" but does not identify who chooses or defines the year, the employee or the employer. The FMLA permits the employer to choose any 12-month period such as fiscal year, calendar year, forward or backward rolling year. How do we administer these two leave programs with these different leave periods?
- The right to job restoration is more generous under MD's law than the FMLA, so if the leaves run concurrently and an employer may properly deny job restoration to an employee under the FMLA but *not* under Maryland's Parental Leave law, which of the 12 weeks of FMLA leave will be considered to run concurrently with Maryland's six weeks of parental leave, e.g, the first six weeks, the last six weeks, or something else?

To avoid these problems and remedy this potential overlap, we propose adding just one clause clarifying that an employer covered under Maryland's Parental Leave law is one that is "NOT COVERED UNDER THE FEDERAL FAMILY AND MEDICAL LEAVE ACT FOR THE CURRENT CALENDAR YEAR."

I ask you to and hope you will support SB 785. If you have any questions or I can provide any additional information, please feel free to contact me. Thank you.

Respectfully submitted,

Christine Walters

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