

# **My FINAL Written Testimony on SB 785 Parental Leav**

Uploaded by: Christine Walters

Position: FAV



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 1<sup>st</sup>, 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*

Christine V. Walters, J.D., MAS, SHRM-SCP, SPHR

# **SB0785 - Labor and Employment - Unpaid Parental Le**

Uploaded by: Danna Blum

Position: FAV



Date: February 5, 2025

Finance Committee  
Senator Pamela Beidle  
3 East  
Miller Senate Office Building  
Annapolis, Maryland 21401

**Re: SB0785 - Labor and Employment - Unpaid Parental Leave - Definition of Employer - Support**

Dear Senator Beidle:

SB0785 would amend the definition of “employer” contained in Maryland’s Parental Leave Act.

Currently, this Act contains the definition of employer as one that is not covered under the federal Family Medical Leave Act in this *or the preceding* calendar year. In reality, this leaves employers who suffered a reduction in force in one year, not being defined as a covered employer in the current year, even when having fewer than 50 employees. This, in turn, leaves them covered under both the federal Family Medical Leave Act *and* Maryland’s Parental Leave Act. This situation puts such employers in a difficult and potentially costly situation in determining how to administer both laws at the same time.

This bill will correct that situation.

The Carroll County Chamber of Commerce, a business advocacy organization of nearly 700 members, supports this bill. We therefore request that you give this bill a favorable report.

Sincerely,

A handwritten signature in black ink that reads "Mike McMullin".

Mike McMullin  
President  
Carroll County Chamber of Commerce

CC: Delegate Chris Tomlinson  
Senator Justin Ready

**MDCC\_ SB 785\_FAV.pdf**

Uploaded by: Grason Wiggins

Position: FAV



## Senate Bill 785

**Date: February 19, 2025**  
**Committee: Senate Finance**  
**Position: Favorable**

---

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Senate Bill 785 (SB 785) addresses an overlap in employer coverage between Maryland's Parental Leave Law and the federal Family and Medical Leave Act (FMLA) by clarifying that employers who are covered by the federal Family and Medical Leave Act for the current year are not required to provide the same unpaid parental leave benefit established under Maryland law due a shift in the number of the employer's employees in a given year.

Maryland's unpaid parental leave requirements apply to businesses that employ between 15 and 49 employees, and the FMLA covers employers who employ 50 or more employees, but there are scenarios where an employer is covered by both laws during the same year due to a shifting number of employees. In those scenarios, there are relevant questions as to whether the leave requirements under state and federal law can be provided concurrently or whether the requirements must be stacked.

To reduce confusion, SB 785 clarifies that the required leave can run concurrently, which ensures that smaller businesses are not required to provide stacked leave due to a shift in the number of employees in any given year. For these reasons, the Maryland Chamber respectfully requests a favorable report on Senate Bill 785.



# **SB785 UnpaidParental leave fix.pdf**

Uploaded by: Justin Ready

Position: FAV



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 19, 2025

**SB 785 – Labor and Employment - Unpaid Parental Leave - Definition of Employer**

Chair Beidle, Vice Chair Hayes, and members of the Finance Committee,

Senate Bill 785 is a technical correction the Maryland’s Parental Leave law. Currently, an employer can be covered under both the law for employing at least 50 employees at the same as the law for 15-49 employees. I believe that this is an unintended consequence of the law.

For example, an employer crossed the 50-employee threshold in January 2024. The employer will become an FMLA-covered employer in June 2024, after employing at least 50 employees for 20 or more weeks. But the employer will still be covered under Maryland’s Parental Leave law through December 31, 2024, because it employed 15-49 employees for at least 20 weeks in the preceding calendar year. I think this is an intended consequence of the law and that was *not* the intent, e.g., to have a small employer subject to both laws concurrently.

If covered under both, how are the leaves to be administered?

- Is the leave 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 provides the six weeks of leave be provided in “any year” but does not identify who chooses or defines the year, while 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?

This bill amends the language to allow employers more clarity on law.

I respectfully request a favorable report on Senate Bill 785.