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# PAID FAMILY INSURANCE BENEFIT & EARNED SICK LEAVE

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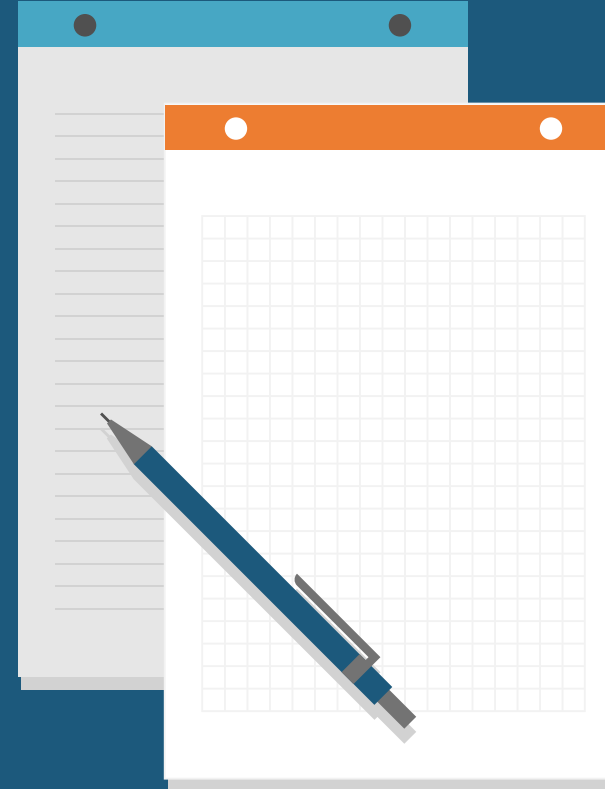
TWO NEW MN LAWS THAT  
IMPACT EMPLOYERS

NORTH RISK WEBINARS | 2023

# AGENDA

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- **Paid Family Insurance**
  - Effective Date
  - Details
  - Next Steps
- **Earned Sick Leave**
  - Effective Date
  - Details
  - Next Steps



# PRESENTER

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**Janell Stanton**

HR Attorney

WAGNER, FALCONER & JUDD, LTD.

# MN'S NEW FAMILY & MEDICAL BENEFIT INSURANCE PROGRAM

## MN-PFML



# MN FOLLOWS THE LEAD OF OTHER STATES/CITIES

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- California, Colorado, Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire (opt-in), New Jersey, New York, Oregon, Rhode Island, and Washington
- San Francisco has also passed its own paid leave law

# EFFECTIVE DATE

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While the effective date of the law is July 1, 2023...

**Don't panic!**

Contributions and benefits do not become available until January 1, 2026



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# COVERED EMPLOYEES

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- Employees who have earned at least 5.3% of the state's average annual wage rounded down to the next lower \$100
- Currently -\$3,500



- Does not apply to federal employees or seasonal employees



# SEASONAL EMPLOYEES

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Subd. 35.

## Seasonal Employee

(a) A seasonal employee is an individual who is employed for **no more than 150 days during any consecutive 52-week period** in hospitality **by an employer whose average receipts during any six months of the preceding calendar year were not more than 33 percent of its average receipts for the other six months of such year.**

# WHICH EMPLOYERS ARE COVERED?

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ALL.

Except the federal government.

Self-employed & independent contractors can opt-in.



# MN-PFML USES?

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- Birth, adoptions, or foster care placement
- Employee's own serious health condition
- Caring for a family member with a serious health condition
- If an employee or employee's family member is experiencing domestic abuse, sexual assault, or stalking
- Qualifying exigency related to active-duty military service



# SERIOUS HEALTH CONDITIONS DEFINED

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A serious health condition is defined as:



Inpatient care in a hospital, hospice, or residential medical care facility; including any period of incapacity



Continuing treatment or supervision by a health care provider

# WHAT IS CONTINUING TREATMENT?

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- (i) A period of **incapacity of seven or more days**, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - (A) Treatment two or more times, within 30 days of the first day of incapacity**, unless extenuating circumstances beyond the individual's control prevent a follow-up visit from occurring as planned, by a health care provider; or
  - (B) Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment** under the supervision of the health care provider;
    - (ii) In a period of incapacity due to **pregnancy**
    - (iii) A period of incapacity or treatment for a **chronic health condition** that:
      - (a) **requires periodic visits, defined as at least twice a year**, for treatment by a health care provider or under orders of, or on referral by, a health care provider;
      - (b) continuous over an **extended period of time**, including recurring episodes of a single underlying condition; and
      - (c) may cause **episodic rather than continuing periods of incapacity**.



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# WHAT IS CONTINUING TREATMENT?

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(iv) **A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective.** The applicant or family member must be under the continuing supervisions of, but need not be receiving active treatment by, a healthcare provider; or

(v) A period of absence to receive **multiple treatments, including any period of recovery from the treatments,** by a healthcare provider, or by a provider of healthcare services under orders of, or on referral by, a healthcare provider, for;

**(A) Restorative surgery** after an accident or other injury; or

**(B) A condition that would likely result in a period of incapacity of more than seven full calendar days in the absence of medical intervention** or treatment.



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# CONTINUING TREATMENT

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(b) For the purposes of paragraph (a), clauses (1) and (2), treatment by a health care provider means an **in-person visit or telemedicine visit** with a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider.

(c) For the purposes of paragraph (a), treatment includes but is not limited to **examinations to determine if a serious health condition exists** and evaluations of the condition.

(d) Absences attributable to incapacity under paragraph (a), clause (2), item (ii) or (iii), qualify for leave under this chapter even if the applicant or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than seven consecutive, full calendar days.



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# EXTENSIVE DEFINITION OF FAMILY MEMBER



- **Spouse or domestic partner**
- Child (biological, adopted, foster, step, or in loco parentis)
- **Parent or legal guardian**
- Sibling
- **Grandchild**
- Grandparent or spouse's grandparent
- **Son-in-law or daughter-in-law**
- Individual with relationship that creates an expectation of reliance

# DETAILS ABOUT USAGE

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Employers must provide leave to employees after **90 calendar days** of employment



## Employees may take:

- A maximum of **12 weeks** for a serious health condition AND
- A maximum of **12 weeks** for bonding, family care, safety, or a qualifying exigency

Limited to an aggregate of 20 weeks of paid leave in a benefit year

# MORE USAGE DETAILS

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Employees may take MN-PFML intermittently for any covered reason



Employers may limit intermittent use to 480 hours in a 12-month period

# PAY & BENEFITS

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Employees receive a maximum weekly benefit amount set by statute

Benefits are to be paid weekly and are prorated when:

- The employee works some hours;
- The employee uses paid sick leave, paid vacation, or other PTO; or
- Leave is taken intermittently

Employee *may* use vacation pay, sick pay, PTO or disability insurance instead if employee is eligible.



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# OBTAINING BENEFITS

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Benefits are paid by a state fund, not directly by the employer

Payment is administered by, and employees apply for benefits from, the family and Medical Benefits Division of DEED



# PAYING PREMIUMS

Beginning **January 1, 2026**, employers will pay quarterly premiums to the MN-PFML insurance account based on the taxable wages paid to the employee:



0.7% for an employer participating in both family and medical benefit programs



0.4% for an employer participating in only medical benefit programs if they have an approved private plan for the family benefit program



0.3% for an employer participating in only family benefit programs if they have an approved private plan for the medical benefit program



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# OTHER REQUIREMENTS

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Employees must give 30 days' notice when need for leave is foreseeable, or as soon as practicable when not foreseeable

Employers may offer a private plan

Employers must submit a quarterly wage detail report to the state

Earnings statements must be updated to show amounts deducted and paid to employees for using MN-PFML

Retaliation prohibited

Employer must maintain insurance coverage and reinstate employees

Employer Notice Requirements

*eff. 11/1/2025*



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# ENFORCING THE LAW

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The statute creates a private right of action, allowing an employee to sue in federal or state court to enforce their rights-remedies include damages, interest, liquidated damages for bad faith actions, injunctive or equitable relief, and **attorney's fees and costs**.

Employers may be fined not less than \$1,000 and not more than \$10,000 for each violation-paid to the employee



# WHAT NOW?

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Consider whether adopting a private plan is more advantageous

Work with a payroll company to ensure the new payroll tax is addressed and that a compliant statement of earnings will be issued

Consider the interplay between MN-PFML and other laws and update policies accordingly

# QUESTIONS?



# MN'S NEW PAID SICK LEAVE LAW

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## EARNED SICK & SAFE LEAVE (ESSL)

# MN FOLLOWS THE LEAD OF OTHER STATES/CITIES

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Arizona, California, Colorado, Connecticut, DC, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, Virginia (limited application), and Washington

There are also a number of cities that have passed their own paid sick leave laws, including: Minneapolis, St. Paul, Duluth, and Bloomington (going into effect July 1, 2023)



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# EFFECTIVE DATE

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The law becomes effective **January 1, 2024**



# NO PREEMPTION OF CITY ORDINANCES

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No. While the state-wide law largely mimics the city ordinances, it does not preempt them.



Employers must continue to comply with any applicable city ordinances

# WHICH EMPLOYERS ARE COVERED?

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ANY INDIVIDUAL  
OR BUSINESS  
WITH **ONE** OR  
MORE EMPLOYEES

# WHO IS ELIGIBLE FOR ESSSL?

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All employees who work at least 80 hours a year in MN

## Includes:

- Part-time employees
- Temporary employees

## Excludes:

- Independent contractors
- Certain airline employees

# THE DETAILS

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- Leave begins to accrue on the first day of employment, but employees may *use* ESSL once they have worked at least **80 hours**
- At a minimum, employees must accrue **1 hour of leave for every 30 hours worked, up to 48 hours** of ESSL per year
- Employees must be allowed to carry over unused ESSL leave, up to a **maximum of 80 hours**
- To avoid carry over, employers can opt to frontload:
  - 48 hours of leave and pays the employees for accrued, unused leave at the end of the year OR
  - 80 hours of leave and does not pay the employees for accrued, unused leave at the end of the year

# PERMITTED USES OF ESSL

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For the employee's own illness or injury



To care for a family member's illness or injury



**Absence relating to domestic abuse or stalking**



For closure of the employee's place of business



Because the employee cannot work or telework due to a risk of transmitting a communicable disease



**Because health authorities said the presence of the employee or family member in the community would jeopardize the health of others**

# EXTENSIVE DEFINITION OF FAMILY MEMBER

- **Child, foster child, adult child, legal ward, child for whom the employee is the legal guardian, or child to whom the employee stands or stood in loco parentis;**
- Spouse or registered partner;
- **Sibling, step-sibling, or foster sibling;**
- Biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the employee was a minor child;
- **Grandchild, foster grandchild, or step-grandchild**
- Grandparent or step-grandparent
- **Sibling's child**
- Parent's sibling
- **Child-in law or sibling-in-law**
- Family members of a spouse or registered partner
- **Other individuals related by blood or whose close association with the employee is equivalent to a family relationship; and**
- Up to one individually annually designated by the employee



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# DETAILS ABOUT USAGE

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If need for ESSL is foreseeable, employer can require **7 days' advance notice**; if the need is not foreseeable, then notice must be given ASAP

Employers may require reasonable documentation regarding the need for ESSL when an employee uses ESSL for more than **three days in a row**.

**ESSL may be used in the smallest increment of time the employer's payroll system tracks, but not more than four hours.**

# PAY & BENEFITS

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Employee's insurance coverage must be maintained during use of ESSL, though the employer can require that employee pay any employee portion of benefits

Employee is entitled to return to employment at the same pay, plus any automatic adjustments that occurred during the leave, and to retail all accrued pre-leave benefits and seniority

# TERMINATION

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Accrued, but unused ESSL **does not** need to be paid at termination.

If an employee is rehired within **120 days** separation, any leave balance at separation must be reinstated.



# OTHER REQUIREMENTS



Posting & Notice-  
Including in EE  
handbook

Retaliation  
Prohibited

Employers cannot  
count ESSL as  
an absence that leads  
to adverse action

Employees not  
required to find their  
own replacement

Employers must  
maintain confidentiality  
of employee and family  
member health  
information

Required statement of  
earnings

Can maintain PTO  
policies assuming it  
provides as generous of  
benefits as the ESSL law

# ENFORCING THE LAW

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Employers may be fined up to \$10,000 for each failure to submit or deliver records required by the DLI. The DLI Commissioner may order compliance with the ESSL statute, including damages to an individual.

The statute also creates an individual right to recover damages, including costs, disbursements, and attorney's fees. An action must be commenced **within three years of the violation.**



# WHAT NOW?

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Review existing leave policies to ensure they comply with the requirements of the ESSL law.

For companies for whom providing paid sick leave is new, employers should start planning for this law soon.

Work with a payroll company to ensure you can provide employees with a compliant statement of earnings.

# QUESTIONS?



# NORTH RISK'S VALUE-ADDED SERVICES HOTLINE

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(888) 667-4135\*



hr@northriskpartners.com\*



Submit a ticket through your WFJ  
Compliance Center Portal

Personalized  
consulting and  
best practices  
from HR  
professionals &  
attorneys

\*Portal enrollment included.



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