



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 200011

Introduced January 23, 2020

Councilmembers Henon, Gym and Brooks

**Referred to the
Committee on Public Health and Human Services**

AN ORDINANCE

Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by creating a new Chapter requiring that certain employers provide Paid Family and Medical Leave to eligible employees under specific circumstances, and providing for funding, enforcement, and penalties, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 9 of The Philadelphia Code is hereby amended to read as follows:

TITLE 9. REGULATION OF BUSINESSES, TRADES AND PROFESSIONS

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CHAPTER. 9-4800. PAID FAMILY AND MEDICAL LEAVE

§ 9-4501. Definitions.

The following definitions apply to this Chapter:

(1) *Chain Establishment.* As provided in Section 9-4103 of The Philadelphia Code, relating to paid sick time.

(2) *Child.* A biological, adopted or foster child, stepchild, or child to whom the eligible employee stands in loco parentis.

(3) *Covered Employer.* For the first year, the term shall mean any individual, partnership, general contractor, subcontractor, association, corporation or business trust that employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. For the second year, the number of

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employees required shall be reduced to 25 or more, and for every year thereafter, to 10 or more. The term includes chain establishments, regardless of the number of employees in an individual establishment; any person or group of persons acting, directly or indirectly, in the interest of an employer in relation to any employee; and any successor in interest of an employer. The term does not include the federal or state governments.

(4) Designated Agency. The Board of Labor Standards, or such other body as is designated by the Mayor.

(5) Eligible Employee. An individual who has been employed for at least a twelve-month period by a covered employer, performs work within the geographic boundaries of the City, and has provided at least 1,250 hours of service to that employer during the previous twelve-month period. The term excludes independent contractors, employees of the federal or state governments, and employees covered by a bona fide collective bargaining agreement.

(6) Employment Benefits. All benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, other paid leave, annual leave, educational benefits, and pensions, regardless whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan," as defined in 29 U.S.C.A. § 1002(3).

(7) Employer-Established Plan Financial Benefit. The financial value an eligible employee is entitled to receive from employment benefits while on leave from work during the period when such employee would have otherwise been eligible for PFML. The employer-established plan financial benefit shall be calculated as follows:

(i) the maximum gross income the employee is entitled to receive from employment benefits during such leave period, minus

(ii) the applicable employee contribution, if any, that the employee would be required to pay in order to receive such employment benefits, including the gross income received from any accrued vacation, sick, or personal time required to be used during such leave period.

(8) Health Care Professional. As defined in Section 9-4103 of The Philadelphia Code.

(9) Intermittent Leave. Leave taken, under Section 9-4502 of this Chapter, in separate periods of time, rather than leave taken for one continuous period of time. Examples of intermittent leave include leave taken on an occasional basis for medical appointments or leave taken several days at a time.

(10) Life Partner. As defined in Section 9-1102 of The Philadelphia Code.

(11) Parent. The biological or adoptive parent of an eligible employee or an individual who stood in loco parentis to an eligible employee when the employee was a child.

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(12) PFML Financial Benefit. The financial value an eligible employee is eligible to receive, or would be eligible to receive but for such employee's receipt of an employer-established plan financial benefit, under this Chapter. The PFML financial benefit shall be calculated as follows:

(i) the maximum gross income the employee is eligible to receive as PFML, minus

(ii) the applicable employee contribution, if any, that the employee would be required to pay in order to receive such PFML benefits, including the gross income received from any accrued vacation, sick, or personal time a covered employer is permitted to require an eligible employee use under Section 9-4502(2).

(13) Reduced Leave Schedule. A leave schedule that reduces the usual number of hours per workweek, or hours per workday of an eligible employee.

(14) Serious Health Condition. An illness, injury, impairment, or physical or mental condition that involves (i) inpatient care in a hospital or residential medical care facility, or (ii) continuing treatment by a health care professional.

(15) Spouse. A partner to a lawful marriage.

(16) Twelve-Month period. 365 consecutive days.

§ 9-4502. Paid Family and Medical Leave.

(1) Requirement.

Beginning 365 days after the effective date of this Chapter, a covered employer shall provide benefits, through an insurance carrier, to eligible employees for Paid Family and Medical Leave ("PFML"), for up to twelve (12) workweeks during any twelve-month period, as provided in subsection 9-4502(6), for one or more of the following occurrences:

(a) The birth of a child of the eligible employee.

(b) The placement of a child with the eligible employee for adoption or foster care.

(c) The care for the spouse, life partner, child or parent, of the eligible employee if such spouse, child or parent has a serious health condition.

(d) A serious health condition that makes the eligible employee unable to perform the functions of the eligible employee's position.

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(2) *The eligible employee shall not be required to use any accrued paid vacation leave, personal leave, or sick leave prior to the use of PFML, except in the case of subsection (1)(d), relating to a serious health condition of the employee.*

(3) *Duration of PFML.*

No more than twelve (12) weeks of PFML shall be paid within any twelve- month period. The entitlement to PFML shall expire at the end of the twelve-month period, beginning on the date on which the leave commences, and may not be accrued for use in any subsequent twelve- month period.

(4) *Intermittent Leave.*

If approved by the eligible employer, an eligible employee may take PFML as intermittent leave or on a reduced leave schedule.

(5) *Notice of Leave.*

In any case where the necessity for PFML is foreseeable, the eligible employee shall provide the covered employer with at least 30 days notice, before the date leave is to begin, of such employee's intention to take leave; otherwise, notice shall be provided as soon as practicable.

(6) *Amount of Benefits.*

(a) *The amount of PFML benefits paid weekly shall equal one-hundred percent (100%) of the eligible employee's average weekly wages for the immediately preceding twelve-month period ending the day before such employee's PFML commences.*

(b) *The first payment shall be made to an eligible employee no later than 2 weeks after a claim is filed, and subsequent payments shall be made in accordance with the payroll schedule of the employer.*

§ 9-4503. *Other Benefits.*

(1) *If PFML under this Chapter also qualifies for leave under the federal Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., the use of PFML under this Chapter shall run concurrently with leave taken under that Act.*

(2) *An eligible employee shall not receive PFML for any day that any of the following apply:*

(a) *The eligible employee has received or is entitled to receive unemployment compensation benefits under the unemployment compensation act of any state or the federal government; or*

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(b) The eligible employee has received or is entitled to receive disability insurance or worker's compensation benefits under state or federal law.

(3) Nothing in this Chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing paid leave to an eligible employee other than required herein.

(4) Nothing in this Chapter shall be construed to require a covered employer to change paid leave policies, or provide additional paid leave, if the PFML financial benefit is equal to or less than the employer-established plan financial benefit available to an eligible employee.

(5) If an eligible employee is entitled to paid leave from employment benefits for the purposes provided in paragraphs 9-4502(1)(a) through (d), but the employer-established plan financial benefit is lower than the PFML financial benefit, the covered employer may provide PFML under this Chapter reduced proportionally to offset the employer-established plan financial benefit such employee has or will receive.

§ 9-4504. Certification.

(1) The covered employer may require that a request for PFML under subsections 9-4502 (1)(c) and (1)(d) be supported by a certification issued by a health care professional as it applies to the eligible employee or the spouse, life partner, child or parent of such employee. The eligible employee shall provide such certification to the covered employer in a timely manner.

(2) Certification under this Section shall include:

(a) The date on which the serious health condition commenced;

(b) The probable duration of the condition;

(c) The appropriate medical facts within the knowledge of the health care professional regarding the condition;

(d) In the case of leave under subsection 4502(1)(d), a statement that the eligible employee is unable to perform the functions such employee's position;

(e) In the case of leave, under subsection 4502(1)(c), a statement that the caregiver is needed to care for the spouse, life partner, child or parent, of such eligible employee, and an estimate of the amount of time that the caregiver is needed to provide such care;

(f) In the case of certification for intermittent leave, or leave on a reduced leave schedule, under subsection 4502(1)(d) for the medical treatment of the eligible

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employee, the dates on which the treatment is expected to be given and the duration of the treatment; and

(g) In the case of certification of intermittent leave or leave on a reduced leave schedule, under subsections 4502(1)(c), a statement that the eligible employee's intermittent leave or reduced leave schedule is necessary for the care of the spouse, life partner, child or parent, of the employee.

(3) Second Opinion.

In any case where the covered employer has, in reasonable good faith, reason to doubt the validity of the certification for leave supplied, the employer may require, at the employer's expense, that the eligible employee obtain the opinion of a second health care professional, designated or approved by the employer, concerning any information in the certification. The employer's designated or approved health care professional shall not be employed on a regular basis by the employer.

(4) Resolution of Conflicting Opinions.

In any case in which the second opinion, described in subsection (3) above, differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care professional, designated or approved jointly by the employer and the employee, concerning the information certified.

(5) Final Opinion.

The opinion of the third health care professional concerning the certified information shall be considered to be final and shall be binding on the employer and employee.

(6) Subsequent Recertification.

The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

§9-4505. Employment and Benefits Protection.

(1) Restoration to Position.

Except as provided in subsection (3) of this Section 4505, any eligible employee who takes PFML for the intended purpose shall be entitled, on return from such leave:

(a) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(b) To be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

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(2) Retention of Benefits.

The taking of PFML shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) Limitations.

Nothing in this Section shall be construed to entitle any restored employee to:

(a) The accrual of any seniority or employment benefits during any period of leave; or

(b) Any right, benefit or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken PFML.

(4) Certification.

As a condition of restoration to position under subsection (1) of this § 9-4505 for an employee who has taken PFML under Section 4502(1)(d), the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care professional of the employee that the employee is able to resume work.

(5) Construction.

Nothing in this Section shall be construed to prohibit an employer from requiring an employee on PFML to report periodically to the employer on the status and intention of the employee to return to work.

§ 9-4506. Payment for PFML Benefits. PFML shall be fully funded by the covered employer of an eligible employee.

§ 9-4507. Enforcement and Penalties.

(1) Jurisdiction for the enforcement of this Chapter and imposition of penalties thereunder shall be vested in the designated agency, which (a) is authorized to coordinate implementation, administration, and enforcement of this Chapter, and (b) shall promulgate appropriate guidelines or regulations for such purposes, and for the purposes of establishing procedures for the filing, investigation, and resolution of complaints regarding alleged violations of this Chapter.

(2) Claims by an eligible employee against a covered employer for a violation of this Chapter shall be filed with and administered in accordance with the provisions of Section 9-4110 of The Philadelphia Code.

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(3) Claims filed by a covered employer against an eligible employee for the submission of a false or fraudulent claim for PFML shall be filed with and administered by the designated agency in accordance with its procedures. Appropriate remedies, including but not limited to, refunds of benefits received by the employee under PFML, may be ordered.

§ 9-4508. *Education.*

The designated agency is authorized to provide ongoing public education, as necessary, to inform covered employers, employees, employment agencies and job applicants about their rights and responsibilities under this Section.

SECTION 2. This Ordinance shall become effective 365 days after it becomes law.

Explanation:

Italics indicate new matter added.