



## **Analysis: The Michigan Family Leave Optimal Coverage Benefits Act**

[Senate Bill 332-3](#) and [House Bill 4574-5](#) create an expansive state-administered paid leave insurance program financed through a new tax on employers and, in some instances, employees.

Under the Michigan Family Leave Optimal Coverage Benefits Act (MI-FLOC), employees would be permitted to take up to **15 weeks of paid intermittent leave** from work to care for themselves or their families (10 days for bereavement). Standard reasons for leave like bereavement and childbirth would be expanded under the bills to include school or workplace closures due to public health emergencies, mental health issues and school meetings related to student health and wellbeing. Recipients of paid leave benefits would be eligible to receive up to **65% of the state's average weekly wage, or approximately \$788 per week**.

The proposal would impact every employer and would **raise taxes on employers by an estimated \$1 to 1.5 billion per year**.

### **Chamber Position**

Oppose. The MI-FLOC program is **different than, and would be in addition to, Michigan's Paid Medical Leave Act** (Public Act 338 of 2018), which requires most Michigan employers to provide 40 hours of paid medical leave to employees in a calendar year.

Here are the top reasons we oppose MI-FLOC:

- New mandates **hurt employers and employees with a worker shortage already reaching a crisis**. Employers use benefit packages to attract and retain quality employees - even without the state telling them to do so.
- If enacted, Michigan would have **one of the most expansive and expensive mandates in the country** in terms of eligibility, qualifying events, benefits and employer obligations. Due to cost and complexity. Only 13 other states – California, Connecticut, Massachusetts, New Jersey, Rhode Island, Washington, Colorado, Delaware, Maine, Maryland, Minnesota, Oregon, and the District of Columbia – have enacted similar laws.
- Creating an expansive **statewide mandate on employers** to provide 15 weeks of paid parental and family leave (MI-FLOC) and another week of paid medical leave (Public Act 338 of 2018) would mean an employee could miss 16 weeks of work. Together, the two proposals **allow employees to miss 30 percent of workdays in a year**.
- Many Michiganders – both employers and employees – across the state do not want to pay **increased taxes** for a new state-run bureaucracy like MI-FLOC – but it would be **nearly impossible to opt out** under the proposal.
- While the handful of other states with similar programs set a hard cap on annual payroll taxes to fund their programs, the Michigan proposal **gives the state the authority set the annual contribution amount...with no limits**.

- Under the proposal, the **state could keep a staggering 5% of all taxes collected**, allowing them to hire hundreds of new state workers to run their massive new paid leave insurance system.
- Businesses, particularly small businesses, already struggle to endure the costs associated with missed productivity of their workers. The **cost to find temporary workers** to fulfill their responsibilities in their absence is a double – or triple in some cases – tax on our job creators.

### **Detailed Analysis (Key Provisions)**

- **Reasons:** Allows employees to take family leave for any of the following reasons (pages 11+):
  - Birth/adoption/foster care duties (includes any time within the “first year”).
  - To cover an individual’s mental or physical illness, injury or health condition.
  - To obtain a medical diagnosis, care or treatment of, or health condition (employee or family member)
  - Preventative medical care (employee or family member).
  - A serious health condition (employee or family member).
  - To care for a military member who is a family member.
  - Qualifying exigency leave – defined to include childcare and school activities, parental care events, issues arising due to military deployment or a variety of military events/circumstances (see pages 7-9).
  - Safe leave (defined on page 9).
  - Bereavement leave within 3 months of the death.
  - Meetings at a school or place of care.
  - Closure of a workplace for a public health emergency or to care for someone impacted.
  - Exposure to communicable disease or to care for someone who has been exposed.
  - Inability to work/work remote due to natural disaster or public health crisis.
    - All sorts of COVID scenarios, including those who are at risk of contracting a communicable disease.
- **Notice:** Limits the ability of employers to require advance notice. Simply requires the employee to provide note to the employer “as soon as possible.” (See language on pages 13 and 15.)
- **Payment of benefits:** Specifies the state would pay out the leave (biweekly). An employee would be eligible to receive payment for up to 15 weeks in a benefit year for all leave except for bereavement, which would be 10 days for each death of a family member. (Pages 14-15.)
  - Specifies an intermittent or “reduced leave schedule” is allowed — but must take 8 hours in a given week to qualify for benefits. Benefits will be prorated for intermittent leave.
  - Specifies leave does not need to be taken sequentially.
- **Wage loss benefits:** Sets a formula for determining benefits, but the maximum benefit is 65% of the state’s average weekly wage (which fluctuates) or approximately \$788/week (page 15).
  - Has language regarding individuals working multiple jobs (page 16).
- **Payroll contributions:** Specifies the tax on employers will take effect on 1/1/2025. From 1/1/25 to 12/31/26, authorizes Treasury to set a contribution amount for each employee “sufficient to fund the payments of family leave optimal coverage benefits and to administer the provisions of this act.” Beginning in 2027 and thereafter, requires the director to “evaluate and determine the contribution rate...based on a percent of employee wages and at the rate necessary to obtain a total amount of contribution equal to 135% of the benefits paid during the previous...year plus an amount equal to 100% of the cost of administration of the payment of those benefits...minus the amount of net assets remaining in the...fund...” (pages 16-17).
  - Specifies an employer may deduct from an employee up to 50% of the contribution required (bottom of page 16).
  - Requires the legislature to appropriate sufficient funds to the fund to administer the act before collection of the payroll contributions (page 17).
  - Specifies an “employer with an approved private plan under section 39 is not required to pay contributions under this section” (page 17).

- BUT: In order to be approved, “a private plan must confer all of the same rights, protections, and benefits provided to employees under this act” – a near impossible threshold (page 31).
      - Allows for self-insurance or use of a third-party insurer (pages 32-33).
- Specifies employers must restore employees to former position (or similar position) upon return from leave (page 17).
- Requires employers to maintain health care benefits while the employee is on leave (page 18).
- Specifies leave time can run concurrently with FMLA and can be coordinated with existing collective bargaining provisions (pages 18-19) — but “an employee is not required to use or exhaust any accrued vacation leave, sick leave, or other paid time off before or while receiving...coverage benefits under this act” (page 19).
  - The bill seems to want to carve out CBA language requiring employees to exhaust other time...but not sure it’s done successfully (page 18, lines 25-26).
- Provides written notification requirements, including updated posters (pages 20-21).
- Provides for civil fines (page 21).
- Gives self-employed individuals the ability to elect coverage (page 21).
- Requires the state to create standardized forms, documentation/certification processes (page 22-25).
- Requires the state to promulgate rules to implement the act (page 25).
- Establishes process to deny claims that are fraudulent or false and creates mechanism to claw back benefits (pages 25-26).
  - Very weak.
- Establishes administrative and civil fines and actions for “employer violations” (pages 26-29).
- Requires annual reports to the legislature (pages 29-30).
- Requires state to educate employers and employees (page 31).
- Creates funding mechanism for the state to administer. Allows the department to “use not more than 5% of the...[taxes collected]...to fulfill its duties.”

**NOTE: This is different, and in addition to, the leave that would be required under the Earned Sick Time Act, which could be put in place if the MI Supreme Court finds the “adopt and amend” process unconstitutional, thereby invalidating Michigan’s Paid Medical Leave Act.**

### Questions/Top-Line Concerns

- **Reasons for Leave.** The bill seems to blend Family Medical Leave Act (FMLA)-type leave with other types of leave (e.g., adoption and foster care, basic medical care [including preventative care], military situations, meetings at schools, COVID, etc.).
  - Most states limit these types of bills to FMLA-type leave, letting the rest be covered by their normal paid leave laws and/or a company’s PTO and sick pay policies.
- **Exemptions.** The exemption for companies that have leave policies that meet or exceed what’s required under SB 33 would create a near impossible threshold for any company to meet.
- **Demand/Cost.** The bill would cover 15 weeks of leave – which could be used *intermittently* (page 15). It covers 65% of the state weekly wage, or \$788/week. We have big questions about what kind of demand exists for a program like this and how much it would cost.
- **Initial Costs.** We have significant concerns about the cost of this program. Other states have deposited (or are considering depositing) significant amounts to get their program started. At a minimum, we believe this should be part of the discussion. Without seed money, we have questions about whether you could assess enough in the first few years of the program to get it off the ground.
- **Funding.** Minnesota’s new program requires a 0.7% payroll tax. Washington has a mandatory premium deduction of 0.8% of gross wages...up from 0.4% in year 1. Oregon is 0.9%. However, the Michigan bill allows Treasury to set the contribution amount...with no limits. The Legislature should set an upward cap on

assessments to create certainty for businesses and employees (who can be asked to share half of the costs of the program).

- **Actuarial study.** We would recommend an annual actuarial study (as other states do) to make sure the program is fiscally sound (i.e., the state isn't overpromising, underdelivering).
- **Funding for the program.** The bill language allows the state to keep 5% of funds. Minnesota expects to collect \$1.5 billion this fiscal year. Using their numbers, this would amount to \$75 million annually to the department.
  - Minnesota expects there to be 425 state employees administering their program. If we were to collect the same amount of contributions as Minnesota and employ the same number of employees, that would amount to \$176,000/employee.
  - Given the host of issues with the Unemployment Agency and its history of untimely payment of claims and lack of responsiveness, we question whether there are any state departments with the capacity or expertise to run this complex program.
- **Former Employees.** We have significant concerns with the language requiring coverage for former employees.
- **Coordination.** At the very least, the bill should allow coordination with other PTO/leave policies.
- **Disability Coverage.** Many of the items covered under the bill are covered by employer-paid, short- and long-term disability plans. The bill should be amended to allow employers to be exempt from the bill and the assessment if they have private insurance coverage.
- **Private Solutions.** Some states, rather than setting up a state-run system, have looked to authorize private insurance to cover this type of leave. Others provide an opt-in system (i.e., if an employer would like to stand up a program covering these programs, it can band with other employers and pool resources). We would encourage the sponsors to consider a similar approach.