

New Hampshire's Voluntary Family Leave Law

An Explainer on the "Granite State Paid Family Leave Plan"

In June 2021, New Hampshire's Governor Sununu signed the "Granite State Paid Family Leave Plan" into law.¹ Pursuant to the law, family and medical leave insurance coverage will be in place for employees of the State of New Hampshire and will be available for other public and private employers to purchase, effective January 1, 2023. This document outlines the major, baseline components of the voluntary family and medical leave law.

Who is covered?

Only permanent employees² of the State of New Hampshire are automatically covered by the Granite State Paid Family Leave Plan. All other public and private employers can choose to purchase family and medical leave insurance to cover their employees.³

Employees whose employers do not purchase family and medical leave insurance and that do not offer a family and medical leave insurance benefit equivalent to insurance benefits pursuant to the New Hampshire law can purchase coverage through the pool for family and medical leave insurance.⁴ Independent contractors are not eligible to purchase family and medical leave insurance through the pool.⁵

What purposes can leave be used for?

The purposes for which leave can be used depends on whether the employee works for the State of New Hampshire or another public or private employer. Covered employees of the State of New Hampshire can take leave to:

- Care for and bond with a newborn, adopted, or foster child within one year of birth or placement;
- Care for a spouse, child,⁶ or parent who has a serious health condition;
- Deal with certain obligations arising from a spouse, child, or parent being on, or called to, active duty abroad in the military; or
- Care for a spouse, child, parent, or next of kin who is a member of the armed forces with a serious injury or illness related to their service.⁷

Employees who purchase insurance coverage or whose employers purchase insurance coverage can take leave for any of the aforementioned purposes, as well as to recover from the employee's own serious health condition. However, employees of the State of New Hampshire cannot take leave under the Granite State Paid Family Leave Plan to recover from the employee's own serious health condition.⁸

What are the requirements to qualify for benefits?

Covered employees of the State of New Hampshire and employees whose employer purchases insurance coverage do not have specific requirements to qualify for benefits. However, employees who individually purchase insurance coverage must pay premiums for 7 months prior to receiving benefits.⁹

How much are workers paid while receiving benefits? How long can workers receive benefits?

While receiving benefits, covered employees are paid 60 percent of their average weekly wage (up to the Social Security taxable wage maximum) for up to 6 weeks of leave per year. However, there is a 7-day unpaid waiting period before benefits begin.¹⁰

How is the program funded?

For covered employees of the State of New Hampshire, the state pays the full cost of family leave insurance.¹¹

Employers with “more than 50 employees” can purchase insurance directly from MetLife,¹² while employers with “fewer than 50 employees” can purchase coverage through the pool for family and medical leave insurance.¹³ Employers that purchase insurance coverage may choose to pay the full cost of the family and medical leave insurance, pay part of the cost and charge the rest of the cost to employees, or charge the full cost to employees.¹⁴ As explained below, employers that choose to pay part of the cost may be eligible for a Business Enterprise Tax credit.

Employees who individually purchase insurance coverage must pay premiums to the FMLI Premium Fund, which remits premiums to MetLife.¹⁵ Employees who are covered through the individual pool and work for employers with “more than 50 employees” must pay their premiums through payroll deductions, which employers must then remit to the FMLI Premium Fund.¹⁶ Employees who are covered through the individual pool and work for employers with “fewer than 50 employees” will likely pay premiums directly to the FMLI Premium Fund.¹⁷ Regardless of employer size, employees who individually purchase insurance coverage will not pay a premium of more than \$5 per week.¹⁸ However, the pool for family and medical leave insurance may be experience rated, meaning premiums may be based on a risk profile or past claims experience.¹⁹ Utilizing an experience rated pool may disadvantage particular groups of workers (such as women, people with disabilities, and older worker) by leading to higher insurance costs for those workers.

Are workers’ jobs protected?

Pursuant to the Granite State Paid Family Leave law, only employers that have purchased family and medical leave insurance and that have 50 or more employees are required to restore employees to their job (or an equivalent job) upon returning from leave.²⁰ Additionally, employees who receive health insurance through such employers are also entitled to continuation of those benefits while on leave.

How is the insurance provided?

Insurance coverage purchased through the law is provided by MetLife.²¹ Employers are able to purchase family and medical leave insurance through other insurance carriers, however, employers that contract with other insurance carriers will not be eligible for related tax credits, as explained below.²²

Who qualifies for the tax credits?

Employers that choose to purchase family and medical leave insurance through MetLife pursuant to the Granite State Paid Family Leave Plan and pay at least part of the premium may qualify for a Business Enterprise Tax credit in an amount equal to 50 percent of the premium paid by the employer for family and medical leave insurance coverage.²³

¹ N.H. Rev. Stat. Ann. § 21-I:99 *et seq.*

² While not defined in the statute, a “permanent state employee” pursuant to the request for proposals published in March 2022, is “any full-time employee who has completed their 12-month probationary period with any branch of the State government, including any person who has been or will be employed on a temporary basis for a period of not less than six (6) months in a 12-month period.” New Hampshire Dep’t of Admin. Servs. Div. of Procurement & Support Servs., Request for Proposal for Commercial Insurance Carrier for the Granite State Paid Family and Medical Leave Plan RFP # 2571-22, at 5 (Mar. 28, 2022), available at <https://www.das.nh.gov/purchasing/docs/bids/RFP%20DAS%202571-22.pdf>.

³ N.H. Rev. Stat. Ann. § 21-I:104.

⁴ N.H. Rev. Stat. Ann. § 21-I:103(III).

⁵ See “How can I get NH PFML insurance if my employer doesn’t provide it?,” New Hampshire Paid Family & Medical Leave, available at <https://www.paidfamilymedicalleave.nh.gov/workers/faqs> (last accessed Nov. 17, 2022).

⁶ Specifically, leave can be taken to care for a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is (1) under 18 years of age, or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability. See N.H. Rev. Stat. Ann § 21-I:101(I); 29 U.S.C. § 2611(12).

⁷ N.H. Rev. Stat. Ann. § 21-I:102(II).

⁸ N.H. Rev. Stat. Ann. § 21-I:102(II).

⁹ N.H. Rev. Stat. Ann. § 21-I:103(III); *see* New Hampshire Dep't of Admin. Servs. Div. of Procurement & Support Servs., Request for Proposal for Commercial Insurance Carrier for the Granite State Paid Family and Medical Leave Plan RFP # 2571-22, at 17 (Mar. 28, 2022), *available at* <https://www.das.nh.gov/purchasing/docs/bids/RFP%20DAS%202571-22.pdf>.

¹⁰ Note that while employees covered through the pool for family and medical leave insurance are subject to a one-week waiting period pursuant to the statute, permanent state employees are subject to the waiting period at the Commissioner of the Department of Administrative Services' discretion. *See* N.H. Rev. Stat. Ann. § 21-I:102(IV)(c), :103(III). Pursuant to the request for proposals published in March 2022, permanent state employees are subject to "a 7-calendar day elimination period." New Hampshire Dep't of Admin. Servs. Div. of Procurement & Support Servs., Request for Proposal for Commercial Insurance Carrier for the Granite State Paid Family and Medical Leave Plan RFP # 2571-22, at 11 (Mar. 28, 2022), *available at* <https://www.das.nh.gov/purchasing/docs/bids/RFP%20DAS%202571-22.pdf>.

¹¹ N.H. Rev. Stat. Ann. § 21-I:102(I).

¹² N.H. Rev. Stat. Ann. § 21-I:103(II).

¹³ N.H. Rev. Stat. Ann. § 282-B:3(III).

¹⁴ N.H. Rev. Stat. Ann. § 21-I:104.

¹⁵ N.H. Rev. Stat. Ann. § 282-B:4.

¹⁶ N.H. Rev. Stat. Ann. § 282-B:3(II).

¹⁷ N.H. Rev. Stat. Ann. § 282-B:10.

¹⁸ The Commissioner of the Department of Employment Security will administer a FMLI Premium Stabilization Trust Fund to ensure that premiums charged to individuals participating in the pool for family and medical leave insurance remain stable and do not exceed \$5 per week. N.H. Rev. Stat. Ann. § 282-B:5.

¹⁹ N.H. Rev. Stat. Ann. § 21-I:103(III).

²⁰ N.H. Rev. Stat. Ann. § 275:37-d. Under certain narrow circumstances, other covered employees may have job protection under other laws, such as the federal Family and Medical Leave Act.

²¹ Pursuant to the statute, the Department of Administrative Services is required to contract with an insurance carrier or carriers to provide family and medical leave insurance in accordance with the Granite State Paid Family Leave Plan. N.H. Rev. Stat. Ann. § 21-I:105. In June 2022, the state contracted with MetLife. *See* New Hampshire Paid Family & Medical Leave, *available at* <https://www.paidfamilymedicalleave.nh.gov/> (last accessed Nov. 17, 2022).

²² "What if I want to purchase NH PFML through my current insurance company?," New Hampshire Paid Family & Medical Leave, *available at* <https://www.paidfamilymedicalleave.nh.gov/employers/frequently-asked-questions> (last accessed Nov. 17, 2022).

²³ N.H. Rev. Stat. Ann. § 77-E:3-e.