Virginia Department of Planning and Budget

Economic Impact Analysis

16 VAC 5-90 Paid Family & Medical Leave
Virginia Employment Commission
Town Hall Action/Stage: 7012 / 11351 Proposed
November 9, 2026

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation

Pursuant to Chapters 981 and 1093 (identical) of the 2026 *Virginia Acts of Assembly*, the Virginia Employment Commission (VEC) proposes to promulgate a new regulation called *Paid Family & Medical Leave*.

Background

Paid Family & Medical Leave Requirements Prior to Virginia Legislation

Prior to the enactment of the Virginia legislation, the federal Family and Medical Leave Act (FMLA) already provided up to 12 weeks of **unpaid**, job-protected leave for an employee to care for themselves or a qualifying family member for certain reasons.[2] The FMLA applies to public agencies and private-sector employers who employ 50 or more employees. However, there are no federal requirements that specifically apply to **paid** family and medical leave. In

[1] See Code § 2.2-4007.04 (A).
[2] The reasons are: 1) the birth of a child or placement of a child with the employee for adoption or foster care, 2) The care for a child, spouse, or parent who has a serious health condition, 3) a serious health condition that makes the employee unable to work, and 4) reasons related to a family member's service in the military, including: 4a) qualifying exigency leave - leave for certain reasons related to a family member's foreign deployment, and 4b) military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness. See https://www.dol.gov/agencies/whd/fact-sheets/28-fmla.

addition, VEC reports that there are no analogous state or local paid family and medical leave (PFML) laws in Virginia.

Virginia Legislation

Chapters 981 and 1093 require VEC to establish and administer a PFML insurance program. Under the program, benefits are paid to covered individuals[3] for family and medical leave. Funding for the program is provided through premiums assessed to employers[4] and employees beginning April 1, 2028. The legislation provides that the benefit amount is 80 percent of the employee's average weekly net earnings; in addition, the benefit amount should not exceed 100 percent of the statewide average weekly net earnings, which must be adjusted annually to reflect changes in the statewide average weekly wage. The legislation caps the duration of paid leave at 12 weeks in any application year, or four weeks in the case of paid leave for safety services, and includes job protection for when the leave period ends.[5] Self-employed individuals are given the option of participating in the program. Additionally, employers may apply to VEC for approval to meet their obligations under the legislation by using a private plan that provides PFML benefits equal to or greater than the benefits provided under this legislation.

Beginning December 1, 2028, family and medical leave benefits are to be payable to any covered individual who is authorized to work in the United States at the time they apply for family and medical leave and:

1. Is caring for a new child during the first year after the birth, adoption, or placement of that child;

2. Is caring for a family member with a serious health condition;

3. Has a serious health condition that makes the covered individual unable to perform the functions of the position of such individual's employment;

[3] The legislation defines "covered individuals" as "any individual other than an employee of the Commonwealth who: 1. Either: a. Meets the minimum monetary eligibility criteria set forth in subdivision A 1 of § 60.2-612; or b. Is self-employed, elects coverage, and meets the requirements of § 60.2-802; 2. Meets the administrative requirements outlined in this chapter and in regulations; and 3. Submits an application."

[4] "Employer" as defined in § 60.2-210: https://law.lis.virginia.gov/vacode/title60.2/chapter2/section60.2-210/.

[5] Specifically, "Any covered individual who receives family and medical leave benefits and has been employed with the covered individual's current employer for at least 120 days prior to the commencement of such individual's paid family and medical leave shall, upon the expiration of such leave, be entitled to restoration by the employer to the position held by such covered individual when such leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits, to which the covered individual had been entitled at the commencement of such leave."

4. Is caring for a covered service member who is the covered individual's next of kin or other family member;

5. Is eligible for qualifying exigency leave arising out of the fact that a family member of the covered individual is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces; or

6. Is seeking safety services for the covered individual or a family member. Leave to seek safety services under this subdivision shall be payable for a maximum of four weeks in a benefit year for any covered individual.

The legislation created in the state treasury a special non-reverting fund to be known as the Family and Medical Leave Insurance Trust Fund (Fund). All payroll contributions remitted pursuant to the legislation, all funds appropriated for the purposes of the Fund, and any gifts, donations, grants, bequests, and other funds are paid into the state treasury and credited to the Fund. Moneys in the Fund are to be used solely for the payment of benefits under the paid family and medical leave insurance program, the administration of such program, and any start-up costs associated with such program.

Beginning on April 1, 2028, each employer must remit to the Fund contributions in the form and manner determined by VEC. No later than October 1, 2027, and annually thereafter, the Commissioner must fix the contribution rate for the coming calendar year. For calendar years 2028 and 2029, the Commissioner must fix such contribution rate based on sound actuarial principles. For calendar year 2030 and thereafter, the Commissioner determines the amount by which the contribution rate shall be adjusted to ensure that the projected balance of the Fund as a percentage of total program expenditures does not fall below 40 percent.

Each employer of more than 10 employees must (i) deduct from each employee's wages an amount equal to 50 percent, or such lesser percentage as may be agreed upon by such employer and employee, of the contribution required per employee and (ii) remit the full contribution required per employee to VEC for deposit into the Fund. Each employer of 10 or fewer employees must deduct from each employee's wages an amount equal to 50 percent of the contribution per employee required of an employer of more than 10 employees. Such employer of 10 or fewer employees must remit such deducted amount to VEC for deposit into the Fund and shall not be required to make additional contributions. No deduction shall cause an employee's wage, after such deduction, to fall below the minimum wage.

The second enactment clause of Chapters 981 and 1093 directs VEC to promulgate all rules and regulations necessary for implementation of this act by April 1, 2028, including the following requirements,

- Requirement #1: A process for receiving benefits claims filed.
- Requirement #2: The form of any application for family and medical leave benefits.
- Requirement #3: The timeline and process for providing notice of a claim to an employer.
- Requirement #4: The timeline and process for making initial claim determinations.
- Requirement #5: The timeline and process for requesting information prior to any decision on a claim being rendered.
- Requirement #6: The process and timeline for a self-employed person to elect family and medical leave coverage.
- Requirement #7: Best practices for communication and coordination between employees and employers regarding the use of leave.

The second enactment clause of the legislation also directs VEC to adopt regulations to establish certification processes that promote efficiency and prevent fraud, including,

- Requirement #8: The process and requirements for certification as described in subsection B of § 60.2-802 of the Code of Virginia, as created by this act, as well as a timeline for such certification.
- Requirement #9: The process by which health care providers certify documentation provided and authorized by employees directly to the Commission.
- Requirement #10: The process by which the Commission notifies employers of the approval of an employee's family and medical leave request.
- Requirement #11: The process for confirming that certification required under § 60.2-802 of the Code of Virginia, as created by this act, is accurate and appropriate.
- Requirement #12: The process for certifying an employee's work authorization to the Commission.

Regulation

Satisfying Requirement #1, the proposed regulation states that: "A claimant may elect to receive family and medical leave benefits by direct deposit into a claimant's bank account, onto a benefits card, or by other means approved by VEC."

Satisfying Requirement #2, the proposed regulation states that: "To receive family and medical leave benefits, the claimant or the claimant's designated representative must apply to the commission for benefits through an online method approved by the commission. A claimant must provide all information required by the commission for purposes of determining eligibility, calculating benefits, and administering family and medical leave benefits."

Satisfying Requirement #3, the proposed regulation states that:

> 1. Timing of leave notice. Where practicable, an employee shall provide an employer with at least 30 days' advance notice of family and medical leave that the employee will take for a foreseeable reason, such as an expected birth or planned medical treatment for a serious health condition.
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> a. When it is not practicable for an employee to provide 30 days' advance notice, such as because the need for leave was unforeseeable, a lack of knowledge of approximately when leave will need to begin, or a change in circumstances, an employee must give notice as soon as practicable.
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> b. An employee need only give notice one time, regardless of whether family and medical leave benefits will be continuous or taken on an intermittent or reduced schedule basis. An employee shall notify an employer as soon as practicable if dates of scheduled leave change, are extended, or are determined after being initially unknown.
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> c. If an employee is unable to provide notice to their employer personally, written notice may be provided by another responsible party, such as the employee's family member, co-worker, or designated representative.
>
> …

Satisfying Requirement #4, the proposed regulation states that: "After the commission determines that an application is complete, the commission will review the claim and make an initial determination within 14 days. The commission will provide the claimant with notice of its initial determination within five business days of making an initial determination." The proposed

regulation further satisfies legislative mandate #4 by including text on the commission gathering further information and contacting various entities in order to make an informed decision.

Satisfying Requirement #5, the proposed regulation states that: “In any request for clarification, authentication, or information, the commission may set a deadline for responding to the commission’s request. The commission may deny a claim for failure to provide clarification, authentication, or additional information requested by the commission by the deadline set in the commission’s request, absent good cause.”

Satisfying Requirement #6, the proposed regulation states that: “A self-employed individual may elect coverage by registering with the Virginia Employment Commission and filing a written notice of election with the commission.” The proposed text includes details on filing requirements, documentation requirements, etc. A self-employed individual who elects coverage must pay both the employer and employee’s share of the contributions as required by the legislation.

Satisfying Requirement #7, the proposed regulation addresses best practices for communication and coordination by covering the provision of advance notice, conferring about planned intermittent leave schedules where practicable, opportunities to discuss alternative leave schedules that better align with employer’s business needs, and guardrails to protect workers’ fair access to leave in that process.

Satisfying Requirement #8, the proposed regulation sets forth in detail the process, required documents and timeline for certification. Satisfying Requirement #9, the proposed regulation details the process by which health care providers certify documentation provided and authorized by employees directly to VEC.

Satisfying Requirement #10, the proposed regulation states that: “Upon the determination by the commission that an application is complete, the commission will notify the claimant and their employer within five business days that the application was completed and will process the complete application as a pending claim.”

Satisfying Requirement #11, the proposed regulation states that: “The commission may contact a claimant, employer, health care provider, foster care agency, victim services provider, or any other individuals with a role in certifying claims under this chapter to request additional

information needed to review a claim, authenticate a certification or other information, clarify a response, or to calculate benefits."

Satisfying Requirement #12, the proposed regulation states that:

> Covered individuals must be authorized to work in the United States at the time they apply for family and medical leave benefits. Applications must include information sufficient for the commission to verify work authorization, including:
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> a. The claimant's date of birth; and
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> b. Either (1) the applicant's Social Security Number, or (2) a number associated with an immigration document from a list of documents accepted by the commission.

Estimated Benefits and Costs

Most of the benefits and costs are due to the legislation, either directly through stated requirements in the legislation or indirectly through direction that the agency provide detail on requirements in the regulation. For the most part, the proposed requirements in the regulation do appear to minimize the costs necessary to comply with the legislation. The agency reports that the proposed regulation has been drafted to minimize administrative burden for employers, including by aligning localization[6] rules and employers' quarterly wage reporting responsibilities with those that apply under Virginia's unemployment insurance (UI) program. All employers subject to the PFML program are already subject to the UI program.[7] The proposed regulation harmonizes employers' wage reporting responsibilities with employers' existing wage reporting responsibilities under the UI program, including the format, data elements, and timing of quarterly wage reports. Employers could submit the same set of documents to VEC to satisfy both programs' requirements, avoiding duplicative compliance costs. Similarly, the proposed regulation aligns employers' quarterly contribution deadlines with employers' existing quarterly

[6] An employee is localized to Virginia, and their wages are subject to contributions, if: a. All of the employee's work is performed within Virginia; b. The employee's work is performed both within and outside of Virginia, but the work performed outside the state is incidental to the employee's work within Virginia, including employment that is temporary or transitory in nature or employment that consists of isolated transactions; or c. The employee is not localized in any state or the District of Columbia, but some of the employee's work is performed in Virginia, and: (1) The employee's base of operations is in Virginia, or if the employee has no base of operations, then the place from which the employee's work is directed or controlled is in Virginia; or (2) The employee's base of operations, or place from which some part of the employee's work is directed or controlled by the employer is not in any state in which part of the work is performed, but the employee's residence is in Virginia.

[7] Source: VEC.

contribution deadlines under the UI program, mitigating compliance costs and reducing confusion.

Additionally, the legislation requires employers to post notification of employee rights concerning the PFML program.[8] The proposed legislation and regulation instruct VEC to provide employers with such a poster. This reduces administrative burden for employers since they would not need to compose and create the poster themselves.

The current regulatory action does not set rules around rate-setting beyond what is established in § 60.2-806, and the inaugural contribution rate is due to be announced by October 1, 2027 based on an independent actuarial analysis reflecting the most current data. For context, the fiscal impact statement (FIS) for the enabling legislation, which was published on March 31, 2026, estimated that premiums would initially have to be assessed in the amount of 0.72 percent of wages to support the benefit level established in the legislation.[9] These amounts would be split between the employer and employee as described above. The FIS also estimated that total annual benefits would be approximately $1.1 billion in FY 2029 (7 months), increasing to $2.1 billion by FY 2031. The projected utilization rate and average duration used to produce these estimates are based on the 2024 Virginia Family and Medical Leave Study completed by the Weldon Cooper Center for Public Service at the University of Virginia,[10] which assumed eight weeks of benefits. The estimates of paid benefits in the FIS are increased by 50 percent to account for the four additional benefit weeks proposed in the legislation.

The cost to employers would depend partially upon the extent to which they already provided PFML benefits equal to or greater than the benefits provided under the legislation and the availability of substitute employees. For employers that were already providing PFML benefits equal to or greater than the benefits provided under the legislation, there would be the following additional costs: 1) staff time to produce the initial application for approval and to respond to VEC questions, 2) every two years thereafter staff time to reapply to VEC for

[8] Those rights are: (i) a statement of an employee's right to family and medical leave benefits pursuant to this chapter and the terms under which such benefits may be used; (ii) the amount of family and medical leave benefits available; (iii) the procedure for filing a claim for family and medical leave benefits; (iv) a statement of the right to job protection and benefits continuation under § 60.2-808; (v) a statement that discrimination and retaliatory personnel actions against a person for requesting, applying for, or using family and medical leave benefits are prohibited under § 60.2-809; and (vi) a statement that the employee has a right to file a complaint for a violation of this chapter.
[9] See https://lis.blob.core.windows.net/files/1214764.PDF.
[10] See https://www.coopercenter.org/research/PMFL-study-2024-update.

approval and respond to the agency's questions, and 3) the amount charged annually by VEC for costs arising from the administration of private plans. For employers that were not already providing at least the minimum required amount of PFML benefits, but wish to meet requirements through private insurance or self-insurance, these three costs would occur plus the cost of the private or self-insurance.

As stated above, the federal FMLA requires that public agencies and private-sector employers who employ 50 or more employees provide up to 12 weeks of unpaid, job-protected leave for an employee to care for themselves or a family member for qualifying situations similar to the PFML qualifying situations. Thus, such employers would already be subject to employees being possibly absent for weeks with the need to find suitable replacements when they are on leave. Private-sector employers with fewer than 50 employees who have not been offering family and medical leave may newly be subject to missing an employee for weeks due to the requirement to participate in the PFML program. When another qualified employee is not available to do the work, there could be either a decrease in the quantity of products produced and available for sale in a given time, or a reduction in the speed and quality of services provided due to fewer workers available. When multiple workers are out on leave at the same time, or a particularly irreplaceable worker is out on leave, some small businesses may even need to close temporarily.

On the other hand, the costs to employers of the PFML program may be somewhat mitigated by certain benefits, including increased employee satisfaction, reduced employee turnover, and an increase in the ability to attract potential employees. The employer may also benefit from a decrease in the spread of illness within the workplace, which may also help reduce the spread of communicable diseases and reduce overall healthcare costs.

The provision of PFML is greatly beneficial for covered employees and their affected family members in that they may continue to receive pay while taking time off: 1) because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement of that child; 2) to care for a family member with a serious health condition; 3) due to a serious health condition that makes the covered individual unable to perform the functions of the position of such individual's employment; 4) to care for a covered service member who is the covered individual's next of kin or other family member; 5) due to a

family member of the covered individual is on active duty, or has been notified of an impending call or order to active duty, in the Armed Forces; or 6) to seek safety services for the covered individual or a family member. The PFML program is also greatly beneficial for employees of private-sector employers who employ fewer than 50 employees since it newly provides them with job protection, as the FMLA only guarantees job protection for employees of private-sector employers who employ 50 or more. Further, the FMLA only guarantees job protection to employees who have been on the job for at least one year, whereas the Virginia PFML program will extend benefits to employees who have been on the job for 120 days. Private insurance companies that offer paid family and medical leave insurance may also benefit in that the legislation may increase demand for their product.

Businesses and Other Entities Affected

The 251,741 non-exempt[11] employers in the Commonwealth and their 3,923,103 workers are directly affected by the legislation and the proposed regulation.[12] Relatives of such workers, and firms that offer paid family and medical leave insurance in Virginia, may be indirectly affected.

The Code requires DPB to assess whether an adverse impact may result from the proposed regulation.[13] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[14] As noted above, the costs are due to the legislation, and the proposed regulation appears to minimize additional required costs. Thus, no adverse impact from the regulation is indicated.

[11] The federal government, the Commonwealth, small agricultural employers as provided in § 60.2 214, certain small fishing operations as provided in § 60.2 219, parents employing children under 21 as provided in § 60.2 219, and certain not-for-profit and religious organizations that are exempt from federal taxes as provided in § 60.2 219 are exempt.

[12] Data source: VEC.

[13] See Code § 2.2-4007.04 (D).

[14] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

Small Businesses[15] Affected:[16]

As the introduced costs are from the legislation, the proposed regulation does not appear to adversely affect small businesses.

Localities[17] Affected[18]

The proposed regulation neither disproportionately affects particular localities, nor introduces costs to local governments.

Projected Impact on Employment

While the legislation may have some impact, the proposed regulation is unlikely to have substantive impact on employment.

Effects on the Use and Value of Private Property

The proposed regulation is unlikely to have substantive impact on the use and value of private property, including real estate development costs.

[15] Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."
[16] See Code § 2.2-4007.04 (A.2). and Code § 2.2-4007.1 (C).
[17] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.
[18] Code § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.