



## Stay Compliant with the Employee Benefits Compliance Brief

An exclusive UBA Partner Firm monthly newsletter, focusing on one of your most important responsibilities — employer compliance.

July 2026

- Understanding the Medical Loss Ratio
- New Illinois NICU Leave Law
- Virginia Enacts Statewide Paid Family and Medical Leave Program
- Question of the Month: PCORI Fee

### Understanding the Medical Loss Ratio

When employers purchase fully insured health coverage, they expect premium dollars to be used primarily for employee health care, not excessive administrative costs or insurer profits. One of the Affordable Care Act's (ACA) lesser-known consumer protection provisions helps ensure that happens through the [Medical Loss Ratio \(MLR\)](#) requirements.

The ACA established a nationwide minimum standard governing the amount of premium revenue insurers had to spend on medical care. The goal was to increase transparency while encouraging insurers to devote more premium dollars to patient care rather than overhead.

Although MLR rebates make headlines each fall, employers may be uncertain about what MLR measures, how rebates are calculated, and what obligations arise if a rebate is received. Understanding these rules can help employers properly manage plan assets, communicate with employees, and remain compliant with ERISA and federal insurance requirements.

The Medical Loss Ratio is the percentage of health insurance premium dollars that an insurance company spends on medical claims paid on behalf of covered individuals and activities that improve health care quality.

The remaining premium dollars may be used for:

- Administrative expenses
- Customer service
- Marketing
- Broker commissions
- Taxes and regulatory fees (subject to federal adjustments)
- Insurer profit

Small group insurers must spend at least 80% of premium on medical care, and large group insurers must spend at least 85%. If an insurer spends less than the required percentage on medical care and quality improvement, it must return the difference as a rebate.

The Centers for Medicare & Medicaid Services (CMS) determines compliance using a rolling average of three years of MLR experience. This helps avoid unusually large rebates resulting from one exceptionally favorable or unfavorable claims year.

All fully insured plans are subject to the MLR.

Plans that are generally excluded are:

- Self-funded employer health plans
- Level-funded arrangements
- Excepted benefits, such as standalone dental or vision plans

Insurers owing rebates typically distribute them by September 30 following the reporting period. Although the insurance company sends the rebate to the employer as the policyholder, the employer is not always entitled to keep the entire amount.

In general:

- If the employer paid 100% of the premiums, the employer may keep the entire rebate.
- If employees paid part of the premiums, employees are entitled to a proportional share of the rebate.

For most ERISA-covered plans, the portion attributable to employee contributions is considered a plan asset and must be used for the benefit of plan participants. Employers should review the plan document and follow Department of Labor fiduciary rules when determining ownership.

## Options for Using the Employee Portion of the Rebate

When employees are entitled to a share of the rebate, employers generally have several options.

**1. Reduce Future Premiums.** This is the most common approach. The employee share of the rebate is applied toward future health insurance premiums, reducing what employees pay for coverage. This method is often the simplest to administer because it automatically benefits current participants.

2. **Provide Cash Payments.** Employers may distribute each eligible employee's share as a cash payment. Cash payments are generally appropriate when reducing future premiums is impractical, such as when coverage has ended or only a small group of employees remains enrolled.

3. **Improve Plan Benefits.** Using the employee portion to enhance plan benefits may be appropriate if is consistent with ERISA fiduciary requirements.

## Tax Treatment Depends on How Premiums Were Paid

The [tax consequences](#) depend on whether employees paid their premiums on a pre-tax or after-tax basis.

- If premiums are paid pre-tax through a Section 125 cafeteria plan, the rebate is subject to payroll taxes because it represents previously untaxed compensation.
- If premiums are paid as after-tax payroll deductions, the rebate is generally not taxable because it is considered a return of amounts the employee already paid with taxed dollars.

If the rebate is used to reduce future pre-tax premium deductions, employees will simply have smaller pre-tax deductions, resulting in slightly higher taxable wages during the period the premium reduction is applied.

## Timing Matters

For ERISA plans, employers should distribute or apply the employee portion of the rebate within approximately three months after receiving it. Holding employee funds longer than necessary may create ERISA fiduciary concerns.

## Employer Action Items

When an MLR rebate is received:

- Determine how much of the premium was paid by the employer versus employees.
- Review the plan document to determine whether it addresses ownership of MLR rebates.
- Decide whether the employee portion will be returned through premium reductions, cash payments, or another permissible method that benefits participants.
- Coordinate with payroll to ensure the rebate is taxed correctly based on whether premiums were paid on a pre-tax or after-tax basis.
- Document the decision-making process and retain records showing how the rebate was allocated and distributed.

Although many MLR rebates are relatively small, employers should treat them carefully. Following [ERISA fiduciary rules](#) and the applicable tax guidance helps ensure that both the employer and employees receive the appropriate benefit from the rebate.

## New Illinois NICU Leave Law

Beginning June 1, 2026, Illinois employers must comply with the new [Family Neonatal Intensive Care Leave Act](#), which provides eligible employees with job-protected leave when their child is admitted to a neonatal intensive care unit (NICU). The law is intended to give parents and other eligible caregivers additional time to be with their hospitalized newborn during a critical period without losing their jobs.

Although the leave is unpaid, employers should review their leave policies, train supervisors, and coordinate this new leave with existing federal and state leave requirements before the law becomes effective.

### Which Employers Are Covered?

The law applies to Illinois employers based on the size of their workforce:

Employer Size	Required NICU Leave
16–50 employees	Up to 10 workdays of unpaid leave
51 or more employees	Up to 20 workdays of unpaid leave

Employers with fewer than 16 employees are not covered by the Act.

### Who Is Eligible?

Eligible employees may take leave while their child is receiving treatment in a neonatal intensive care unit (NICU). The Act defines a child broadly to include a biological child, adopted child, foster child, stepchild, legal ward, or a child for whom the employee stands *in loco parentis*.

Unlike the federal Family and Medical Leave Act (FMLA), the Illinois law does not impose a minimum length of service or hours-worked requirement for employee eligibility.

### How May Leave Be Taken?

Employees may use NICU leave:

- Continuously
- Intermittently
- On a reduced schedule, if needed

Employers may require leave to be taken in increments of at least two hours.

### Interaction with FMLA

One of the most significant features of the law is how it coordinates with the federal Family and Medical Leave Act.

For employees who qualify for FMLA leave, NICU leave begins *after* FMLA leave ends. In other words, the Illinois NICU leave is available in addition to the employee's FMLA entitlement—it does not run concurrently with FMLA leave.

For employees who are not eligible for FMLA, the Illinois law still provides job-protected NICU leave if they meet the requirements of the state law.

## Employee Notice and Documentation

Employees should provide reasonable notice when the need for leave is foreseeable. If advance notice is not possible because of the circumstances surrounding the NICU admission, notice should be provided as soon as practical.

Employers may require reasonable documentation verifying that the child has been admitted to a NICU and confirming the length of the hospitalization.

## Job Protection

Upon returning from leave, employees must generally be restored to the same position they held before taking leave or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. Employers also may not interfere with an employee's rights under the Act or retaliate against an employee for requesting or taking leave.

## Enforcement

The Illinois Department of Labor administers and enforces the Act.

Employees who believe their rights have been violated may file a complaint with the Department or bring a civil action. Employers that violate the law may face civil penalties of up to \$5,000 per affected employee, in addition to other available remedies.

## Employer Action Items

Illinois employers should take steps now to prepare for the June 1, 2026, effective date by:

- Determining whether the organization meets the 16-employee coverage threshold.
- Updating employee handbooks and leave policies to include Family Neonatal Intensive Care Leave.
- Training HR staff and supervisors on employee rights under the new law.
- Establishing procedures for requesting leave and obtaining reasonable documentation.
- Coordinating NICU leave administration with FMLA, paid leave policies, disability benefits, and other applicable leave laws.
- Reviewing payroll and leave tracking systems to ensure NICU leave is administered correctly.

While the amount of leave provided under the Act is relatively modest, employers should recognize that it is a separate, job-protected leave entitlement that may extend an employee's overall protected leave beyond what is available under the FMLA. Careful planning and updated leave administration practices can help employers remain compliant while supporting employees during a difficult family medical event.

## Virginia Enacts Statewide Paid Family and Medical Leave Program

Virginia has joined the growing number of states requiring paid family and medical leave (PFML), becoming the first southern state to enact a mandatory statewide paid leave insurance program. Signed into law in April 2026, the new program will provide eligible employees with wage replacement and job-protected leave for qualifying family and medical reasons.

Employers have more than two years to prepare. Payroll contributions will begin on April 1, 2028, and eligible employees may begin receiving benefits on Dec. 1, 2028. The Virginia Employment Commission (VEC) will administer the program and is expected to issue additional regulations and guidance before implementation. The initial payroll contribution rate will be established by Oct. 1, 2027.

Virginia's Paid Family and Medical Leave (PFML) program creates a state-administered insurance system that provides partial wage replacement when eligible employees need time away from work for specified family or medical reasons. The state program does not replace the FMLA; instead, employers may need to administer both laws concurrently when both apply.

The law applies to nearly all private employers with employees working in Virginia. Employers will either participate in the state-administered PFML insurance program or apply for approval of a private plan that provides benefits equal to or greater than those available under the state program.

Employees generally become eligible if they satisfy Virginia's earnings requirements for unemployment insurance. Unlike the federal FMLA, there is no requirement that an employee work a minimum number of hours or complete 12 months of service before becoming eligible for benefits. Income earned from multiple employers may be combined to determine eligibility.

Eligible employees may receive up to 12 weeks of paid leave during a benefit year for qualifying events, including:

- Bonding with a newborn child
- Adoption or foster care placement
- The employee's own serious health condition
- Caring for a family member with a serious health condition
- Certain military family needs
- Caring for a covered service member

Eligible leave may be taken intermittently when permitted under the law.

The law also provides paid leave for certain safety-related reasons involving domestic violence, sexual assault, or stalking, making Virginia's program broader than many existing state paid leave laws.

Eligible employees will receive approximately 80% of their average weekly wages, subject to a statutory maximum tied to the statewide average weekly wage established by the Virginia Employment Commission. Benefits are payable for up to 12 weeks during a benefit year for most qualifying reasons.

### Funding the Program

The PFML program will be financed through payroll contributions. Contribution rates will be established annually by the Virginia Employment Commission beginning in 2027.

Current statutory provisions generally require employers with 11 or more employees to remit the full contribution, while allowing them to deduct up to half of the required contribution from employee wages. Employers with 10 or fewer employees are not required to pay the employer share but must generally withhold and remit the applicable employee contribution.

Payroll deductions may not reduce an employee's wages below the applicable minimum wage.

## Employer Notice Requirements

The law establishes several employer communication responsibilities. Employers will be required to:

- Provide written notice of employee rights upon hire.
- Furnish annual notices regarding PFML benefits and protections.
- Display an official workplace poster issued by the Virginia Employment Commission.

Additional notice requirements and model forms are expected as the VEC develops implementing regulations.

## Private Plan Option

Rather than participating in the state insurance program, employers may seek approval to provide benefits through a private insured or self-funded plan. To qualify, a private plan must provide benefits that are at least equivalent to those required under Virginia law and must receive approval from the Virginia Employment Commission.

## Employer Action Items

Although payroll contributions do not begin until 2028, employers should begin planning well in advance.

- Monitor future regulations issued by the Virginia Employment Commission.
- Review existing leave and disability programs to identify necessary policy changes.
- Coordinate with payroll providers regarding future payroll withholding requirements.
- Evaluate whether a private PFML plan may be a cost-effective alternative.
- Budget for future employer payroll contributions, if applicable.
- Prepare employee communications explaining the new benefit before payroll deductions begin.
- Train HR staff and supervisors on administering leave that may qualify under both the federal FMLA and Virginia's PFML program.

Virginia's new paid leave program represents one of the most significant employment law developments in the Commonwealth in recent years. While implementation remains several years away, employers that begin planning early will be better positioned to integrate the new requirements into their existing leave administration and compliance processes as additional guidance becomes available.

## Question of the Month

**Q.** Can you confirm that the PCORI fee is \$3.84 multiplied by the average number of lives covered under the plan?

**A.** You are correct. For plan years ending between Oct. 1, 2025, and Oct. 1, 2026, the PCORI fee is \$3.84 per covered life.

*Answers to the Question of the Week are provided by Kutak Rock.*

This information is general information and provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.

