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Seyfarth Shaw LLP

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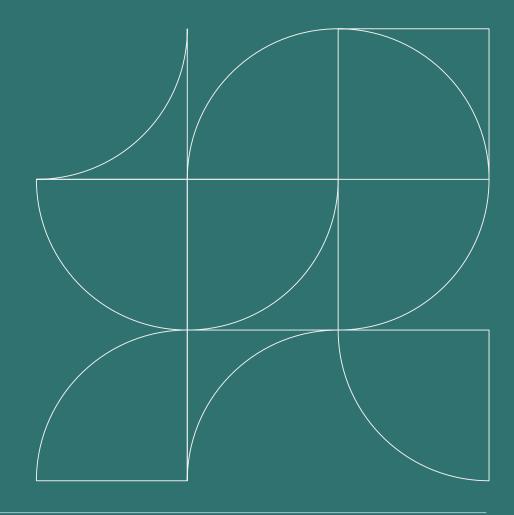


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Agenda

01	Nationwide Paid Family Leave Law Overview
02	Minnesota Paid Family Medical Leave Updates
03	Delaware Paid Family Medical Leave Updates
04	Maine Paid Family Medical Leave Updates
05	Maryland Paid Family Medical Leave Updates
06	2025 Federal and State Paid Family Leave Outlook

Nationwide Paid Family Leave Law Overview



Paid Family Leave Laws Overview

Existing Mandatory SDI Laws – 5 States:

• CA, HI, NJ, NY & RI

Existing Mandatory PFML Laws – 13 States + DC

- Paid Family Leave CA, NJ, NY & RI
- Paid Family and Medical Leave CO (benefits became effective 1/1/2024), CT, DC, DE (benefits effective 1/1/2026), MA, ME (benefits effective 5/1/2026), MD (benefits effective 7/1/2026), MN (benefits effective 1/1/2026), OR (benefits became effective 9/3/2023), and WA



Paid Family Leave Laws Overview

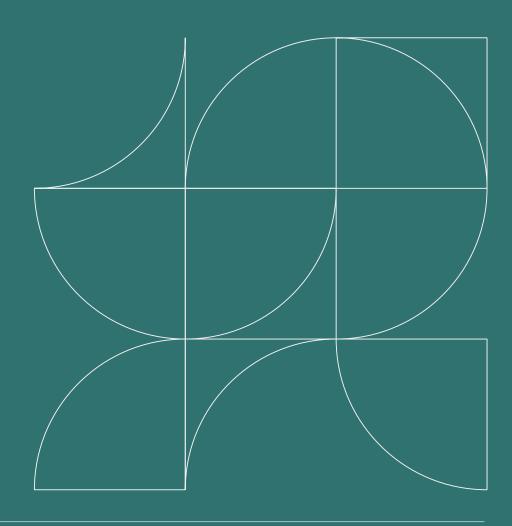
A few new twists!

- NH, VT have instituted Voluntary PFML programs
 - NH (effective 1/1/2023)
 - VT (effective for state employees 7/1/2023; for other non-state government public employers 7/1/2024; for individual/private employer purchasers 7/1/2025)
- AL, AR, FL, KY (enacted 4/5/2024), SC (enacted 5/21/2024), TN, TX, VA added Family Leave Insurance as a class of insurance

Are these signs of the direction that PFML benefits will take in the coming years?



Minnesota Paid Family Medical Leave Updates



Minnesota Paid Leave Milestones and Important Deadlines

- Signed by the Governor: May 25, 2023
- First Quarterly Wage Report Due: October 31, 2024
- Notice Requirement Deadline: December 1, 2025
- Payroll Deductions Begin: January 1, 2026
- Use of Paid Leave Begin: January 1, 2026
- First Quarterly Premiums Due: April 30, 2026

Minnesota Paid Leave – Employee and Employer Coverage

- Employee: Employees are covered under the Minnesota Paid Leave Law if:
 - (1) 50% or more of their employment is performed in Minnesota;
 - (2) less than 50% of their employment is performed in Minnesota, but the employee resides in Minnesota 50% or more of the calendar year; and
 - (3) less than 50% of their employment is performed in Minnesota, but the employee's work is directed and controlled in Minnesota.
- Employer: Employer means any person, organization or entity that employs at least one covered employee.

"Employer" does **not** include:

- (1) The federal government; and
- (2) A self-employed individual.

Minnesota Paid Leave – Reasons for Use

Covered Reasons for Use:

- Bonding: Includes spending time with a biological, adopted, or foster child following the child's birth, adoption or placement.
- Family Care: Includes caring for a family member with a serious health condition or caring for a family member who is a military member.
- Qualifying Exigency: Includes a need arising out of a military member's active duty service or notice of an impending call or order to active duty.
- Safe Leave: Includes leave from work because of domestic abuse, sexual assault, or stalking, provided the leave is to seek medical attention, obtain counseling or other services, seek relocation or obtain legal advice.
- Serious Health Condition: Includes a physical or mental illness, injury, impairment, condition or substance use disorder that includes, for example, impatient care, treatment or periods of incapacity.
- Medical Care Related to Pregnancy: Includes prenatal care or incapacity due to pregnancy or recovery from childbirth, stillbirth, miscarriage, or related health conditions.

Minnesota Paid Leave – Covered Family Members

Covered Family Members include:

- (1) a spouse or domestic partner;
- **(2)** a child;
- (3) a parent or legal guardian;
- (4) a sibling;
- (5) a grandchild;
- (6) a grandparent or spouse's grandparent;
- (7) a son-in-law or daughter-in-law; and
- (8) an individual who has a personal relationship with the employee that creates an expectation and reliance that the employee care for the individual without compensation (regardless of whether the employee resides with this person).

Minnesota Paid Leave – Amount of Leave

- Length of Benefits:
 - Up to a maximum of 12 weeks of paid family or medical leave benefits in a benefit year.
 - If an employee uses both medical and family leave in a single benefit year, they can take 20 weeks of combined leave in total.
- Continuous or Intermittent: Benefits will be available on a continuous or intermittent basis.
- Benefit Year:
 - The 12-month period that starts when Minnesota Paid Leave is first taken by the employee.

Minnesota Paid Leave – Amount of Pay

- Beginning January 1, 2026: Covered employees may be entitled to Minnesota Paid Leave benefits as follows:
 - (1) 90% of wages that do not exceed 50% of the state's average weekly wage; plus
 - (2) 66% of wages that exceed 50% of the state's average weekly wage but not 100%; plus
 - (3) 55% of wages that exceed 100% of the state's average weekly wage.
 - Benefits will be paid to employees on a weekly basis.
 - -Employees will receive payments directly from the State of Minnesota.

Minnesota Paid Leave – How Leave Is Funded

- Funding: The program is funded through employee payroll deductions
 AND employer contributions, if the employer so chooses.
- Employers' Contribution to the Program (as of January 1, 2026): Employers must pay a minimum of 50% of the annual premiums, which includes:
 - (1) Participation in family and medical benefit program: 0.7% contribution rate
 - (2) Participation in medical benefit program: 0.4% contribution rate
 - (3) Participation in family benefit program: 0.3% contribution rate
- Employee Deductions: Employees must pay the remaining portion not paid by the employer.

Minnesota Paid Leave – Private Plan Exemption

- Overall: Private plan must provide benefits equal to those required under the law for paid family and/or medical benefits.
- Application Requirements:
 - (1) Submit poof of coverage; and
 - (2) Choose a private plan that fully meets the requirements laid out under the Paid Leave Law.
- Current Status: The Minnesota Department of Commerce is working on a process to allow carriers to sell private plans that would qualify for an exemption. No private plans have been approved at this time.

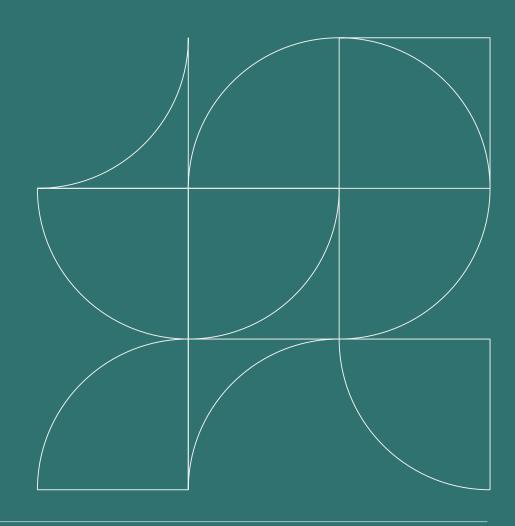
Minnesota Paid Leave –

Notice and Posting Requirements

Posting

- Display & maintain a poster in a conspicuous place accessible to all employees.
- Sample poster to be provided by Department.
- Post in English & any language that is the first language spoken by at least 5% of the workforce.
- Notice must be provided: Within 30 days of the employee's hire or 30 days before premium collections begin, whichever comes later.
 - **Deadline:** December 1, 2025
- Earning statements: Must include any amount deducted by the employer for paid leave benefits.

Delaware Paid Family Medical Leave Updates



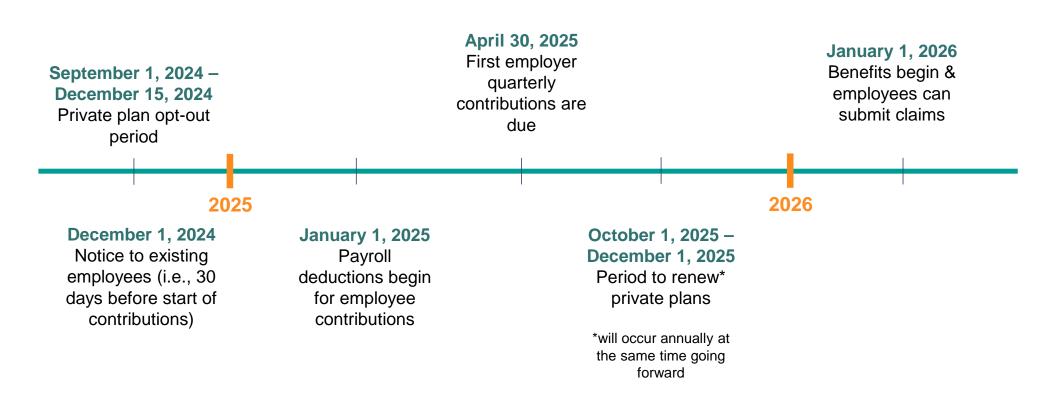
Delaware PFML – Key Provisions

Topic	Detail
Covered Employers	Overall: Private employers with 10 or more employees working in Delaware Application of Specific Provisions: 10-24 employees (Parental Leave only); 25+ employees (all Leaves)
Employee Eligibility	Employees who have worked at least 12 months and 1,250 hours for their employer in the prior 12 months
Reasons for Leave	Parental Leave: birth, adoption, or placement through foster care, available for first year following bonding event Medical Leave: EE's own serious health condition Family Caregiving: caring for a family member with a serious health condition Qualifying Exigency: active military duty
Family Members	Includes: child, parent, and spouse (same as FMLA) Excludes: siblings, parents-in-law, or any other relations

Delaware PFML – Key Provisions (con't)

Topic	Detail
Amount of Leave	Maximum of 12 weeks for all leave reasons in application year Medical, Family Caregiving, or Qualifying Exigency: 6 weeks in 24-month period Parental Leave: 12 weeks in an application year
Amount of Pay	80% of average weekly wages during the 12-months preceding application submission Minimum : \$100 per week Maximum : \$900 per week
Employee Contributions	Total Contribution of ER and EE: 0.8% of wages Medical Leave: 0.4% of wages Qualifying Exigency & Family Caregiving: 0.08% of wages Parental Leave: 0.32% of wages May deduct up to 50% of the cost of the plan from EE wages ER can elect to cover EE portion

Important Dates for Employers



Notice & Posting Requirements

- <u>Timing of Initial Notice</u>: Employers cannot start deducting contributions until 30 days after the employees have been given notice of the withholding
 - Existing Employee + State Plan + Jan. 1st Contribution = Notice REQUIRED by December 1, 2024

Notice Requirements:

- Provide at the time of hiring and when an employee requests covered leave or the employer acquires knowledge that an employee's leave may be for a qualifying event
- Distribution via work or personal email address
- For specific content requirements, see Delaware website for model notice
- <u>Notice of Employee Rights:</u> Model notice is available at <u>https://laborfiles.delaware.gov/main/pfl/Notice_of_Employee_Rights</u> .docx

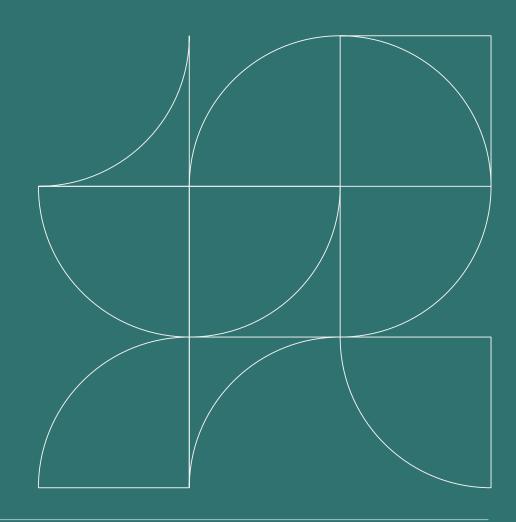
• Posting Requirements:

- English, Spanish, other language spoken by at least 5% of workforce
- For specific content requirements, see Delaware website for poster

Electing to Use a Private Plan

- Employers can choose to provide paid leave through a private plan, either a DOI-approved insurance policy or a DOI-approved self-insured plan
 - The private plan cannot charge the employee more than the state plan would
- There are many substantive *and* administrative components that must be met in order to obtain private plan approval
- Employer should use <u>LaborFirst</u> DE's new admin system to manage PFML – to initiate the private plan approval process
 - This process will repeat yearly
 - Delaware expects private plans to be approved or denied prior to January 1, 2025. If denied, employers will be automatically enrolled in the state plan
- <u>Timing of Notice</u>: Employers should follow 30-day rule, depending on contribution start date

Maine Paid Family Medical Leave Updates



Maine Paid Family and Medical Leave (PFML)

- Signed by the Governor: July 11, 2023
- Final Rules Adopted: December 6, 2024
- Collect Contributions: January 1, 2025
 - For Q1: even employers who will seek a private plan exemption must start collecting contributions starting January 1, 2025
- PFML Benefits Begin: May 1, 2026

Maine PFML- Employer Coverage

• Employer Coverage:

- Overall: Most Maine employers will be subject to the PFML program.
- <u>Legal Standard</u>: employers with one (1) or more employees includes:
 - Public employers (other than the federal government),
 - Private employers (regardless of size), and
 - Self-employed individuals that opt into the program.

Maine PFML- Employee Eligibility

- Covered employee;
- Earned 6X the state average weekly wage during the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year (currently \$6,868);
- Submit an application for benefits no more than 60 days before the anticipated start date of family leave and medical leave and no more than 90 days after the start date of family leave and medical leave;
- Be employed as of the date of application for benefits if applying in advance of leave, or be employed as of the date of leave beginning if applying retroactively for leave;
- Have not been declared ineligible for committing fraud; and
- Satisfy one of the qualifying reasons for use.

Maine PFML—Reasons for Use

Covered Reasons for Use of PFML:

- Medical leave
- Organ donation
- Bonding with a child
- Family care leave
- Military caregiver leave
- Qualifying exigency leave
- Safety leave

Maine PFML-Covered Family Members

"Family member" is defined as: "a biological, foster, step, or adopted child (regardless of age); grandparent; grandchild; sibling; spouse or domestic partner; or an individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship."

Maine PFML – Covered Family Members (Continued)

A **significant personal bond** is one that, when examined under the totality of the circumstances, is like a family relationship, regardless of biological or legal relationship. This bond may be demonstrated by, but is not limited to the following factors, with **no single factor being determinative:**

- Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
- Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
- The expectation to provide care because of the relationship or the prior provision of care;
- Cohabitation and its duration and purpose;
- Geographic proximity; and
- Any other factor that demonstrates the existence of a family-like relationship.

Maine PFML- How Leave is Funded

Funding beginning January 1, 2025:

- Employers with <u>15 or more employees</u> are required to pay 0.5% and all employees are required to pay .05%.
- Employers with <u>less than 15 employees</u> do not pay the payroll tax, but must remit the employee's portion of the tax 0.5%. (Employer may choose to cover this for their employees, but is not required to do so).
- Self-employed individuals who opt in are only responsible for 50% of premium rate.
- Penalty for Non-Compliance: 1% of the employer's total quarterly payroll.
- Telecommuters: Look at the unemployment test.

Maine PFML- Amount of Pay

- Overall: The maximum weekly benefit is equal to the state average weekly wage (SAWW), which is currently \$1,144.67.
- Benefit tiers: The benefit amount is based on the employee's average weekly wage relative to the SAWW:
 - Tier 1: For wages up to 50% of the SAWW, the benefit is 90% of the employee's average weekly wage.
 - Tier 2: For wages over 50% of the SAWW, the benefit is 66% of the employee's average weekly wage.
- Beginning July 1 each year the maximum weekly benefit will be adjusted annually.

Maine PFML- Amount of Leave

- Overview: No more than 12 weeks of benefits in a benefit year for medical and/or family leave.
- Leave available as
 - Continuous
 - Intermittent
 - Reduced Schedule
- Increments of use = not less than a scheduled workday
 - Employer and employee may agree to a smaller increment
 - Minimum increment is one hour.

Maine PFML – Job Protection

- Covered individual is entitled to job protection when taking Maine PFML if they worked for a covered Maine employer at least 120 days prior to the start of the leave.
- Proceed with caution:
 - The requirement is "portable" meaning an employee will not lose eligibility if transferring to a new job for another covered Maine employer.
 - Even there is no job protection, the **anti-retaliation provision** still applies.

Maine PFML - Private Plan Exemption

- Overall: Employers may apply for a private plan substitution if they show that what they offer a "substantially equivalent" to the state plan. The plan must meet the obligations required under the PFML Law (e.g., rights, protections, and benefits).
- Employees cannot apply for a private plan exemption yet.
- All employers are responsible for remitting Q1 2025 contributions regardless of their intent to pursue a private plan.

Maine PFML - Coordination of Benefits

- There is no reduction of the Maine PFML benefit for wages received from "any other employer from whom the covered individual is not on leave."
- Employees may use PTO to top off Maine PFML if they choose to do so.
 - Employers cannot require employees to use PTO.
- The benefit amount is **not** reduced by any short-term disability or PTO that an employee uses during their leave, but the employee's **typical** weekly wage cannot exceed 100%.
- Benefits will be reduced by any worker's compensation and longterm/permanent disability benefits.

Maine PFML – Notice and Other Requirements

- Employee must provide notice in a "reasonable" time in advance of leave. The rules define reasonable as **30 days before commencing the leave**. If there is an emergency, illness or sudden necessity, an employee must make a good-faith effort to provide written notice as soon as feasible under the circumstances. Employers should accept notice from a family member or health care provider on behalf of an employee who is incapacitated.
- Must include
 - Reason for leave
 - Type of leave (e.g. continuous, reduced schedule, or intermittent leave);
 - Actual or anticipated timing and duration of leave;
 - Any other relevant information regarding the employee's need to take leave.
 - *The employer may not require an employee's notice to be in or on a prescribed form as long as the information provided is sufficient. This notice must be in writing, which can include a standard form, letter, email, or text message provided to the employer.

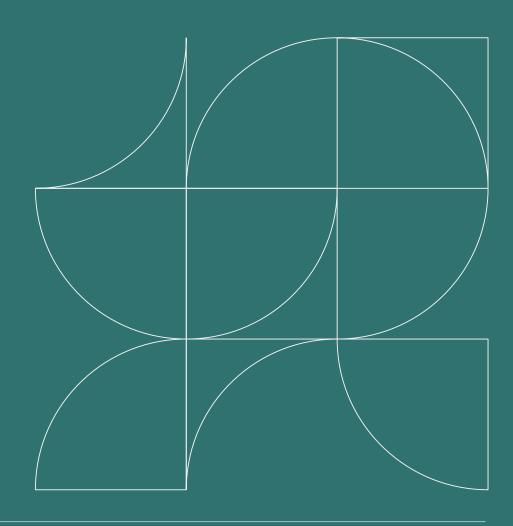
Maine PFML – Employer Undue Hardship

- "Undue hardship" means a significant impact on the operation of the business or significant expenses, considering the financial resources of the employer, the size of the workforce, and the nature of the industry that cannot be overcome with the amount of notice given. An undue hardship shall be considered reasonable if:
- The employer provided a written explanation of the undue hardship to the employee, demonstrating, based on the totality of the circumstances, how the absence of the specific employee and the specific timing and/or duration of the employee's requested leave will cause significant impact on the operation of the business or significant expenses;
- The employee retains the ability to take leave within a reasonable time frame relative to the proposed schedule; and
- The employer has made a good faith attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the employer's operations.
- If medical leave is requested, the employer's proposed schedule must be sufficient to accommodate the healthcare needs of the employee in the judgment of the employee's healthcare provider.
- *Employer must submit information to support claim for undue hardship within 10 business days after being notified of the employee's application for leave.

Maine PFML – Employer Notice/Posting Requirements

- Posting: Required
- Written Notice: Required within 30 days of the start of employment
 - Notice required 14 days prior to any change in employee contribution amounts.
 - -Failure to provide notice and posting waives employee's notice obligation.
- Policy: No specific requirement...
- Next Steps: Register your business next month on the portal

Maryland Paid Family Medical Leave Updates



Maryland Paid Family and Medical Leave (PFML)

- Governor's Veto Overridden by Legislators: April 9, 2022
- Updated Draft Regulations: July 10, 2024
- Public Comment Period on Proposed Regs Closed: Nov. 18, 2024
- Payroll Deductions Begins: July 1, 2025
- First Quarterly Premiums Due: October 2025
- Notice Requirement Begins: January 2026
- PFML Benefits Begin:
 - Original: January 1, 2025
 - Amended: January 1, 2026
 - Amended AGAIN (i.e., current): July 1, 2026

Maryland PFML – Employer Coverage / Employee Eligibility

Employer Coverage:

— Overall: Most Maryland employers will be subject to the PFML program → Need just 1 employee in Maryland. No exemptions.

• Employee Eligibility:

- Per Statute, EEs who have worked at least 680 hours over the 12-month period immediately preceding the date on which the leave is to begin are "covered individuals" under the Act.
 - Self-employed individuals may also elect to participate in the program.
 - Relevant Time Period: Per FAQs, is "in the 4 calendar quarters reported before they need to take leave," rather than "12-month period immediately preceding date on which leave is to begin"
 - FAQs address remote, hybrid and mobile EEs

Maryland PFML – Reasons for Use

Covered Reasons for Use of PFML:

- to care for a child during the first year after the child's birth or after the placement of the child through foster care, kinship care or adoption
- to care for a family member with a serious health condition
- for the employee's own serious health condition that results in their being unable to perform the functions of their position
- to care for a service member who is the employee's next of kin
- for a qualifying exigency arising out of the deployment of a service member who is a family member of the employee.

Maryland PFML – Covered Family Members

Covered Family Members Under MD PFML Include:

- the biological, adopted, foster or step-child of the employee
- a child for whom the employee has legal or physical custody or guardianship
- a child for whom the employee stands in loco parentis (regardless of the child's age)
- a biological, adoptive, foster or step-parent of the employee or the employee's spouse
- the legal guardian of the employee or the ward of the employee or the employee's spouse
- an individual who acted as a parent or stood in loco parentis to the employee or their spouse when they were a minor
- the employee's spouse or domestic partner;
- a biological, adoptive, foster or step-grandparent, grandchild or sibling of the employee

Maryland PFML - How Leave is Funded

- Funding: Contributions begin as of July 1, 2025.
- Amount of Deductions:
 - 0.9% of covered wages up to Social Security cap
 - Employers may collect up to half of the contribution rate from EEs, but can also choose to cover this portion
 - Smaller ERs (i.e., less than 15 EEs) not required to pay ER portion
- Remitting and Reporting:
 - First payment to State due October 2025; Quarterly thereafter
 - ERs will also be responsible for filing quarterly wage and hour reports with the MD FAMLI Division; <u>Includes ERs with private plans</u>

Maryland PFML – Amount of Pay

- Overall: Starting July 1, 2026, partial wage replacement of up to 90% of the employee's average weekly wages, with a maximum weekly benefit amount of \$1,000
 - If the covered individual's average weekly wage is 65% or less of the state average weekly wage, 90% of the individual's average weekly wage;
 - If the covered individual's average weekly wage is greater than 65% of the state average weekly wage, the sum of: (a) 90% of the covered individual's weekly wage up to 65% of the state average weekly wage; and (b) 50% of the covered individual's average weekly wage that is greater than 65% of the state average weekly wage;
- Beginning January 1, 2027: the maximum weekly benefit will be adjusted annually to reflect the annual percentage growth of the area's Consumer Price Index.

Maryland PFML – Amount of Leave / Job Protection

- Overview: No more than 12 weeks of benefits in an application year (i.e., the 12-month period beginning on the first day of the week in which an employee applies for benefits).
 - However, an employee may receive an <u>additional 12 weeks</u> of benefits IF the individual qualifies for both (a) parental leave (i.e., bonding with a new child) <u>and</u> (b) a medical leave due to their own serious health condition in the same application year.
- Continuous or Intermittent: Leave benefits will be available on a continuous or intermittent
 basis; however, an employee may not take intermittent leave in an increment of less than 4 hours.
- <u>Leave is Job Protected</u>: The Act requires employers to restore an employee to an equivalent position of employment upon the expiration of the leave.
 - Extends to an employee who "receives benefits" or "takes leave from work for which benefits may be paid" under the Act.
 - Employers may only terminate an employee on such a leave "for cause" and deny the
 employee's restoration rights if the denial is necessary to prevent "substantial and grievous"
 economic injury to the employer's operations <u>and</u> the employer provides the employee notice
 of the intent to deny restoration rights at the time the employer determines the economic injury
 would occur.

Maryland PFML - Private Plan Exemption

 Overall: A covered employer can also satisfy the Act's requirements through a private employer-plan that meets or exceeds the benefits and coverages provided in the Act and is approved by the Maryland Department of Labor.

Sept. 2024 FAQs:

- Private plans are **not** on the market yet
- There is a fee to apply, and it varies depending on whether ER applies for a commercial or self-insured plan.
- Once approved for a private plan, ER does <u>not</u> need to make contributions to State
- All ERs, including those with private plans, will have to submit quarterly wage and hour reports to the State
 - Reports will be required to include claims data each quarter. Employers can face consequences if they submit incorrect, late, or incomplete data.

Maryland PFML – Notice and Other Requirements

Notice:

- Employer shall provide written notice to EEs:
 - 6 months before benefits begin (i.e., 1/1/2026)
 - when the employee is hired,
 - once a year,
 - when the employee requests paid leave, and
 - when ER knows that an employee's leave request may qualify.
- Posting: No specific requirement
- Policy: No specific requirement



SCAN ME

CLE: NEW PROCESS

Please scan the QR code and complete the digital attendance verification form to receive CLE credit for this program.

You will need:

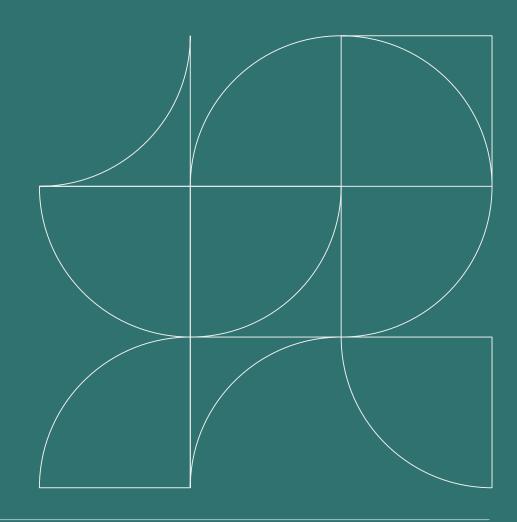
1. Title: Guidance on State and Local Paid Family Leave Laws: Part X

2. Date Viewed: December 17, 2024

3. Attendance Verification Code: SS____

State-specific CLE credit information can be found in the form.

2025 Federal and State Paid Family Leave Outlook

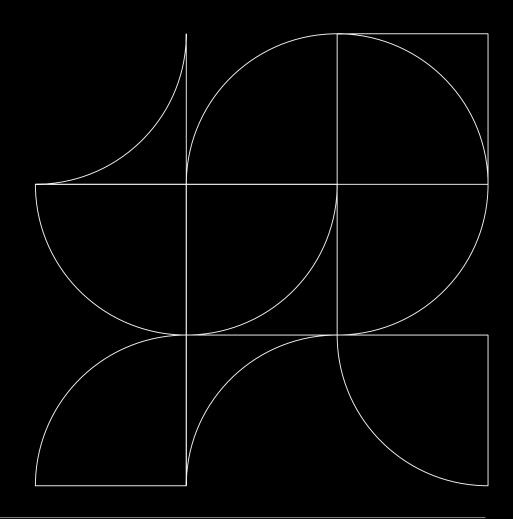


Recent PFML Activity and Potential Future Changes



- Oregon PFML: Program went "live" on 9/3/2023; Amendments 7/1/2024
- Colorado PFML: Program went "live" 1/1/2024
- Other Enacted Laws with Expected 2025 Activity: Delaware, Maine, Maryland, Minnesota (all "go live" in 2026; other activity in 2025)
- Where Next (mandatory PFML)? Michigan; Illinois;
 Vermont; New Mexico; Hawaii; Virginia
- Federal PFML Activity and Prospects:
 - <u>2023-2024</u>: House + Senate Bipartisan Working Groups
 - 2025 Outlook: I-PLAN; Trump Administration Unknowns

Seyfarth Paid Leave Resources



Seyfarth Paid Leave Resources



If you have questions about or would like assistance with the country's Paid Family Leave "Patchwork" here are some ways Seyfarth can help:

(A) <u>Premium PFL Survey</u>: Seyfarth maintains a comprehensive PFL survey breaking down the specific requirements of each existing state and local PFL law.

For more information contact: paidleave@seyfarth.com

(B) <u>Paid Leave Mailing List</u>: Seyfarth regularly publishes Legal Updates and Blog Posts on PFL and other paid leave law developments.

You can sign up here:

https://connect.seyfarth.com/9/7/landing-pages/subscription.asp

Seyfarth Paid Leave Resources



(C) <u>Webinar Series – Guidance on PFL</u>: This webinar series is a great tool for you!

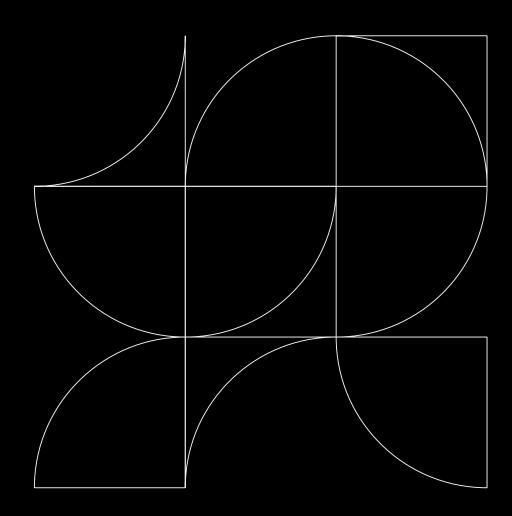
- Part 1 MA, CT, DC and WA PFL updates
- Part 2 CA, CO, NJ, NY and OR PFL updates
- Part 3 Federal Paid Leave Prospects detailed review
- Part 4 Federal + CT, DC, OR and NH PFL updates
- Part 5 CT PFML detailed review
- Part 6 DE, MD, DC, MA and CT PFL updates
- Part 7 CO, OR and WA PFL updates
- Part 8 PFL Comparisons and 2023 Mid-Year Update
- Part 9 PFL Comparisons, Challenges and Federal Outlook
- Part 10 TODAY!

Note: We also have a <u>separate</u> Webinar Series focused on Paid Sick Leave guidance.

(D) <u>"Take It or Leave It" Podcast</u>: In late 2021, Seyfarth launched a podcast focused exclusively on workplace leaves, absence management, and accommodations. Episodes streaming on Spotify, SoundCloud, and Apple Podcasts, and available on Seyfarth's website.

More info at: https://www.seyfarth.com/trends/take-it-or-leave-it-podcast.html

Questions?



thank you

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