PAID FAMILY AND MEDICAL LEAVE

PREPARING FOR THE FUTURE

Mutual of Omaha

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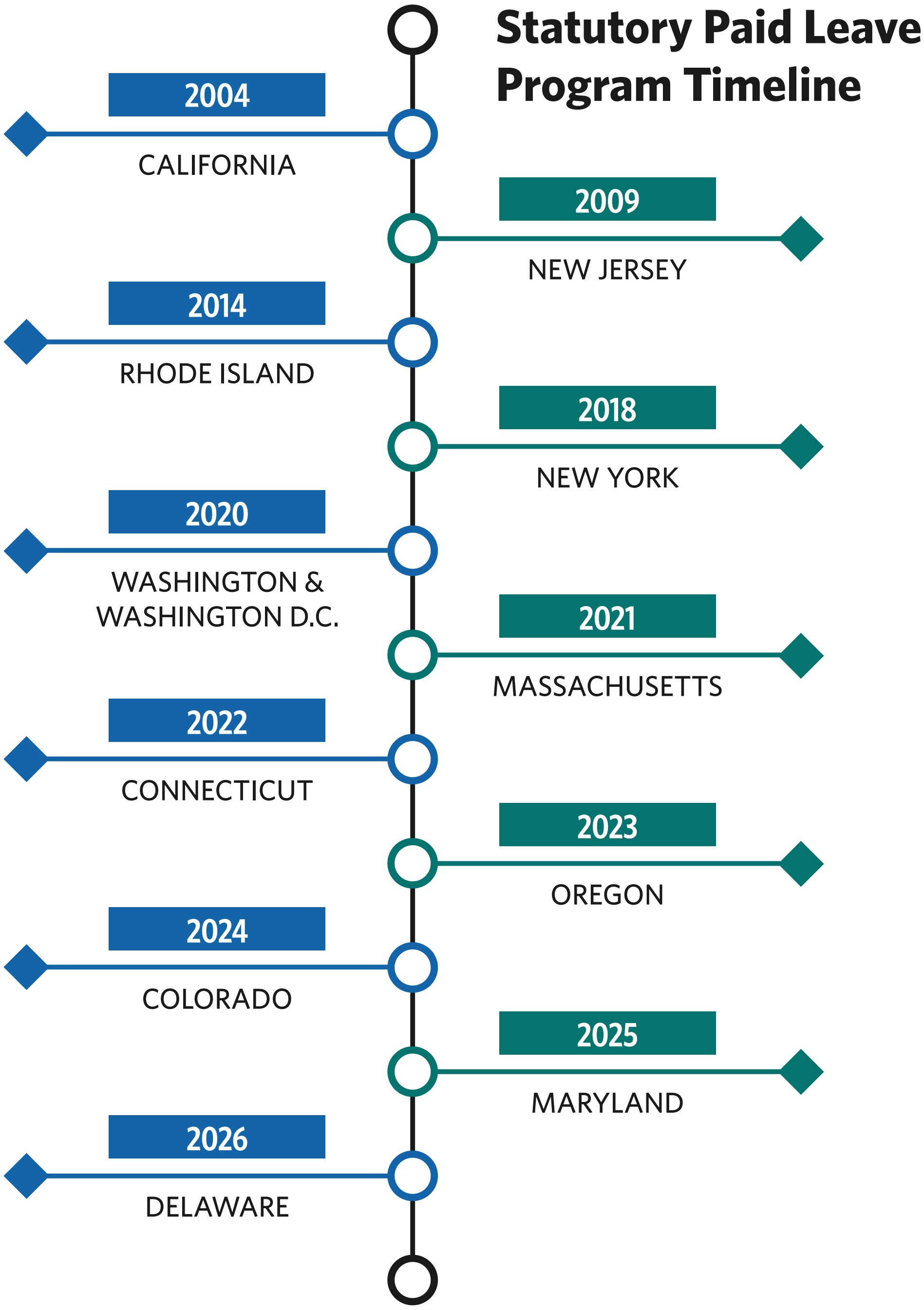
Since 1993, American workers have benefited from the Family and Medical Leave Act (FMLA) to take time off from work to address their own medical needs or the needs of their family. However, FMLA is missing one key component — *income replacement*. At the start of 2022, 64% of Americans reported living paycheck to paycheck[1], so access to paid leave is a growing concern to modern day workers.

1. Lending Club Press Report (2022)

In response to the absence of a national paid leave program, an increasing number of states have introduced legislation to offer eligible workers a state-based plan. However, the specific benefits offered can vary from state to state. Recent years have seen an increase in paid family and medical leave (PFML) activity. As of 2022, seven states and the District of Columbia have active statutory programs[2], and four additional states[3] are set to pay benefits in coming years. This leaves employers in a unique situation to consider impacts to workers universally, especially if they are operating across multiple states or employ a remote workforce.



2. CA, NJ, RI, NY, WA, DC, MA, CT
3. OR, CO, MD, DE

Here's a look ahead on what to expect from the PFML landscape.

Oregon

In 2019, Oregon became the ninth state to enact a mandatory paid leave benefit. The Paid Family and Medical Leave Insurance (PFMLI) program will begin contributions on January 1, 2023, with benefits going live September 3, 2023.

Like many other state-paid leave programs, Oregon will offer leave benefits to bond with a new child after birth, adoption, or foster care placement, as well as for an employee's own medical condition or to care for a family member with a serious health condition. Unique to Oregon compared to some other active programs[4], the PFMLI benefit will also offer safe leave related to domestic violence, sexual assault, or stalking. Absent from the Oregon program in comparison to other states is military exigency leave; however, this leave reason is included in the unpaid Oregon Family Leave Act (OFLA).

Other components of the Oregon PFMLI program include:

- 12 weeks of paid leave with an additional 2 weeks of medical leave available for pregnancy-related complications
- Additional 4 weeks of unpaid leave
- Up to 100% wage replacement for earnings equal to or less than 65% of the state average weekly wage + 50% replacement for earnings above 65% of the state average weekly wage
- No unpaid waiting period prior to benefits being payable

Employers may opt out of the state program in favor of a private plan that offers equal or greater benefits.

4. Safe leave is included in the OR, CO, CT, NJ programs

Colorado

On the heels of the Oregon PFMLI program, the Colorado Family and Medical Leave Insurance (FAMLI) program will begin contributions on January 1, 2023, with benefits payable as of January 1, 2024. This program will offer benefits to eligible employees to bond with a child after birth, adoption, or foster care placement, for an employee's own medical condition, and to care for a family member with a serious health condition. Similar to Oregon, Colorado will also offer safe leave related to domestic violence, sexual assault, or stalking. Contrary to the Oregon PFMLI program, FAMLI benefits include leave for military exigency reasons.

Other components of the Colorado FAMLI program include:

- 12 weeks of paid leave with an additional 4 weeks of medical leave available for pregnancy-related complications (up to 16 weeks total)
- Up to 90% wage replacement for earnings equal to or less than 50% of the state average weekly wage + 50% replacement for earnings above 50% of the state average weekly wage
- No unpaid waiting period prior to benefits being payable

Employers may opt out of the state program in favor of a private plan that offers equal or greater benefits.

Maryland

Maryland recently[5] joined the list of states mandating paid leave. The Maryland Family and Medical Leave Insurance Program (MD PFML) will begin contributions on October 1, 2023, and benefits will start January 1, 2025. The program will allow leave to be taken for bonding with a new child, caring for a family member, caring for an injured service member, an employee's own medical condition, and for military exigencies.

Other components of the Maryland PFML program include:

- 12 weeks of paid leave in a benefit year
- An additional 12 weeks of leave if the employee takes leave for both bonding and their own medical needs (maximum of 24 weeks)
- Up to 90% wage replacement for earnings equal to or less than 65% of the state average weekly wage + 50% wage replacement for earnings above 65% of the state average weekly wage

Employers may opt out of the state program in favor of a private plan that offers equal or greater benefits.

5. Maryland's program passed in April 2022

Delaware

In May 2022, Delaware joined the growing number of states to pass a paid leave program. The Healthy Delaware Families Act (DE PFML) will begin contributions on January 1, 2025 and benefits on January 1, 2026. The Delaware program follows the federal FMLA more closely than some other states, with qualifying events including an employee's own medical needs, parental leave for bonding, caring for a sick family member, and qualifying military exigencies.

Other components of the Delaware program include:

- 12 weeks of paid leave in a benefit year for parental leave
- 6 weeks in a 24-month period for family/medical leave
- Up to 80% wage replacement
- Shared bonding entitlement if two parents work for the same employer

Employers may opt out of the state program in favor of a private plan that offers equal of greater benefits.

What Employers Need to Know

Navigating the evolving world of paid leave can be difficult, especially for employers with employees in multiple states. Here are a few tips to help maneuver the many facets of the paid leave arena:

Compile your resources. Take time to familiarize yourself with the laws impacting your employees and gather as much information as possible. Many state websites contain robust materials and FAQs, and Mutual of Omaha as your insurance carrier provides our customers with additional educational materials. There may also be webinars or other educational forums that can help Human Resources teams stay up to date on changes.

It is also important to maintain current benefit guides as a resource for employees. Clearly outlining the policies can help employees understand their benefits and responsibilities. Be sure that front line managers are also equipped with adequate information to answer basic questions and engage your insurance carrier as needed.

Program variances from state to state can be challenging. PFML programs vary from state to state which can cause challenges to employers who operate across multiple states. If this is the case, be aware of how benefits may fluctuate: allotted duration, eligibility requirements, contribution responsibilities, unpaid waiting periods, benefit calculations and maximum amounts. Be prepared to address concerns from employees in states that do not have mandatory PFML states who would not be eligible for the same benefits as coworkers in states with an active program. If you are considering ways to fill these equity gaps, short-term disability programs may be a solution.

Hybrid or remote work can also be a factor to consider. Many states[6] look to an employee's earnings for program eligibility, so it is important to correctly identify the employee's work state for unemployment and tax reporting purposes.

Coordinate any statutory programs with other benefits. PFML programs are often designed to run concurrently with other benefits, such as FMLA or other programs, so that employees receive the appropriate amount of time for a qualifying event. There may be situations in which employees qualify for some benefits and not others; however, in cases where multiple benefits may apply, it is best to understand how they will coordinate and what each offers to the employee. FMLA is unpaid, but does offer job protection, whereas disability programs offer income replacement but not job protection. Most state PFML benefits offer a combination of both job protection and income replacement, but payments under these plans could impact disability benefits as many disability policies offset for any state-based programs.

If you have any internal leave policies, it is important to consider those as well. Since most states only replace a percentage of the employee's wages, internal leave policies may be used to supplement benefits. However, not all states allow employees to receive additional income while on leave or will offset if additional income is received above 100% of the employee's pre-disability wages. Coordinate benefits as much as possible and communicate in order for employees to receive the expected benefits for both time and payment.

6. MA, OR, CO, CT, CA, NJ, RI

Conclusion

Based on the flurry of recent activity in the paid leave environment, there is a clear trend toward more states initiating programs to benefit workers. Traversing the evolving leave landscape can be difficult, especially for employers with a multi-state workforce. Mutual of Omaha is dedicated to keeping customers informed of the impact of state paid leave on employers and employees.

Appendix

In-force State Paid Leave snapshot:

State	Covered Reasons	Weeks of Leave	Benefit Calculation	Maximum Benefit (2022)
California	• Own medical condition • Care for a family member's medical condition • Bonding • Military exigency	• 52 weeks medical • 8 weeks family	Up to 60% replacement for earnings 1/3 or more of the state average weekly wage or 70% replacement for earnings less than 1/3 of the state average weekly wage	$1,540
Connecticut	• Own medical condition • Care for a family member's medical condition • Bonding • Military exigency • Safe leave	• 12 weeks • 2 additional weeks for pregnancy/ childbirth complications	Up to 95% replacement for earnings that are less than or equal to the state minimum wage multiplied by 40 + 60% replacement for earnings above the state minimum wage multiplied by 40	$780 (as of 1/1/22) $840 (as of 7/1/22)
District of Columbia	• Own medical condition • Care for a family member's medical condition • Bonding	• 6 weeks medical • 6 weeks family • 8 weeks bonding • Maximum of 8 weeks combined • 2 additional weeks for pregnancy/ childbirth complications	Up to 90% replacement for earnings up to 150% of the DC minimum wage multiplied by 40 + 50% replacement for earnings above 150% of the DC minimum wage multiplied by 40	$1,009

State	Covered Reasons	Weeks of Leave	Benefit Calculation	Maximum Benefit (2022)
Massachusetts	• Own medical condition • Care for a family member's medical condition • Bonding • Military exigency • Military care giver	• 20 weeks medical • 12 weeks family • Maximum of 26 weeks	Up to 80% wage replacement for earnings equal to or less than 50% of the state average weekly wage + 50% wage replacement for earnings above 50% of the state average weekly wage	$1,084.31
New Jersey	• Own medical condition • Care for a family member's medical condition • Bonding • Safe leave	• 26 weeks of medical • 12 weeks of family	85% replacement of an individual's average weekly wage capped at 70% of the state average weekly wage	$993
New York	• Own medical condition • Care for a family member's medical condition • Bonding • Military exigency	• 26 weeks medical • 12 weeks family • Maximum of 26 weeks	Up to 67% replacement of an individual's earnings capped at 67% of the state average weekly wage (PFL) Up to 50% of the average weekly wage for the previous 8 weeks (DBL)	$1,068.36 (PFL) $170 (DBL)

State	Covered Reasons	Weeks of Leave	Benefit Calculation	Maximum Benefit (2022)
Rhode Island	• Own medical condition • Care for a family member's medical condition • Bonding	• 30 weeks medical • 4 weeks family • Maximum of 30 weeks	Up to 60% replacement	$978
Washington	• Own medical condition • Care for a family member's medical condition • Bonding • Military exigency	• 12 weeks medical • 12 weeks family • Maximum of 16 weeks • 2 additional weeks for pregnancy/ childbirth complications	Up to 90% replacement for earnings up to 50% of the state average weekly wage + 50% replacement for earnings above 50% of the state average weekly wage	$1,327

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