PAID FAMILY AND MEDICAL LEAVE

PAID LEAVE IS CHANGING: ARE YOU READY?

Mutual of Omaha

Table of Contents

The paid leave landscape is everchanging, and Paid Family Medical Leave (PFML) is in the spotlight for many employers and eligible workers. PFML allows employees to take paid time off to attend to specific family and medical needs when they arise. Staying up to date with the latest state laws and regulations while ensuring company policies are compliant and serve employees' needs can be a challenge for employers, especially as new state PFML programs launch. Mutual of Omaha can help employers by providing answers and support to plan resources and provide education as new state leave laws come in to play.

The State(s) of Paid Leave

Statutory PFML programs are on the rise. In 2018, New York became the fourth state[1] to implement a paid family leave program. Five more states[2] and the District of Columbia quickly followed. With ten mandated PFML programs now paying benefits in 2024, growth continues to be on the horizon as other states continue to adopt similar programs. Looking forward, 2026 is poised to be a landmark year for the PFML frontier as four additional states[3] will launch programs.

The Road Ahead

	Maryland	Delaware	Minnesota	Maine
Contributions begin	10/1/24	1/1/25	1/1/26	1/1/25
Benefits begin	1/1/26	1/1/26	1/1/26	5/1/26
Qualifying reasons	Employee's own serious health condition Child bonding Family care Military exigency	Employee's own serious health condition Child bonding Family care Military exigency	Employee's own serious health condition Child bonding Family care Military exigency Safe Leave	Employee's own serious health condition Child bonding Family care Military exigency Safe Leave
Benefit amount	90% wage replacement up to 65% of the SAWW* + 50% wage replacement for wages above 65% of the SAWW $1,000 maximum benefit per week $50 minimum benefit per week	80% wage replacement rounded to the nearest dollar $900 maximum benefit per week $100 minimum benefit per week	90% wage replacement up to 50% of the SAWW + 66% wage replacement for wages between 50-100% of the SAWW + 55% wage replacement for wages above 100% of the SAWW	90% wage replacement for wages up to 50% of the SAWW + 66% wage replacement for wage above 50% of the SAWW
Duration	Up to 12 weeks An additional 12 weeks if the employee takes leave for their own serious health condition and bonding in the same benefit year	10-24 employees: Up to 12 weeks of parental leave per benefit year 25+ employees: Up to 12 weeks of parental leave per benefit year and up to 6 weeks of combined family or medical leave in a 24-month period	Up to 12 weeks for an employee's own serious health condition Up to 12 weeks for bonding, safe, or family leave Capped at a maximum of 20 weeks combined leave	Up to 12 weeks maximum for any combination of leave reasons

*SAWW = State average weekly wage

[1] California, New Jersey, and Rhode Island
[2] Washington (2020), Massachusetts (2021), Connecticut (2022), Oregon (2023), Colorado (2024)
[3] Maryland, Delaware, Minnesota, Maine

In addition to the rise of mandatory state PFML programs, there has been a shift in recent years toward voluntary PFML legislation. New Hampshire[4] and Vermont[5] both launched paid leave programs for state employees with the option for private plan employers to participate in the benefits on a voluntary basis.

The NCOIL Paid Family Leave Insurance Model Act is also being adopted at a rapid rate. This model allows insurance companies licensed to issue disability insurance to offer paid family leave benefits. Under the model, family leave can be taken for birth/bonding, caring for a family member with a serious health condition, and qualifying exigency leave. These are not mandatory programs, but seven states[6] have currently passed laws allowing for paid leave insurance policies and others are introducing this legislation.

As both mandatory and voluntary paid leave laws continue to expand, employers look to prepare for the road ahead.

[4]Benefits began January 1, 2023
[5]State program benefits began July 1, 2023, with optional coverage for private sector employers as of July 1, 2024
[6]Virgina, New Hampshire, Arkansas, Tennessee, Alabama, Florida, and Texas

Gearing Up For Changes

Navigating PFML programs can be challenging for any employer. Below are a few key areas to watch for as new statutory programs bring changes.

Administrative Challenges

Coordination of Benefits

When new PFML benefits go into effect, many employers need to review and revisit their existing leave policies. It is essential to understand how the new PFML requirements coordinate with other benefits at a comprehensive level. Additionally, employers need to learn how benefits such as short-term disability, FMLA, and internal company paid leaves will integrate with statutory programs.

Coordination between state PFML programs and existing benefits involves multiple layers. State laws are occasionally silent regarding offsetting, stacking leave programs, or capping benefits at 100% of pre-disability salary. Other states are more specific in addressing the coordination. For example, Colorado's FAMLI Act specifically states that employees are not able to receive both wage replacement benefits and employer-provided paid leave for the same time period. The exception is when the employer-provided benefits supplement the PFML pay to make the employee whole. The Paid Leave Oregon program, on the other hand, does not address any coordination of its state benefits with other employer-provided programs.

As new state PFML benefits become available to employees, employers should review their existing policies to ensure that employees are receiving the intended amount of paid leave time and wage replacement.

Tips for employers:

- **Review offset language:** Many fully insured short-term disability policies contain language that offsets for statutory benefits. Check your disability policy to ensure that the state benefit will be the primary payor.
- **Coordinate internal policies:** If you have an existing paid sick leave or paid parental leave policy, you may need to update the policy to avoid conflict with new state PFML benefits.
- **Educate employees:** Ensure employees understand the benefits available to them, when those benefits can be used, and when offsets might occur. Having the necessary information up front helps employees utilize their leave benefits effectively.

Remote and Hybrid Workers

The workplace is changing, and employers' workforces look different today than just a few years ago. As more businesses are moving to remote environments and employing workers across the country, they could be faced with an unexpected side effect: compliance with statutory PFML laws.

Similar to on-site employees, remote workers are entitled to PFML benefits if they work in the PFML state and meet certain eligibility requirements. One key challenge with PFML for remote workers is that coverage rules vary depending on the applicable laws and telecommuting arrangement. This can depend on factors such as where the company is headquartered, in which state the employee is working, and from where the work is being directed.

If an employee is 100% remote, they are likely covered by the state PFML program where they both live and work. In a hybrid situation, factors to consider will be whether the states where the employee performs work duties have a PFML program, how often the employee works in each state, and each state's specific eligibility requirements. Some states follow unemployment rules, so employers can also consider where employees are designated for unemployment purposes to determine if and when PFML laws might apply. It is recommended that employers consult their internal counsel for laws specific to their workforce.

Employers may not be located in a state with a PFML program, but their workers could be. Staying up to date on new program timelines and important deadlines is key to compliance with new state PFML requirements. As states pass PFML legislation or employees relocate, employers must review any impacts and act accordingly.

Tips for employers:

- **Create clear policies:** Establish clear, comprehensive policies around PFML for remote workers. Be sure to communicate these policies to your remote employees regularly and clearly.
- **Follow notice requirements:** Ensure your on-site and remote employees understand their rights and responsibilities and feel supported during their leave.

Implementation Timelines

State PFML programs are not created overnight. It takes years of legislative rulemaking, prefunding, and planning to roll out these benefits. Employers are challenged to plan ahead while still being at the mercy of the state to provide important guidance and rules for how new PFML programs will work.

Even though benefits might not be payable for years after a state PFML program passes, employers are faced with making decisions long before they file the first claim. Most states[7] collect premium contributions up to a year or more ahead of the benefit effective date in order to prefund the state PFML program. Even though employees cannot use benefits, employers are required to collect and remit these PFML contributions in advance, which means they need to identify impacted employees and set up payroll systems early to accommodate.

State timelines can also change. Oregon was initially set to launch benefits in January 2023, but with the COVID-19 pandemic and limited resources benefits were delayed until September. Similarly, Maryland's law passed with a timeline for contributions starting October 1, 2023, and benefits beginning January 1, 2025; however, the state subsequently pushed back its PFML timeline by a year. Staying abreast of these changes is essential as employers prepare to meet their compliance responsibilities and educate their employees about available benefits.

Employers may also seek a private plan alternative in lieu of utilizing the state for PFML claim administration. In these cases, employers must act early to obtain quotes, review private plan requirements, and make the important decision on which plan is right for them. States also set rules regarding the timeline and process for applying for a private plan option, which can lead to additional hurdles for employers to navigate.

Tips for employers:

- **Flag key dates:** States set dates for when contributions begin, when private plan opt-out applications are due, and when benefits begin. Knowing these dates and preparing required notices and payroll deductions are key for successfully complying with new state PFML laws.
- **Explore your options:** Some employers may benefit from using a private plan option, either self-administered or through an approved insurance carrier. Review the costs and administrative requirements ahead of time to determine which option is best.

[7] Minnesota is not prefunding its program

Private Plan Options

Administering PFML programs is daunting and requires expertise and resources. While few states[8] do not allow private plan options, others permit employers to use a private insurance carrier to administer the state PFML benefits or to self-administer. Private carriers specialize in PFML and are prepared to handle claims and administer programs in alignment with state regulations.

Considerations for employers when contemplating private plan options might be cost, administrative burdens, coordination with other benefit programs, and customer service. Benefits of choosing a private plan include having a single claim administrator for short-term disability and PFML claims, faster claim adjudication, and added resources for customer service and compliance support.

In general, private plans must offer equal to or better benefits than the state program, cover all eligible employees, and not cost employees more than if their employer elected to provide benefits under the state program. There may also be a state application fee[9] to employers seeking a private plan alternative.

Conclusion

With the ever-changing landscape of statutory PFML, many employers don't feel equipped to stay on top of all of the requirements, or may not even be aware of the changes ahead. Mutual of Omaha is dedicated to keeping customers informed of the impacts PFML has on employers and employees and is available to help them in navigating the complexities of these new programs.

[8]Rhode Island and Washington D.C.
[9]Washington - $250, Oregon - $250, Colorado - $500

Mutual of Omaha