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# MAINE'S PAID FAMILY AND MEDICAL LEAVE LAW

## Agenda:

- General Overview
- Key Dates
- Rulemaking and Gathering Feedback
- Contributions to the PFML Fund
- Reasons for Leave
- Types of Leave
- Requirements and Eligibility
- Information for Employers
- Benefit Calculations: The Tiers
- Examples
- Questions

# GENERAL OVERVIEW

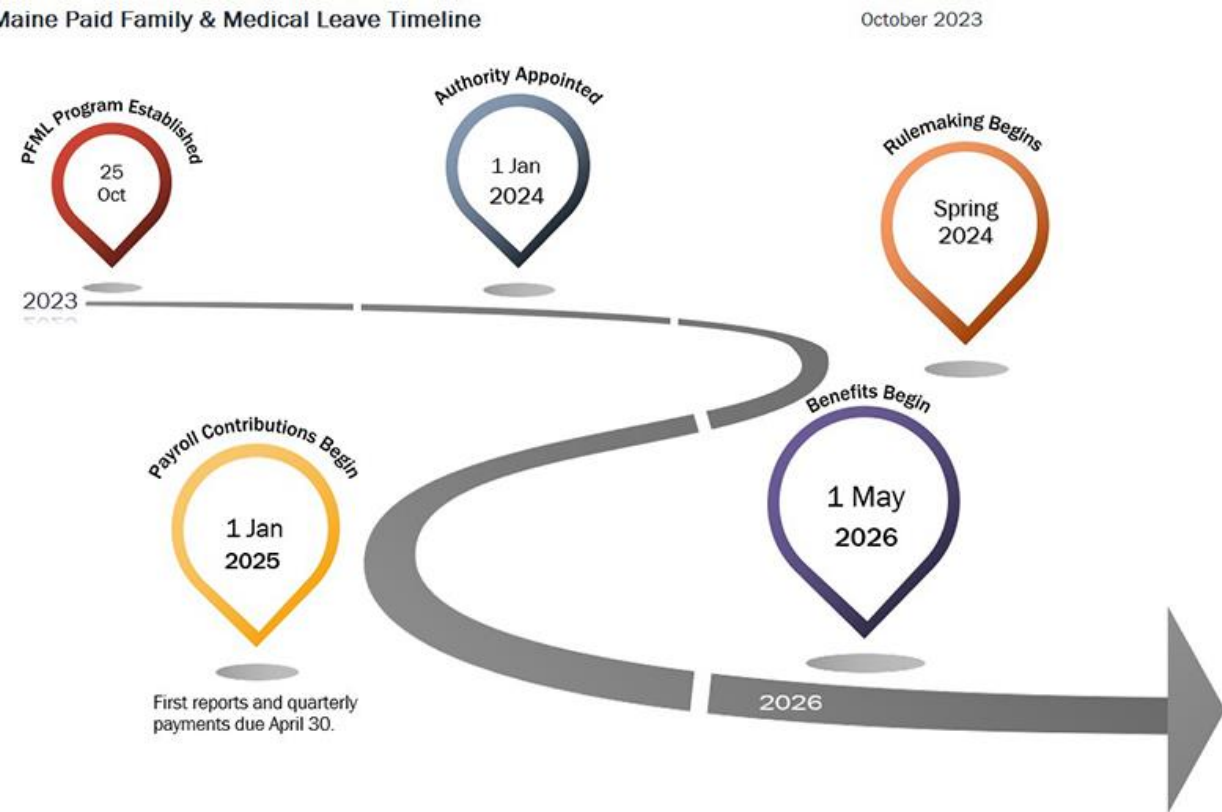
- July 2023 - Governor Janet Mills signs state budget into law that included the creation of the Paid Family and Medical Leave (PFML) law.
- Maine's PFML law will provide up to 12 weeks of paid leave per benefit year for family, military, medical or safe leave.
- PFML law will apply to all employees and employers in the State of Maine. Federal government and its employees are exempted from the law.



# KEY DATES

- October 25, 2023: PFML law takes effect.
- January 1, 2024: PFML Authority appointed.
- January 1, 2025: Rules to implement the PFML program must be adopted by the Maine Department of Labor.
- January 1, 2025: Payroll withholdings for the Paid Family Medical Leave program will begin.
- May 1, 2026: Benefits become available.

Maine Paid Family & Medical Leave Timeline



# RULEMAKING PROCESS AND GATHERING FEEDBACK

The rulemaking process for PFML will be done in accordance with the Maine Administrative Procedures Act (MAPA):

Target date to begin rulemaking process: **Spring 2024**

- Informal public listening sessions will be held across the state to solicit general feedback and questions from interested parties.
- Initial rules drafted and released for public comment. Opportunities for public comment will be provided along with a public hearing.
- Department considers and responds to public comments.
- Department publishes rules to implement the program by January 2025.

# CONTRIBUTIONS TO PFML FUND

- The contribution per employee is 1% of an individual's wage rate, split between the employee and employer.
- Employers with fewer than 15 employees are exempted from the employer share of contributions but they must still withhold 50% of the premium from their employees wages. Self-employed individuals who opt-in are only responsible for the 50% premium rate.

## Example of contribution breakdown for employers/employees:

- **For employers with 15 or more employees**  
For an employer with an annual payroll of \$1 million a year, the annual premium would be \$10,000 ( $\$1\text{M} \times 1\%$ ). The employer would contribute \$5,000 per year (50%) and the employees, combined, would contribute \$5,000 per year (50%).
- **For employers with less than 15 employees**  
For an employer with an annual payroll of \$250,000, the annual premium would be \$1,250 ( $\$250\text{K} \times 0.5\%$ ). The employer may deduct the entire amount from the employees' wages and would be responsible for remitting the premium.

# REASONS FOR LEAVE

PFML reasons for leave mirror current state and federal law. Reasons for leave include:

- **Family leave:** To care for a new child (birth, adoption, fostering)
- **Medical leave:** To care for one's own medical needs, to care for family with serious health condition
- **Safe leave:** For victims of domestic abuse
- **Military deployment:** For emergencies related to military deployment (qualifying exigency)

# TYPES OF LEAVE

- **Continuous leave:** An employee is taking leave that is ongoing for days or weeks at a time. (Ex. Employee is taking 6 weeks off to bond with newborn).
- **Intermittent leave:** An employee is still working but will need to take time off in increments (Ex. An employee undergoing chemotherapy works in the morning, has chemotherapy treatment in the afternoon, and will need a day to recover).
- **Reduced leave:** An employee is still working but is on a reduced schedule working certain number days of the week while on leave for the rest. (Ex. Employee normally works Monday-Friday but is now only working Monday, Wednesday and Thursday for the next 8 weeks to care for a family member with a serious medical condition).

# REQUIREMENTS AND ELIGIBILITY

- Absent an emergency, illness or necessity to take leave, an employee must give “reasonable notice” to the employer of their intent to take leave.
- Proof must be provided that the individual qualifies under one of the approved reasons for leave.
- The individual must have earned at least six times the state average weekly wage (SAWW) over the past four quarters before accessing the benefit. (In 2023, \$6,216)
- The scheduling of an employee taking leave must not cause “undue hardship” on the employer.





# IMPORTANT INFORMATION FOR EMPLOYERS

- Individuals who have not worked for an employer for at least 120 days are not guaranteed job protections when taking leave. (But employer may face retaliation claim from employee who takes leave during initial 120 days of employment and is not returned to same or similar job.)
- An employer may apply for a private plan exemption showing what they offer is "substantially equivalent" to the state plan. They may opt out and administer their own plan as long as their plan meets the obligations required under the PFML law (rights, protections and benefits).
- The Department holds the right to withdraw approval of a private plan if any of the terms and conditions are violated.
- If an employer fails to provide notice about the Maine PFML program and the employee's right to take it if necessary, the employee's obligation to inform the employer they are taking leave is waived.

# BENEFIT CALCULATIONS: THE TIERS

- Benefits are determined by a tiered system based on the state average weekly wage (SAWW):
  - The portion of the covered individual's average weekly wage that is equal to or less than 50% of the SAWW is replaced at 90%
  - The portion of the covered individual's average weekly wage that is more than 50% of the SAWW is replaced at 66%
  - Benefits are capped at the SAWW (\$1,103 in 2022)

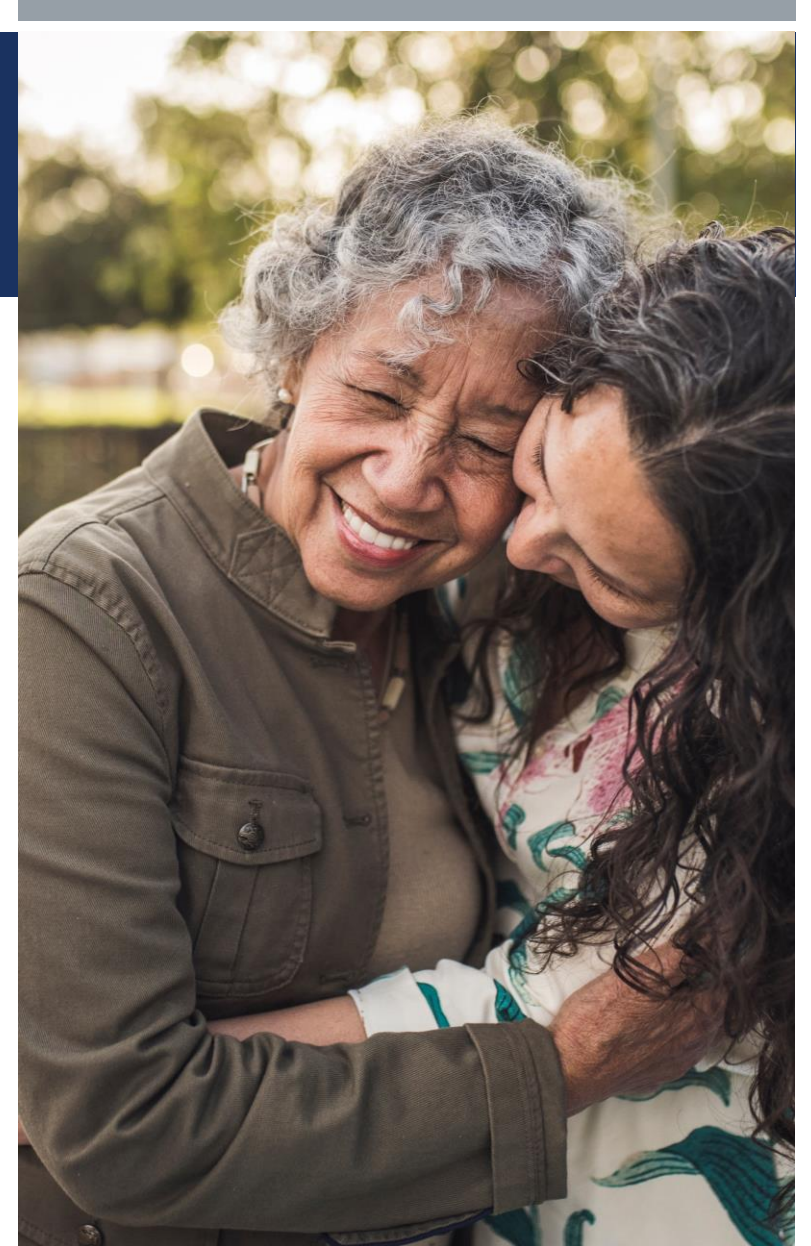
# HOW BENEFITS WILL BE CALCULATED

## EXAMPLE I: MORGAN (ESTIMATE)

- Morgan is employed as a full-time accountant and earns \$57,000 a year.
- Morgan needs to take 8 weeks off to care for her mother who has a serious medical condition.

### Calculation of Morgan's Weekly Benefit (Estimate):

- Morgan's average weekly wage is \$1,096 (\$57,000 divided by 52 weeks).
- Morgan's weekly deduction from paycheck to pay into PFML fund is \$5.48 per week. (\$285 a year in contributions divided by 52 weeks).
- Assuming Morgan's employer has less than 15 employees, the employer is exempt from paying an employer contribution but must submit Morgan's deductions to the PFML Fund.
- Tier 1: 90% wage replacement on earnings up to 50% of SAWW:  $\$1,103 \times 50\% = \$552$  (rounded).  
90% of \$552 = \$496
- Tier 2: 66% wage replacement on earnings exceeding 50% of the SAWW
  - Morgan's remaining earnings are \$544 ( $\$1,096 - \$552$ ).
  - 66% of \$544 = \$359
- Morgan's weekly benefit for the next 8 weeks = \$855 (\$496 plus \$359). This is less than the SAWW, so there is no reduction.





## HOW BENEFITS WILL BE CALCULATED EXAMPLE 2: MICHAEL (ESTIMATE)

- Michael is employed full-time as a custodian and earns \$29,432 a year. (The 2024 state minimum wage of \$14.15 per hour)
- Michael needs to take 6 weeks off to bond with his newborn daughter.

### Calculation of Michael's Weekly Benefit (Estimate):

- Michael's average weekly wage is \$566 (\$29,432 divided by 52 weeks).
- Michael's weekly deduction from paycheck to pay into PFML fund is \$2.83 per week. (\$147 a year in contributions divided by 52 weeks).
- Assuming Michael's employer has 15 or more employees, the employer contribution is also \$2.83 a week. (\$147 a year in contributions divided by 52 weeks).
- Tier 1: 90% wage replacement on earnings up to 50% of SAWW:  $\$1,103 \times 50\% = \$552$  (rounded).  
90% of \$552 = \$496
- Tier 2: 66% wage replacement on earnings exceeding 50% of the SAWW
  - Michael's remaining earnings are \$14 (\$566 - \$552).
  - 66% of \$14 = \$9
- Michael's total weekly benefit for the next 6 weeks = \$505 (\$496 plus \$9). This is less than the SAWW, so there is no reduction.

# HOW BENEFITS WILL BE CALCULATED

## EXAMPLE 3: JO (ESTIMATE)

- Jo is employed full-time as a mechanic and earns \$78,000 a year.
- Jo needs to take 4 weeks off to recover from surgery.

### Calculation of Jo's Weekly Benefit (Estimate):

- Jo's average weekly wage is \$1,500 (\$78,000 divided by 52 weeks).
- Jo's weekly deduction from paycheck to pay into PFML fund is \$7.50 per week.
- Assuming Jo's employer has 15 or more employees, the employer contribution is also \$7.50 a week.
- Tier 1: 90% wage replacement on earnings up to 50% of SAWW:  $\$1,103 \times 50\% = \$552$  (rounded). 90% of \$552 = \$496
- Tier 2: 66% wage replacement on earnings exceeding 50% of the SAWW
  - Jo's remaining earnings are \$948 ( $\$1,500 - \$552$ ).
  - 66% of \$948 = \$626
- Jo's total weekly benefit for the next 6 weeks = \$1,122 ( $\$496 + \$626$ ). This exceeds the SAWW, so Jo's benefit is capped at \$1,103.





# Questions


# HOW TO PREPARE FOR IMPLEMENTATION

- *Read the text of the MPFML ; follow DOL developments.*
- Use DOL rule-making process effectively. Raise questions and comments early and often.
- Know what relevant laws, policies, CBA provisions apply now.
- Resolve any ambiguity or dispute about application of current leave benefits in advance of implementation of MPFML.
- Consider changes in current leave provisions. Buy back excessive sick leave accrual? Mutual interest with union?
- In negotiating language, beware unintended consequence.



- Questions





**Base period.** “Base period” means the first 4 calendar quarters immediately preceding the first day of an individual’s benefit year.

**Example:**

**Benefit year begins: 4-15-2024**


**Base period: Q2, Q3, Q4 2023; Q1 2024**

**Benefit year.** “Benefit year” means the 12-month period beginning on the first day of the calendar week immediately preceding the date on which family leave benefits or medical leave benefits commence.

**Example:**


**Employee leave: 4-18-2024**

**Benefit year begins: 4-15-2024**




**Employee.** “Employee means a person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment in the State but does not include an independent contractor.

- Substitutes?
- Per diem fire fighters?
- On call?
- Seasonal?
- Election Workers?




As designated by the covered individual in accordance with rules, 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.

- Question: How is this going to be verified? Does this mean that an employee can claim their best friend as being like family? This opens it up to saying you have a significant relation with anyone.




**Serious health condition.** “Serious health condition” means an illness, injury, impairment, pregnancy, recovery from childbirth or physical, mental, or psychological condition that involves inpatient care in a hospital, hospice or residential medical care center or continuing treatment by a health care provider.

- **Question:**
- **Example – anxiety – if treated by health care provider (monitoring of ongoing medications) would be considered a “serious health condition”?**




**Wages.** “Wages” includes, but is not limited to, salary, wages, tips, commissions, and other compensation as determined by the rule.

- Stipends?
- On-call pay?
- Insurance buy-out?



To bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;

- Any time during those 12 months? Intermittent? 1 week per month?



**Medical leave eligibility.** A covered individual with a serious health condition that makes the covered individual unable to work is eligible for medical leave.

- Can an employer require light duty, if available?

1. **Maximum leave requirements.** The following requirements apply.

- A. A covered individual is not eligible for more than 12 weeks of family leave in a benefit year.
- B. A covered individual is not eligible for medical leave for more than 12 weeks in a benefit year
- C. A covered individual may not take more than 12 weeks, in the aggregate, of family leave and medical leave under this subchapter in the same benefit year.


This section does not prevent a covered individual from taking medical leave that is immediately followed by family leave when the medical leave is taken during pregnancy or recovery from childbirth and is supported by documentation from a health care provider.


- Does this mean someone CAN get more than 12 weeks?
- Is this for all types of medical leave or just pregnancy medical leave?





1. **Intermittent leave requirements.** Leave permitted by this section may be taken by an employee intermittently in increments of not less than 8 hours or on a reduced leave schedule otherwise agreed to by the employee and the employer. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection may not result in a reduction in the total amount of leave to which the covered individual is entitled under this subchapter.



- Does the employer have to allow for intermittent leave due to a birth of a child? This is up to the employer under current FMLA law.
- In this section does this mean that if an employer allows (as it must under Federal FMLA) for an employee to take 4 hours of leave every work day - 4 hours a day for 120- days – 480 hours of FMLA leave, but the State law only allows 8 hours per day to be counted that at the end of the 120 days of Federal FMLA they could still take 12 weeks or 60 8-hour days as allowed under this state law?

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1. **Weekly benefit.** While on family leave or medical leave pursuant to this subchapter, a covered individual receives a weekly benefit amount as provided in section 850-C.
    - How do employees pay their portion of benefits if we can't require them to use accruals? Do they have to pay directly? Who manages that?

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1. **Notice to employer.** Absent an emergency, illness, or other sudden necessity for taking leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use leave under this subchapter. Use of such leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer. If an employer fails to provide notice as required under section 850-I, the employee's obligation to provide notice under this subsection is waived.
    - What happens if more than 1 person needs leave at the same time which would essentially shut down a whole department creating an undue hardship?


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1. Right to benefits; accrual. The taking of family leave or medical leave may not affect an employee's right to accrue vacation time, sick time, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs. During the duration of an employee's family leave or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of leave.
- Currently, some employer leave policies do not allow for accruals while out on unpaid leave. Since this is paid leave, employers are now required to accrue?

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- A. Require a public employer, as defined in section 962, subsection 7, or employee of a public employer that is a party to a collective bargaining agreement in existence on the **effective date of this subchapter** to apply any of the rights and responsibilities under this subchapter until the existing collective bargaining agreement expires.
- Employers are not allowed to require employees to use their accrued sick, vacation, or personal time?
  - If an existing CBA doesn't expire until 7-1-2026, does this mean those employees are not eligible for paid family and medical leave benefits until it expires? Do they still utilize Maine FML or Federal FML?
  - When is the effective date of this subchapter?




**Waiting period for medical leave.** Medical leave benefits are not payable during the first 7 calendar days of the leave, except that an employee may use accrued sick or vacation pay, or other paid leave provided under a collective bargaining agreement or employer policy during the first 7 calendar days of the leave.

- Unlike WC, the 7-day waiting period does not get picked up, if out for more than 14 days, correct?
- Employers can't require employees to use accrued sick leave for the waiting period?



Reduction of benefit. The weekly benefit amount must be reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on family leave or medical leave:


- A. A government program or law, including, but not limited to, unemployment insurance under this Title and workers' compensation under Title 39-A other than for compensation received under Title 39-A, section 213 for an injury that occurred prior to the family leave or medical leave claim, or under other state or federal temporary or permanent disability benefits law; or
- B. A permanent disability policy or program of an employer
  - How does this affect short term disability, sick leave banks?
  - WC is tax free money – how does this offset work?



**Notification of employer.** The administrator shall notify the relevant employer within 5 business days of a claim being filed pursuant to this subchapter.


- Again, if more than 1 employee is applying for leave at the same time in the same department creating an undue hardship, how is that handled?






**Ineligibility.** A covered individual is not eligible to receive family leave benefits or medical leave benefits if the administrator finds, through a process established by rule, that the covered individual, for the purpose of obtaining these benefits, has willfully made a false statement or misrepresentation regarding a material fact, or has willfully withheld a material fact concerning the facts required to be certified pursuant to this section. The department shall establish a process by rule for the determination of eligibility under this section, including a grievance process for a covered individual determined to be ineligible.

- How will the administrator investigate? What is the process? If someone fraudulently requests and receives leave, will the employer be notified, and can the employer discipline up to and including termination?



**Annualized amount.** The fund must maintain an annualized amount as determined by an annual study by a qualified actuary that examines the program's recent and expected future claims experience, administrative expenses, and target fund requirements

- What if the fund can't maintain this amount? Will the employer and employee be required to contribute more than 1%?



**Restoration to position upon return to work.** Except for an employee who has not been employed for at least 120 days, an employee who exercises the right to family leave or medical leave under this subchapter is entitled, upon return from that leave, to be restored by the employer to the position held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

- **An employee can take this leave on their second day of employment? If it is determined that the employer needs this position filled, can they? Does the employee who is on leave employed under 120 days get terminated?**

**Retaliation prohibited.** An employer may not discharge, fire, suspend, expel, or discipline, through the application of attendance policies or otherwise, or threaten or in any manner discriminate against an employee for the exercise of any right to which the employee is entitled under this subchapter or with the purpose of interfering with the exercise of any right to which the employee is entitled under this subchapter.

- **Can an employer extend an employees' probationary period if they are on leave during the probationary period?**

# POLICIES TO CONSIDER UPDATING

- Sick
- Sick Bank
- Short term disability
- Long term disability
- Paid Parental Leave
- FML
- Workers' compensation
- Retire/Rehire – or collecting SS or a pension while working