



# State & Local Compliance Update

## USI EMPLOYEE BENEFITS

May 29, 2024

# Maine Publishes Proposed PFML Regulations

The Maine Department of Labor (“Department”) has recently published [proposed regulations](#) for the Maine Paid Family and Medical Leave (“PFML”) program. The proposed regulations provide additional details including program eligibility, how the benefit may be used, and applying for benefits.<sup>1</sup>

## THE BASICS

On June 11, 2023, Maine Governor Janet Mills signed into law the state’s budget bill which established a PFML program.<sup>2</sup> The program provides 12 weeks of wage replacement benefits for employees taking family or medical leave. Contribution withholdings under the state program begin January 1, 2025, and claims processing begins May 1, 2026. Employers can opt out of the state program and offer a private plan if certain conditions are met.

This article highlights new and clarifying information contained in the proposed regulations.<sup>3</sup>

## EMPLOYER COVERAGE

All private and public employers who employ one or more employees in Maine are required to provide paid family and medical leave. A “covered individual” is defined as an employee who earned at least 6 times 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.<sup>4</sup>

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<sup>1</sup> For a complete understanding of the program, these proposed regulations (described in 15 sections) should be reviewed in conjunction with the law.

<sup>2</sup> See USI’s Compliance Update, [Maine Establishes Paid Family and Medical Leave Benefits Program](#) (July 24, 2023).

<sup>3</sup> An in-person public hearing is scheduled for June 10, 2024, and the public comment period will run through July 8, 2024.

<sup>4</sup> “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.

The program does not apply to the federal government. Self-employed individuals and tribal governments can opt-in to the program.<sup>5</sup> In addition, the program does not apply to any employer or employee subject to the Railroad Unemployment Insurance Act, incarcerated persons earning wages in a Maine correctional facility or detention facility, and students that are earning wages as part of the Federal Work-Study Program and are enrolled in any University of Maine system, a community college, or any private higher educational institution in the State of Maine.

## USE AND TYPES OF LEAVE

Covered individuals may take their full 12 weeks of leave in a variety of ways:

- **Continuous leave** occurs in blocks of consecutive days or weeks.
- **Intermittent leave** provides for varying periods of leave and returning to work throughout a period of approved covered leave time. Intermittent leave may be planned (e.g., for routine appointments) or unplanned (e.g., for a flare-up of a serious health condition).
- **Reduced schedule leave** reduces an employee's typical number of days per workweek, or hours per workday, on a planned and consistent basis.

Partial weeks or partial days of leave will be prorated against the employee's scheduled workweek.<sup>6</sup>

## ELIGIBILITY TO RECEIVE BENEFITS

To receive PFML benefits, a covered individual must:

- Be a covered employee;
- Submit an application for benefits in a manner approved by the Department (which may be submitted online), 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;
- Have not been declared ineligible due to fraud; and
- Satisfy one of the qualifying reasons under the PFML program.<sup>7</sup>

Additional provisions regarding eligibility to take leave include:

- The combined medical and family leave may not exceed the 12-week maximum of family and medical leave within a benefit year.
- The 12 weeks of aggregate PFML may be reduced by amounts taken under FMLA or state FMLA unless the leaves are taken concurrently.

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<sup>5</sup> Information regarding electing coverage for self-employed individuals and tribal governments is detailed Section XII of the proposed regulations.

<sup>6</sup> Additional details regarding the use of intermittent and reduced scheduled leave can be found in Section III of the proposed regulations.

<sup>7</sup> Paid family leave is available:

- 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;
- to care for a family member with a serious health condition;
- to attend to a qualifying exigency (same as per federal FMLA);
- to care for a family member of the covered individual who is a covered service member;
- to take safe leave; or
- any other reason allowed under the state's existing unpaid family leave laws.

- A covered individual taking family leave to care for an individual with whom they have an affinity relationship is limited to one such designated individual per benefit year.<sup>8</sup>

## EMPLOYEE NOTICE TO EMPLOYER

Absent an emergency, illness, or other sudden necessity for taking leave, an employee must give reasonable notice (e.g., 30 days) to the employee's supervisor of the intent to use leave. If the request for leave is not foreseeable, an employee must make a good faith effort to provide written notice to the employer of the employee's intent to use leave as soon as possible. Notice provided on behalf of the employee by a family member or health care provider is considered notice provided by the employee.

An employer claiming an undue hardship with respect to the scheduling of foreseeable leave has the burden to prove the 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.

## AMOUNT OF BENEFIT

The weekly benefit amount paid to employees and self-employed individuals on family or medical leave is calculated based on a tiered wage system. The calculation is as follows:

- 90% of Average Weekly Wage<sup>9</sup> up to 50% of the State Average Weekly Wage<sup>10</sup> (Tier 1) plus 66% of Average Weekly Wage in excess of 50% of the State Average Weekly Wage (Tier 2).
- The weekly benefit cannot exceed the State Maximum Weekly Benefit.

## PREMIUMS

The employer's premium amount and contribution report must be remitted quarterly on or before the last day of the month following the close of the quarter for which premiums have accrued. Beginning January 1, 2025, the premium is set at no more than 1% of wages.

- An employer with 15 or more employees may only deduct up to 50% of the required premium from an employee's wages and must remit 100% of the combined premium contribution to the Paid Family and Medical Leave Insurance Fund ("Fund") (i.e., the required premium may be equally shared between the employee and employer).
- An employer with fewer than 15 employees may only deduct up to 50% of the required premium from an employee's wages and must remit 50% of the premium to the Fund as businesses with fewer than 15 employees are exempt from paying into the state plan.
- The Program caps the amount of an employee's earnings subject to contributions at the same amount of earnings subject to Social Security taxes.

The employer size for the purposes of determining premium liability for calendar year 2025 is determined by the number of covered employees employed for the employer in the State of Maine on October 1, 2024. The number of employees includes full-time, part-time, seasonal, and temporary employees. On October 1, 2025, and October 1 of each year thereafter, the employer

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<sup>8</sup> "Affinity Relationship" means a significant personal bond between a covered individual and another individual that is or is like a family relationship, regardless of biological or legal relationship.

<sup>9</sup> Average weekly wage generally means 1/52 of aggregate total wages paid in the state as reported by the employer.

<sup>10</sup> State average weekly wage means the average weekly wage published by the Department for the State for the 12 most recent months.

must calculate its size for the purpose of determining premium liability for calendar year 2026 and each calendar year thereafter.

The proposed regulations clarify that an employer's determination as to whether to deduct premiums from employees' wages must apply to all employees. If an employer changes that determination, the employer must provide notice to all employees in writing at least 7 days prior to the employees' first affected paycheck.

Employers must include in the employee's pay statement that a premium deduction for PFML has been deducted from the employee's wages.

### **APPROVED PRIVATE PLAN**

Employers may apply for a private plan exemption after January 1, 2026, but an exemption may not be effective prior to April 1, 2026. Applications for substantially equivalent private plans must be submitted on a form provided by the Department and may be accepted on a rolling basis. An application fee set by the Department must be included with the submission of the application.

An approved private plan is effective on the first day of the first quarter following approval of the application. The employer is responsible for premiums provided under the PFML program and the regulations until the effective date of substitution. An approved private plan is valid for a period of 3 years.

Employers approved for a private plan may not request cancellation of their private plan prior to the private plan's expiration date except by a demonstration to the Department of good cause. Good cause includes, but is not limited to, evidence of a premium increase. If the Department approves the employer's request for cancellation, the employer may not re-apply for another private plan for three years from the date of cancellation.

Employers must notify the Department of any material changes to an approved private plan at least 60 days in advance of the effective date of the changes and must obtain written approval from the Department regarding the changes.

### **EMPLOYER NEXT STEPS**

Employers should review all the available information from the Department and work with employment counsel, leave vendors, payroll processors and any other related business advisors to make sure they are compliant with the PFML program by the requisite dates. In addition, employers should monitor the PFML website for additional guidance and regulations. USI will continue to keep employers updated on new PFML program developments as applicable.

### **RESOURCES**

- For the proposed regulations, visit:  
[https://www.maine.gov/labor/docs/2024/rulemaking/12\\_702PFMLDraftRule.pdf](https://www.maine.gov/labor/docs/2024/rulemaking/12_702PFMLDraftRule.pdf)
- For the PFML law, visit:  
<https://www.maine.gov/labor/docs/2023/pfml/2023PLc412PFMLExcerpt.pdf>
- For the Maine Department of Labor's Paid Family and Medical Leave website, visit:  
<https://www.maine.gov/labor/pfml/>

**USI** [usi.com/locations](https://www.usi.com/locations)

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