



# State & Local Compliance Update

## USI EMPLOYEE BENEFITS

September 24, 2024

## Maine Releases Updated Proposed PFML Regulations

The Maine Department of Labor (“Department”) has recently published [updated proposed regulations](#) for the Maine Paid Family and Medical Leave (“PFML”) program. This article highlights significant new and clarifying information not contained in the original proposed regulations.

### BACKGROUND

On June 11, 2023, Maine Governor Janet Mills signed into law the state’s budget bill which established a PFML program.<sup>1</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. Earlier this year, the Department published proposed PFML regulations for public comment.<sup>2</sup>

The following items have been revised in these updated proposed regulations.

### WAGE DEFINITION

The updated regulations clarify that wages paid in the state include all forms of compensation for personal services, such as regular salary, tips, commissions, bonuses, and severance pay. It does not cover payments made to independent contractors. For payroll and premium purposes, wages are calculated similarly to how Maine unemployment wages are determined but applied to a larger base of employees that are not traditionally subject to the Maine unemployment contributions tax.<sup>3</sup> Wages exclude amounts above the annual base limit set by the U.S. Social Security Administration.

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<sup>1</sup> See USI’s Compliance Update, [Maine Establishes Paid Family and Medical Leave Benefits Program](#) (July 24, 2023).

<sup>2</sup> See USI’s Compliance Update, [Maine Publishes Proposed PFML Regulations](#) (May 29, 2024).

<sup>3</sup> To determine if wages are reportable under Maine unemployment law, and therefore reportable wages for Maine PFML purposes, use the four criteria sequential test detailed in [Maine PFML FAQ](#) (Q&A 13).

## ELIGIBILITY TO RECEIVE BENEFITS

To receive PFML benefits, a covered individual must:

- Be a covered employee;
- Have earned wages paid in the state 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. For the purposes of these calculations, it is the amount of the state average weekly wage in effect at the time of application for benefits;
- 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;
- 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 due to fraud; and
- Satisfy one of the qualifying reasons under the PFML program.<sup>4</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 will be reduced by amounts taken under FMLA or state FMLA in the 12-month period preceding the start of leave, unless the leaves are taken concurrently.

Note that the proposed rule allowing family leave to care for an individual with a serious health condition to whom a covered individual has an "affinity relationship" has been eliminated and replaced with the term "significant personal bond." 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.

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<sup>4</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.

## DEFINITION AND PROCESS FOR EMPLOYER CLAIMING UNDUE HARDSHIP

An employer may not claim an undue hardship with respect to the scheduling of foreseeable leave<sup>5</sup> if sufficient notice has been provided in accordance with the employee notification requirements, unless the employer establishes that, in the specific context of the employer's business, the amount of notice provided was insufficient.

An employer may reasonably determine that a leave creates an undue hardship for the employer if it has a significant impact on the operation of the business or creates significant expenses, considering the financial resources of the employer, the size of the workforce and the nature of the industry. The process employers must follow to claim undue hardship, as detailed in the amended proposed regulations, is comprehensive and burdensome. Employers may need to review situations with their employment counsel as the Department has final say on the matter.

## EMPLOYER SIZE FOR DETERMINING PREMIUM LIABILITY

The proposed method for determining employer size for the purposes of determining premium liability for calendar year 2025 and beyond has been amended. Employers must determine the number of covered employees for each Federal Employer Identification Number ("FEIN") separately. An employer that employed 15 or more covered employees on their payroll in 20 or more calendar workweeks during the 12-month period preceding September 30 of each year will be an employer of 15 or more employees for the following calendar year.<sup>6</sup> This count includes the total number of employees on establishment payrolls employed full or part time who received pay for any part of the pay period. Temporary and intermittent employees are included, as are any employees who are on paid sick leave, on paid holiday, or who work during only part of the specified pay period.

## CHANGES FOR APPROVED PRIVATE PLANS

Employers may apply for a private plan exemption after April 1, 2025. Applications for substantially equivalent private plans (fully insured or self-funded with a surety bond paid to the state) must be submitted online 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 application submission. Beginning April 1, 2025, the application fee is \$250 for review of the application, and an additional \$250 administrative reimbursement fee is applied if the application is approved for the substitution. The application fees may be increased by the Department on January 1, 2026 or thereafter, based upon inflation or based upon a redetermination by the Department that the current application fees do not cover the actual cost for administering private plans. An approved private plan is valid for three years.

The updated rules explain that employers will generally owe premiums to the state plan until their exemptions are approved. All employers must pay premiums to the state for the first quarter of 2025. The employer is responsible for PFML premiums until the effective date of exemption and

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<sup>5</sup> 30 days written notice to the employer is presumed to constitute reasonable notice.

<sup>6</sup> Employers with 15 or more covered employees must remit 100% of the premium but may deduct up to 50% of the premium from the employees' gross wages. Employers with fewer than 15 employees must remit 50% of the premium but may deduct up to 50% of the premium from employees' gross wages.

premiums owed prior to the effective date of exemption must be remitted to the state and are non-refundable.

Employers granted approval for a private plan have the option of commencing PFML benefit payments from the private plan prior to May 1, 2026; however, benefits should begin no later than May 1, 2026. Once approved for a private plan, employers are no longer obligated to remit contributions to the state beginning with the first day of the quarter in which the private plan is approved. However, if the application for the private plan is submitted less than 30 days prior to the end of the quarter, the premium exemption is effective the first day of the next quarter following when the application was submitted (assuming it is approved).

## EMPLOYER NEXT STEPS

Employers should review all the available information from the Department and continue to 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. All employers must be prepared to withhold contributions beginning January 1, 2025. 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; final regulations are expected prior to January 1, 2025.

## RESOURCES

- For the updated proposed regulations, visit:  
<https://www.maine.gov/labor/docs/2024/rulemaking/PFMLDraftRuleSecondVersion.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/paidleave/>

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

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