



**U.S. CHAMBER OF COMMERCE**  
Employment Policy Division



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# A Policy Patchwork: Paid family leave laws in the states







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## **A Policy Patchwork: Paid family leave laws in the states**



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## Abstract

**This report examines state and local PFL laws that are currently in effect or that have been enacted and are scheduled to go into effect in the coming years. It then identifies key trends for each core topic and, with the key trends in mind, concludes with recommendations for future federal and state PFL proposals. Overall, it makes clear how the various state, and some local, PFL programs are incongruous and create significant compliance challenges for employers operating under multiple PFL laws.**



**As state and local PFL programs proliferate, compliance burdens on multi-state and national employers become more and more complicated.**

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# Introduction

The number of state and local paid family leave (PFL) programs are on the rise and are ever-evolving, subjecting multi-state employers to numerous, often conflicting, requirements. There is no federal law in the United States mandating that private employers provide PFL benefits, or, for that matter, *any* form of *paid* time off, to their employees. The federal Family and Medical Leave Act of 1993 (FMLA)<sup>1</sup> provides eligible employees with *unpaid* leave for certain qualifying caregiving events, but does not provide employees with any form of *paid* leave. While several paid leave proposals of various types have been introduced in Congress, none have gained serious traction.<sup>2</sup> A growing number of states and municipalities have enacted or revamped their own PFL programs in recent years.<sup>3</sup>

PFL laws typically operate as insurance programs to which employees and/or employers contribute. Employees who need to provide caregiving for qualifying events are able to draw on the program's benefits that provide partial or, for at least certain employees in one relevant location,<sup>4</sup> full wage replacement while an employee is on leave. PFL benefits are most often available for bonding absences after birth, adoption or foster placement, and to care for certain family members with a serious health condition. Moreover, while some

PFL laws provide explicit job protection<sup>5</sup> and a right to reinstatement to employees who receive PFL benefits, this is not the case under all existing PFL laws.<sup>6</sup>

As of 2019, there are 10 PFL jurisdictions in the country: ( 1 ) California, ( 2 ) New Jersey, ( 3 ) Rhode Island, ( 4 ) New York, ( 5 ) Washington State, ( 6 ) Massachusetts, ( 7 ) Connecticut, ( 8 ) Oregon, ( 9 ) Washington, D.C., and ( 10 ) San Francisco, CA. The PFL laws in California, New Jersey, Rhode Island, New York, and San Francisco are currently in effect, while PFL coverage in the other five locations will go into effect between January 2020 (Washington State) and January 2023 (Oregon). In addition, the PFL programs in at least California, New Jersey, New York, and San Francisco (the former two jurisdictions being the first two states with PFL programs, which have been in effect since 2004 and 2009 respectively) will be undergoing further changes in 2020 and 2021.<sup>7</sup>

As state and local PFL programs proliferate, compliance burdens on multi-state and national employers become more and more complicated.<sup>8</sup> Employer challenges are triggered by various factors, including complexities within a single PFL program and inconsistencies between multiple PFL programs.

1 See 29 U.S.C. 2601, et seq.; 29 CFR Part 825.

2 See Congressional Research Service Report on "Paid Family Leave in the United States," R44835 (May 28, 2019).

3 The information contained in this publication is current as of December 2019. Various states and municipalities have pending PFL legislation; those are not addressed here.

4 Refer to the "San Francisco, CA" subsection in the "Evaluating Existing Paid Family Leave Laws - Summary" section for more information.

5 "Job Protection," as used in this paper, generally refers to the ability of an employee to return to the same or a similar/equivalent position following a period of PFL. Not every state or local PFL law, by its own terms, provides job protection. Additional detail on how each PFL jurisdiction handles "job protection" is contained in the "Evaluating Existing Paid Family Leave Laws - Summary" section below.

6 A seemingly related yet distinct area of law that has undergone a similar rapid expansion in recent years, is that of paid sick leave (PSL). PSL laws do not establish an insurance program to administer the benefits. Instead, PSL benefits are managed directly between employers and their workers. Importantly, PSL laws, as well as other non-PFL state and local leave laws – such as, but not limited to, disability insurance benefits, and unpaid family medical leave laws – are not covered in this report.

7 Refer to the "California," "New Jersey," "New York," and "San Francisco" subsections in the "Evaluating Existing Paid Family Leave Laws - Summary" section for more information.

8 Paid Sick Leave ("PSL") laws, disability insurance benefit programs, unpaid family medical leave laws, etc., while beyond the scope of this report, contain their own unique patchwork of state and local obligations that present their own unique set of inconsistencies and challenges for multi-state and national employers, which are in addition to, and often intermingled with, the requirements under the PFL laws discussed herein.



**For an employer with operations in multiple PFL jurisdictions, being required to administer PFL benefits across broad and, often times, inconsistent qualifying events, covered family members, and amount of available time off can lead to long absences, imposing significant challenges, both financially and operationally, on an employer.**

Here are some non-exclusive examples:

- **Qualifying Events and Covered Family Members:** As explained more fully throughout this report, PFL laws do not apply the same definition of qualifying events or covered family members. For an employer with operations in multiple PFL jurisdictions, being required to administer PFL benefits across broad and, often times, inconsistent qualifying events, covered family members, and amount of available time off can lead to long absences, imposing significant challenges, both financially and operationally, on an employer.
- **Example:** A 30-year old man works for a business in New York State and has been with the employer for five years. He is eligible for New York PFL benefits and benefits under the federal FMLA. In March 2020, his grandfather is diagnosed with a serious health condition. He applies for and receives New York PFL benefits for 10 weeks to care for his grandfather in light of his serious health condition. He returns to work in June 2020. Then, in August 2020, his wife gives birth to a child. While he has used all of his New York PFL earlier in the year, he has not yet taken any FMLA leave because grandparents are not covered under the FMLA. He thus is entitled to an additional 12 weeks of unpaid FMLA leave to bond with his new child despite having just returned from a 10 week leave of absence. All 22 weeks of time off taken in 2020—nearly half of the year—are job protected, although only the first 10 are paid.

- **Job Protection:** Whether existing PFL laws protect an employee's job following an absence due to a qualifying event depends on the law in question. While certain PFL laws require employers to reinstate the employee to the same or an equivalent position following a qualifying event, other PFL laws impose no such requirement and instead only provide eligible employees with wage replacement benefits. Understanding when a PFL law provides a leave entitlement (and job reinstatement protection) as distinguished from only a wage replacement benefit is vital for employers because it helps them recognize when PFL benefits run concurrently with potentially applicable federal, state, and local laws or employer policies, and what options, if any, they have available when faced with an employee who is regularly absent for lengthy periods of time. The potential for missteps exist in just a single PFL jurisdiction. For employers in multiple PFL locations, inadvertently assuming an employee's absence triggers more forms of time off and leave than it actually does is a regular risk that must be navigated with caution and thorough analysis.
- **Method of Funding:** PFL benefits are either employee funded, employer funded, or funded by both the employer and employee. Practical challenges, including setting up payroll deductions, collecting and remitting those deductions, and reporting all required corresponding information to the applicable state agency, are plentiful. Administering PFL funding can become a substantial burden for payroll and human resources departments when an employee works in multiple PFL jurisdictions for roughly an even amount of time each pay period or month. Complicated questions with often inconsistent and unclear answers complicate administration—Does the employer set up permissible payroll deductions under both laws? Is the employee entitled to two sets of PFL benefits? If so, do those benefits run concurrently, assuming the absence is a qualifying event under both laws?

This report examines state and local PFL laws that are currently in effect or that have been enacted and are scheduled to go into effect in the coming years. It then identifies key trends for each core topic and, with the key trends in mind, concludes with recommendations for future federal and state PFL proposals. Overall, it makes clear how the various state, and some local, PFL programs are incongruous and create significant compliance challenges for employers operating under multiple PFL laws.



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# Evaluating Existing Paid Family Leave Laws

## Summary

America's state and local PFL law patchwork is growing and changing rapidly. In fact, nine of the 10 existing PFL jurisdictions' PFL programs will undergo significant modifications between 2019 and 2023. Here are some highlights:

- PFL Laws Not Yet in Effect:** The PFL programs under five enacted PFL laws—Washington State, Washington, D.C., Massachusetts, Connecticut, and Oregon—were not active as of November 2019, i.e., eligible employees are not yet entitled to receive PFL benefit payments for qualifying events under these laws. The programs will “go live” as follows: **(1)** Washington State - January 2020; **(2)** Washington, D.C. - July 2020; **(3)** Massachusetts - January and July 2021 (depending on the nature of the qualifying event); **(4)** Connecticut - January 2022; and **(5)** Oregon - January 2023. However, employers in these states must or will need to comply with a number of other implementation deadlines before the programs' respective “go live” dates. These include deadlines to initiate premium withholdings, remit PFL contributions, report required information, distribute and/or display relevant notices and posters, and, if applicable, apply for private plan approval.
- PFL Laws Currently in Effect:** Even though the California, New Jersey, New York, and San Francisco PFL laws are currently in effect, each law is undergoing changes in 2020 and 2021. These changes include, but are not limited to, increasing

the number of weeks of PFL benefits that are available to eligible employees in a 12-month period (all four laws), expanding the scope of qualifying events (California), and expanding the weekly PFL benefit payment percentages available to employees (New Jersey and New York). Rhode Island, the remaining PFL program that is currently active, is not scheduled to undergo any significant amendments at this time.

To better understand existing PFL laws and their multifaceted moving parts, this report summarizes select key provisions, referred to as “core topics,” under each law. The core topics include: **(1)** employer and employee coverage; **(2)** method of funding;<sup>9</sup> **(3)** amount of PFL benefit payments; **(4)** length of PFL benefits; **(5)** qualifying events; **(6)** covered family members; **(7)** whether each law provides job protection, a right to reinstatement following leave, and protections against unlawful retaliation;<sup>10</sup> **(8)** notice and posting requirements; **(9)** potential penalties for violations; and **(10)** whether employers can use a private and/or self-insurance plan instead of following the state PFL program and, if so, the corresponding private or self-insurance plan approval process.<sup>11</sup>

Summaries of each existing PFL law's handling of these core topics follow.

9 Covered employers generally must report certain information, such as number of employees, employee earnings, and/or employee contributions to the program, if applicable, and remit the appropriate PFL premium funds to the jurisdiction's PFL enforcement agency. Reporting and remitting deadlines and procedures differ depending on the applicable PFL law.

10 Even if a particular PFL law does not provide employees who receive PFL benefits with job protection and a right to reinstatement, such employees may be entitled to job protection under the federal FMLA, a state unpaid family medical leave law, other applicable leave law, or employer policy.

11 PFL laws contain a number of additional substantive provisions beyond those identified as core topics for purposes of this report. Some nonexclusive examples of PFL law provisions not covered in this report include, but are not limited to, (a) employee notice standards, (b) intermittent leave, (c) usage waiting periods, (d) documentation and verification, (e) continuation of health and other benefits during PFL, (f) interplay between PFL and other employer-provided leaves (i.e., vacation, sick days, PTO, etc.) or applicable federal, state, or local laws, (g) confidentiality requirements, (h) recordkeeping requirements, and (i) treatment of collective bargaining agreements.



## California (State)<sup>12</sup>

California was the first state to create a paid family leave program, which has been in effect since 2004. The California PFL law has undergone various amendments since this time. One such amendment will become effective on July 1, 2020, and includes an increase in the maximum number of weeks of PFL wage replacement benefits that are available to eligible employees in a 12-month period (see below). Another amendment that will expand the scope of PFL qualifying events becomes effective in January 2021.

Unlike some other state PFL laws, the California PFL law is not a leave of absence law—it does not provide employees with any time off from work, or mandate that employers give employees time off. Instead, the California PFL law provides eligible employees with partial wage replacement benefits when they are on an approved leave of absence under a federal or state statute (e.g., the federal Family and Medical Leave Act, the California Family Rights Act (CFRA), etc.) and/or under an employer leave policy for a PFL-covered purpose (also referred to as a qualifying event).

### Employer and Employee Coverage

Private sector employers in California are generally subject to the state's PFL law. Specifically, employers must provide coverage for employees with payroll in excess of \$100 in a calendar quarter, with a few exceptions.<sup>13</sup> To be eligible for PFL benefits, an employee must have: (1) made a claim for such benefits; (2) filed the required certificate;<sup>14</sup> (3) earned at least \$300 from which California State Disability Insurance ("SDI")<sup>15</sup> deductions were withheld during the base period;<sup>16</sup> (4) have lost wages because he or she was caring for a seriously ill covered family member or bonding with a new child; and (5) if required by the employer, used up to two weeks of any earned but unused vacation time or paid time off (PTO).

### Method of Funding

California PFL is funded through mandatory employee payroll deductions, which employers subsequently remit to the state as part of their Unemployment Insurance contributions. The 2019 SDI withholding rate is 1.0% on a maximum taxable wage limit of \$118,371.

### Amount of Benefit Payments

Eligible employees receive California PFL wage replacement benefits representing approximately 60 to 70 percent of their wages up to a certain maximum based on the statewide average weekly wage. In 2019, the wage replacement benefits range from a minimum of \$50 to a maximum of \$1,252. According to the California Employment Development Department (EDD), the California PFL maximum weekly benefit amount between 2004 and 2018 increased from \$728 to \$1,216.

- 12 **Sources:** Cal. Unemp. Ins. Code §§ 984, 2610, 2613, 2652, 2901, 3251 - 3272, 3300-3307; Cal. Code Regs. tit. 22, §§ 3251-1, 3301 - 3306; EDD SDI Online Website, available at [https://www.edd.ca.gov/disability/sdi\\_online.htm](https://www.edd.ca.gov/disability/sdi_online.htm); EDD Employers' Guide to Voluntary Plan Procedures (DE 2040 Rev. 5) (10-17), available at [https://www.edd.ca.gov/pdf\\_pub\\_ctr/de2040.pdf](https://www.edd.ca.gov/pdf_pub_ctr/de2040.pdf); EDD Paid Family Leave - Forms and Publications Webpage, available at [http://www.edd.ca.gov/Disability/PFL\\_Forms\\_and\\_Publications.htm](http://www.edd.ca.gov/Disability/PFL_Forms_and_Publications.htm); EDD Required Notices and Pamphlets Webpage, available at [https://www.edd.ca.gov/payroll\\_taxes/required\\_notices\\_and\\_pamphlets.htm](https://www.edd.ca.gov/payroll_taxes/required_notices_and_pamphlets.htm); 2019 California Employer's Guide, available at [https://www.edd.ca.gov/pdf\\_pub\\_ctr/de44.pdf](https://www.edd.ca.gov/pdf_pub_ctr/de44.pdf); Overview of California's Paid Family Leave Program - 2019 (DE 2530), available at [https://www.edd.ca.gov/pdf\\_pub\\_ctr/de2530.pdf](https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf).
- 13 Exceptions exist for some domestic workers, some governmental employees, employees of interstate railroads, employees of certain nonprofit agencies, and individuals claiming a religious exemption. See 2019 California Employer's Guide, Page 104, [https://www.edd.ca.gov/pdf\\_pub\\_ctr/de44.pdf](https://www.edd.ca.gov/pdf_pub_ctr/de44.pdf).
- 14 The certificate is as required by Sections 2708 and 2709 of the California Unemployment Insurance Code and involves providing proof of relationship for bonding claims or having the care recipient's physician or practitioner certify the disability by completing the "Physician/Practitioner's Certification" for care claims.
- 15 The California SDI program includes both short-term Disability Insurance (DI) and PFL wage replacement benefits to eligible workers who need time off from work for a qualifying reason. See "State Disability Insurance," <https://www.edd.ca.gov/disability/>.
- 16 A base period covers 12 months and is divided into four consecutive quarters. The base period includes wages subject to SDI tax that were paid about 5 to 18 months before the employee's disability claim began. See Cal. Unemp. Ins. Code §§ 2610-2612, "Calculating Benefit Payment Amounts," [https://www.edd.ca.gov/disability/Calculating\\_DL\\_Benefit\\_Payment\\_Amounts.htm](https://www.edd.ca.gov/disability/Calculating_DL_Benefit_Payment_Amounts.htm).



**Unlike some other state PFL laws, the California PFL law is not a leave of absence law—it does not provide employees with any time off from work, or mandate that employers give employees time off. Instead, the California PFL law provides eligible employees with partial wage replacement benefits.**

### Length of Benefits

Eligible employees currently are entitled to receive California PFL partial wage replacement benefits for a maximum of six weeks in a 12-month period. As of July 1, 2020, the amount of available PFL wage replacement benefits in a 12-month period will increase to eight weeks.

### Qualifying Events

Eligible employees can receive California PFL wage replacement benefits for the following qualifying events:<sup>17</sup>

- To bond with a minor child within the first year of the child’s birth or placement in connection with foster care or adoption;
- To care for a seriously ill covered family member; and/or
- Beginning on January 1, 2021, to participate in a qualifying exigency related to the covered active duty or call to covered active duty of the employee’s spouse, domestic partner, child, or parent in the Armed Forces of the United States.

### Covered Family Members

For purposes of the California PFL law, “family member” includes an employee’s **(1)** child, **(2)** parent, including parent-in-law, **(3)** grandparent, **(4)** grandchild, **(5)** sibling, **(6)** spouse, or **(7)** domestic partner.

### Job Protection, Right to Reinstatement, and Retaliation Protection

As explained above, the California PFL law only provides eligible employees with partial wage replacement benefits, not a leave entitlement. The employee must qualify for the time off from work under another law (e.g., FMLA, CFRA, etc.) and/or under an employer policy. As such, separate and apart from other potentially applicable laws or employer policies, the California PFL law does *not* provide employees with job protection or a right to reinstatement. However, the law(s) (e.g., FMLA, CFRA, etc.) and/or employer policy very well may provide employees with job protection and/or a right to reinstatement. The FMLA and the CFRA do so, subject to limited exceptions.

### Notice and Posting

Although California employers do not have an obligation under the California PFL law to reinstate employees who receive PFL benefits, they must comply with other PFL-mandated obligations. For instance, employers with employees who are covered by California Unemployment Insurance and SDI (i.e., including PFL) must post a model notice (DE 1857A), which references PFL, in a prominent location in the workplace. In addition, California employers must provide the Paid Family Leave (DE 2511) brochure to **(1)** new employees and **(2)** employees who request leave to care for a seriously ill family member or bond with a new child. Both of these publications are available on the California EDD website at [www.edd.ca.gov](http://www.edd.ca.gov).

<sup>17</sup> Certain state PFL laws allow employees to receive benefits for their own serious health condition. Other state PFL laws do not. Most jurisdictions that fall into the latter category offer eligible employees a separate state disability insurance benefit. California falls into this category. This discussion does not include any further details of state disability insurance programs.



**Employers can comply with the California PFL law through the state plan or an approved voluntary plan. As in other paid family leave jurisdictions, the California PFL voluntary plan application process is complex.**

### Potential Penalties

Employers who violate the California PFL law may face certain penalties. For example, any person who, with or without intent to evade any requirement of the PFL law, fails to file any return or report, or to supply any information required by the law or who, with or without like intent, makes, renders, signs, or verifies any false or fraudulent return, report, or statement, or supplies any false or fraudulent information, is liable for a civil penalty of up to \$1,000, and is also guilty of a misdemeanor and shall, upon conviction, be fined an amount not to exceed \$1,000, or be imprisoned for not more than one year, or both the fine and imprisonment.

### Private or Self-Insurance Plans

Employers can comply with the California PFL law through the state plan or an approved voluntary plan. As in other paid family leave jurisdictions, the California PFL voluntary plan application process is complex.

Applications for voluntary plans must be submitted on forms prescribed by the California Employment Development Department (“EDD”). The Director of EDD will approve a voluntary plan where there is at least one employee in employment and all of the following exist:

- The rights afforded to the covered employees are greater than those provided for under the PFL law;
- The plan has been made available to all of the employer’s California employees or to all employees at any one distinct, separate establishment maintained by the employer in California;
- A majority of the employer’s California employees or a majority of the employees employed at any one distinct, separate establishment maintained by the employer in California have consented to the plan;
- If the plan provides for insurance, the form of the insurance policies to be issued have been approved by the Insurance Commissioner and are to be issued by an admitted disability insurer;
- The employer has consented to the plan and has agreed to make the payroll deductions required, if any, and transmit the proceeds to the plan insurer, if any;
- The plan provides for the inclusion of future employees;
- The plan will be in effect for a period of not less than one year and, thereafter, continuously unless the Director of the EDD finds that the employer or a majority of its employees employed in California covered by the plan have given notice of withdrawal from the plan;
- The amount of deductions from the wages of an employee in effect for any plan shall not be increased on other than an anniversary of the effective date of the plan or as otherwise permitted by law; and
- The approval of the plan or plans will not result in a substantial selection of risks adverse to the Disability Fund.





## California (San Francisco)<sup>18</sup>

The San Francisco, CA Paid Parental Leave Ordinance (“PPLO”) was enacted in 2016 and became effective between January 1, 2017, and January 1, 2018, depending on the size of the employer, as determined by number of employees *anywhere*, presumably including overseas employees. The San Francisco PPLO builds upon the California Paid Family Leave (“PFL”) program and requires covered employers to provide supplemental compensation to eligible San Francisco employees (as set forth below in the “Employer and Employee Coverage” section) who are receiving California PFL partial wage replacement benefits to bond with a new child, so that employees receive 100% of their current normal gross weekly wages, **up to a weekly maximum benefit amount**. Because there is a maximum weekly benefit amount, an eligible employee will not necessarily receive 100% of his or her normal gross weekly wages from a combination of California PFL benefits and PPLO supplemental compensation.

### Employer and Employee Coverage

As of January 1, 2018, the PPLO applies to all San Francisco employers who regularly employ 20 or more employees, regardless of their work location. In addition, “covered employer” under the PPLO means any person who directly or indirectly employs or exercises control over the wages, hours, or working conditions of an employee and who regularly employs at least the threshold number of employees discussed above.

An employee is eligible for PPLO supplemental compensation if he or she **(1)** has been employed by the employer for at least 180 days before the start of the leave period, **(2)** performs at least eight hours of work per workweek for the employer within the geographic boundaries of San Francisco, **(3)** spends at least 40% of his or her total weekly hours worked

for the employer within the geographic boundaries of San Francisco, and **(4)** is eligible to receive California PFL wage replacement benefits for the purpose of bonding with a new child. In addition, the employee must **(5)** agree to allow his or her employer to apply up to two weeks of unused, accrued vacation time to help meet the employer’s obligation to provide supplemental compensation. The PPLO applies to full-time, part-time, and temporary employees.

As a precondition of receiving PPLO supplemental compensation, an eligible employee must: **(1)** complete the San Francisco Paid Parental Leave Form (available at [www.sfgov.org.pplo](http://www.sfgov.org.pplo) and from the employer); and **(2)** do one of the following: **(a)** provide the employer with a copy of the employee’s Notice of Computation of California Paid Family Leave Benefits from the State of California or other legally authorized statement; or **(b)** at the time of applying for California PFL benefits, provide the State of California with written authorization to disclose the employee’s weekly PFL benefit amount to the employer, so that the employer may request and obtain this information from the State of California. An eligible employee’s failure to comply with this requirement relieves the employer of its obligation to provide the employee with PPLO supplemental compensation.

### Method of Funding and Amount of Benefit Payments

The PPLO supplemental compensation is funded by covered employers, i.e., the supplemental compensation is paid directly by the employer to the employee as opposed to through a collective fund. As noted above, under the San Francisco PPLO, covered employers provide eligible San Francisco employees who are receiving California PFL partial wage replacement benefits to bond with a new child with supplemental compensation, so that employees receive 100% of their current normal gross weekly wages, up to a weekly maximum benefit amount. Because there is a maximum weekly benefit amount, an eligible employee will not necessarily receive 100% of his or her normal gross weekly wages from a combination of California PFL benefits and PPLO supplemental compensation.

<sup>18</sup> Sources: S.F., CAL., Police Code, Art. 33H (2016); San Francisco Paid Parental Leave Rules (Dec. 23, 2016), available at [https://sfgov.org/olse/sites/default/files/33%20FINAL%20PPLO%20Rules%205%2018%202017\\_0.pdf](https://sfgov.org/olse/sites/default/files/33%20FINAL%20PPLO%20Rules%205%2018%202017_0.pdf); San Francisco PPLO FAQs (Aug. 2017), available at <https://sfgov.org/olse/sites/default/files/FAQ%20August%202017.pdf>; San Francisco Office of Labor Standards Enforcement PPLO Website, available at <http://sfgov.org/olse/paid-parental-leave-ordinance>.



## The San Francisco PPLO builds upon the California Paid Family Leave (“PFL”) program and requires covered employers to provide supplemental compensation to eligible San Francisco employees who are receiving California PFL partial wage replacement benefits...

The maximum benefit cap is calculated based on the gross wage that is derived from dividing the California PFL maximum weekly benefit amount, by the percentage rate of wage replacement provided under the California PFL law.<sup>19</sup> Accordingly, the maximum benefit cap changes when state law changes. The PPLO also contains guidance about how to calculate an employee’s supplemental compensation where the employee’s weekly wage fluctuates.

### Length of Benefits

Eligible employees currently are entitled to receive PPLO supplemental compensation for a maximum of six weeks in a 12-month period. As of July 1, 2020, to remain consistent with the California PFL program, the amount of available PPLO supplemental compensation in a 12-month period will increase to eight weeks.

### Qualifying Events

Supplemental compensation under the San Francisco PPLO is available to employees who are receiving California PFL wage replacement benefits for a qualifying bonding event, i.e., to bond with a minor child within the first year of the child’s birth or placement in connection with foster care or adoption.

### Covered Family Members

Because PPLO supplemental compensation is only available when the employee is receiving California PFL wage replacement benefits for bonding, there is no “family member” definition as there is under other PFL laws.

### Job Protection, Right to Reinstatement, and Retaliation Protection

Under the San Francisco PPLO it is unlawful for a covered employer to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights to supplemental compensation. Further, it is unlawful for an employer to interfere with, restrain, or deny an employee’s ability to exercise, or his or her attempt to exercise, any rights protected under the PPLO. Also, notably, terminating a covered employee prior to the employee’s leave period but within 90 days of the employee having notified the employer of his or her intent to apply for and/or use California PFL wage replacement benefits raises a rebuttable presumption that the termination was taken to avoid the employer’s San Francisco PPLO supplemental compensation obligations.

### Notice and Posting

The San Francisco PPLO also imposes notice and posting obligations on covered employers. First, employers are required to provide employees with a copy of the San Francisco Paid Parental Leave Form within a reasonable time after the employee tells the employer that she or he is expecting a newborn, adopted, or foster child, or sooner if the employee inquires about paid parental leave. Second, to the extent an employer publishes an employee handbook that describes other kinds of personal or parental leave available to its employees, the employer must include a description of the right to supplemental compensation under the PPLO. Third, covered employers must post the model Paid Parental Leave Poster in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site.

<sup>19</sup> For California PFL claims beginning on or after January 1, 2019, weekly benefits range from \$50 to a maximum of \$1,252. See “Calculating Paid Family Leave benefit Payment Amounts,” [https://www.edd.ca.gov/Disability/Calculating\\_PFL\\_Benefit\\_Payment\\_Amounts.htm](https://www.edd.ca.gov/Disability/Calculating_PFL_Benefit_Payment_Amounts.htm).



### Potential Penalties

Violations of the San Francisco PPLO can be dealt with administratively or through a civil action. Administrative remedies include paying any supplemental compensation unlawfully withheld and the payment of an additional sum as an administrative penalty to each employee or person whose rights under the PPLO were violated. If any supplemental compensation was unlawfully withheld, the dollar amount of supplemental compensation withheld from the employee multiplied by three, or \$250, whichever amount is greater, is included in the administrative penalty paid to the employee. Other violations, such as a failure to post the notice or an act of retaliation, will carry an additional administrative penalty that includes \$50 to each employee or person whose rights were violated for each day or portion thereof that the violation occurred or continued.

If the court in a civil action determines that an employer has violated the PPLO, the injured employee is entitled to civil remedies, which may include, but are not limited to, **(1)** reinstatement, **(2)** back pay, **(3)** the payment of any supplemental compensation unlawfully withheld, **(4)** the payment of an additional sum as liquidated damages in the amount of \$50 to each employee or person whose rights under the PPLO were violated for each day or portion thereof that the violation occurred or continued, **(5)** where the employer unlawfully withheld supplemental compensation to an employee, the dollar amount of the supplemental compensation withheld from the employee multiplied by three, or \$250, whichever amount is greater, **(6)** injunctive relief, and **(7)** reasonable attorneys' fees and costs.

### Private or Self-Insurance Plans

Finally, an employer who utilizes a voluntary plan for California PFL requirements must provide the supplemental compensation either through the voluntary plan or by paying the supplemental compensation directly to a covered employee.



**Because PPLO supplemental compensation is only available when the employee is receiving California PFL wage replacement benefits for bonding, there is no “family member” definition as there is under other PFL laws.**



## Connecticut (State)<sup>20</sup>

The Connecticut Paid Family and Medical Leave (“PFML”) law was enacted in 2019.<sup>21</sup> Connecticut PFML premium withholdings begin on January 1, 2021, and eligible employees can start receiving PFML benefits as of January 1, 2022.<sup>22</sup>

### Employer Coverage and Employee Eligibility

The threshold for employer coverage under the Connecticut PFML law is quite low. Specifically, the law defines “employer” as a person engaged in any activity, enterprise, or business who employs one or more employees. The Connecticut PFML law defines “employee” to mean an individual engaged in service to an employer in Connecticut in the business of the employer. To be a covered employee entitled to Connecticut PFML benefits, an individual must: **(A)** have earned at least \$2,325 during the employee’s highest earning quarter within the base period;<sup>23</sup> and **(B)** meet one of the following conditions: **(1)** is presently employed; **(2)** was employed by the employer within the previous 12 weeks (i.e., certain recently separated employees will be entitled to PFML benefits); or **(3)** is self-employed or a sole proprietor and Connecticut resident enrolled in Connecticut PFML.

### Method of Funding

Connecticut PFML is funded through employee payroll deductions. The law states that each employee “shall contribute” to the PFML trust fund a portion of his or her earnings up to the Social Security contribution and benefit base. The law similarly imposes an obligation on employers to “deduct and withhold” the necessary amounts from employee wages each pay period. The amount of Connecticut PFML deductions will not exceed 0.5% of an employee’s covered earnings.

### Amount of Benefit Payments

The Connecticut PFML weekly compensation offered to covered employees will be equal to (a) 95% of the covered employee’s base weekly earnings up to an amount equal to 40 times the Connecticut minimum fair wage, and (b) 60% of that covered employee’s base weekly earnings above an amount equal to 40 times the minimum fair wage.<sup>24</sup> An employee’s Connecticut PFML maximum weekly compensation cannot exceed 60 times the minimum fair wage. Based on the Connecticut minimum fair wage increases established in the State’s 2019 “An Act Increasing the Minimum Fair Wage,”<sup>25</sup> in 2022, Connecticut PFML benefits will be capped at approximately \$780 to \$840 per week. As of June 1, 2023, when the Connecticut minimum fair wage will reach \$15 per hour, Connecticut PFML benefits will top off at approximately \$900 per week.

### Length of Benefits

The Connecticut PFML law provides for 12 weeks of PFML benefits in a 12-month period to eligible employees who are absent for one of the below qualifying events. Importantly, where an employee is absent due to a serious health condition resulting in incapacitation that occurs during a pregnancy, she may be entitled to two additional weeks of PFML benefits (i.e., for a total of 14 weeks in a 12-month period).

20 **Sources:** “An Act Concerning Paid Family and Medical Leave,” CT Public Act No. 19-25 (2019).

21 In addition to creating a new paid leave program, the Connecticut PFML bill also amends the Connecticut Family and Medical Leave Act (“CFMLA”), the state’s existing unpaid family medical leave law, in a number of ways.

22 Additional Connecticut PFML details and employer obligations are expected to be released through regulations and administrative guidance in the coming months and years as the state’s PFML effective dates approach.

23 Under the Connecticut PFML law, “base period” means the first four of the five most recently completed quarters. *See* CT PL 19-25 § 1(2).

24 Under the Connecticut PFML law, “base weekly earnings” means an amount equal to one-twenty-sixth (1/26), rounded to the next lower dollar, of the covered employee’s total wages or self-employed income earned during the two quarters of the covered employee’s Base Period (as defined above) in which the earnings were highest.

25 **See** CT Public Act No. 19-4, available at <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00004-R00HB-05004-PA.pdf>.



### Qualifying Events

Eligible employees can receive Connecticut PFML benefits for the following qualifying events:

- To care for a family member with a serious health condition;
- For the employee’s own serious health condition;
- To bond with a newly born, adopted, or fostered child;
- To serve as an organ or bone marrow donor;
- In connection with a qualifying military exigency of the spouse, son, daughter, or parent of the employee, in accordance with the federal FMLA;
- Military caregiver leave;<sup>26</sup> or
  - Certain absences related to the employee’s status as a victim of family violence.<sup>27</sup>

### Covered Family Members

For purposes of Connecticut PFML, “family member” includes a (1) spouse, (2) son or daughter, (3) parent, (4) parent-in-law, (5) sibling, (6) grandchild, (7) grandparent, or (8) an individual related to the employee by blood or affinity whose close association to the employee is the equivalent of those family relationships.

### Job Protection, Right to Reinstatement, and Retaliation Protection

While the Connecticut PFML law on its own likely does not provide job protection to employees who are absent for a qualifying event and receive PFML benefits, this is currently a gray area under the law. The law lacks a standalone provision on unlawful retaliation, but also states in its provision on employers’ written notice obligations that “[r]etaliation by the employer against the employee for requesting, applying for or using family and medical leave for which the employee is eligible is prohibited.”<sup>28</sup> Regardless, if the leave runs concurrent with FMLA or Connecticut Family and Medical Leave, there will be job protection.



**Connecticut PFML is funded through employee payroll deductions. The law states that each employee “shall contribute” to the PFML trust fund a portion of his or her earnings up to the Social Security contribution and benefit base.**

26 Entitles the employee to a one-time benefit of 26 workweeks of leave during any 12-month period for each appropriate armed forces member per serious injury or illness incurred in the line of duty. See CT Gen. Laws § 31-511(i).

27 Specifically, employees are entitled to use Connecticut PFML if they are victims of family violence and the absence is reasonably necessary to (1) seek medical care or psychological or other counseling for physical or psychological injury or disability for the victim, (2) obtain services from a victim services organization on behalf of the victim, (3) relocate due to such family violence, or (4) participate in any civil or criminal proceeding related to or resulting from such family violence. See CT Gen. Laws § 31-515(b).

28 Forthcoming Connecticut PFML regulations and administrative guidance could clarify whether the PFML law provides independent employee protections against unlawful retaliation and affords employees job protection following a PFML absence.



**Employers can comply with the Connecticut PFML law through the state plan or an approved private plan. As in other paid family leave jurisdictions, the Connecticut PFML private plan application process is complex.**



### Notice and Posting

As of July 1, 2022, the Connecticut PFML law will require employers to distribute written notice to employees concerning certain rights under the law **(1)** at the time of hire, and **(2)** each year thereafter. The Connecticut PFML law currently does not impose any specific corresponding posting obligation on covered employers.

### Potential Penalties

The Connecticut PFML law states that if an employer intentionally aids, abets, assists, promotes, or facilitates an employee's ability to make, or attempt to make, a claim for PFML benefits that is erroneously paid to the employee, the employer will be liable for the same financial penalty as the person making or attempting to make the claim or receiving or attempting to receive the benefits.

### Private or Self-Insurance Plans

Employers can comply with the Connecticut PFML law through the state plan or an approved private plan. As in other paid family leave jurisdictions, the Connecticut PFML private plan application process is complex. For instance, the Connecticut PFML law provides that employers will be able to satisfy their PFML obligations through a private plan if the plan meets the following criteria:

- Confers all of the same rights, protections and benefits provided by the Connecticut PFML law, including at least the same number of weeks of benefits, at the same wage replacement, and coverage for the same reasons;
- Imposes no additional conditions or restrictions on the use of the leave beyond those explicitly authorized under the Connecticut PFML law;
- Does not cost employees more than Connecticut PFML through the state;
- Provides coverage for all employees throughout employment;
- Provides for inclusion of future employees;
- Does not adversely select members and does not threaten the state fund or endanger the solvency of the fund;
- Was approved by a majority of employees (subject to other requirements of the PFML law); and
- Meets any additional requirements established by the forthcoming Connecticut Paid Family and Medical Leave Insurance Authority.

Furthermore, the PFML private plan approval process requires that **(1)** if the private plan is in the form of self-insurance, the employer must furnish a bond running to the state, with a surety company authorized to transact business in the state as surety, in a form and amount required by the state, and **(2)** if the plan provides for insurance, the forms of the policy have been approved by the Insurance Commissioner and issued by an approved insurer.



## District of Columbia<sup>29</sup>

The Washington, D.C. Universal Paid Leave Amendment Act of 2016 was formally enacted in 2017, and created the District's Paid Family Leave ("PFL") program. Washington, D.C. PFL contributions began on July 1, 2019, and eligible employees can start receiving PFL benefits as of July 1, 2020.

### Employer Coverage and Employee Eligibility

Employer coverage under the Washington, D.C. PFL program is based on whether the employer is subject to and required to pay insurance on behalf of its employees under the District's Unemployment Compensation Act. A covered employer who pays unemployment insurance to the District for an employee during any quarter of a calendar year is presumed to be required to contribute to the District's PFL Fund for that employee for that quarterly period, unless the employer provides information consistent with the law and regulations to rebut the presumption that the individual was a covered employee during that quarterly period.

To be a covered employee under the District's PFL program an employee must either (1) spend more than 50% of his or her work time for that employer working in the District of Columbia, or (2) be employed by a covered employer that is based in the District and regularly spend a substantial amount of his or her work time for that covered employer in the District *and* not more than 50% of his or her work time for that covered employer in another jurisdiction. In addition, the individual's work time spent outside of the District must be incidental in nature, temporary or transitory in nature, or consist of isolated transactions.

### Method of Funding

Unlike most other existing PFL programs, the Washington, D.C. PFL program does not allow employers to cover some or all of the PFL premium cost through employee payroll deductions. Instead, Washington, D.C. PFL is funded *solely* by mandatory employer contributions. As of July 1, 2019, covered employers in the District began paying a 0.62% tax on the wages of each of the employer's covered employees to fund the PFL benefit. The contribution is due quarterly and, notably, is required regardless of any other benefit programs offered by the employer.

### Amount of Benefit Payments

For employees who are paid less than or equal to 150% of 40 times the Washington, D.C. minimum wage, the weekly benefit rate is 90% of the employee's average weekly wage rate. For employees who are paid more than 150% of 40 times the Washington, D.C. minimum wage, the weekly benefit rate is (i) 90% of 150% of 40 times the D.C. minimum wage, plus (ii) 50% of the amount by which the employee's average weekly wage exceeds 150% of 40 times the D.C. minimum wage. No eligible employee is entitled to D.C. PFL payments that exceed the maximum weekly benefit amount. Before October 1, 2021, the maximum weekly benefit amount is \$1,000. As of October 1, 2021, and on each October 1 thereafter, the D.C. PFL maximum weekly benefit amount will be increased to account for inflation.

### Length of Benefits

Eligible individuals are entitled to receive Washington, D.C. PFL benefits for a maximum of eight workweeks in a 52-week period. This is regardless of the number of qualifying parental, family and medical leave events (see below) that occur during that period. Eligible individuals are entitled to up to eight weeks of parental leave, six weeks of family leave, and two weeks of medical leave in a 52-week period, subject to the overall eight-week maximum described at the beginning of this paragraph.

<sup>29</sup> Sources: Universal Paid Family Leave Amendment Act of 2016, D.C. ACT 21-682 §§ 101-112; Washington, D.C. Paid Family Leave Final Tax Regulations, §§ 3400-3408, 3499; D.C. Code Ann. §§ 32-501, 32-505, 32-509, 51-104; DOES Office of Paid Family Leave Website, available at <https://dcpaidfamilyleave.dc.gov/>; Washington, D.C. Paid Family Leave Employer Toolkit, available at <https://dcpaidfamilyleave.dc.gov/download/employer-toolkit/?wpdmdl=691&refresh=5d51ccc07bd201565641920>.



**Unlike most other existing PFL programs, the Washington, D.C. PFL program does not allow employers to cover some or all of the PFL premium cost through employee payroll deductions. Instead, Washington, D.C. PFL is funded solely by mandatory employer contributions.**

### Qualifying Events

Eligible individuals can receive Washington, D.C. PFL benefits for the following qualifying events:

- Medical Leave for the employee’s own serious health condition;
- Family Leave to care for a family member with a serious health condition; and
- Parental Leave to bond with the employee’s child during the first 12 months after birth, placement for adoption or foster care, or placement of a child with the employee for whom the employee legally assumes and discharges parental responsibility.

### Covered Family Members

For purposes of Washington, D.C. PFL, “family member” includes an employee’s (1) child, (2) grandparent, (3) parent, including parent-in-law, (4) sibling, and (5) spouse, including a domestic partner.

### Job Protection, Right to Reinstatement, and Retaliation Protection

Under the Washington, D.C. PFL program, employees do not receive additional job protection beyond that already called for under the Washington, D.C. Family and Medical Leave Act (DCFMLA). As a result, an eligible individual who works for a covered employer with under 20 employees in the District most likely is not entitled to job protection if he or she decides to take paid leave.<sup>30</sup> The DCFMLA states that, with certain exceptions,<sup>31</sup> an employee who is eligible for a qualifying family or medical leave event and has not exhausted his or her leave entitlement at the time of the qualifying event must be (1) restored to the same position held by the employee when the family or medical leave commenced, or (2) restored to an equivalent position that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment.<sup>32</sup>

The DC PFL program also prohibits employers from interfering with employees who exercise or attempt to exercise their rights under the law and retaliating against employees who, among other things, request, apply for, or use PFL benefits. Under the DC PFL program, it is currently unclear as to whether an employer who fails to reinstate an employee following a leave is “retaliating” against the employee. DC PFL final regulations that are forthcoming may provide more clarity on this point.

### Notice and Posting

Employers also must comply with Washington, D.C. PFL notice and posting obligations. First, a covered employer is required to post the District’s model PFL notice in a conspicuous place or places where notices to employees are customarily posted. The notice must be posted in English and all languages in which it has been published by the District. Covered employers must also send the notice to remote covered employees to post at their individual worksites.

30 This is because the DCFMLA does not apply to any employer who employs less than 20 individuals in the District, and it appears that the D.C. PFL law does not provide additional job protection beyond that set forth in the DCFMLA. *See* D.C. Code Ann. § 32-516.

31 Under the DCFMLA, an employer can deny restoring a salaried employee’s employment at the conclusion of a qualifying event if the employee is among the five highest paid employees of an employer of fewer than 50 persons or among the highest paid 10% of employees of an employer of 50 or more persons *and* the following conditions are met: (1) the employer shows that not restoring the individual’s employment is necessary to prevent substantial economic injury to the employer’s operations and (2) the employer notifies the employee of the intent to deny restoration of employment and the basis for the decision at the time the employer determines such denial is necessary. An employer cannot prevent employment restoration where it is bound by certain contractual obligations. *See* D.C. Code Ann. § 32-505(f).

32 Notably, qualifying events under the District’s PFL program and DCFMLA will not always overlap. For instance, the definition of “family member” under the PFL program is broader than that under the DCFMLA. *Compare* D.C. ACT 21-682 § 101(7) *with* D.C. Code Ann. § 32-501(4).





**Unlike a number of other PFL jurisdictions, the Washington, D.C. PFL program does not offer employers the option of complying through a private plan or self-insured plan.**

Second, covered employers must send the PFL notice to employees in at least three situations. These situations include (1) annually to all employees, (2) to the individual employee within 30 days of the employee's hiring, and (3) to the individual employee at the time the employer receives direct notice from the employee that PFL for a qualifying event is needed.<sup>33</sup>

**Potential Penalties**

A covered employer who violates the above notice requirement will face a civil penalty not to exceed \$100 for each covered employee to whom individual notice was not delivered *and* \$100 for each day that the covered employer fails to post the notice in a conspicuous place. In addition, an employer who fails to make the required PFL contributions is subject to the same notice requirements, procedures, interest, penalties, and remedies set forth in the District's Unemployment Compensation Act. These penalties and remedies include potential liens on property and rights to property (both real and personal) of the employer, suspension of any business, professional or other licenses held by an employer, misdemeanors, imprisonment of not more than 180 days, and monetary fines.<sup>34</sup> More general violations of the District's PFL law carry potential damages equal to (1) any wages, salary, employment benefits, or other compensation denied or lost to the employee due to the violation plus interest, *and* (2) the greater of the

amount specified in (1) or consequential damages not to exceed an amount equal to three times the amount determined in (1).

**Private or Self-Insurance Plans**

Unlike a number of other PFL jurisdictions, the Washington, D.C. PFL program does not offer employers the option of complying through a private plan or self-insured plan. The District's PFL law expressly states that while a covered employer may provide an eligible individual with leave benefits in addition to those provided by the PFL program, providing such benefits, including a paid leave program, does not exempt the covered employer from making PFL contributions or an eligible individual from receiving PFL benefits.

33 Covered employers have the burden of demonstrating compliance with this PFL notice requirement, and can do so by sending notice via email or similar digital transmission, provided that the covered employer retains email receipts or signed statements by covered employees acknowledging delivery. Final Regs. §§ 3407.2-3407.3.

34 The potentially applicable penalties depend on a variety of factors, including, but not limited to, whether the employer "knowingly" violated their obligations under the law. See D.C. Code Ann. §§ 51-104.



## Massachusetts (State)<sup>35</sup>

The Massachusetts Paid Family and Medical Leave (“PFML”) law was enacted in 2018, and PFML premium withholdings began on October 1, 2019. As of January 1, 2021, eligible employees can start receiving PFML benefits for all qualifying events other than to care for a family member with a serious condition, the benefits for which do not begin until July 1, 2021.

### Employer Coverage and Employee Eligibility

The threshold for employer coverage under the Massachusetts PFML law is quite low. Specifically, the law will apply to most companies with one or more employees working in Massachusetts. The Massachusetts PFML regulations contain specific steps for companies to follow when determining if they are a covered employer with respect to a covered individual that works both inside and outside of Massachusetts.<sup>36</sup> In addition, a company will be considered a “covered business entity” with respect to an independent contractor if the company issues 1099-MISC tax forms for more than 50% of its Massachusetts workforce.

Employee eligibility for Massachusetts PFML benefits is broken into several standards. Most individuals, including full-time, part-time, temporary, and seasonal employees, will be deemed eligible for PFML benefits if they satisfy a financial eligibility test.<sup>37</sup> The financial eligibility test entails that, at the time of leave, the individual must have received total wages or contract payments from a Massachusetts employer or covered business entity that in the aggregate: **(a)** Equals or exceeds 30 times the individual’s weekly benefit amount (or generally about 15 weeks of employment/contract work); and **(b)** Equals or exceeds \$4,700. The test is measured over the 12 months preceding the individual’s claim for PFML benefits. Satisfying the financial eligibility test also could lead to

Massachusetts PFML coverage for former employees, 1099-MISC contract workers, and self-employed individuals. Former employees who meet the financial eligibility test are eligible for PFML benefits within 26 weeks following separation or until they obtain new employment, whichever is sooner. 1099-MISC contract workers will be covered if they meet the financial eligibility test and contract with a “covered business entity,” as described above. Finally, certain self-employed individuals who opt into the state PFML program, pay the PFML contributions, and meet the financial eligibility test will be considered covered under the PFML law.

### Method of Funding

Massachusetts PFML is funded by a payroll tax on companies at an initial contribution rate of 0.75% of the first \$132,900 that a covered individual earns in a year. However, as explained in more detail below, the PFML program is also funded through a complicated cost-sharing setup where cost may be shared between the covered employer and employee at varying percentages, based on the type of leave and the size of the company. The covered employer can collect the employee’s share of the cost through a payroll tax or contract payment deduction.

For “medical leave,” a covered employer with 25 or more employees in Massachusetts may deduct up to 40% of the contribution from the employee’s wages or contract payments to qualifying contract workers. For “family leave,” such a covered employer may deduct up to 100% of the contribution from the employee’s wages or covered contract worker’s contract payment (see below for differences between “medical leave” and “family leave”).

<sup>35</sup> Sources: Massachusetts Paid Family Medical Leave, Mass. Gen. Laws c.175M; Mass. Gen. Laws c.151A § 24; 458 Mass. Code Regs. 2.00; Massachusetts Department of Family and Medical Leave Website, available at <https://www.mass.gov/orgs/departement-of-family-and-medical-leave>.

<sup>36</sup> An employer or covered business entity shall be considered a Massachusetts employer or covered business entity with respect to services performed by a covered individual if (a) the service is performed entirely within Massachusetts, or both within and out of Massachusetts so long as the service outside of Massachusetts is incidental (temporary or transitory in nature or consists of isolated transactions); or (b) the service is not localized in any state but some part of the service is performed in Massachusetts and (1) the individual’s base of operations is in Massachusetts, or if there is no base of operations, the place from which such service is directed or controlled, is within Massachusetts; or (2) the individual’s base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in Massachusetts. 458 Mass. Code Regs. 2.01(2).

<sup>37</sup> This standard applies to employee eligibility for purposes of PFML benefits. However, even if a Massachusetts employee does not satisfy the financial eligibility test, they will still be subject to the PFML contribution/payroll tax (see below).



In other words, these companies must pay at least 60% of the medical leave contribution, but need not pay for any of the family leave contribution. Smaller employers with less than 25 employees or contract workers in Massachusetts are not required to pay any portion of the contribution for family and medical leave.<sup>38</sup>

### Amount of Benefit Payments

The weekly benefit amount for employees and self-employed individuals on Massachusetts PFML is determined as follows: (i) the portion of an employee's or self-employed individual's average weekly wage that is equal to or less than 50% of the state average weekly wage will be replaced at a rate of 80%; and (ii) the portion of an employee's or self-employed individual's average weekly wage that is more than 50% of the state average weekly wage will be replaced at a rate of 50%. This replacement is subject to a maximum weekly benefit amount that will not be more than \$850 per week. By October 1 of each subsequent year thereafter, the Massachusetts Department of Family and Medical Leave (the "Department") may adjust the maximum weekly benefit amount to 64% of the state average weekly wage. The adjusted maximum weekly benefit amount will take effect on January 1 of the year following such adjustment.<sup>39</sup>

### Length of Benefits

Covered individuals can take up to 20 weeks of medical leave and up to 12 weeks of family leave (up to 26 weeks if the family leave is to care for an injured service member) per benefit year. The maximum aggregate of all Massachusetts PFML may not exceed 26 weeks per benefit year.

### Qualifying Events

Eligible employees or contract workers can receive Massachusetts PFML benefits for the following qualifying medical leave and family leave events:<sup>40</sup>

- Medical Leave for the worker's serious health condition;
- Family Leave to care for a family member with a serious health condition;
- Family Leave to bond with the worker's child during the first 12 months after birth, adoption, or foster care placement;
- Family Leave for any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces;
- Family Leave to care for a family member who is a covered servicemember with a serious injury or illness incurred or aggravated in the line of duty (for this particular reason, up to 26 weeks of leave may be taken in a benefit year).

### Covered Family Members

For purposes of Massachusetts PFML, "family member" includes a (1) spouse, (2) domestic partner, (3) child, (4) parent, (5) parent of a spouse or domestic partner, (6) person who stood in loco parentis to the covered individual when the covered individual was a minor child, (7) grandchild, (8) grandparent, or (9) sibling.

38 Covered employers with fewer than 25 covered employees may deduct the full contributions for both family and medical leave but do not have to remit to the state the "employer's share" (i.e., 60% of the medical leave contribution). Such an employer or covered entity still must remit the "employee share" of the total contribution to the state each quarter. See Mass Gen. Laws ch. 175M, § 6(c)-(d).

39 For a covered individual who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount will be prorated as determined by the Department.

40 As noted above, PFML benefits for the qualifying events begin on either January 1 or July 1, 2021, depending on the nature of the event. See 458 Mass. Code Regs. 208(8).



**In addition, a company will be considered a “covered business entity” with respect to an independent contractor if the company issues 1099-MISC tax forms for more than 50% of its Massachusetts workforce.**

### **Job Protection, Right to Reinstatement, and Retaliation Protection**

Employers must restore an employee who has taken Massachusetts PFML to the employee’s previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of the leave.<sup>41</sup> It is also unlawful under the Massachusetts PFML law for an employer to threaten to retaliate or to retaliate (i.e., by discharging, firing, suspending, expelling, disciplining, applying attendance policies, or otherwise threatening or in any other manner discriminating) against an employee for exercising his or her rights under the PFML law. The Massachusetts PFML law uniquely provides for a rebuttable presumption of retaliation for any negative employment action taken against an employee within 26 weeks of an employee’s PFML leave or return from PFML leave; the employer may rebut this presumption with clear and convincing evidence that the action was taken for legitimate, non-retaliatory reasons.

### **Notice and Posting**

Companies also have notice and posting obligations under the Massachusetts PFML law. By July 1, 2019, companies were required to post in a conspicuous place on each of its premises a notice approved by the Department providing information on PFML benefits. Further, by September 30, 2019, companies must distribute written PFML notices to existing employees and covered contract workers and must provide covered workers the opportunity to either acknowledge receipt or decline to acknowledge receipt of the notices either in writing or electronically. Thereafter, companies must provide new hires or contract workers with a written notice explaining certain Massachusetts PFML rights and information. This notice must be provided to new hires or contract workers within 30 days of the start of their employment or contract.

### **Potential Penalties**

Covered employers who fail to distribute required notices will be liable for \$50 per covered individual for the first violation, and \$300 per covered individual for subsequent violations. In addition, if a covered employer engages in unlawful retaliation under the PFML law, worker remedies can include potential treble damages, injunctions, reinstatement, reasonable costs, and attorneys’ fees. If a covered employer fails to make their required contributions to the Massachusetts Family and Employment Security Trust Fund, it will be assessed a penalty equal to its annual payroll, or the fraction thereof which it failed to comply, multiplied by the then-current annual contribution rate required, in addition to the total amount of benefits paid to covered individuals for whom it failed to make contributions.

<sup>41</sup> An exception to this reinstatement requirement exists if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the leave. See 458 Mass. Code Regs. 2.16(1).



## The company's private PFML plans must confer all the same rights, protections, and benefits provided to workers under the state PFML plan.

### Private or Self-Insurance Plans

Companies can comply with the Massachusetts PFML law through the state plan or an approved private plan. As in other paid family leave jurisdictions, the Massachusetts PFML private plan application process is complex. Companies begin the private plan process by applying to the Department for approval.

The company's private PFML plans must confer all the same rights, protections, and benefits provided to workers under the state PFML plan, including, but not limited to:

- Providing family leave and medical leave to a covered individual for the covered reasons and up to the maximum number of weeks required in a benefit year;
- Allowing covered individuals to take, in the aggregate, the required maximum number of weeks of family and medical leave in a benefit year;
- Allowing family leave and medical leave to be taken for all covered purposes;
- Providing a wage replacement rate during all family and medical leave of at least the amount required under the law;
- Providing a maximum weekly benefit during all family and medical leave of at least the amount specified in the state plan;
- Allowing family or medical leave to be taken intermittently or on a reduced schedule as authorized under the state plan;
- Imposing no additional conditions or restriction

on the use of family or medical leave beyond those explicitly authorized by the PFML law or regulations;

- Allowing any employee covered under the private plan who is eligible to take family or medical leave under the state plan to take family or medical leave under the private plan (including former employees during the 26-week period following separation); and
- Providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state plan.<sup>42</sup>

Private PFML plans must also comply with the following provisions: (i) if the private plan is in the form of self-insurance, the covered employer must furnish a bond running to Massachusetts, with some surety company authorized to transact business in Massachusetts as a surety, in such form and in such amount as may be approved by the Department; (ii) the plan must provide for all eligible workers throughout their period of employment or contract; and (iii) if the plan provides for insurance, the forms of the policy must be issued by an approved insurer (licensed in Massachusetts).

<sup>42</sup> The Department's PFML webpage on private plans calls out that the employer's private plan must "specifically state[ ] that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits." See Private plan benefit requirements for PFML exemptions, <https://www.mass.gov/info-details/private-plan-benefit-requirements-for-pfml-exemptions>.



## New Jersey (State)<sup>43</sup>

The New Jersey Family Leave Insurance (“FLI”) law has been in effect since 2009. The law underwent significant amendments in February 2019. Some of the amendments took effect immediately, while others are being phased in throughout 2019 and 2020.

### Employer Coverage and Employee Eligibility

The threshold for employer coverage under the New Jersey FLI law is quite low. Any employer that is subject to the state’s unemployment compensation law is considered a covered employer for purposes of FLI. Among other standards, an employer is covered under the state unemployment compensation law if it employs one or more individuals in the state and has paid the affected individual at least \$1,000 in the current or preceding calendar year.

Likewise, the FLI threshold for employee eligibility also is low. An employee is eligible for FLI benefits if he or she meets the minimum earnings criteria during the base year (defined as the first four quarters of the five completed calendar quarters immediately before the week in which FLI benefits begin). Specifically, the employee must have either: (1) worked 20 calendar weeks in the base year, earning at least \$172 each week; or (2) earned at least \$8,600 in the base year.<sup>44</sup>

### Method of Funding

Employers are not required to contribute to FLI. Rather, the FLI program is funded solely through employee contributions. For 2019, each employee contributes 0.08% of his or her earnings, up to a taxable wage base of \$34,400. This results in a maximum annual FLI deduction of \$27.52. If an employer fails to withhold the employee’s contribution at the time his or her wages are paid or during the next payroll cycle, then the employer is liable for the contribution.



**Employers are not required to contribute to FLI. Rather, the FLI program is funded solely through employee contributions. For 2019, each employee contributes 0.08% of his or her earnings, up to a taxable wage base of \$34,400.**

### Amount of Benefit Payments

Prior to July 1, 2020, employees’ FLI maximum weekly benefit rate is 67% of their average weekly wage, up to a maximum determined by the statewide average wages. For 2019, the FLI maximum weekly benefit is \$650.

On and after July 1, 2020, the FLI maximum weekly benefit rate will equal 85% of an employee’s average weekly wage, up to a maximum of 70% of the statewide average weekly wage. Based on 2019 statewide figures, the post-July 1, 2020, FLI maximum weekly benefit will be approximately \$860 per week (although this amount can change based on future statewide average wages).

### Length of Benefits

Employees are entitled to up to six weeks of continuous or 42 days of intermittent FLI benefits during any 12-month period commencing before July 1, 2020. Thereafter, employees are entitled to up to 12 weeks of continuous or 56 days of intermittent FLI benefits in a 12-month period.

<sup>43</sup> Sources: N.J. Stat. Ann. §§ 34:11C-3, 43:21-25 to 43:21-56; New Jersey Department of Labor and Workforce Development, Division of Temporary Disability and Family Leave Insurance Website, available at <https://myleavebenefits.nj.gov/>.

<sup>44</sup> Under the New Jersey FLI law, a “covered individual” is defined as any individual who is in employment, as defined in the New Jersey “unemployment compensation law,” for which the individual is entitled to remuneration from a covered employer, or who has been out of that employment for less than two weeks.



## Qualifying Events

Eligible employees can receive New Jersey FLI benefits for the following qualifying events: (1) to care for a family member with a serious health condition; (2) to bond with a child during the first 12 months after birth, foster care placement, or adoption; or (3) to engage in activities covered by the New Jersey Security and Financial Empowerment Act (“SAFE”) on behalf of the individual has been a victim of domestic violence or a sexually violent offense, or to assist a family member who has been a victim of domestic violence or a sexually violent offense.<sup>45</sup> FLI may not be used because an individual is unable to work due to his or her own disability.<sup>46</sup>

## Covered Family Members

For purposes of FLI, “family member” means a sibling, grandparent, grandchild, child, spouse, domestic partner, civil union partner, parent-in-law, parent, any other individual related by blood to the employee, or any other individual who has a close association with the employee that is the equivalent of a family relationship.

## Job Protection, Right to Reinstatement, and Retaliation Protection

Following the February 2019 amendments to the NJ FLI law, it is unlikely, although not certain, that an employee who receives FLI benefits has job protection or a right to reinstatement if the FLI benefits do not run concurrently with leave under a separate federal or state law (i.e., the FMLA or New Jersey Family Leave Act) or employer-provided policy.<sup>47</sup>

## Notice and Posting

To comply with the FLI law, covered employers must satisfy certain notice and posting obligations. First, an employer must conspicuously post notification in a place accessible to all employees in each of the employer’s workplaces. Second, an employer must provide each employee with a copy of the notification: (1) not later than 30 days after the notification is issued by regulation; (2) at the time of the employee’s hiring, if the employee is hired after the notification is issued; (3) whenever the employee notifies the employer that the employee is taking time off for eligible New Jersey FLI circumstances; and (4) at any time, upon the first request of the employee.

## Potential Penalties

Employers who violate the New Jersey FLI law are liable for fines of up to \$250, \$500, or \$1,000 depending on the violation, and up to a 90-day term of imprisonment, or both, at the discretion of the court. Employers who fail to comply with FLI-required notifications and disclosures, including the notice and posting requirements discussed above, are subject to a fine of \$250. The FLI law’s new unlawful retaliation provision (see above) also includes certain forms of relief, including, but not limited to, fines of between \$1,000 and \$2,000 for a first violation and fines of up to \$5,000 for each subsequent violation.

45 Where the employee or the employee’s covered family member is a victim of domestic violence or a sexually violent offense, as set forth under the New Jersey SAFE Act, the employee may receive FLI benefits to: (1) Seek medical attention; (2) Obtain services from a victim services organization; (3) Obtain counseling; (4) Participate in safety planning; (5) Seek legal assistance; or (6) Attend, participate, or prepare for court proceedings. See N.J. Stat. Ann. §§ 34:11C-3, 43:21-27(o).

46 Certain state PFL laws allow employees to receive benefits for their own serious health condition. Other state PFL laws do not. Most jurisdictions that fall into the latter category offer eligible employees a separate state disability insurance benefit that is financed separately from PFL. New Jersey falls into this category. This discussion does not include any further details of state disability insurance programs.

47 The 2019 amendments to the New Jersey FLI law added an anti-retaliation provision, N.J. Stat. Ann. § 43:21-55.2, which states that “[a]n employer shall not discharge, harass, threaten, or otherwise discriminate or retaliate against an employee with respect to the compensation, terms, conditions, or privileges of employment on the basis that the employee requested or took any...family temporary disability leave benefits [i.e., FLI benefits]... including retaliation by refusing to restore the employee following a period of leave.” This provision seems to conflict with other sections of the FLI law: (1) N.J. Stat. Ann. § 43:21-26, which states that “the Legislature **does not intend** that the policy established by [FLI] . . . be construed as granting any worker an entitlement to be restored by the employer to employment held by the worker prior to taking family temporary disability leave” (emphasis added); and (2) N.J. Stat. Ann. § 43:21-39.1(d), which states that “[n]othing in [FLI] shall be construed to grant an employee any entitlement to be restored by the employer to employment held by the employee prior to taking family temporary disability leave or any right to take action against an employer who refuses to restore the employee to employment after the leave.” Employers await potential updates to the New Jersey FLI regulations, which could clear up whether the FLI law’s new anti-retaliation provision provides job protection following an FLI absence.



**Employers can comply with the New Jersey FLI law through the state plan or an approved private plan. As in other paid family leave jurisdictions, the private plan application process is complex.**

#### **Private or Self-Insurance Plans**

Employers can comply with the New Jersey FLI law through the state plan or an approved private plan. As in other paid family leave jurisdictions, the private plan application process is complex. Some highlights are as follows.

An employer's private FLI plan must be submitted to the New Jersey Division of Employment Security (the "Division"). If approved, the private plan takes effect on the first day of the next calendar quarter (or an earlier date if requested and approved). To be approved, the private plan must satisfy the following non-exclusive criteria:

- All employees are to be covered with respect to any disability commencing after the effective date of the plan (with limited exceptions);
- Eligibility requirements are no more restrictive for the private plan than for the state plan;
- Weekly benefits payable under the private plan are at least equal to the weekly benefits payable under the state plan;

- The cost to employees is no greater than the worker contribution under the state plan; and
- Upon termination of employment, coverage is continued under the plan while an employee remains a "covered individual" under the FLI law, but not after the employee is employed by another employer.

Notice of the private plan (including current rates, eligibility requirements, benefit entitlements, rights of the employees—including appeal rights to the Division, plan contact information, and instructions on how to file a claim for benefits) must be posted in a conspicuous place and provided to each employee: (1) at the time of the establishment of the plan; (2) at the time of hire for subsequently hired employees; and (3) within three business days of when the employer knows or should know that the employee may have a need for benefits.





## New York (State)<sup>48</sup>

The New York Paid Family Leave (“PFL”) law has been in effect since 2018 and will be fully phased in by 2021.

### Employer Coverage and Employee Eligibility

Generally, employers that employ one or more employees on each of at least 30 days in any calendar year are covered under the New York PFL law. Employee eligibility for PFL benefits is divided into two standards based on regular weekly hours worked. Employees who regularly work *20 or more hours* per week become eligible for New York PFL if they are employed by a covered employer for at least 26 consecutive weeks before the first full day of PFL begins. Employees who regularly work *less than 20 hours* per week become eligible for PFL after working 175 days for the covered employer before the first full day of PFL begins.<sup>49</sup>

### Method of Funding

New York PFL is funded by employees through payroll deductions. Employers are not required to fund any portion of the PFL benefit, although they can choose to cover the cost for their employees.<sup>50</sup>



**New York PFL is funded by employees through payroll deductions. Employers are not required to fund any portion of the PFL benefit, although they can choose to cover the cost for their employees.**

### Amount of Benefit Payments

As of January 1, 2019, New York PFL benefits were paid at the rate of 55% of the employee’s average weekly wage, but not more than 55% of the state average weekly wage. In 2019, the state average weekly wage was \$1,357.11. Thus, the PFL maximum weekly benefit for 2019 was \$746.41.

On January 1, 2020, PFL benefits will be paid at the rate of 60% of the employee’s average weekly wage, but not more than 60% of the state average weekly wage. The New York State average weekly wage for 2020 has been determined to be \$1,401.17. Thus, the PFL maximum weekly benefit for 2020 is \$840.70.

On January 1, 2021 and in subsequent years, PFL benefits will be paid at the rate of 67% of the employee’s average weekly wage, but not more than 67% of the state average weekly wage.

### Length of Benefits

The annual amount of available PFL benefits increased from eight to 10 weeks at the start of 2019, and will increase to its 12-week maximum in 2021.

### Qualifying Events

Eligible employees can receive New York PFL benefits for the following qualifying events: (1) to care for a covered family member when the family member has a serious health condition; (2) to bond with his or her child during the first year after the birth, adoption, or foster care placement; or (3) for a “qualified exigency” under the federal FMLA,<sup>51</sup> in connection with the spouse, domestic partner, child, or parent of the employee being on active duty or being notified of an impending call or order to active duty in the armed forces of the United States.<sup>52</sup>

<sup>48</sup> Sources: NY Workers’ Comp. Law Art. 9 §§ 200 to 242; 12 NYCRR §§ 355.2, 355.4, 355.8, 355.9, 358, 360, 361, 380; New York State Paid Family Leave Website, available at <https://paidfamilyleave.ny.gov/>.

<sup>49</sup> Related to employee eligibility, the NY PFL law also contains detailed provisions on waiver of benefits. At a high level, only those employees who have a regular schedule that will not allow them to reach the eligibility thresholds detailed above have the option to waive benefits under PFL. Although waiver is optional for such employees, covered employers must provide them with the option to waive PFL benefits. See 12 NYCRR § 380-2.6.

<sup>50</sup> For 2019, the contribution is 0.153% of an employee’s gross wages each pay period with an annual maximum contribution of \$107.97.

<sup>51</sup> 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8).

<sup>52</sup> Certain state PFL laws allow employees to receive benefits for their own serious health condition. Other state PFL laws do not. Most jurisdictions that fall into the latter category offer eligible employees a separate state disability insurance benefit that is financed separately from PFL. New York falls into this category. This discussion does not include any further details of state disability insurance programs.



**For purposes of New York PFL, “family member” includes an eligible employee’s: (1) child; (2) spouse; (3) domestic partner; (4) parent, including parent-in-law; (5) grandchild; and (6) grandparent.**

### Covered Family Members

For purposes of New York PFL, “family member” includes an eligible employee’s: (1) child; (2) spouse; (3) domestic partner; (4) parent, including parent-in-law; (5) grandchild; and (6) grandparent.

### Job Protection, Right to Reinstatement, and Retaliation Protection

The New York PFL law prohibits covered employers from discharging or failing to reinstate an employee, or otherwise discriminating against an employee, because the employee claimed or attempted to exercise their rights under the law. In fact, the law requires that when an employee returns to work after a PFL absence, the employer must restore the employee to the same position or a comparable position with comparable benefits, pay, and other terms and conditions of employment.

### Notice and Posting

Employers also must comply with the New York PFL law’s notice and posting standards. First, employers must conspicuously post a printed notice concerning New York PFL in a form prescribed by the state Workers’ Compensation Board. Second, employers must provide eligible employees with a written statement of their rights under the PFL law when an employee will be absent from work for a qualifying PFL reason (see above) for more than seven consecutive days. The statement must be provided to the employee within the later of five business days after the employee’s seventh consecutive day of absence or five business days after the employer has received notice that the employee’s absence is for a qualifying PFL reason. Third, if an employer maintains written guidance for employees concerning employee benefits or leave rights, such as in an employee handbook, information on New York PFL and employee obligations under the PFL law must be included in the handbook or other written guidance. Even employers that lack such written guidance must provide written information to their employees about New York PFL rights and obligations, including how to file a claim for benefits.

### Potential Penalties

An employer who fails to provide payment of family leave benefits as required by the law within 10 days of the date on which the employer becomes covered is guilty of a misdemeanor, subject to a fine of between \$100 and \$500 or imprisonment of not more than 1 year, or both. Any prior failure to pay family leave benefits that occurred within the last 5 years results in a fine of between \$250 and \$1,250, in addition to any other penalties or fines otherwise provided by law. For conviction for a third or subsequent violation, the fine increases to up to \$2,500, in addition to any other legally-permitted penalties or fines. Where the employer is a corporation, the president, secretary, treasurer, or officers exercising corresponding functions will each be held liable under the law.<sup>53</sup> Further, the law permits the Chair of the New York Workers’ Compensation Board (the “Chair”) to impose upon the violator a penalty of up to 0.5% of the violator’s weekly payroll for the period of such failure and an additional sum not in excess of \$500.

<sup>53</sup> It appears as though the New York PFL law may include personal liability for the above individuals where a corporation is found to have violated the PFL law.



**Where the employer is a corporation, the president, secretary, treasurer, or officers exercising corresponding functions will each be held liable under the law.**



### Private or Self-Insurance Plans

Employers can comply with the New York PFL law by obtaining a PFL insurance policy through either an approved private company or the state insurance program, or by electing and obtaining approval from the state to self-insure. As in other PFL jurisdictions, the application process for an alternative to the state plan is complex. Some highlights are as follows.

Generally, employers wishing to utilize a self-insurance plan must apply to the Chair for approval. For an employer's self-insurance plan to be accepted as satisfying the PFL law, the plan or agreement must: (1) provide benefits at least as favorable as the family leave benefits provided by the law and (2) not require employee contributions of more than the amount required by the law, except by agreement and provided the contribution is reasonably related to the value of the benefits as determined by the Chair.

The employer must permit the Chair's authorized representatives access to its premises for the purpose of examining operations and records. To receive approval, the Chair must be satisfied with the financial and administrative ability of the employer to make payment of the benefits provided and that the employer's tangible assets make reasonably certain the payment of all obligations that may arise under the PFL law.

In addition, to receive approval for a self-insurance PFL plan from the Chair, the employer must agree that the plan will satisfy a number of additional criteria, which include, but are not limited to, the following:

- Pay paid family leave, if applicable, to employees eligible under the law;
- Deposit securities, and/or cash, and/or file a surety bond, and/or irrevocable letters of credit with the Chair as required by the law;
- Pay all obligations, including benefits, fines, expenses, and assessments imposed pursuant to the law;
- Permit the Chair's authorized representatives access to the employer's premises for the purpose of examining operations and records;
- Accept all expenses and liability in excess of the sum of the collected employee contributions (assuming such contributions were collected at the legal maximum);
- Acknowledge that under no circumstances shall any employee bear any additional cost above the maximum contribution rate allowed by law and may not collect any contributions above the maximum rate allowed;
- Not to commingle collected PFL funds with any other funds of the employer; and
- Submit all reports as required by the law.

Each self-insurer must file annually verified reports, which must include, but are not limited to, the following information: (1) number of eligible employees; (2) amount of covered payrolls; (3) amount of employee contributions; and (4) estimate of amount of employee contributions in the ensuing year.



## Oregon (State)<sup>54</sup>

The Oregon Paid Family and Medical Leave (“PFML”) law was enacted in 2019. Oregon PFML premium withholdings will begin on January 1, 2022, and eligible employees can start receiving PFML benefits as of January 1, 2023.<sup>55</sup>

### Employer Coverage and Employee Eligibility

The Oregon PFML law has a broad employer coverage standard that includes any person that employs one or more employees working anywhere in the state. To be considered an eligible employee under the Oregon PFML law,<sup>56</sup> an employee must **(1)** have either **(a)** earned at least \$1,000 in wages during the base year,<sup>57</sup> or **(b)** if the employee has not earned at least \$1,000 in wages during the base year, then have earned at least \$1,000 in wages during the alternate base year,<sup>58</sup> and **(2)** be entitled to apply for PFML benefits. The latter requirement means that the employee must have contributed to the PFML insurance fund during the base year or alternative base year, whichever is applicable, and submitted a claim for PFML benefits through the proper procedures.

### Method of Funding

All covered employers and eligible employees are required to contribute to the Oregon PFML Insurance Fund. As noted above, payroll contributions begin on January 1, 2022.

The total contribution rate cannot exceed 1% of employee wages, up to a maximum of \$132,900 in wages. Employer contributions will be paid in an amount that is equal to 40% of the total rate determined by the Director of the Employment Department of the State of Oregon (the “Director”). In addition, employers can deduct employee contributions from the wages of each employee in an amount equal to 60% of the total rate determined by

the Director. The PFML law allows employers to elect to pay the required employee contributions, in whole or in part, as an employer-offered benefit.

The law includes an exception for employers that employ fewer than 25 employees. Specifically, such employers are not required to pay the employer contributions discussed above; however, it appears that they still will be obligated to collect and remit the employee portion of the PFML premium.

### Amount of Benefit Payments

An employee entitled to Oregon PFML will receive benefit payments as follows: (a) if the employee’s average weekly wage is equal to or less than 65% of the state average weekly covered wage (“state average”), the employee’s PFML weekly benefit amount will be 100% of their average weekly wage; and (b) if the employee’s average weekly wage is greater than 65% of the state average, the weekly benefit amount is the sum of (i) 65% of the state average, and (ii) 50% of the employee’s average weekly wage that is greater than 65% of the state average.

The PFML minimum weekly benefit amount will equal 5% of the state average, and the PFML maximum weekly benefit amount will equal 120% of the state average. The Oregon state average between July 1, 2019 and June 30, 2020 is \$1,044.40. Based on this value, which is subject to annual change by the State, the PFML weekly benefit amount would range between \$52.22 and \$1,253.28.

### Length of Benefits

Under the Oregon PFML law, eligible employees can receive PFML benefits for a maximum of 12 weeks in a benefit year. Relatedly, the law allows employees to take a total of 16 weeks of leave in the benefit year, with up to a maximum of 12 weeks being paid under the PFML law and the remaining weeks being unpaid for reasons covered under the Oregon Family

<sup>54</sup> Sources: Act “Relating to family medical leave benefits,” Oregon HB 2005-B (2019); Oregon Bulletin No. 111, May 17, 2019, available at [https://wcd.oregon.gov/Bulletins/bul\\_111.pdf](https://wcd.oregon.gov/Bulletins/bul_111.pdf).

<sup>55</sup> Additional Oregon PFML details and employer obligations are expected to be released through regulations and administrative guidance in the coming months and years as the state’s PFML effective dates approach.

<sup>56</sup> The Oregon PFML law also contains provisions detailing how a “self-employed individual” and “employee of a tribal government” can become covered individuals entitled to PFML benefits.

<sup>57</sup> Under the Oregon PFML law, “base year” means the first four of the last five completed calendar quarters preceding the benefit year.

<sup>58</sup> Under the Oregon PFML law, “alternate base year” means the last four completed calendar quarters preceding the benefit year.



Leave Act (“OFLA”).<sup>59</sup> Further, an eligible employee may qualify for an additional two weeks of benefits in a given benefit year if the employee experiences limitations related to pregnancy, childbirth, or a related medical condition including, but not limited to, lactation.

### Qualifying Events

Eligible employees can receive Oregon PFML benefits for the following qualifying events:

- Family Leave to care for and bond with a child during the first year after the child’s birth or during the first year after the placement of the child through foster care or adoption;
- Family Leave to care for a family member with a serious health condition;<sup>60</sup>
- Medical Leave taken by a covered individual that is made necessary by the individual’s own serious health condition; and
- Safe Leave for certain covered absences relating to domestic violence, harassment, sexual assault, or stalking.<sup>61</sup>

### Covered Family Members

For purposes of Oregon PFML, “family member” includes an eligible employee’s (1) spouse, (2) child or the child’s spouse or domestic partner, (3) a parent, including a parent of the employee’s spouse or domestic partner, or the parent’s spouse or domestic partner, (4) sibling or stepsibling, or the sibling’s or stepsibling’s spouse or domestic partner, (5) grandparent or the grandparent’s spouse or domestic partner, (6) grandchild or the grandchild’s spouse or domestic partner, (7) domestic partner, or (8) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

### Job Protection, Right to Reinstatement, and Retaliation Protection

After returning to work after a period of Oregon PFML, an eligible employee is entitled to be restored to the position of employment he or she held when the leave commenced, if that position still exists, without regard to whether the employer filled the position with a replacement worker during the period of leave. If the position held by the employee at the time leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

For employers that employ fewer than 25 employees, if the position held by an eligible employee when the employee’s leave commenced no longer exists, the employer may, at its discretion based on business necessity,<sup>62</sup> restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay. Notably, the job protections described in this paragraph apply only to an eligible employee who was employed by the employer for at least 90 days before taking PFML.

Under the Oregon PFML law, it is considered an unlawful employment practice if an employer (1) discriminates against an eligible employee who has invoked any provision of the PFML law, (2) fails to provide job protection as described above, (3) denies leave or interferes with any other right to which an eligible employee is entitled under the PFML law, or (4) retaliates or in any way discriminates against an employee with respect to hire or tenure or any other term or condition of employment because the employee has inquired about rights or responsibilities under the PFML law.

59 Reasons for use under the OFLA include, but are not limited to, bereavement leave and care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care. See ORS 659A.159.

60 The Oregon PFML law expressly states that “Family Leave” does not include leave (1) to care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care, (2) to deal with the death of a family member, or (3) after the employee’s military spouse has been notified of an impending call or order to active duty and before deployment and when the military spouse is on leave from deployment. See Oregon HB 2005-B, Sec. 2(17); ORS 659A.159 (1)(d), (e); ORS 659A.093.

61 An eligible employee can use Safe Leave for the following covered purposes: (1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee’s minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking; (2) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee’s minor child or dependent; (3) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking; (4) To obtain services from a victim services provider for the eligible employee or the employee’s minor child or dependent; and (5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee’s minor child or dependent. See ORS 659A.272; Oregon HB 2005-B, Sec. 2(21).

62 It is unclear at this time whether the Oregon PFML law requires such employers to rehire individuals in these situations. We expect this point to be clarified closer to the law’s 2023 effective date.



### Notice and Posting

The Oregon PFML law also imposes a notice requirement on employers. Specifically, as of January 1, 2022, employers will be required to provide written notice to each employee of the duties and rights of an eligible employee under the PFML law in accordance with rules adopted by the Director. The notice must be provided to an employee in the language the employer typically uses to communicate with the employee.

### Potential Penalties

The Oregon PFML law comes with a number of potential penalties that could be enforced against employers who violate the law. Some non-exclusive examples include:

- An employer that willfully makes or causes to be made false statements or willfully fails to report a material fact regarding the claim of an eligible employee or regarding an employee's eligibility for PFML insurance benefits under the law may face a civil penalty in an amount not to exceed \$1,000 against an employer for each such occurrence.
- If an employer fails to remit any amount of contributions due under the law, the amounts will be a lien in favor of the Director upon all property, whether real or personal, belonging to the employer, individual or person.
- If, prior to September 1 of each year, an employer has failed to file all required reports and pay all contributions due in that year, the employer will be required to pay a penalty equal to 1% of the wages of the employer's employees in the preceding calendar year.
- In addition to any penalties listed above or otherwise set forth in the Oregon PFML law, violation of any provision of the law is a Class A misdemeanor.
- The law also states that certain officers, members, or partners may be held personally liable for violations, particularly in the case of default by the employer.

### Private or Self-Insurance Plans

Employers can comply with the Oregon PFML law through the state plan or an approved employer-offered benefit plan. As in other paid family leave jurisdictions, the Oregon PFML employer-offered benefit plan application process is complex. An employer may apply to the Director for approval of an employer-offered benefit plan that provides PFML benefits to the employer's employees. The application fee will be up to \$250. Some highlights of the standards surrounding employer-offered benefit plans include:

- The Director will review and approve an application for an employer-offered benefit plan if: (a) the plan is made available to all employees who have been continuously employed with an employer for 30 days, and (b) the benefits afforded to employees covered under the plan are equal to or greater than the weekly benefits and duration of leave that an eligible employee would qualify for under the PFML law.
- An employer cannot require an employee to have been employed by the employer for more than 30 days to be eligible for coverage under the plan.
- Neither an employer that provides benefits under an approved plan nor an employee covered under such a plan is required to make the PFML contributions discussed above.
- An employer may assume all or a part of the costs related to an approved employer-offered benefit plan. If an employer assumes only part of the costs, the employer may deduct employee contributions from the wages of employees to finance the costs related to the plan, except that any contribution amounts deducted may not exceed the amount that an eligible employee would otherwise be required to contribute under the law.
- An approved employer-offered benefit plan must remain in effect for at least one year.
- An employer that offers an approved employer-offered benefit plan must: (a) afford job protection and prohibit retaliation and discrimination for use of PFML; (b) maintain all reports, information, and records relating to the plan, including payroll and account records that document employee contributions and expenses; and (c) provide written notice to employees that includes certain specific information set forth in the law.
- An employer will need to apply for re-approval once a year for a three-year period following the date on which the Director first approved the employer-offered PFML benefit plan.



## Rhode Island (State)<sup>63</sup>

The Rhode Island paid family leave (“PFL”) law, known as the Temporary Caregiver Insurance (“TCI”) law, went into effect in 2014.

### Employer Coverage and Employee Eligibility

The threshold for employer coverage under the Rhode Island TCI law is quite low. Generally, the law will apply to employers that have one or more individuals in employment (defined as providing service performed for wages or under any contract of hire) within any calendar year.

An employee is eligible for TCI benefits if he or she earned sufficient wages in Rhode Island during the base period,<sup>64</sup> and paid into the TCI fund through payroll deductions (see below). The current minimum earnings threshold is \$12,600. A separate earnings criteria may be applied to the extent an employee earns less than \$12,600 in the base period.

### Method of Funding

Employers are not required to contribute to the TCI program. Rather, the TCI program is funded entirely through employee payroll deductions. For 2019, each employee contributes 1.1% of his or her first \$71,000 in earnings.

### Amount of Benefit Payments

An eligible Rhode Island employee’s TCI weekly benefit rate will be equal to 4.62% of the wages paid to the employee in the highest quarter of his or her base period (as defined above), subject to a maximum weekly benefit amount. For TCI claims that begin on or after July 1, 2019, the weekly benefits can range from \$98 to \$867.



**Eligible employees can receive Rhode Island TCI benefits for the following qualifying events: (1) to care for a child, spouse, domestic partner, parent, parent-in-law, or grandparent with a serious health condition; or (2) to bond with a new child during the first 12 months after birth, foster care placement, or adoption.**

### Length of Benefits

Employees are entitled to receive up to four weeks of TCI benefits in a benefit year.<sup>65</sup>

### Qualifying Events and Covered Family Members

Eligible employees can receive Rhode Island TCI benefits for the following qualifying events: (1) to care for a child, spouse, domestic partner, parent, parent-in-law, or grandparent with a serious health condition; or (2) to bond with a new child during the first 12 months after birth, foster care placement, or adoption.<sup>66</sup>

63 Sources: R.I. Gen. Laws §§ 28-41-34 to 28-41-42 (along with other sections in R.I. Gen. Laws Chapters 28-39 through 28-42); R.I. Department of Labor and Training Temporary Disability / Caregiver Insurance Website, available at <http://www.dlt.ri.gov/tdi/>; R.I. TCI FAQs, available at <http://www.dlt.ri.gov/tdi/tdifaqs.htm>; R.I. Department of Labor and Training 2019 UI and TDI Quick Reference, available at <http://www.dlt.ri.gov/lmi/news/quickref.htm>.

64 Under the Rhode Island TCI law, the “base period” is the first four of the last five completed calendar quarters before the starting date of your new claim. However, the state alternatively will use the last four completed quarters if needed to meet the minimum earnings requirements. *See* R.I. Gen. Laws § 28-39-2(2).

65 Under the Rhode Island TCI law, “benefit year” is a 52-week period which begins on the Sunday of the week in which the employee’s first date of being unable to work due to a qualifying TCI event occurs. *See* R.I. Gen. Laws § 28-39-2(6).

66 Certain state PFL laws allow employees to receive benefits for their own serious health condition. Other state PFL laws do not. Most jurisdictions that fall into the latter category offer eligible employees a separate state disability insurance benefit that is financed separately from PFL. Rhode Island falls into this category. This discussion does not include any further details of state disability insurance programs.



## Employees who receive TCI benefits are entitled to job protection and a right to reinstatement following the expiration of their TCI benefits

### Job Protection, Right to Reinstatement and Retaliation Protection

Employees who receive TCI benefits are entitled to job protection and a right to reinstatement following the expiration of their TCI benefits. In particular, the TCI law states that when TCI benefits end, an employer must restore the employee either to the position he or she held prior to receiving TCI benefits, or to a comparable position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment including fringe benefits and service credits.

### Notice and Posting

Employers also must comply with the Rhode Island TCI law's notice and posting standards. This includes posting and maintaining printed TCI notices as prepared by the State of Rhode Island. The notices must be posted in conspicuous places where the employees' services are performed.

### Potential Penalties

An employer that fails to complete and return the applicable TCI claim filing notice form to the state within seven working days of its mailing is liable for a \$25 penalty for each such failure. In addition, the state will file a civil action against an employer that fails to make proper and timely payment of collected TCI contributions. Relatedly, each offense of misappropriated collected TCI contributions by an employer will result in a fine of up to \$1,000, imprisonment for up to one year, or both.

### Private or Self-Insurance Plans

Unlike a number of other PFL jurisdictions, the Rhode Island TCI law does not offer employers the option of complying through a private plan or self-insured plan.<sup>67</sup> TCI compliance is only attainable through the state plan.

<sup>67</sup> The Rhode Island TCI FAQs state the following: Q: May I get paid by my employer or receive benefits from a private short term disability insurance policy and still collect TDI or TCI? A: If you continue to be paid a salary, sick or vacation pay, or receive benefits from an additional disability insurance policy, while you are totally unable to work due to illness or non-work related injury, caregiver or bonding, you are allowed to receive TDI. However, you must not be performing any services for the company. If you are recuperating and transitioning into your regular work schedule but working reduced hours and in "Partial Return to Work" claim status, all earnings such as salary, sick, short-term disability payments, vacation, bonus, commission etc. must be considered. See FAQ No. 29, <http://www.dlt.ri.gov/tdi/tdifaqs.htm>.





## Washington (State)<sup>68</sup>

The Washington State Paid Family and Medical Leave (“PFML”) law was enacted in 2017. Washington State PFML premium withholdings began January 1, 2019,<sup>69</sup> and eligible employees can start receiving PFML benefits as of January 1, 2020.

### Employer Coverage and Employee Eligibility

Virtually all employers in the State of Washington will be covered under the PFML law. This is because the law defines “employer” as any individual or type of organization having any person in employment. The law also contains specific steps for employers to follow when determining if “employment” includes a covered individual’s entire service, i.e., his or her service both inside and outside of Washington State.<sup>70</sup>

Employees are eligible for Washington State PFML benefits after working at least 820 hours in employment during the qualifying period. Under the Washington State PFML law, the “qualifying period” means the first four of the last five completed calendar quarters. If eligibility is not established using the formula from the prior sentence, the law allows the determination to be made using the last four completed calendar quarters immediately preceding the application for leave.

### Method of Funding

From January 1, 2019 through December 31, 2020, the Washington State PFML premium is 0.4% of the gross wages paid each quarter.<sup>71</sup> One-third of this amount is allocated to “family leave” and two-thirds are allocated to “medical leave” (see below for differences between “medical leave” and “family leave”). The family leave premium is paid entirely by the employee. The medical leave premium can be split between the employee and employer with 45% paid by the employee and 55% paid by the employer. The employer can choose to pay all or part of the employee premium. Employers with fewer than 50 employees employed in Washington State are not required to pay the employer portion of premiums for family and medical leave.<sup>72</sup>

68 Sources: Wash. Rev. Code §§ 50A.04.005 to 50A.04.900; Wash. Admin. Code §§ 192-500-170, 192-510-040 to 065, 192-530-010 to 030, 192-540-020 to 050, 192-620-005; Washington Employment Security Department PFML Website, available at <https://www.paidleave.wa.gov/>.

69 If an employer has not yet begun collecting PFML premiums from employees, there is no penalty. An employer can begin collecting the premiums at any time, as long as it provides its employees with advance notice of one pay period. An employer is not permitted to withhold retroactively; rather, the employer would be responsible for paying any missed employee premiums on behalf of its employees. See WAC 192-510-065.

70 “Employment” means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The term “employment” includes an individual’s entire service performed within or without or both within and without this state, if: (i) The service is localized in this state; or (ii) The service is not localized in any state, but some of the service is performed in this state; and (A) The base of operations of the employee is in the state, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or (B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this state. Wash. Rev. Code § 50A.04-010(7) (a).

71 For calendar years 2021 and beyond, the premium rates will be based on the family and medical leave insurance account balance ratio as of September 30 of the previous year. See Wash. Rev. Code § 50A.04.115(6).

72 However, such employers still must remit the “employee portion” of the premiums to the state each quarter. See WAC 192-510-040; “Employers,” <https://www.paidleave.wa.gov/employers>.



### Amount of Benefit Payments

An employee entitled to Washington State PFML will receive benefit payments as follows: (a) if the employee's average weekly wage is equal to or less than 50% of the state average weekly wage ("state average"), the employee's PFML weekly benefit amount will be 90% of their average weekly wage; and (b) if the employee's average weekly wage is greater than 50% of the state average, the PFML weekly benefit amount will be the sum of (i) 90% of 50% of the state average, and (ii) 50% of the difference between the employee's average weekly wage and 50% of the state average. As of January 1, 2020, the PFML minimum weekly benefit is \$100 and the PFML maximum weekly benefit is \$1,000.

### Length of Benefits

Eligible employees can take up to 12 weeks of family leave and/or up to 12 weeks of medical leave per benefit year, up to a maximum annual aggregate as set forth below. The amount of available PFML benefits for medical leave increases to 14 weeks per benefit year if the employee experiences a serious health condition with a pregnancy that results in incapacity. The maximum aggregate of all Washington State PFML may not exceed 16 weeks per benefit year (or 18 weeks if the additional two weeks of medical leave are triggered as set forth in the prior sentence).

### Qualifying Events

Eligible employees can receive Washington State PFML benefits for the following qualifying events:

- Medical Leave for the employee's own serious health condition;
- Family Leave to care for a family member with a serious health condition;
- Family Leave to bond with the employee's child during the first 12 months after birth or placement;
- Family Leave for any qualifying exigency as permitted under the federal FMLA, as they existed on October 19, 2017, for family members (as defined below).

### Covered Family Members

For purposes of Washington State PFML, "family member" includes an employee's (1) child, (2) grandchild, (3) grandparent, (4) parent, including parent-in-law, (5) sibling, and (6) spouse, including a registered domestic partner.

### Job Protection, Right to Reinstatement, and Retaliation Protection

Employees have a right to reinstatement under the Washington State PFML law *only if* they satisfy certain conditions. Specifically, upon return from leave, an eligible employee receives job protection and a right to be restored to either the same position or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment if the employee: (1) works for an employer with 50 or more employees;<sup>73</sup> (2) has been employed by the current employer for at least 12 months; and (3) has worked at least 1,250 hours for the current employer during the 12 months immediately preceding the date on which leave will commence.<sup>74</sup>

Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any valid right provided under the PFML law, and from discharging or in any other manner discriminating against any employee for opposing any unlawful practice under the law.

### Notice and Posting

Employers also have Washington State PFML notice and posting obligations. First, employers must post a notice setting forth certain details about the law, including information about filing a complaint, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted. Second, when an eligible employee is absent for a Washington State PFML qualifying event for more than seven consecutive days, the employer is required to provide the employee with a written statement of the employee's rights under the law. The written statement needs to be delivered by the later of (a) five business days after the employee's seventh

73 Determined as 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. See Wash. Rev. Code § 50A.04.025(6)(a).

74 The Washington State PFML law also allows employers to deny restoration to a salaried employee who is among the highest paid ten percent of the employees employed by the employer within seventy-five miles of the facility at which the employee is employed if certain conditions are met. See Wash. Rev. Code § 50A.04.025(6)(b).



consecutive day of absence due to a PFML qualifying event, or (b) within five business days after the employer has received notice that the employee's absence is due to a PFML qualifying event.<sup>75</sup>

### Potential Penalties

An employer who willfully fails to submit the required PFML reports is subject to penalties as follows: (a) for the second occurrence, the penalty is \$75; (b) for the third occurrence, the penalty is \$150; and (c) for the fourth occurrence and for each occurrence thereafter, the penalty is \$250. An employer who willfully fails to remit the full amount of the PFML premiums when due is liable for both (a) the full amount of premiums due, plus interest, and (b) a penalty equal to the premiums and interest. Posting violations that are deemed willful will result in a penalty of up to \$100 for each separate offense.

In addition, a violation of interference, unlawful discharge, or discrimination against an employee who exercises his or her PFML rights can result in damages equal to (a) denied or lost wages, salary, employment benefits, or other compensation, or (b) alternatively, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to 16 weeks of wages or salary for the employee (or 18 weeks if the employee experiences a serious health condition with pregnancy that results in incapacity). If such a violation is deemed willful, liquidated damages also will be assessed.

### Private or Self-Insurance Plans

Employers can comply with the Washington State PFML law through the state plan or an approved voluntary plan. As in other paid family leave jurisdictions, the Washington State PFML voluntary plan application process is complex.<sup>76</sup> A voluntary plan application must be submitted to the Washington State Employment Security Department (the "Department") and carries a \$250 nonrefundable application fee. For the first three years of a voluntary plan's existence, re-approval is required every year. After three years, re-approval is required only if the employer makes changes to the plan. Mandatory re-approval does not carry the \$250 application fee.

The Commissioner must approve any voluntary PFML plan if he or she finds that there is at least one employee in employment and all of the following are met:

- The benefits afforded to the employees are at least equivalent to the benefits under the state plan, including, but not limited to, the duration of leave;
- Sick leave entitlement under Washington state law is in addition to any family and medical leave benefits;
- The plan is available to all eligible employees of the employer employed in Washington, including future employees;
- The employer has agreed to make the payroll deductions required, if any, and transmit the proceeds to the Department for any portions not collected for the voluntary plan;
- The plan will be in effect for at least one year, and, thereafter, continuously unless the Commissioner finds that the employer has given notice of withdrawal from the plan in a manner specified by the Commissioner;
- The amount of payroll deductions will not exceed the maximum payroll deduction for the state plan;
- Employees are eligible for benefits under the plan by meeting the state plan eligibility requirements and having worked at least 340 hours for the employer;
- Employees are entitled to job protection if they (i) have worked for the employer for at least 9 months and 965 hours during the 12 months prior to the date leave will commence, and (ii) satisfy the applicability requirements for job protection under the state plan (see above); and
- The voluntary plan provides that the employer maintains the employee's existing health benefits.

<sup>75</sup> The Commissioner of the Washington State Employment Security Department (the "Commissioner") is expected to release model notices and posters for employers to use when complying with these requirements. Wash. Rev. Code §§ 50A.04.070, 50A.04-075.

<sup>76</sup> In addition to the voluntary plan points cited in this discussion, the Washington State PFML law also includes voluntary plan provisions on several additional topics, such as employee eligibility, posting of notice regarding the plan, employee costs, employee contributions, termination by the Commissioner, and employer penalties. See Wash. Rev. Code §§ 50A.04.600 to 50A.04.665.



**Many existing PFL laws apply to employers that have one or more employees in the relevant jurisdiction ... a significant drop off from the FMLA employer coverage standard of employing no less than 50 employees for at least 20 workweeks in the current or preceding year.**

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# Evaluating Existing Paid Family Leave Laws

## Key Trends

**As the above summaries demonstrate, existing PFL laws handle the core topics in both complicated and varied ways. However, upon examination, certain trends emerge.**

### Employer Coverage

Many existing PFL laws apply to employers that have one or more employees in the relevant jurisdiction (Connecticut, Massachusetts, Oregon, Rhode Island, and Washington State)—a significant drop off from the FMLA employer coverage standard of employing no less than 50 employees for at least 20 workweeks in the current or preceding year. Other PFL locations contain the same employee threshold, but also impose additional employer coverage criteria, such as paying the employee a certain amount over a certain period of time (New Jersey) or having employed the individual for a certain amount of time in a given year (New York; California). Other PFL laws' employer coverage standards are tied to larger employee thresholds (San Francisco) or whether the employer is subject to a separate insurance program operated by the jurisdiction (Washington, D.C.).

### Employee Eligibility

Employee eligibility for PFL benefits consists of more variables than does employer coverage. For starters, certain PFL jurisdictions determine employee eligibility based on whether the individual satisfies multiple factors. These factors include: **(a)** earning a certain amount of wages over a certain period of time, usually referred to as a “base year,” “base period,” or “qualifying period;” **(b)** length of employment; **(c)** hours and/or percentage of time worked; **(d)** contribution to the PFL program; **(e)** submission of a claim for PFL benefits, including submitting any required certification; **(f)** if required by employer, employee's use of a certain amount of PTO (i.e., vacation time); and **(g)** lost wages due to absence for a qualifying event.

**Table 1** includes a breakdown of these employee eligibility criteria by relevant PFL location.

Employee Eligibility Topics	Relevant PFL Locations
Wage Amount Threshold	CA, CT, MA, NJ, OR, RI
Length of Employment	NY, San Francisco
Hours and/or Percentage of Time Worked	DC, WA, San Francisco
Contribution to PFL Program	CA, OR, RI
Submission of Claim for PFL Benefits	CA, OR
If Required, Use of Certain Amount of PTO	CA, San Francisco
Lost Wages Due to Absence for Qualifying Event	CA

The above topics are not the only employee eligibility standards found in existing PFL laws. For instance, certain PFL laws also apply to former employees who satisfy specific criteria (Connecticut; Massachusetts; New Jersey). In addition, some PFL laws have specific provisions describing how to determine eligibility for employees who spend time working in both the PFL jurisdiction and other jurisdictions (Massachusetts, Washington State, Washington, D.C.).

## Method of Funding

PFL benefits are funded in one of three ways: **(a)** solely employer-funded; **(b)** employee-funded, which can be further divided into mandatory and non-mandatory employee funding; and **(c)** funding is split between the employer and employee. The PFL laws that follow a dual employer-employee funding setup contain an exception for small businesses (measured as having fewer than 25 or 50 employees depending on the specific law in question) that effectively waives the employer portion of the PFL premium.

**Table 2** contains a jurisdiction-specific breakdown of existing PFL funding options.

Funding Mechanism	Relevant PFL Locations
Employer-Funded	<b>DC, San Francisco</b> (compensation paid directly by employer to employee, i.e., district/city not involved)
Employee-Funded (Mandatory)	<b>CA, NJ, RI, CT</b> (subject to future clarification)
Employee-Funded (Non-Mandatory) <sup>77</sup>	<b>NY</b>
Funding Split Between Employer and Employee	MA, WA, OR *under each law, employer can pay employee portion

<sup>77</sup> In certain PFL locations (i.e., CA), the funding must come from the employee. The employer cannot pay the employee premiums.

## Amount of Benefit Payments

The relevant percentages used to determine an employee's weekly PFL wage replacement amounts and the corresponding maximum weekly benefit amounts vary based on the PFL law in question. New Jersey currently has the lowest PFL maximum weekly benefit amount—\$650 per week in 2019. As of July 1, 2020, the New Jersey maximum weekly benefit amount is set to increase to approximately \$860 per week, which will be more aligned with the New York and Rhode Island PFL maximum weekly benefit amounts for 2020. The current California PFL maximum weekly benefit amount is \$1,252. This amount increases to \$2,087 in San Francisco.

**Table 3** contains a comparison of the relevant percentages used to determine an employee's weekly PFL payment amounts and the weekly benefit amounts and/or maximum weekly benefit amounts, broken down by location.

PFL Location	Amount of PFL Benefit Payments
<b>CA</b>	Percent of Wages: 60 - 70% wage replacement (depending on income) Weekly Amount (as of 1/1/2019): \$50 - \$1,252
<b>RI</b>	Percent of Wages: 4.62% of wages paid to the employee in the highest quarter of his or her base period Weekly Amount: \$98 - \$867
<b>NJ</b>	Percent of Wages: (a) Pre-7/1/2020: 66.6% of avg. weekly wage ("AWW"), up to max weekly benefit; (b) Post-7/1/2020: 85% of AWW, up to max. of 70% state AWW Max. Weekly Benefit: (a) 2019: \$650; (b) Post-July 1, 2020: Approx. \$860
<b>NY</b>	Percent of Wages: (a) 2019: 55% of employee or state AWW, whichever is greater; (b) 2020: 60% of same; (c) 2021 (and on): 67% of same. Max. Weekly Benefit: (a) 2019: \$746.41; (b) 2020: \$840.70
<b>WA</b>	Percent of Wages: Percentages determined by whether employee's AWW is (a) equal to or less than, or (b) greater than 50% of the state AWW Weekly Amount: \$100 - \$1,000
<b>DC</b>	Percent of Wages: Percentages based on whether the employee's pay is (a) equal to or less than, or (b) greater than 150% of 40x the D.C. min. wage Max. Weekly Benefit (before 10/1/2021): \$1,000
<b>MA</b>	Percent of Wages: Percentages based on portion of employee's AWW that is (a) equal to or less than, or (b) greater than 50% of the state AWW Max. Weekly Benefit: \$850
<b>OR</b>	Percent of Wages: Percentages determined by whether employee's AWW is (a) equal to or less than, or (b) greater than 65% of the state AWW Weekly Amount (based on 2019 state AWW): Approx. \$55 - \$1,253
<b>CT</b>	Percent of Wages: Percentages based on amount of employee's "base weekly earnings" that is (a) equal to 40x state min. wage, and (b) greater than 40x state min. wage Max Weekly Benefit: (a) 2022: Approx. \$780 - \$840 (depending on month); (b) As of 6/1/2023: \$900 per week
<b>San Francisco</b>	Percent of Wages: Requires supplemental compensation, which plus CA PFL, equals 100% of employee's gross weekly wage (with a weekly max.) Max. Weekly Benefit (2019): \$2,087

## Length of Benefits

The length (i.e., number of weeks) of PFL benefits available to employees in a given year varies depending on the applicable law. At the low end, as of July 2020, eligible employees in Washington, D.C. will be entitled to receive a maximum of two weeks of PFL benefits per year for “medical leave” qualifying events. Currently, eligible employees in Rhode Island are entitled to four weeks of PFL benefits per year. At the high end, eligible workers in Massachusetts can receive 26 weeks of combined “family leave” and “medical leave” per year beginning January 2021. In some PFL jurisdictions, benefits refer only to income replacement and without any mandate that an employer provide leave.

**Table 4** contains a comparison of the amount of PFL benefits available under each existing PFL laws, including, where applicable, varying amounts for a single location depending on the nature of the qualifying event and relevant effective dates.

Weeks of PFL Benefits / Year	Relevant PFL Locations
<b>2 Weeks</b>	DC (for “medical leave”) (as of 7/1/2020)
<b>4 Weeks</b>	RI (current)
<b>6 Weeks</b>	NJ (current); CA (current); San Francisco (current); DC (for “family leave”) (as of 7/1/2020)
<b>8 Weeks</b>	DC (for “parental leave” or combined “family leave,” “parental leave,” and “medical leave”) (as of 7/1/2020); CA (as of 7/1/2020); San Francisco (as of 7/1/2020)
<b>10 Weeks</b>	NY (current)
<b>12 Weeks</b>	NY (as of 1/1/2021); NJ (as of 7/1/2020); WA (single “family leave” or “medical leave” event) (as of 1/1/2020); CT (as of 2022); MA (for “family leave”) (as of 2021); OR (for reasons under the state PFML law) (as of 2023)
<b>14 Weeks</b>	WA (in certain limited “medical leave” situations) (as of 1/1/2020); CT (in certain limited situations) (as of 2022)
<b>16 Weeks</b>	WA (if multiple covered events per year) (as of 1/1/2020); OR (combined PFML and unpaid leave under state Family Leave Act) (as of 2023)
<b>18 Weeks</b>	WA (if multiple covered events per year and only in certain limited situations) (as of 1/1/2020)
<b>20 Weeks</b>	MA (for “medical leave”) (as of 2021)
<b>26 Weeks</b>	MA (combined “family leave” and “medical leave”) (as of 2021)



## Qualifying Events

PFL benefits most often are available for bonding absences after birth, adoption, or foster placement, and to care for certain covered family members with a serious health condition. Some PFL qualifying event trends include the following:

- Newer PFL laws, such as Connecticut, Massachusetts, Oregon, Washington State, and Washington, D.C., will make PFL benefits available for absences due to an employee’s own serious health condition, in addition to more traditional “family leave” qualifying events.
- None of the PFL laws that are currently providing PFL benefits to eligible employees allow employees to receive such benefits for their own serious health condition. However, four of these five jurisdictions—California, New Jersey, New York and Rhode Island—offer eligible employees a separate state disability insurance benefit.<sup>78</sup>
- Recent PFL developments in New Jersey, Connecticut, and Oregon have resulted in “safe time” absences (i.e., absences relating to domestic violence, sexual assault, and/or stalking) being considered qualifying events.

**Table 5** Contains a summary of qualifying PFL events broken down by existing PFL laws.

Qualifying PFL Event	Relevant PFL Locations
Bonding – Birth or Placement	All 10 Existing PFL Laws
Care of Family Member with Serious Health Condition	CA, NJ, RI, NY, WA, DC, MA, CT, OR
Own Serious Health Condition	WA, DC, MA, CT, OR
Qualifying Military Exigency	NY, WA, MA, CT
Bone Marrow and Organ Donation	CT
Military Caregiver Leave	MA, CT
Safe Time	NJ, CT, OR

<sup>78</sup> As noted above, newer PFL laws, including, but not limited to, those in Washington and Washington, D.C. will make PFL benefits available for absences due to an employee’s own serious health condition, in addition to more traditional “family leave” qualifying events.

## Covered Family Members

As noted in the prior section, all existing PFL laws other than the San Francisco law include caring for a family member with a serious health condition as a qualifying event. It is, therefore, important to understand how these laws stack up in terms of who they consider to be a covered family member.

Putting aside San Francisco PFL, which only allows PFL to be used for “bonding” related qualifying events, all other PFL laws’ definitions of covered family members are broader than the individuals considered covered family members under the federal FMLA for serious health conditions - child, parent, spouse. In addition to covering certain common family members, such as grandparents, grandchildren, and siblings, multiple recently-enacted PFL laws include a catch-all group in their family member definition, namely, any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. This “close association” family member is a product of state and local paid sick leave laws, which have increasingly included the same catch-all category in their own respective family member definitions.<sup>79</sup>

**Table 6** summarizes different categories of covered family members under existing PFL laws, broken down by jurisdiction. Additional family member categories, including, but not limited to, (a) the parent of an employee’s domestic partner, (b) a child’s spouse or domestic partner, (c) civil union partners (to the extent different from a domestic partner under applicable law), or (d) a person who stood in loco parentis to the employee when the employee was a minor child, may exist depending on the specific PFL law in question.

Covered Family Member	Relevant PFL Locations
Child	CA, CT, DC, MA, NJ, NY, OR, RI, WA
Parent	CA, CT, DC, MA, NJ, NY, OR, RI, WA
Parent-In-Law	CA, CT, DC, MA, NJ, NY, OR, RI, WA
Spouse	CA, CT, DC, MA, NJ, NY, OR, RI, WA
Domestic Partner	CA, DC, MA, NJ, NY, OR, RI, WA
Sibling	CA, CT, DC, MA, NJ, OR, WA
Grandparent	CA, CT, DC, MA, NJ, NY, OR, RI, WA
Grandchild	CA, CT, MA, NJ, NY, OR, WA
Spouse or Domestic Partner of a Sibling, Grandparent, and/or Grandchild	OR
Individual whose close association with the employee is the equivalent of a family relationship	CT, NJ, OR

79 Ariz. Rev. Stat. § 23-371(H)(5) (“Family member” means . . . [a]ny other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”); 8 N.Y.C. Admin. Code § 20-912 (“Family member” shall mean . . . any other individual whose close association with the employee is the equivalent of a family relationship.”); N.J. Rev. Stat. § 34:11D(1) (“Family member” means . . . any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.”); Chi. Mun. Code § 1-24-010 (“Family member” means . . . any other individual related by blood or whose close association with the Employee is the equivalent of a family relationship.”); Dall. City Code § 20-2(7) (“Family member” means . . . any other individual whose close association to an employee is the equivalent of a family relationship.”).

## Job Protection, Right to Reinstatement, and Retaliation Protection

A significant issue relating to existing PFL laws is whether the law provides employees with explicit job protection and a right to reinstatement following an absence for a qualifying event. Of the 10 existing PFL laws, seven of them provide employees with job protection and a right to be reinstated to the same or an equivalent position after receiving PFL benefits. However, many of these laws impose conditions that must be satisfied in order to receive the job protection. Such conditions can be based on length of employment, hours worked over a relevant time period, or working for an employer with a sufficiently large workforce.

**Table 7** examines which PFL laws provide job protection, including whether the employee must satisfy certain conditions in order to take advantage of the job protection.

Job Protection?	Relevant PFL Locations
PFL law provides job protection without conditions	MA, NY, RI, San Francisco
PFL law provides job protection with conditions	DC, OR, WA
PFL law does not provide job protection	CA, CT*, NJ*

\*PFL law most likely does not provide job protection, although this is not certain.

## Notice and Posting

Notice and posting requirements exist under most PFL laws. Eight of the 10 existing PFL laws, other than Connecticut and Oregon (both of which could change as PFL regulations and other guidance are released in the coming years), require employers to display a model poster in a conspicuous location in the workplace. In addition, providing employees with individualized notice of their PFL rights at certain times is a common component of PFL laws. At least one PFL law, Massachusetts, even mandates that employers have employees acknowledge receipt of the PFL notice or decline to acknowledge receipt of the notice, either electronically or in writing.

**Table 8** surveys the varying notice situations under existing PFL laws.

When Employer Must Provide PFL Notice to Employee	Relevant PFL Locations
Upon hire or within certain number of days thereafter	CA, CT, DC, MA, NJ
Annually	CT, DC
When the employer is notified of employee's need for PFL qualifying event, or within a certain amount time after start of PFL absence (if applicable)	CA, DC, NJ, NY, WA, San Francisco
Include notice or certain PFL-specific information in employee handbook	NY, San Francisco
Upon employee inquiry about PFL	San Francisco
Upon first request of the employee	NJ
Within a certain number of days after a new notice is issued by the state	NJ
By a set date established as part of PFL program implementation	MA, OR

## Potential Penalties

PFL laws carry a wide array of potential penalties that can be applied to employers who violate the specific law. In addition to general penalties, explicit acts of noncompliance that carry specific potential penalties under certain PFL laws include **(a)** failure to remit the appropriate amount of PFL premiums; **(b)** failure to file the required reports; **(c)** failure to provide the required notifications and disclosures or display the required poster; **(d)** unlawful retaliation, interference, or discrimination; **(e)** intentionally providing information to the administrative agency that results in an erroneous PFL payment to an employee; and **(f)** failure to complete and timely return a PFL claim form to the administrative agency. Some nonexclusive examples of PFL penalties include:

- Monetary fines and penalties, which (a) can increase based on certain factors, such as repeat violations or willfulness; and (b) be applied on a per employee and/or per day basis, depending on the nature of the violation;
- Liquidated damages;
- Holding certain officers, members, or partners personally liable;
- A misdemeanor;
- A term of imprisonment of varying length; and
- Potential liens on property.

## Private or Self-Insurance Plans

An employer has the ability to obtain approval to administer a private PFL plan, or sometimes a self-insured plan, in lieu of following the applicable state's PFL program in all current PFL locations other than Washington, D.C. and Rhode Island. In the eight PFL jurisdictions that permit private or self-insurance plans (also referred to as voluntary plans, depending on the law), the application process is notably complex and, at least in certain locations, carries an application fee. Generally, some of the criteria some employers' private or self-insured PFL plans must satisfy in order to be approved by a PFL administrative agency include the following:

- The private plan is available to all employees (or a certain number or percentage of employees) in the PFL jurisdiction;

- Employees under the private plan satisfy applicable eligibility standards in order to receive PFL benefits;
- A threshold amount of employees consented to the private plan;
- Future employees will be covered by the private plan;
- The rights afforded to employees under the private plan are equal to or greater than those provided for under the PFL law and regulations;
- Provides the right amount of PFL benefits each year (i.e., number of weeks of family and/or medical leave individually and in the aggregate, as applicable);
- PFL benefits under the private plan are available for all qualifying events as set forth in the applicable PFL law;
- The private plan's weekly wage replacement benefit amount is at least as generous as the amount employees would receive under the PFL law;
- PFL benefits under the private plan can be taken intermittently or on a reduced schedule, consistent with the applicable PFL law;
- Payroll deductions under the private plan, if any, are no greater than the permissible amount of deductions under the PFL law;
- Employees receive job protection under the private plan, consistent with any applicable conditions;
- The private plan will be in effect for at least one year;
- Former employees are covered under the private plan, consistent with applicable PFL laws' treatment of former employees;
- If the private plan provides for insurance, the forms of the policy must be issued by an approved insurer; and
- The employer permits representatives from the administrative agency to access its premises for purposes of examining operations and records to determine the employer's ability to properly administer the private plan.

In addition to meeting the relevant application criteria from the above list, certain PFL laws also require employers to obtain re-approval of their private PFL plan each year for a certain number of years after the initial approval.



**To provide employers with relief from the widespread PFL administrative burdens, federal legislation should create a national platform that establishes a single set of criteria and requirements.**

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# Paid Family Leave

## Recommendations

**Despite variations in the above core PFL topics, certain trends have emerged within each topic based on a jurisdiction-by-jurisdiction analysis. Coupling these trends with aspects of preexisting federal unpaid leave laws, such as the FMLA, is highly informative when assessing how a federal or state PFL law should operate and what such a law could accomplish.**

Some recommended components of a federal PFL proposal include:

### National Platform

Many employers operate in multiple states or across the entire United States. This makes them subject to numerous, and frequently inconsistent, state and local paid leave programs, both in the PFL context and in terms of other forms of leave (i.e., paid sick leave, disability insurance benefits, etc.) As discussed throughout this report, the substantive technical and administrative details built into one, let alone 10, PFL laws create considerable compliance challenges and increased liabilities for multi-state and nationwide employers.

To provide relief from the widespread PFL administrative burdens, federal legislation should create a national platform that establishes a single set of criteria and requirements. Employers could opt in to the national platform and receive an exemption from state or local PFL laws or, if they prefer, continue to operate under a state or local PFL law that is equal to or more generous than the federal standard. For example, employers that operate in only one state, particularly if they have already set up payroll systems and made other administrative adjustments to comply with a state program, might prefer that option rather than make another round of adjustments to comply with the national platform.

### Employee Funded

Several states, such as California, New Jersey, Rhode Island, and (most likely) Connecticut, fund their PFL programs exclusively through mandatory employee payroll deductions. The employee payroll deductions are collected by the employer each pay period and ultimately remitted to the administering agency, usually on a quarterly basis. A future federal or state PFL program should follow this model for multiple reasons.

First, employers will need to absorb significant PFL implementation costs. These costs include, but are not limited to, policy drafting, setting up payroll deductions, employee and manager training, integration with existing company policies, employee absenteeism due to use of the PFL, recordkeeping, and remitting collected premiums to the administering agency. Thus, employers should not have to cover the costs of the PFL premium as well. Second, and relatedly, many employers already incur the cost of maintaining their company-provided PFL and/or short-term disability programs. Requiring them to also fund some or all of a state PFL program would force them to pay for the same employee benefit twice. This unreasonable double payment standard could encourage many such employers to drop their existing company paid leave programs, which often times are more generous than state PFL programs.

## FMLA Model

Existing state and local PFL programs impose a number of standards—employer coverage, employee eligibility, amount of benefits, qualifying events, covered family members—that far exceed comparable standards under the federal FMLA. By broadening their requirements so far beyond those imposed by the FMLA, employers subject to state and local PFL laws are left absorbing hefty costs and administrative burdens in order to comply.

To this end, future federal and state PFL proposals should largely (although not entirely) follow the existing FMLA model, including, but not limited to, the following points:

### Employer Coverage

- **The Issue:** Small businesses face unique compliance challenges, particularly with regard to operational disruptions, which is why the FMLA only applies to employers who employ 50 or more employees for at least 20 workweeks in the current or preceding year. However, most existing PFL laws will cover an employer if it has one or more individuals in employment in the relevant jurisdiction, thereby imposing substantial financial and operational burdens on small businesses across the PFL jurisdictions.
- **Recommendation:** Future federal or state PFL programs should set an employer coverage threshold that is friendly to small businesses. The threshold should be no less than employing 50 employees for at least 20 workweeks in the current or preceding year, as exists under the FMLA.

### Employee Eligibility

- **The Issue:** Existing PFL laws contain a variety of employee eligibility criteria, many of which include low annual earnings thresholds,<sup>80</sup> hours worked requirements, and/or length of employment requirements. These criteria cover many individuals, including new hires, seasonal employees, and certain part-time employees, who are not currently eligible for leave under the FMLA. Employers that employ large part-time populations, depend on influxes of seasonal employees during peak months, and/or experience high employee turnover, will face extensive and widespread administrative and financial challenges if employees who currently do not reach the FMLA eligibility threshold are entitled to federal or state PFL benefits.
- **Recommendation:** A future federal or state PFL program should impose an employee eligibility standard that, at a minimum, requires employees to meet the hours worked, length of employment, and worksite eligibility standards under the FMLA, namely that the employees (1) have worked for that employer for at least 12 months, (2) have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave, and (3) work at a location where at least 50 employees are employed at the location or within 75 miles of the location.<sup>81</sup> Further, a future federal or state PFL program also should require that an individual satisfy a minimum earnings threshold based on his or her earnings during the current or prior year in order to be eligible to receive federal PFL benefits.

80 Examples of PFL laws with an employee eligibility “earnings component” include: (a) California - individual earned at least \$300 from which California State Disability Insurance (“SDI”) deductions were withheld during the base period; (b) Connecticut - individual earned at least \$2,325 during his/her highest earning quarter within the base period; (c) Massachusetts - individual must have received total wages from a Massachusetts employer or covered business entity that in the aggregate: (i) Equal or exceed 30 times the individual’s weekly benefit amount (or generally about 15 weeks of employment/earnings); and (ii) Equal or exceed \$4,700; (d) New Jersey - individual worked 20 calendar weeks in the base year, earning at least \$172 each week, or earned at least \$8,600 in the base year; (e) Oregon - individual earned at least \$1,000 in wages during the base year; and (f) Rhode Island - individual earned \$12,600 in Rhode Island during the base period.

81 29 U.S.C.A. § 2611(2); 29 C.F.R. § 825.102, 825.110.



### Length of Benefits

- The Issue: Four of the existing 10 PFL laws permit employees to receive PFL benefits during more than 12 weeks in a 12-month period (i.e., the federal FMLA threshold), with the maximum annual amount of PFL benefits being afforded in Massachusetts (26 weeks of combined family leave and medical leave) and Washington State (18 weeks of combined family and medical leave).<sup>82</sup> A number of other PFL laws where the annual weekly benefit amount is less than or equal to the FMLA's 12-week standard do not permit employees to use PFL for their own serious health condition. Instead, employees often can receive benefits for such absences through a separate state program (i.e., disability insurance benefits), which increases the aggregate amount of time off an employee can take in a year beyond the FMLA threshold. Excessive amounts of time off impose considerable costs and complications on employers and employees not on leave.
- Recommendation: A future federal or state PFL program should provide eligible employees with no more than 12 weeks of benefits in a 12-month period.

### Qualifying Events

- The Issue: State and local PFL benefits are available for family and medical issues that far exceed bonding with a new child, as well as other covered absences under the FMLA.
- Recommendation: A future federal or state PFL program should limit qualifying events to those permitted under the FMLA.

### Covered Family Members

- The Issue: Many PFL laws define “family member” significantly more broadly than parent, child, and spouse (i.e., the federal FMLA standard). Common additional covered individuals include parents-in-law, siblings, grandparents, and grandchildren. However, and notably, the New Jersey, Connecticut, and Oregon PFL laws also provide employees with PFL benefits when they are absent to care for the serious health condition of an individual whose close association with the employee is equivalent to a family relationship.<sup>83</sup>
- Recommendation: A future federal or state PFL program should largely limit covered family members to the categories of individuals who are considered family members under the FMLA—parent, child, and spouse, although adding grandparents to that list should be considered.

### Job Protection

- The Issue: Not all state PFL programs explicitly guarantee that a worker can return to his or her job.
- Recommendation: A future federal or state PFL program should be specific about a worker's right to return to his or her job after taking leave.

On these core PFL topics, a workable model for future federal or state PFL programs is to follow the FMLA, with which employers already have considerable experience, including protecting employees' job during leave. To resolve the PFL patchwork that is proliferating in the United States and minimize the financial, administrative, and operational burdens that a PFL program would impose on covered employers, a federal PFL law, as well as any future state laws, should incorporate the above recommendations.

<sup>82</sup> See Table 4 above for more details.

<sup>83</sup> See Table 6 above for more details.



**U.S. CHAMBER OF COMMERCE**  
Employment Policy Division