

Proposed Rules for Maine Paid Family and Medical Leave Provide Some Helpful Information for Employers

by Suzanne E. Meeker on July 1, 2024

Maine’s comprehensive paid family and medical leave (PFML) law, enacted in October 2023, establishes a state benefits program funded by employer and employee contributions (the “Program”). The PFML law provides for implementation of the Program in phases over several years:

- **January 1, 2024–January 1, 2025**—Setting up the administrative structure of the Program by appointment of a PFML Authority and adoption of final Program rules by the Maine Department of Labor.
- **January 1, 2025**—Funding the Program by payroll contributions goes into effect. Covered employers must submit their first quarterly contribution reports and premium payments to the Program by April 30, 2025.
- **May 1, 2026**—Opening the Program for benefit applications and payment.

Consistent with this timeline, the Maine Department of Labor (the “DOL”) published its proposed rules governing the Program in late May. The DOL is accepting public comments [online here](#) through July 8, 2024. Although the proposed rules may be revised before being finalized, they provide a guide to the DOL’s thinking about the Program’s details and operation.

This post focuses on specific aspects of the PFML law where the proposed rules provide helpful information about their application.

Covered Employers and Employees

The Program applies to almost all employers with one or more employees in Maine. The Federal government is exempt, and tribal governments and self-employed individuals may elect coverage. Similarly, nearly all employees who earn wages in Maine are covered by the PFML law. Exceptions are limited to employees who earned less than six times the state average weekly wage (determined each July 1) in aggregate during a one-year base period and, under the proposed rules, who are incarcerated in Maine correctional institutions, covered by the Federal Railroad Unemployment Insurance Act, or earning wages under the Federal Work-Study Program while enrolled in a public or private college or university.

Contributions

The PFML law requires initial contributions (“premiums”) of one percent of employee wages up to the applicable Social Security Taxable Wage Base. The DOL may adjust the premium annually after the 2027 calendar year as required to keep the Program solvent. Covered employers are liable for payment of premiums to the Program but may deduct up to 50 percent of the contributions from employee wages. The proposed rules clarify that a determination to deduct premiums from wages must apply to all employees, and any change requires written notice to all employees at least seven days before the first affected paycheck.

There is a statutory premium reduction to one half percent of employee wages for small employers with fewer than 15 employees. The proposed rules clarify that eligibility for the premium reduction is based on the number of covered employees in Maine. Such a small employer may deduct the full amount of its premium obligation from wages.

Under the proposed rules, the employer’s size for determining premiums for a calendar year is based on the number of covered employees in Maine on the preceding October 1. Accordingly, initial premium liability will be based on the October 1, 2024 employee count. The proposed rules make clear that the count must include seasonal and temporary workers as well as full- and part-time employees.

The proposed rules do not permit employers to correct a failure to deduct employee premiums for any pay period, regardless of the cause. Instead, the employer will be deemed to have elected to pay the employee share. It is unclear how this rule will interact with the requirements to treat all employees the same and to provide advance written notice of any changes to deductions.

Qualifying Leaves

The PFML law makes benefits available for medical leave for a covered employee’s own serious health condition and family leave for reasons including care for a new biological, foster, or adopted child, a family member’s serious health condition, emergencies related to the military deployment of a family member, protection from abuse, organ donation, and military bereavement. The maximum total leave within an employee’s benefit year is 12 weeks, which may run concurrently with Federal FMLA leave. However, an employee may not be required to exhaust other paid leaves before taking leave, such as sick, vacation, or personal time.

The proposed rules address several concerns raised by the statutory language. First, covered family members include individuals with whom the covered employee “has a significant bond that is or is like a family relationship,” even if there is no biological or legal relationship. Under the proposed rules, an employee may take leave with respect

to only one such individual in a benefit year. Second, the proposed rules clarify that an employee taking sequential medical and family leave related to pregnancy and childbirth is limited to an aggregate of 12 weeks, which was unclear from the statute.

Private Plans

The PFML law permits employers to provide the required benefits through private plans approved by the DOL in lieu of participating in the state program. Private plans may be either self-funded or insured under a policy issued by a state-authorized insurer; self-funded plans must furnish a bond to the state. The statute generally requires private plans to replicate the terms of the Program at a cost to employees not greater than authorized for the Program. The maximum number of weeks of leave, wage replacement rate, and maximum weekly benefit must be “substantially equivalent” to those provided under the Program.

The proposed rules establish the process for requesting substitution of a private plan for the Program and provide details on the meaning of “substantially equivalent” benefits. Generally, benefits need not be identical but must be at least as generous as under the Program. Applications for both insured and self-funded plans will be accepted after January 1, 2026, subject to payment of an application fee. An employer with a self-insured private plan must also apply for a certification that its plan is eligible for substitution for an additional fee, by filing a copy of the plan document with the DOL or possibly the Maine Bureau of Insurance (if the DOL so determines). An employer with a self-insured private plan may submit its applications for substitution and certification simultaneously.

If an application for substitution is approved, the exemption from the Program will become effective on the first day of the next calendar quarter. The applicant must continue contributions to the Program until the effective date. Accordingly, no private plan exemption could be effective before April 1, 2026, and all covered employers will be required to pay contributions for at least five calendar quarters from January 1, 2025.

A private plan exemption will be valid for three years. In fact, under the proposed rules, the employer may not request cancellation of the exemption during the three years except for “good cause,” such as a premium increase for an insured plan. The DOL must approve any “material change” to the private plan with at least 60 days’ advance notice. Application for renewal after three years must be filed at least 30 days before the prior exemption expires. Significantly, the proposed rules will make it essential for employers to take action, even if they do not seek renewal, by requesting cancellation to avoid being penalized by having employee payroll contributions disallowed after the exemption expires.

PFML Program Administration

The proposed rules also include detailed procedures for employees requesting leave, including notice to employers, benefit applications, and claims review, as well as for appeals from covered employers and employees on various adverse decisions. For employers, these include certain DOL findings when considering benefit applications and disapproval or revocation of private plan substitutions.

Next Steps for Covered Employers

Although the proposed rules may be revised in upcoming months, Maine employers should begin preparing to implement premium payments in 2025 and consider whether they may want to apply for a private plan substitution at the beginning of 2026.

If you have questions about preparing for implementation or any other aspect of the Maine PFML Program, please contact a member of Verrill's Employee Benefits & Executive Compensation Group.



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