

Preparing for Paid Family Medical Leave (PFML): Interactions with Other Types of Leave

Maine Paid Family and Medical Leave

- State-run insurance program providing partial wage replacement and job-protected leave for eligible workers.
- Benefits available starting May 1, 2026.
- **Covered employers/workers:** Most Maine employers are covered. Employees working in Maine are generally eligible; self-employed individuals can opt in.
- **Funding/contributions:** Up to 1.0% of wages, split 50/50 between employer and employee. Employers with fewer than 15 employees are not required to pay the employer share (but must remit employee contributions).
- **Duration:** Up to 12 weeks of paid leave per benefit year (combined across qualifying reasons).
- **Covered reasons:**
 - Worker's own serious health condition (medical leave)
 - Bonding with a new child (birth, adoption, foster)
 - Care for a family member with a serious health condition
 - Certain military-related exigencies and caregiving
 - Safe leave related to domestic violence, sexual assault, or stalking

The Basics

- 26 M.R.S. § 850-R. creates a non-exclusivity principle that allows eligibility for state benefits and other leave benefits.
- "This subchapter may not be construed to prohibit an employee entitled to receive benefits for family leave or medical leave under a collective bargaining agreement or employer policy from also receiving benefits under this subchapter as long as the employee is otherwise eligible for benefits under this subchapter"

The Basics Continued

- 26 M.R.S. § 850-C(5) contains a mandatory benefit reduction provision to prevent overcompensation.
- "The weekly benefit amount must be reduced by the amount of wages or wage replacement that a covered individual receives for that period under:
 - A government program or law, including, but not limited to, unemployment insurance and workers' compensation under Title 39-A other than for compensation received under Title 39-A, section 213 for an injury that occurred prior to the family leave or medical leave claim, or under other state or federal temporary or permanent disability benefits law; or B. A permanent disability policy or program of an employer"

Coordination with Federal and State FMLA

- Maine PFML is designed to be taken at the same time as unpaid federal FMLA and Maine FMLA when applicable.
- Employers subject to federal FMLA and Maine FMLA should follow their normal process for designating leave time under these programs.

Coordination with Federal FMLA

- Employer can require employee to use PFML leave when they are on federal FMLA leave
- 29 CFR § 825.207: "FMLA permits an eligible employee to choose to substitute accrued paid leave for FMLA leave" and "If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave."

Coordination with Federal FMLA

- This regulation establishes that "the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave"

Coordination with Federal FMLA

- Result should be the same as courts construe the statutes similarly.
- *Colburn v. Parker Hannifin/Nichols Portland Div.*, 355 F.Supp.2d 566, 573-574 (D. Me. 2005), *aff'd*, 429 F.3d 325 (1st Cir. 2005).
- *Donovan v. Nappi Distributors*, 703 F. Supp.3d 135, 254 (D. Me. 2023).

Coordination with Federal and State FMLA

- Some absences will only be approvable under Maine PFML or federal/Maine FMLA, but not the other(s), because of things like different eligibility rules and different covered leave reasons.
- Employees cannot choose to take one leave and “save” the other leave to use later.

Coordination with Federal and State FMLA

- If an employee used federal or Maine FMLA without concurrent Maine PFML in the previous year, and the employer provides documentation of it, that non-concurrent unpaid leave will reduce the amount of Maine PFML time the employee has available.
- The employer will be able to provide this documentation to the Administrator after being notified about the employee's claim application for Maine PFML.

Coordination with Federal and State FMLA

- Employers subject to federal FMLA and Maine FMLA can still follow their normal process for confirming and designating a leave under those laws.
- An employer is not entitled to medical information that is provided to the Maine PFML Administrator.

PFML Benefits and Accrued PTO

- By law, an employer cannot force an employee to use PTO (such as vacation, sick time, and/or Earned Pay Leave) during a PFML absence, or to use up all their PTO before taking PFML.
- However, because PFML benefits do not replace all of an employee's regular earnings, employees will likely want to use some PTO to close that gap, which the DOL refers to as a “top up” in its FAQs.

PFML Benefits and Accrued PTO

- Additionally, medical leave benefits are not payable during the first seven calendar days of the leave.
- Employee may use accrued sick or vacation pay or other paid leave provided under a collective bargaining agreement or employer policy during the first seven calendar days of the leave.

PFML Benefits and Accrued PTO

- This can help an employee end up with the same amount of money they usually get each week.
- It can also help by making payroll deductions – for things like health insurance premiums – continue uninterrupted.
- An employer must allow an employee to use accrued time to “top up,” consistent with the PTO policy and applicable law.
- Alternatively, an employer may choose to simply pay employees the amount to close the gap without the employees having to use PTO.

PFML Benefits and Accrued PTO

- The PFML program will not reduce benefits paid to account for “top up” payments or PTO usage.
- However, PFML is not intended to lead to situations where workers end up with more money in a week than they would have gotten while working.

PFML Benefits and Accrued PTO

- Employers should make sure the amount they're "topping up" (or the amount employees are getting via PTO), combined with their PFML benefits, does not add up to more than an approximate estimate of the amount the employee would have earned while working.

Effect Other Benefits Have on PFML Benefits

- By law, PFML benefits will be reduced dollar for dollar by any payments an employee is receiving at the same time from:
 - State unemployment insurance
 - Worker's compensation, except for benefits for partial incapacity for an injury that occurred prior to the PFML claim
 - Any government provided short-term disability or long-term disability program (such as Social Security Disability Insurance)
 - A long-term disability insurance plan provided by employee's current or prior employer.

Effect Other Benefits Have on PFML Benefits

- The Administrator will ask the employee if they are receiving payments from any of these programs when they create a claim.
- The Administrator will let the current employer know a new claim has been created and give the current employer the opportunity to share any information it may have about payments from one of these programs.
- If PFML benefits are calculated and paid and the Administrator later learns that the employee also got payments from one of these programs, the employee will be expected to pay back the amount that should have been reduced from their PFML benefits.

Effect Other Benefits Have on PFML Benefits

PFML benefits will not be reduced for the following:

- Benefits from employer's short-term disability insurance plan.
- "Top up" payments employer voluntarily chooses to provide to employees to get them to 100% of their regular pay.
- Wages from PTO that employees choose to use to get themselves to 100% of their regular pay.
- Worker's compensation benefits for partial incapacity for an injury that occurred prior to the PFML claim.

Coordination with Employer Policies—Benefit Accrual

- Taking PFML does not affect an employee's right to accrue or receive other employment benefits.
- While on leave, the employee is still entitled to:
 - Accrue vacation time and sick time (if employer policy provides for such time).
 - Continue earning bonuses, advancement, seniority, or service credit.
 - Maintain participation in benefit plans or programs.

Coordination with Employer Policies—Benefit Coordination

- During PFML leave:
 - Employers must continue the employee's health insurance coverage.
 - Employers must contribute to premiums at the same level as if the employee were working.
 - The employee remains responsible for any employee portion of premiums.
 - Employers must maintain coverage under the same conditions as if the employee had not taken leave.

Coordination with Employer Policies—Job Protection

- If an employee has been employed with an employer for at least 120 consecutive days the employee must be returned to their own or an equivalent position when they return from leave.
- An employee who has been employed for less than 120 consecutive days with an employer is not entitled job protections during leave.

Coordination with Employer Policies—Job Protection

- An employee is required to give reasonable notice to their employer on their intent to use leave and must provide notice as soon as practicable in cases of emergency use of leave.
- If an employee fails to give reasonable notice after starting an emergency leave, by failing to follow the employer's usual notice requirement for work absences and provided there are no unusual or extenuating circumstances that prevent the employee from providing such reasonable notice, then the employee may not be entitled to job protection if the leave is approved.

Preparing for Employee Leave

- Have policies in place regarding leave benefits
 - Paid/unpaid designations
 - Concurrent application
 - Job protection vs. wage replacement
- Provide required notices
- Ensure clear processes for requesting leave
- Monitor state/federal updates to leave benefits/programs