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Maine Issues Final Paid Family and Medical Leave Regulations

The Maine Department of Labor ("Department") has released final regulations for the Maine Paid Family and Medical Leave ("PFML") program.

Background

On June 11, 2023, Maine Governor Janet Mills signed into law the state's budget bill which established a PFML program. Several rounds of proposed rule making followed. The program provides 12 weeks of wage replacement benefits for employees taking family or medical leave. Contribution withholdings under the state program became effective for all employers on **January 1, 2025**, and claims processing begins **May 1, 2026**. Employers can opt out of the state program and offer a private plan, beginning **April 1, 2025**, if certain conditions are met.

Employer Coverage

All private and public employers who employ one or more employees in Maine are required to provide PFML. The program does not apply to employees of the federal government. Self-employed individuals and tribal governments can opt-in to the program.

Eligibility to Receive Benefits

To receive PFML benefits, a covered individual must work for an employer subject to PFML and:

- Have earned wages paid in the state at least 6 times the State Average Weekly Wage during the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year.
- Be employed when timely submitting an application for benefits;
- Have not been declared ineligible due to fraud; and
- Satisfy one of the qualifying reasons to take PFML:

- to bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;
- to care for a family member with a serious health condition;
- to attend to a qualifying exigency (same as per federal FMLA);
- to care for a family member of the covered individual who is a covered service member;
- to take safe leave; or
- any other reason allowed under the state's existing unpaid family leave laws.

Additional provisions regarding eligibility to take leave include:

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

Wage Definition

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

Amount of Benefit

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

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

Use and Types of Leave

Covered individuals may take up to 12 weeks of approved leave in a variety of ways:

- **Continuous leave** occurs in blocks of consecutive days or weeks.
- **Intermittent leave** provides for varying periods of leave and returning to work throughout a period of approved covered leave time.

- **Reduced schedule leave** reduces an employee's typical number of days per workweek, or hours per workday, on a planned and consistent basis.

Partial weeks or partial days of leave will be prorated against the employee's scheduled workweek.

Premiums

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

- An employer with 15 or more employees may only deduct up to 50% of the required premium from an employee's wages and must remit 100% of the combined premium contribution to the Paid Family and Medical Leave Insurance Fund ("Fund") (i.e., the required premium may be equally shared between the employee and employer).

- An employer with fewer than 15 employees may only deduct up to 50% of the required premium from an employee's wages and must remit 50% of the premium to the Fund as businesses with fewer than 15 employees are exempt from paying into the state plan.

- The PFML program caps the amount of an employee's earnings subject to contributions at the same amount of earnings subject to Social Security taxes.

Employers must determine the number of covered employees for each federal employer identification number ("FEIN") separately. An employer that employs 15 or more covered employees on their payroll in 20 or more calendar workweeks during the 12-month period preceding September 30 of each year will be an employer of 15 or more employees for the following calendar year. This count includes the total number of employees on establishment payrolls employed full or part-time who receive pay for any part of the pay period. Employers will determine their size for each upcoming calendar year as of October 1, 2024 (i.e., effective January 1, 2025) and October 1 of each year thereafter.

The penalty for an employer failing to pay contributions and/or submit wage reports is 1 percent of the employer's total quarterly payroll. Employers will receive a notification if they have failed to pay contributions or submit a wage report and will have time to correct the issue before the penalty is assessed.

Approved Private Plans

Employers may apply for a private plan exemption after **April 1, 2025**. Applications for substantially equivalent private plans (fully insured or self-funded with a surety bond paid to the state) must be submitted online on a form provided by the Department along with an application fee set initially at $250 for review of the application, and an additional $250 administrative reimbursement fee if the application is approved for the substitution. The application fees may be increased by the Department on **January 1, 2026**, or thereafter. An approved private plan is valid for three years.

Employers will generally owe premiums to the state plan until their exemptions are approved. All employers must pay premiums to the state for the first quarter of 2025. The employer is responsible for PFML premiums until the effective date of exemption and premiums owed prior to the effective date of exemption must be remitted to the state and are non-refundable.

Unionized Workforces

Public employers and employees that are subject to a collective bargaining agreement that was in effect on October 25, 2023, are not required to participate in the PFML program until the collective bargaining agreement expires.

Job Protection

Any employee that has been employed with their employer for at least 120 consecutive calendar days is entitled, upon return from leave, to be restored by the employer to the position held by the employee when the leave commenced, or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

Tax Issues

The Department has provided the following tax advice in the PFML FAQs on the Department's PFML website. Premiums are calculated on total subject wages, before federal income tax, state income tax, and Social Security and Medicare taxes are deducted. Whether PFML premiums are taxable is reliant on the guidance and processes of the federal Internal Revenue Service. Employers should work closely with their tax professionals on this question. Employee premium contributions should be listed under Box 14 of the W-2 form with the label "MEPFML."

Employer Notifications to Employees

Maine Law requires the Department to issue the workplace notice in English, Spanish, French, Somali and Portuguese and any other language that is the primary language of at least 2,000 residents of the state. Employers must post the workplace notice in English and each language other than English that is the primary language of 3 or more employees of that workplace.

Employers must also provide a written notice to new employees within 30 days of hire that contains the employee's contribution amount and the employees' rights and obligations under the law.

An employer that fails to comply with the poster and employee notice requirements will be liable for a civil penalty of $50 per employee for the first offense and $150 per employee for each subsequent violation.

Employer Action

Employers should review all the available information from the Department, including the final regulations, and continue to work with employment counsel, leave vendors, payroll processors and any other related business advisors to ensure compliance with the PFML program by the requisite dates.

- All employers must be prepared to **withhold** contributions beginning **January 1, 2025**.
- The new Maine PFML Portal ("portal") will be **launching January 6, 2025**.
- All employers will be required to **register** with the Department via the portal to determine their liability for PFML contributions and to designate a third-party payroll or employee leasing company if they wish.
- Employers must **submit premiums and wage reports** quarterly through the portal.
  The first submission starts **April 1, 2025**, due by **April 30, 2025**.