What Employers Need to Know:
Maine's Paid Family and Medical Leave

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PFML Background

- On July 11, 2023, Governor Mills signed into law the Maine state budget in 2023 Public Law Chapter 412, which included the creation of a paid family and medical leave program (the “Program”)
- Maine is the 13^{th} state to enact such a program
- Under the program, beginning in 2026, eligible workers in both the public and private sectors will be eligible to take up to 12 weeks of paid family and medical leave

Program Eligibility & Benefits

- The Program will be administered by the MEDOL, and shall be effective as of January 1, 2026
- The Program covers eligible employees of eligible employers, including private businesses, the State, municipalities, and tribal governments
- The Program will provide up to 12 weeks of paid leave in a benefit year, which may be taken intermittently in increments of not less than 8 hours or on a reduced schedule as agreed to by an employer and its employee

Program Eligibility & Benefits

- Except in cases of emergency, employees must give reasonable notice of their intent to use leave, and the use of leave may not affect an employee's right to accrue vacation time, sick time, bonuses, advancement, seniority, length of service credit, or other employment benefits, plans, or programs
- Use of leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer

Program Eligibility & Benefits

- An individual may file an application for benefits no more than 60 days before the anticipated start date of leave and no more than 90 days after the start of leave
- The administrator may waive the 90 day filing deadline for good cause

Program Eligibility & Benefits

- The Program will be funded by employer and employee premium payments that will begin January 1, 2025
- The premium payments may not be more than a combined 1% of wages
- Employers with 15+ employees may deduct up to 50% of the premium required for an employee from that employee's wages and shall remit 100% of the combined premium to the benefit fund
- Employers with less than 15 employees may deduct up to 50% of the premium from that employee's wages and shall remit that amount to the fund

Program Eligibility & Benefits

- Self-employed individuals who elect coverage shall pay 50% of the premium required
- Beginning in 2028, and for each calendar year thereafter, the MEDOL will set the premium for the coming calendar year based on the percentage of employee wages at a rate necessary to maintain the benefits fund
- Employers that fail to make required contributions will be assessed a penalty equal to 1% of its total annual payroll for each year it fails to comply, in addition to amounts already owed, as well as the total amount of benefits paid to individuals for whom it failed to make premium payments

Program Eligibility & Benefits

- Benefit payments to individual are not payable during the first 7 calendar days of leave, but employees may use other employer-provided sick/vacation/paid leave during the first 7 days the employee is absent from work
- Covered employees are eligible to receive:
  - Up to 90% of their average weekly wage that is equal to or less than 50% of the state average weekly wage (SAWW); AND
  - Up to 66% of their average weekly wage that is more than 50% of the SAWW

**The max weekly benefit shall be the state average weekly wage ($1,103.71 as of July 1, 2023)

Program Eligibility & Benefits

- The benefit amount shall be prorated if leave is taken on an intermittent or reduced leave schedule
- The weekly benefit amount will be reduced by other government wages or wage replacement, or benefits from an employer permanent disability policy or program

Program Eligibility & Benefits

- An annual study by a qualified actuary will examine claims experience, admin expenses, and target fund requirements
- The admin costs for the Program may not exceed 5% of the amount deposited in the benefits fund
- The administrator must publish a report each year regarding total claims and benefits paid

Self-Employed Individuals

- Self employed individuals, including independent contractors and sole proprietors, may elect to participate in the Program and receive coverage for an initial period of not less than 3 years, with such election becoming effective on the date of filing written notice with the MEDOL
- Such individuals may withdraw from coverage within 30 days after the end of the 3 year period by filing written notice with the Commissioner
- Self-employed individuals that have elected coverage but have failed or refused to make premium payments for at least 2 quarters may be disqualified from receiving leave benefits

Private Plans, Collective Bargaining, & Concurrent Leave

- An employer with an approved private plan is not required to remit premiums to the fund
- Employers with private plans may apply to the MEDOL for approval to meet its obligations under the law through a private plan
- In order to be approved, a private plan must confer rights, protections, and benefits substantially equivalent to those provided to employees under the Program

Private Plans, Collective Bargaining, & Concurrent Leave

- Employers offering private plans that violate the private plan requirements are subject to a fine of $100/violation
- The MEDOL shall annually determine the admin costs arising out of administration of private plans, which shall be reimbursed by said private plan

Private Plans, Collective Bargaining, & Concurrent Leave

- The establishment of the Program does NOT eliminate an employer's obligations to comply with any employer policy, law, or CBA that provides for greater/additional rights than those provided under the Program
- The Program may not curtail rights provided under a CBA or employment contract
- The Program does not prevent an employer from compelling an employee to exhaust any rights to sick, vacation, or personal time prior to or while taking leave under the Program
- Leave taken under the Program shall run concurrently with federal FMLA

Reasons for Taking Leave

- To bond with the covered individual’s child or adopted child during the first 12 months after the child’s birth or adoption
- To care for a family member with a serious health condition
  - “family member” is defined broadly
- To attend a qualifying exigency
- To care for a family member who is a covered military service member

Reasons for Taking Leave

- To take safe leave as a result of violence, sexual assault, or stalking
- For personal medical leave for a serious health condition (that makes the individual unable to work)
- To donate an organ for human organ transplant
- For leave following the death of a family member
- Other reasons as prescribed by law

Notice & Return to Work

- Employers must provide notice of benefits available under the Program in a conspicuous place at each of its locations, and shall provide written info about the Program within 30 days of the start of an employee's employment
- Employers that fail to comply with the notice provisions will be subject to a civil penalty of $50/employee for a first violation and $150/employee for each subsequent violation
- Employers must allow employees that take PFML benefits to return to work in the position held by the employee when leave is commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment
- Employers may not retaliate against employees for exercising their rights to benefits under the Program

Additional Guidance/Rulemaking

- The law requires the MEDOL to publish detailed guidance and regulations
- Such guidance and regulations must be published no later than January 1, 2025
- The Program’s administrator shall also establish reasonable procedures and forms for filing claims for benefits and shall specify the supporting documentation necessary to support any claim for benefits

Summary of Important Dates

- October 2023: State budget goes into effect
- January 2024: MEDOL begins rulemaking process
- January 1, 2025: Initial PFML Program rules adopted
- January 1, 2025: Employer/employee contributions to Program begin
- May 1, 2026: Claims for benefits begin being processed

Questions?