



# Webinar Series: Guidance on State and Local Paid Family Leave Laws

## Part IX: Paid Family and Medical Leave Law Comparisons, Challenges and Federal Outlook

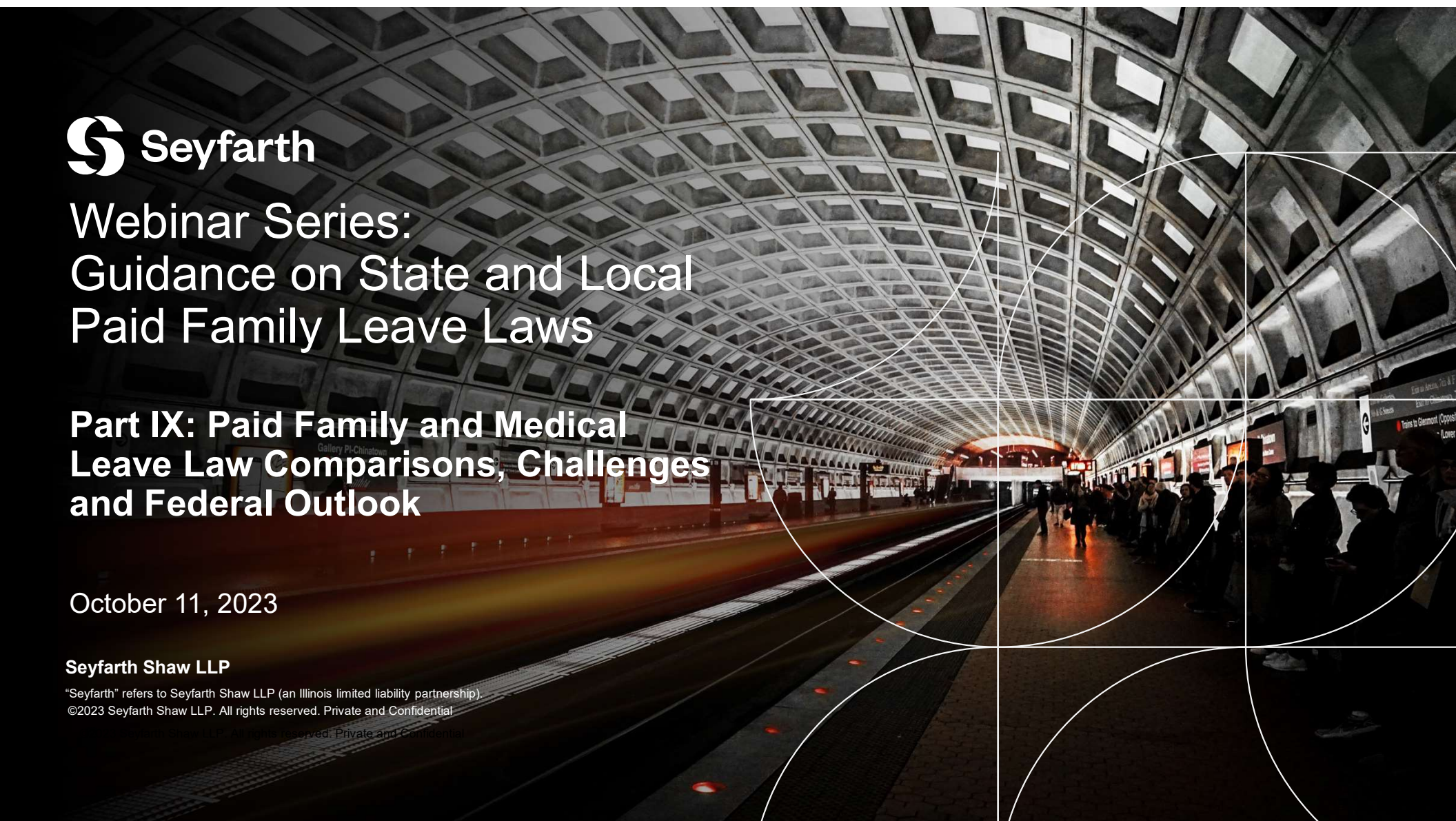
October 11, 2023

**Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2023 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

All rights reserved. Private and Confidential



## Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

# Speakers

---



**Joshua Seidman**  
Partner  
New York Office  
[jseidman@seyfarth.com](mailto:jseidman@seyfarth.com)



**Christina Duszlak**  
Associate  
Boston Office  
[cduszlak@seyfarth.com](mailto:cduszlak@seyfarth.com)



**Renate Walker**  
Associate  
Atlanta Office  
[rewalker@seyfarth.com](mailto:rewalker@seyfarth.com)



**Ilyse Schuman**  
Senior Vice President,  
Health Policy  
American Benefits Council  
[ISchuman@abcstaff.org](mailto:ISchuman@abcstaff.org)



## Program Overview

- 01** PFL/PFML Overview
- 02** Select PFL/PFML Comparisons via Infographic
- 03** Challenges & Complications for Employers & Employees
- 04** Federal Activity
- 05** Final Thoughts
- 06** Questions

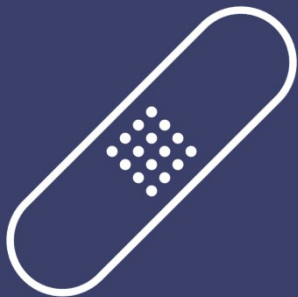
# PFL/PFML Overview





## Terminology

- **Statutory Unpaid Family and Medical Leave (FML):** Provides up to a specified number of weeks of unpaid job-protected leave for eligible employees who take leave for covered reasons, including their own illness, bonding with new child or to care for family member with a serious health condition.
- **Statutory Disability Insurance (SDI, TDI):** Provides partial wage replacement to employees who are temporarily disabled and unable to work because of non-occupational illness or accident.
- **Statutory Paid Family Leave (PFL):** Provides up to certain number of weeks of paid leave for eligible employees who take leave for family care related covered reasons, including bonding with a new child or to care for family member with a serious health condition. This time may also be job-protected in some jurisdictions.
- **Statutory Paid Family and Medical Leave (PFML):** Provides up to certain number of weeks of paid leave for eligible employees who take leave for covered reasons, including their own illness, bonding with a new child or to care for family member with a serious health condition. This time may also be job-protected in some jurisdictions.



## Terminology continued

- **Statutory Paid Sick Leave Law (PSL):** Employees earn a certain amount of paid leave based on hours worked that can be used for various reasons, including sickness or preventive care for themselves or family members. Employees receive their full pay (with potential nuances) for PSL and they are paid by their employer for the time.
- **COVID Paid Leave / Public Health Emergency Leave (SPSL, EPSL, PHEL):** In certain jurisdictions, employees receive a lump sum of paid time off for COVID-19 specific reasons or broader public health emergency leave reasons.
- **Company-Provided/Voluntary Leave (STD, LTD, PPL, etc.):** Companies may choose to provide voluntary leave benefits to employees such as short-term disability or paid parental leave in order to attract or retain employees.



## Paid Family and Medical Leave

- **Existing Mandatory SDI Laws – 5 States:**
  - CA, HI, NJ, NY & RI
- **Existing Mandatory PFML Laws – 13 States + DC**
  - Paid Family Leave - **CA, NJ, NY & RI**
  - Paid Family and Medical Leave – **CO** (benefits effective 2024), **CT, DC, DE** (benefits effective 2026), **MA, ME** (benefits effective 2026), **MD** (benefits effective 2026), **MN** (benefits effective 2026), **OR & WA**



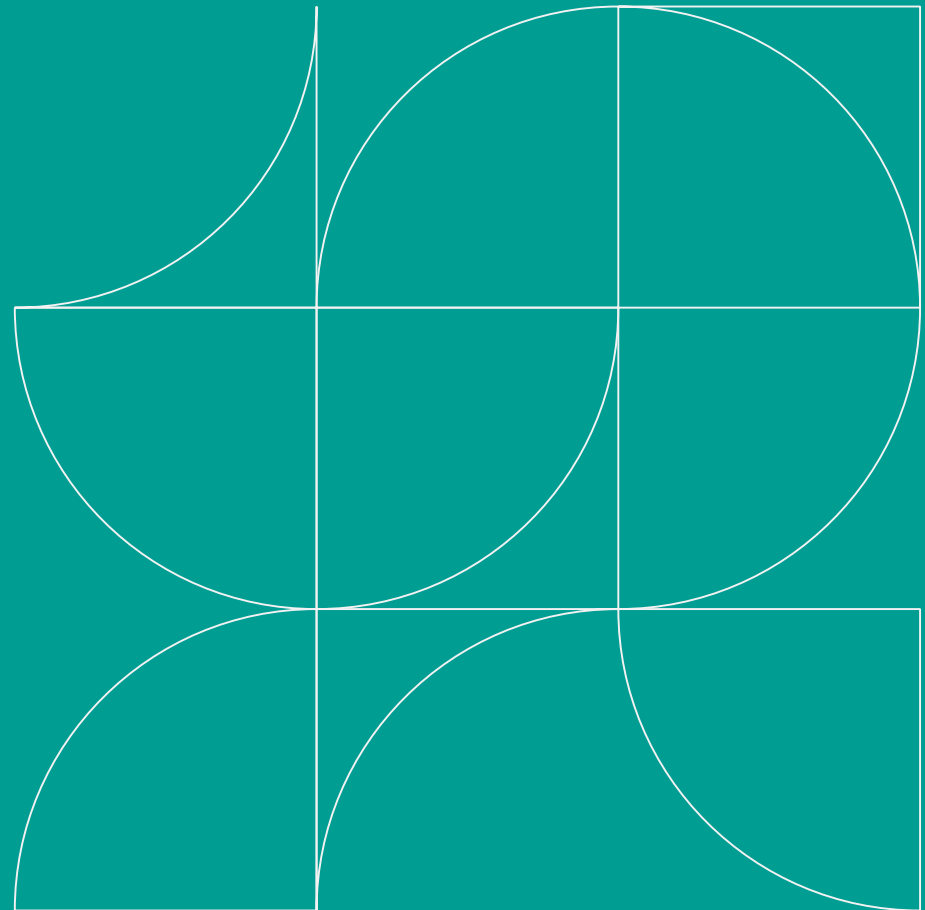


## Paid Family and Medical Leave

### A few new twists!

- **NH, VT** have instituted **Voluntary** PFML programs
  - NH (effective 1/1/2023)
  - VT (effective for state employees 7/1/2023; for other non-state government public employers 7/1/2024; for individual/private employer purchasers 7/1/2025)
- **AL, AR, FL, TN** (effective 1/1/2024), **TX, VA** added **Family Leave Insurance** as a class of insurance
- **Are these signs of the direction that PFML benefits will take in the coming years?**

# Select PFL/PFML Comparisons via Infographic



# Paid Family and Medical Leave Substantive Topics

---

## Infographic Topics:

- Qualifying Absences
- Covered Family Members
- Length of Benefits & Duration of Leave
- Amount of Pay

## Other PFML Law Substantive Topics:

- Employee Eligibility
- Employer Coverage
- Remote/Hybrid/Mobile Workers
- Benefit Year
- Key Definitions
- Job Protection
- Funding
- Waiting Periods
- Intermittent Leave
- Employee Notice & Scheduling
- Documentation
- Medical Recertification
- Interplay with Employer Leave
- Interplay with Other Laws
- Notice to Employees
- Posting
- Claim Filing Process
- Benefits Continuation
- Employee Disqualification
- Confidentiality
- Recordkeeping
- Anti-Retaliation/Discrimination/Interference
- Reporting & Remitting
- Union Workers
- Self-Employed Workers
- Written Policy Requirements
- Private Plans



# Weaving the Patchwork: How Mandatory Paid Family Leave Laws Stitch Together

## Private Plan Availability

All existing PFL laws other than DC and RI have a private plan option available to employers, but private plan approval criteria varies greatly



Locations with Mandatory PFL Laws <sup>0</sup>	Medical Leave (weeks) <sup>n</sup>	Family Leave (weeks) <sup>a</sup>	Military Exigency And/Or Military Caregiver Leave?	"Other" Leave? <sup>9</sup>	Combined Leave (weeks)	Percent of Wages Paid <sup>7</sup>	Non-Immediate Family Members Covered? <sup>6</sup>
CA	52 <sup>1</sup>	8	Yes <sup>5</sup>	None	52 <sup>1</sup>	60 - 70%	None
CO (eff. 1/1/2024)	12 or 16 <sup>3</sup>	12	Yes <sup>5</sup>	1 type	12 or 16 <sup>3</sup>	90% then 50%	2 types
CT	12 or 14 <sup>3</sup>	12	Yes	2 types	12 or 14 <sup>3</sup>	95% then 60%	1 type
DC	12	12	No	1 type	12 or 14 <sup>4</sup>	90% then 50%	None
DE (eff. 1/1/2026)	6 <sup>2</sup>	6 or 12 <sup>2</sup>	Yes <sup>5</sup>	None	12	80%	None
ME (eff. 5/1/2026)	12	12	Yes	3 types	12	90% then 66%	2 types
MD (eff. 1/1/2026)	12	12	Yes	None	24	90% then 50%	None
MA	20	12	Yes	None	26	80% then 50%	None
MN (eff. 1/1/2026)	12	12	Yes	1 type	20	90% then 66% then 55%	3 types
NJ	26 <sup>1</sup>	12	No	2 types	38 <sup>1</sup>	85%	1 type
NY	26 <sup>1</sup>	12	Yes <sup>5</sup>	1 type	26 <sup>1</sup>	67%	None
OR (eff. 9/3/2023)	12 or 14 <sup>3</sup>	12	No	1 type	12 or 14 <sup>3</sup>	100% then 50%	3 types
RI	30 <sup>1</sup>	6	No	None	30 <sup>1</sup>	4.62% <sup>8</sup>	None
WA	12 or 14 <sup>3</sup>	12	Yes <sup>5</sup>	1 type	16 or 18 <sup>3</sup>	90% then 50%	2 types

<sup>0</sup> Effective date represents date benefits become available for all forms of leave

<sup>1</sup> Length of absence from statutory disability insurance (SDI) laws

<sup>2</sup> 6 weeks in 24-month period = employee or family member serious health condition; 12 weeks in 12-month period = bonding

<sup>3</sup> Additional weeks possible if pregnancy complications

<sup>4</sup> Additional weeks possible for prenatal care and bonding

<sup>5</sup> Military Exigency Only

<sup>6</sup> For this graphic, Immediate Family Members are: child, parent, in-laws, spouse, domestic partner, sibling, grandparent, grandchild

Non-Immediate Family Members Include: equivalent of family relationship by close association, individual who lives in employee's home, expectation of care, etc.

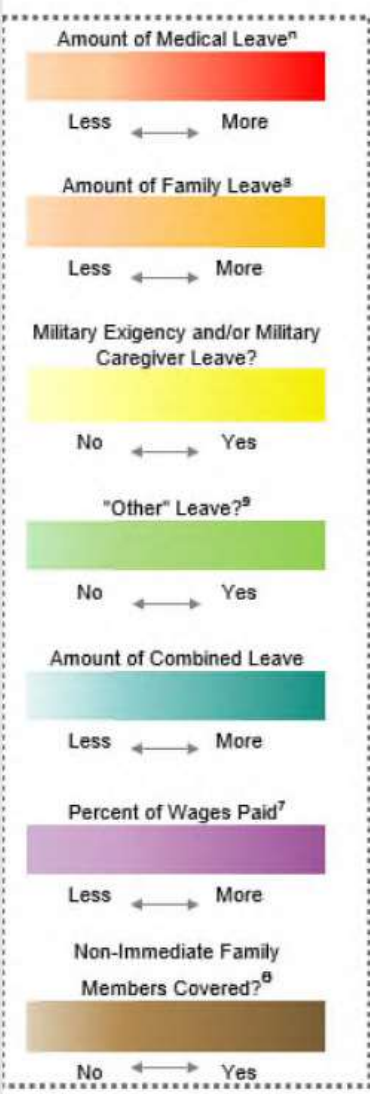
<sup>7</sup> Amount of pay to Employee will depend on certain factors, such as their average weekly wage ("AWW"), the statewide AWW and the maximum weekly pay established by each program

<sup>8</sup> Unlike other PFL laws, which typically measure amount of pay based on the employee's AWW, RI measures based on the employee's highest earning quarter in the base period

<sup>9</sup> "Other" Leave can include, but is not limited to, Bereavement Leave, Safe Time, Bone Marrow or Organ Donation, Prenatal Care, Public Health Emergencies, or COVID related absences.

<sup>n</sup> For this graphic, Medical Leave refers to qualifying absences related to the employee's own serious health condition or disability, depending on applicable law

<sup>a</sup> For this graphic, Family Leave refers to qualifying absences related to bonding or caring for a family member with a serious health condition



Locations with Mandatory PFL Laws <sup>0</sup>	Medical Leave (weeks) <sup>n</sup>	Family Leave (weeks) <sup>a</sup>	Military Exigency And/Or Military Caregiver Leave?	"Other" Leave? <sup>9</sup>	Combined Leave (weeks)	Percent of Wages Paid <sup>7</sup>	Non-Immediate Family Members Covered? <sup>6</sup>
CA	52 <sup>1</sup>	8	Yes <sup>5</sup>	None	52 <sup>1</sup>	60 - 70%	None
CO (eff. 1/1/2024)	12 or 16 <sup>3</sup>	12	Yes <sup>5</sup>	1 type	12 or 16 <sup>3</sup>	90% then 50%	2 types
CT	12 or 14 <sup>3</sup>	12	Yes	2 types	12 or 14 <sup>3</sup>	95% then 60%	1 type
DC	12	12	No	1 type	12 or 14 <sup>4</sup>	90% then 50%	None
DE (eff. 1/1/2026)	6 <sup>2</sup>	6 or 12 <sup>2</sup>	Yes <sup>5</sup>	None	12	80%	None
ME (eff. 5/1/2026)	12	12	Yes	3 types	12	90% then 66%	2 types
MD (eff. 1/1/2026)	12	12	Yes	None	24	90% then 50%	None
MA	20	12	Yes	None	26	80% then 50%	None
MN (eff. 1/1/2026)	12	12	Yes	1 type	20	90% then 66% then 55%	3 types
NJ	26 <sup>1</sup>	12	No	2 types	38 <sup>1</sup>	85%	1 type
NY	26 <sup>1</sup>	12	Yes <sup>5</sup>	1 type	26 <sup>1</sup>	67%	None
OR (eff. 9/3/2023)	12 or 14 <sup>3</sup>	12	No	1 type	12 or 14 <sup>3</sup>	100% then 50%	3 types
RI	30 <sup>1</sup>	6	No	None	30 <sup>1</sup>	4.62% <sup>8</sup>	None
WA	12 or 14 <sup>3</sup>	12	Yes <sup>5</sup>	1 type	16 or 18 <sup>3</sup>	90% then 50%	2 types

## Qualifying Events

Qualifying Event	Relevant PFML Locations
Bonding – Birth	All mandatory PFML laws
Bonding – Adoption	All mandatory PFML laws
Bonding – Foster Care Placement	All mandatory PFML laws
Care of Family Member with Serious Health Condition	All mandatory PFML laws
Own Serious Health Condition	CA*, CO, CT, DC, DE, HI*, ME, MD, MA, MN, NJ*, NY*, OR, RI*, WA
Qualifying Military Exigency	CA, CO, CT, DE, ME, MD, MA, MN, NY, WA
Military Caregiver Leave	CT, ME, MD, MA, MN
Bone Marrow and/or Organ Donation	CT, ME
Safe Time	CO, CT, ME, MN, NJ, OR
Bereavement Leave	ME**, WA
Pre-Natal Care	DC, MN
State of Emergency or Public Health Emergency Related Absences	NJ
COVID-Specific Absences	NY

## Covered Family Members

Family Member	Relevant PFML Locations
Child	All mandatory laws
Parent	All mandatory laws
Parent-In-Law	CA, CO, CT, DC, ME, MD, MA, MN, NJ, NY, OR, RI, WA
Spouse	All mandatory laws
Domestic Partner	CA, CO, DC, ME, MD, MA, MN, NJ, NY, OR, RI, WA
Sibling	CA, CO, CT, DC, ME, MD, MA, MN, NJ, NY, OR, WA
Grandparent	CA, CO, CT, DC, ME, MD, MA, MN, NJ, NY, OR, RI, WA
Grandchild	CA, CO, CT, ME, MD, MA, MN, NJ, NY, OR, WA

## Covered Family Members continued

Family Member	Relevant PFML Locations
Sibling, Grandparent, and/or Grandchild of Employee's Spouse or Domestic Partner	ME, MN, CO, OR
Child's Spouse and/or Domestic Partner	MN, OR, WA
Individual whose close association with the employee is equivalent of a family relationship	CO, CT, ME, NJ, OR
Individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person	WA
Individual who has a relationship with the eligible employee that creates "an expectation and reliance" that the employee will care for the individual, regardless of residence.	MN



## Length of Benefits – “Family Leave”



Weeks of Benefit Per Year	Relevant PFML Locations
<b>6 Weeks</b>	<b>DE*</b> (family member serious health condition as of 2026), <b>RI</b> (as of 2023)
<b>8 Weeks</b>	<b>CA</b>
<b>12 Weeks</b>	<b>CO</b> (as of 2024), <b>CT</b> , <b>DC</b> , <b>DE</b> (bonding with new child) (as of 2026), <b>ME</b> (as of 2026), <b>MD</b> (as of 2026), <b>MA</b> , <b>MN</b> (as of 2026), <b>NJ</b> , <b>NY</b> , <b>OR</b> , <b>WA</b>

**\*DE – Certain Absences Measured on 24-Month Basis:** Care of family member of with a serious health condition (SHC) is limited to a total 6 weeks in a 24-month period. In addition, employee is only eligible for one medical, family member SHC, or military exigency in 24-month period.

## Length of Benefits – “Medical Leave”

Weeks of Benefit Per Year	Relevant PFML Locations
<b>6 Weeks</b>	<b>DE*</b> (as of 2026)
<b>12 Weeks</b>	<b>CO</b> (as of 2024), <b>CT, DC, ME</b> (as of 2026), <b>MD</b> (as of 2026), <b>MN</b> (as of 2026), <b>OR, WA</b>
<b>14 Weeks</b>	<b>CT</b> (if incapacitated during pregnancy); <b>OR</b> (if limitations related to pregnancy, childbirth, or related medical condition) (as of 9/3/2023); <b>WA</b> (if incapacitated during pregnancy)
<b>16 Weeks</b>	<b>CO</b> (if pregnancy or childbirth complications) (as of 2024)
<b>20 Weeks</b>	<b>MA</b>
<b>26 Weeks</b>	<b>NJ</b> (via SDI program); <b>NY</b> (via SDI program)
<b>30 Weeks</b>	<b>RI</b> (via SDI program)
<b>52 Weeks</b>	<b>CA</b> (via SDI program)

**\*DE – Certain Absences Measured on 24-Month Basis:** EE “medical” leave for their own serious health condition (SHC) is limited to a total 6 weeks in a 24-month period. In addition, EE is only eligible for one medical, family member SHC, or military exigency in 24-month period.

## Length of Benefits – Other Absences

---

- **California:** Qualifying Exigency: 8 Weeks / Year
- **Colorado:** Qualifying Exigency / Safe Leave: 12 Weeks / Year (as of 2024)
- **Connecticut:** Bone Marrow / Organ Donation; Qualifying Exigency: 12 weeks / Year
- **Connecticut:** Safe Leave: 12 Days / Year
- **Connecticut:** Military Caregiver: 26 Weeks / Year
- **Delaware:** Qualifying Exigency: 6 Weeks / 24-month period (as of 2026)
- **Washington, D.C.:** Pre-Natal Leave: 2 Weeks / Year
- **Maine:** Qualifying Exigency / Military Caregiver / Safe Leave / Bereavement Leave\*/ Organ Donation: 12 weeks (as of 2026)
- **Maryland:** Qualifying Exigency: 12 Weeks / Year (as of 2026)
- **Massachusetts:** Qualifying Exigency: 12 Weeks / Year
- **Massachusetts:** Military Caregiver: 26 Weeks / Year
- **Minnesota:** Qualifying Exigency / Safe Leave / Military Caregiver: 12 weeks (as of 2026)
- **New Jersey:** Safe Leave / State of Emergency or Public Health Emergency Related Absences: 12 Weeks / Year
- **New York:** Qualifying Exigency / COVID-Specific Absences: 12 Weeks / Year
- **Oregon:** Safe Leave: 12 Weeks / Year
- **Washington:** Bereavement Leave: 7 calendar days following death of family member
- **Washington:** Qualifying Exigency: 12 Weeks / Year

\*Limited to family members who die in military service.

## Length of Benefits – Combined Total

Weeks of Benefit Per Year	Relevant PFML Locations
<b>12 Weeks</b>	<b>CO</b> (as of 2024), <b>CT, DC, DE</b> (as of 2026), <b>ME</b> (as of 2026), <b>OR</b>
<b>14 Weeks</b>	<b>CT</b> (if incapacitated during pregnancy); <b>DC</b> (“parental leave” + “pre-natal leave” only); <b>OR</b> (if limitations related to pregnancy, childbirth, or related medical condition) (as of 9/3/2023)
<b>16 Weeks</b>	<b>CO</b> (if pregnancy or childbirth complications) (as of 2024); <b>WA</b> (if both “family” and “medical” covered events)
<b>18 Weeks</b>	<b>WA</b> (if both “family” and “medical” covered events + incapacitated during pregnancy)
<b>20 Weeks</b>	<b>MN</b> (as of 2026)
<b>24 Weeks</b>	<b>MD</b> (as of 2026)
<b>26 Weeks</b>	<b>MA; NY</b> (via SDI program)
<b>30 Weeks</b>	<b>RI</b> (via SDI program)
<b>38 Weeks</b>	<b>NJ</b> (via SDI program + PFL program)*
<b>52 Weeks</b>	<b>CA</b> (via SDI program)

## Amount of Pay

State	Amount of Benefit Payments
CA (PFL)	<p><b>Percent of Wages:</b> 60 and 70% of EE's average weekly wage (AWW) depending on income</p> <p><b>2023 Weekly Max:</b> \$1,620.00</p>
CT	<p><b>Percent of Wages:</b> 95% of EE' AWW up to 40x state min. wage, plus 60% of the AWW that is greater than 40x state min. wage up to the weekly maximum benefit</p> <p><b>Weekly Max as of 7/1/2022:</b> \$840.00 (increasing to \$900 as of June 1, 2023)</p>
CO (Benefits begin 2024)	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 50% of the state AWW plus 50% of the AWW that is greater than 50% of the state AWW up to the weekly maximum benefit</p> <p><b>2024 Weekly Max:</b> \$1,100.00</p>
DC	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 40x 150% of DC minimum wage and 50% of the AWW above 40x 150% of DC minimum wage</p> <p><b>Current Weekly Max:</b> \$1,049.00</p>
DE (Benefits begin 2026)	<p><b>Percent of Wages:</b> 80% of a worker's AWW during the preceding 12 months</p> <p><b>2026 Weekly Max:</b> \$900.00</p>

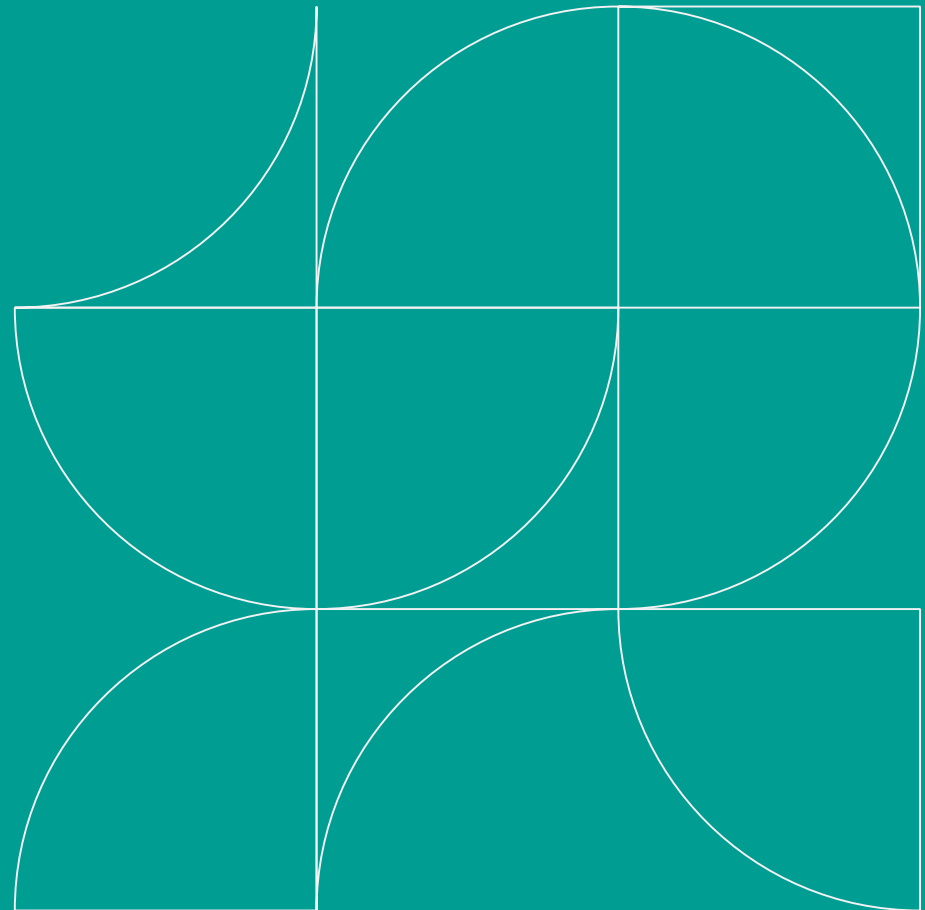
## Amount of Pay continued

State	Amount of Benefit Payments
<b>ME (Benefits begin 2026)</b>	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 50% of the state AWW and 66% of the AWW above 50% of the state AWW</p> <p><b>2026 Weekly Max:</b> Maximum weekly benefit will be set at the state average weekly wage, which changes annually.</p>
<b>MD (Benefits begin 2026)</b>	<p><b>Percent of Wages:</b> 90% of EE's AWW up to 65% of the state AWW and 50% of the AWW above 65% of the state AWW</p> <p><b>2026 Weekly Max:</b> \$1,000.00</p>
<b>MA</b>	<p><b>Percent of Wages:</b> 80% of EE's AWW up to 50% of the state AWW and 50% of the AWW greater than 50% of the state AWW</p> <p><b>2023 Weekly Max:</b> \$1,129.82</p>
<b>MN (Benefits begin 2026)</b>	<p><b>Percent of Wages:</b> 90% of EE's wages up to 50% of the state AWW plus 66% of wages that is greater than 50% of the state AWW but less than 100% of state AWW plus 55% of wages above 100% of state AWW</p> <p><b>2026 Weekly Max:</b> State AWW as calculated by State on or before 6/30 of each year</p>
<b>NJ (PFL)</b>	<p><b>Percent of Wages:</b> 85% of a worker's AWW up to maximum weekly benefit amount</p> <p><b>2023 Weekly Max:</b> \$1,025.00</p>

## Amount of Pay continued

State	Amount of Benefit Payments
NY (PFL)	<p><b>Percent of Wages:</b> 67% of employee's average weekly wage up to the maximum weekly benefit</p> <p><b>2023 Weekly Max:</b> \$1,131.08</p>
OR (Benefits begin Sept. 2023)	<p><b>Percent of Wages:</b> 100% of the employee's average weekly wage up to 65% of the state average weekly wage plus 50% of the average weekly wage over 65% of the state average weekly wage</p> <p><b>2023 Weekly Max:</b> 120% of state average weekly wage</p>
RI (PFL)	<p><b>Percent of Wages:</b> 4.62% of employee's wages in the highest quarter of the base period</p> <p><b>Weekly Max as of 7/1/2022:</b> \$1,007.00</p>
WA	<p><b>Percent of Wages:</b> 90% of the employee's average weekly wage up to 50% of the state average weekly wage plus 50% of the average weekly wage above 50% of the state average weekly wage up to the weekly maximum</p> <p><b>2023 Weekly Max:</b> \$1,427.00</p>

# Challenges for Employers and Employees





## Remote and Hybrid Workers

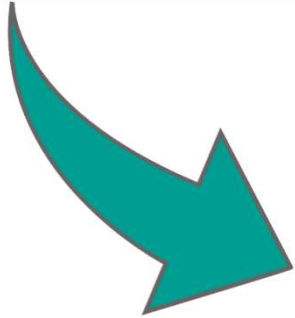
---

- **Coverage varies** depending on the applicable law and the telecommuting arrangement.
- If employee is 100% remote → **likely covered** by PFML jurisdiction where they live (and work).
- **Hybrid workers in two jurisdictions:**
  - Do either/both jurisdictions have a PFML law?
  - How often is the employee working in each location?
  - Does the employee meet the eligibility criteria for either or both PFML laws?
- Fact-specific analysis varies by jurisdiction.
- Also consider to which jurisdiction the premiums are being remitted and reported.

# Inconsistency with Federal FMLA

## FMLA - Employer Coverage Standard:

Employ no less than 50 employees for at least 20 workweeks in the current or preceding year.

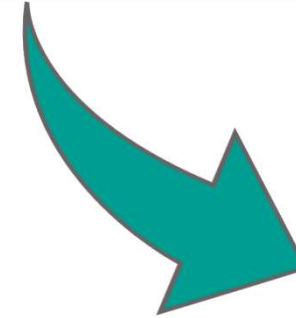


## PFML Laws - Employer Coverage Standard:

Most existing PFML laws apply to employers that have one or more employees in the relevant jurisdiction.

## FMLA - Employee Eligibility:

12 months of employment with current employer; 1,250 hours worked in previous 12 months; and 50+ employees within 75-mile radius.



## PFML Laws – Employee Eligibility:

Most existing PFML laws determine employee eligibility based on wages earned from any employer in the jurisdiction over a defined period of time.

## Inconsistency with Federal FMLA continued

---

- **FMLA Reasons for Use:**
  - Birth/placement of child
  - Care for family member with serious health condition
  - Employee's own serious health condition
  - Qualifying exigency
  - Military caregiver
- **FMLA Covered Family Members:**
  - Spouse
  - Parent
  - Child
- **FMLA Length of Benefits:**
  - Generally, 12 weeks in a 12-month period
  - 26 weeks during a single 12-month period for military caregiver leave

## Coordination with Employer Policies

- Some laws are ambiguous or silent.
- Coordination with “time off” benefits (i.e., PTO, paid sick leave, vacation, etc.) **versus** “leave” benefits (i.e., parental leave, STD, etc.).
- Coordination involves multiple layers, including **(a)** determining whether the statutory leave and company-provided benefit can be run concurrently, and **(b)** assessing how the leave will be compensated (i.e., will the time off be fully paid at 100% normal wages; what amount of pay will come from the statute versus company policy; is there a reimbursement component, etc.)
- Restrictions on employers’ ability to run company-provided leave concurrently with statutory PFML, depending on the law.

# Understanding Overlapping Leave Laws

---

- **Overall:** State PFL and PFML laws touch upon several other existing statutory benefits, such as the **(a)** federal FMLA, **(b)** state unpaid FML laws, **(c)** federal, state and local disability law, **(d)** domestic violence victim leave laws, **(e)** military leave laws, **(f)** family military leave laws, **(g)** paid sick and safe time laws
- **Several areas must be assessed to determine overlap and interplay. Nonexclusive examples include:**
  - Amount of leave?
  - Reasons for leave?
  - Whether employer-provided benefits run concurrently?
  - Paid versus unpaid?
  - Amount of pay?
  - Job protection?

## Private Plans

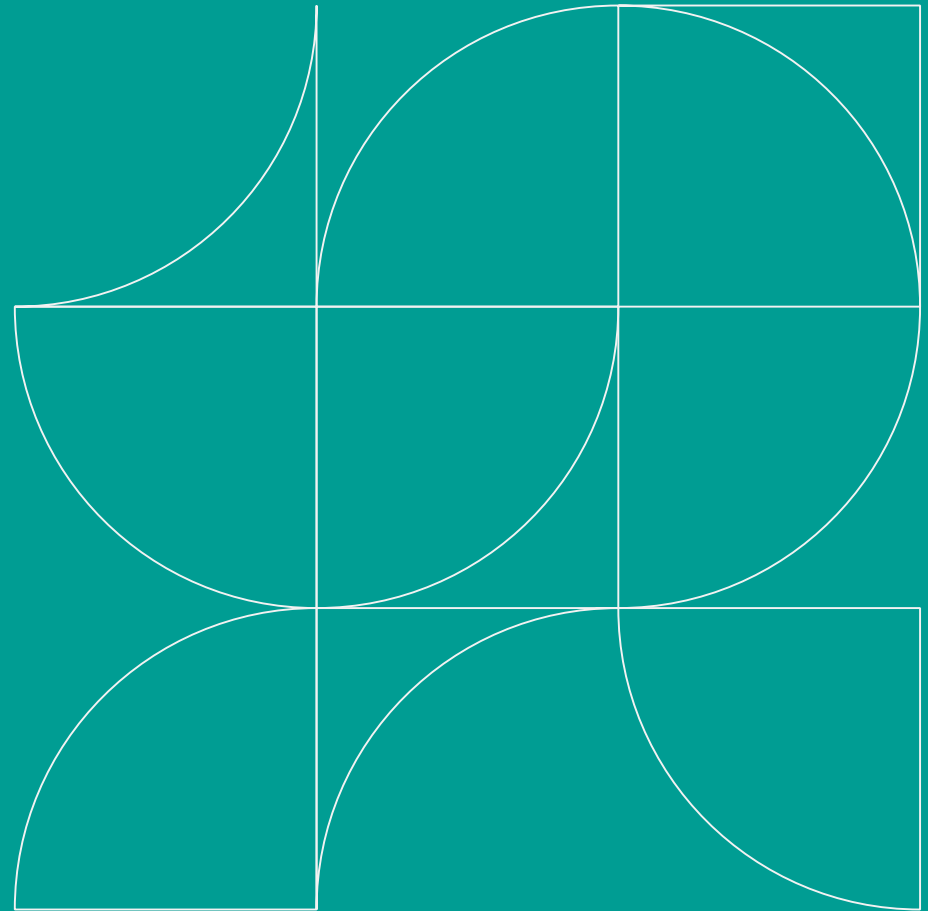
- 12 mandatory PFML laws allow private plans.
- All existing laws other than DC and RI
- **Approval standards vary –**
  - Generally, ER must show that private plan **meets or exceeds all substantive criteria** under state program.
  - In addition, application standards can have strict and **nuanced administrative criteria** that must be met
- Applications for exemptions or renewals are due at different times (e.g., annually vs. every 3 years).
- Administratively burdensome.

## Intermittent Leave

- PFML laws are inconsistent.
- Most PFML laws allow intermittent bonding leave.
  - By contrast, federal FMLA requires employee & employer consent for this.
- Increments of use vary.
- PFML payment schedules can be impacted.



# Federal Activity





# Overview of Federal PFML

---

## **Current Law:** FMLA (unpaid)

- Employer tax credit for paid family and medical leave

## **Previous Law But Sunset:** Families First Coronavirus Response Act (FFRCA)

- Benefits: Sunset 12/31/2020
- Tax Credit for Voluntary ER FFCRA PFML Offerings: Sunset 9/30/2021

## **Current Prior and Proposed Legislation:**

- Family And Medical Insurance Leave (FAMILY) Act
- Build Back Better Act (BBBA)
- FAIR Leave Act



## FAMILY Act – Overview

---

**Overall:** Purports to use new revenues to create a self-sustaining fund that would allow new parents, family and military caregivers and individuals with serious health conditions to take up to 3 months of paid leave (20 days per month) tracking traditional unpaid FMLA reasons.

**Funding:** 0.2% payroll tax to EE and ER each based on Social Security taxable wage base ; 0.4% tax to self-employed individuals.

**Employee Eligibility:** NOT tied to employment; Low bar for EE eligibility

**Qualifying Reasons:** Tracks FMLA-qualifying reasons, but would expand family member and add “safe time” component

**Employer Subsidy:** None.

**Funding for States with PFML Laws:** Yes. Comparable existing state leave programs to receive federal funding.



## Build Back Better Act (117<sup>th</sup> Congress) – PFML Overview

---

**Overall:** Aimed to provide “universal paid family and medical leave benefits” for up to 12 weeks per year.

**Funding:** From Treasury Department for workers who do not already have paid leave through employers

**Employee Eligibility:** Low bar for employee eligibility

**Qualifying Reasons:** Tracks FMLA-qualifying reasons, but would expand family member **and** add “bereavement leave” component

**Employer Subsidy:** Yes. Employers offering comparable paid family & medical leave to receive subsidy of up to 90% of projected national average cost (defined by Treasury)

**Funding for States with PFML Laws:** Yes. Comparable existing state leave programs to receive federal funding.



## FAIR Leave Act – Overview

---

**Overall:** Not quite paid family leave, but interrelated. Senate bill S.2574 and its House companion H.R. 5037 seek to repeal the limitation on leave for married couples under FMLA.

### Background:

- Currently under FMLA, spouses employed by the same employer are only allowed an aggregate of 12 weeks of leave – as opposed to both employees having 12 weeks – for certain qualifying absences.
- This limitation applies if the spouses are taking leave to bond with a child after birth, to bond with a child that has been placed in foster care or adoption, or to care for a sick parent with a serious health condition.



## House Bipartisan Paid Family Leave Working Group

---

- **Overall:** Formally announced in late-2022, a group of 6 bipartisan Representatives began meetings in February 2023 with various stakeholders interested in a federal PFL solution.
- **Notable Legislators:** Group is led by Representatives Stephanie Bice (R-OK) and Chrissy Houlihan (D-PA).
- **Scope of Meetings:** So far in 2023, the Working Group has met with various stakeholders, including employee advocacy groups, insurance carriers, small employer organizations, large employers and related advocacy groups, and members of existing state PFL programs.
- **What's Next???** - Working Group trying to develop legislative proposals; potential coordination with Senate?



# Final Thoughts



## Seyfarth Paid Family Leave Resources



If you're struggling with or have questions about the country's **Paid Family Leave "Patchwork"** here are some ways Seyfarth can help:

**(A) PFL Survey**: Seyfarth maintains a ***comprehensive PFL survey*** breaking down the specific requirements of ***each*** existing state and local PFL and PFML law.

For more information contact: [paidleave@seyfarth.com](mailto:paidleave@seyfarth.com)

**(B) Paid Leave Mailing List**: Seyfarth regularly publishes Legal Updates and Blog Posts on PFL law developments.

You can sign up here:

<https://connect.seyfarth.com/9/7/landing-pages/subscription.asp>

# Seyfarth Paid Family Leave Resources



**(C) Webinar Series – Guidance on PFL:** This webinar series is a great tool for you!

- Part 1 – MA, CT, DC and WA PFL updates
- Part 2 – CA, CO, NJ, NY and OR PFL updates
- Part 3 – Federal Paid Leave Prospects detailed review
- Part 4 – Federal + CT, DC, OR and NH PFL updates
- Part 5 – CT PFML detailed review
- Part 6 – DE, MD, DC, MA and CT PFL updates
- Part 7 – CO, OR and WA PFL updates
- Part 8 – Comparing State PFML Laws and Mid-Year 2023 Legislative Updates
- Part 9 – Today!

**Note:** We also have a separate Webinar Series focused on Paid Sick Leave guidance.

**(D) “Take It or Leave It” Podcast:** In late 2021, Seyfarth launched a podcast focused exclusively on workplace leaves, absence management, and accommodations. Episodes streaming on Spotify, SoundCloud, and Apple Podcasts, and available on Seyfarth’s website.

**More info at:** <https://www.seyfarth.com/trends/take-it-or-leave-it-podcast.html>



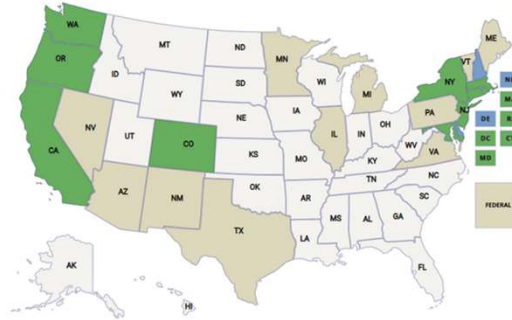


# AMERICAN BENEFITS COUNCIL

## RESOURCES

Visit our website to learn more about the benefits of Council membership, including access to timely news and analysis, our webinar archive and the Paid Leave Atlas

[americanbenefitscouncil.org](http://americanbenefitscouncil.org)



**Paid Leave Atlas**  
The Council, in partnership with Seyfarth Shaw LLP, has developed an easy-to-use online tool that allows Council members to obtain vital information on paid leave laws

**Council Publications**  
Membership includes access to original Council publications written exclusively for our members



**BenefitsByte**  
THE LATEST NEWS FROM THE WORLD OF EMPLOYEE BENEFITS, EXCLUSIVELY FOR COUNCIL MEMBERS

**Recent Issues**  
December 3, 2023  
2023 Benefits Byte Issues  
December 3, 2023  
House Committee Approves Legislation Expanding HSAs  
Council Recommends Modifications to Rules for Maine Retirement Savings Program; New Washington DC Proposal Under Consideration  
November 28, 2023  
Federal Court Backs DOL in ESG Rule; House Republicans Advance Bills to Block ESG in ERISA Plans  
Council Urges SEC to Withdraw Predictive Data Analytics Rule Proposal  
Council Joins Data Equity Coalition  
November 21, 2023  
Agencies Extend Mental Health Parity Guidance Comment Period  
House Lame ducks Criticize Slow EBSA Enforcement Process

**Archive**  
2023  
2022  
2021  
2020  
2019  
2018  
2017  
2016

**Social Media**  
And be sure to connect to the Council on LinkedIn and follow us on X (formerly Twitter)

# Questions?



**thank  
you**

For more information please contact:

**Joshua Seidman**

Email: [jseidman@seyfarth.com](mailto:jseidman@seyfarth.com)

**Christina Duszlak**

Email: [cduszlak@seyfarth.com](mailto:cduszlak@seyfarth.com)

**Renate Walker**

Email: [rewalker@seyfarth.com](mailto:rewalker@seyfarth.com)