



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

Part 5: Spotlighting Connecticut

December 9, 2021

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2021 Seyfarth Shaw LLP. 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.

Seyfarth Shaw LLP

“Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2021 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

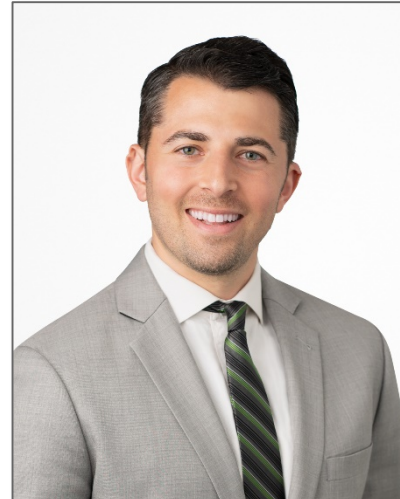
Joining You Today



Meredith-Anne Berger
Associate
New York
mBerger@seyfarth.com



Christina Duszlak
Associate
Boston
cduszlak@seyfarth.com



Joshua Seidman
Partner
New York
jseidman@seyfarth.com

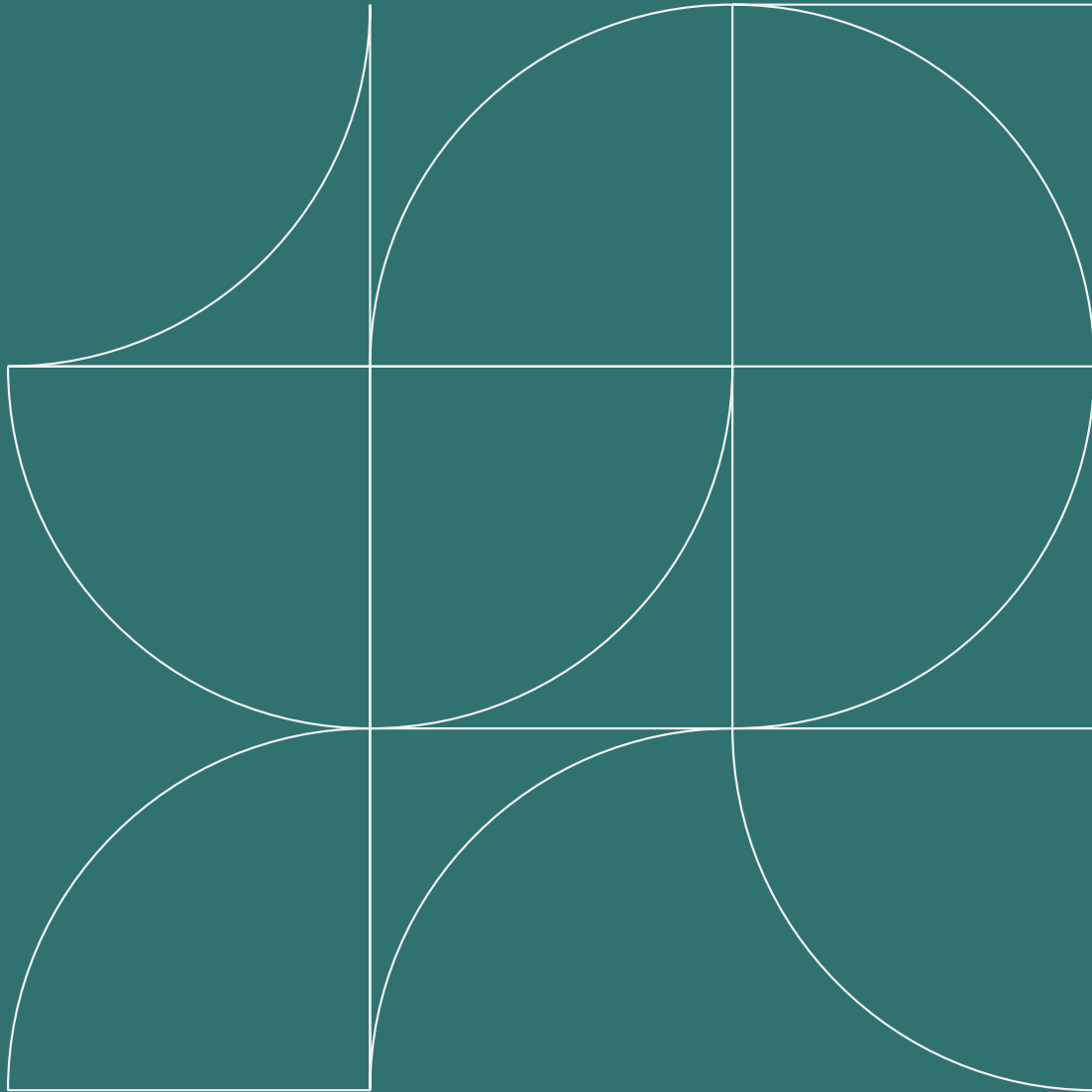


Jean Wilson
Counsel
Boston
jwilson@seyfarth.com

Agenda

01	Nationwide Paid Family Leave Overview
02	Overview of the CT PFML Law and Amendments to CT FMLA Law
03	Interaction Between CTPFML, Other Leave Laws & Employer Policies
04	Claims Process
05	Employer Obligations
06	Private Plan Exemptions

Nationwide Paid Family Leave Overview

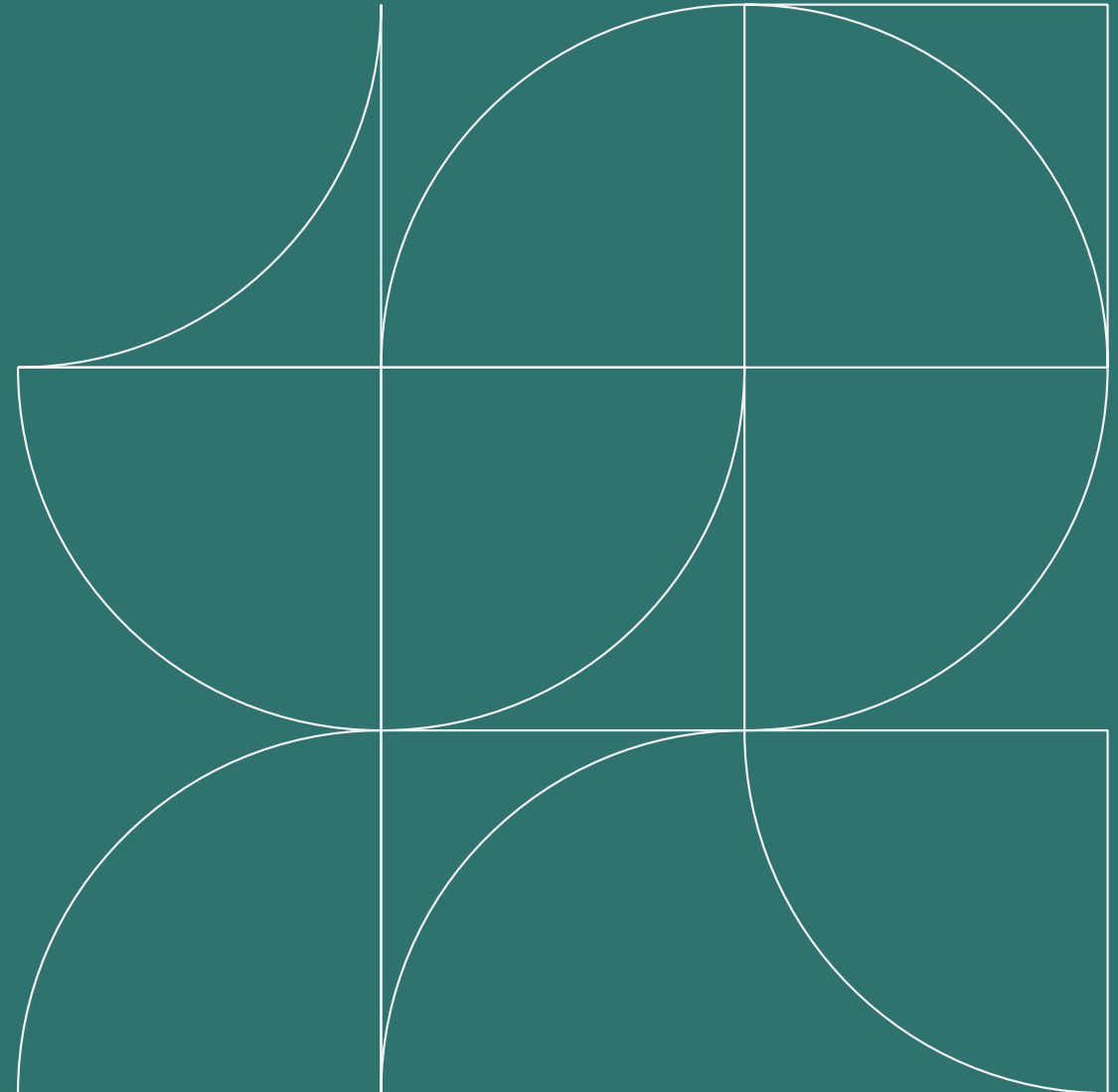


Paid Family Leave Laws Overview

- **Existing PFL Laws: 12 TOTAL LAWS**
 - **10 States + DC**
 - CA, NJ, RI, NY, WA, DC, MA, CT, OR, CO, & NH
 - **1 Municipality**
 - San Francisco, CA
- **Federal: No existing law, but PFML included in BBBA legislation for now; Unlikely to be in final version**



**Connecticut Paid Family &
Medical Leave Act
and
Amendments to Connecticut
Family & Medical Leave Act**



Overview – CT Paid Family & Medical Leave (PFML)

- **Signed by the Governor:** June 25, 2019
- **Impact on CT Family and Medical Leave Act (CT FMLA):** The CT PFML Act amends the CT FMLA
- **Employee Premium Withholdings Started:** January 1, 2021
- **Remit Contributions to the State:** Quarterly unless exempted
- **Applications Accepted:** December 1, 2021
- **PFML Benefits Begin:** January 1, 2022

**Pick up your
signaling
devices....**

What type of Connecticut Paid Family and Medical Leave Plan does your Company have?

- Public plan
- Private plan
- Considering changing from public plan to private plan
- Considering changing from private plan to public plan

Employer Coverage – CT PFML and CT FMLA

CT PFML

vs.

CT FMLA

Overall:

Most Connecticut employers will be subject to the PFML program.

Legal Standard:

Any entity that employs 1 or more employees, with a few narrow exclusions

Current:

75-employee threshold to be a covered employer

As of January 1, 2022:

“Employer” standard will also be expanded to cover entities with 1 or more employees

Employee Eligibility – CT PFML and CT FMLA

CT PFML

vs.

CT FMLA

Two Part Test

- Earned **at least \$2,325** during the employee's highest earning quarter within the base period, **and**
- Meet **one** of the following conditions:
 - is presently employed;
 - was employed by the employer within the previous 12 weeks; **or**
 - is self-employed or a sole proprietor and Connecticut resident enrolled in CT PFML

Current:

Employed for 12 months **and**
Completed 1,000 hours of service during prior 12-month period

As of January 1, 2022:

Must be employed for **at least 3 months** immediately preceding employee's request

Employees Working In CT and Another State - CT PFML

- Subject to CT unemployment insurance obligations → the employee is covered under the CT PFML
- Not subject to CT unemployment insurance obligations → the same factors that are used in the unemployment insurance context **to determine if the employee “works in Connecticut”** for the purpose will apply (in order of priority):
 - Whether the services are localized.
 - If the services are not localized, whether there is a base of operations and whether some of the services are performed within the same state as the base of operations.
 - If the work is not localized and there is no base of operations: whether the employee performs some of the services and receives direction and control from a state
 - If and only if there is no place of direction and control, no localized services, and no base of operation: where the employee resides.

- Care for family member with a serious health condition (SHC)
- Employee's own SHC
- Bond with a newly born, adopted, or fostered child
- Serve as an organ or bone marrow donor
- Qualifying military exigency of the spouse, son, daughter, or parent of the employee in accordance with federal FMLA
- Military caregiver leave (one-time benefit of 26 workweeks of leave during any 12-month period)
- Certain "Safe Time" absences (12 days)

Reasons for Use: CT PFML

Covered Family Members – CT PFML and CT FMLA

Covered Family Members under CT PFML and CT FMLA (as of 1/1/2022) include:

1. Child
2. Spouse
3. Parent
4. **Parent-in-law**
5. **Sibling**
6. **Grandchild**
7. **Grandparent**
8. **An individual related to the employee by blood or whose close association to the employee is the equivalent of those family relationships**

How Leave is Funded – CT PFML

- **How is PFML Funded?**

- The program will be funded through employee payroll deductions.

- **Do Employers Contribute to the Program?**

- No, employers do not contribute to the PFML program.

- The law imposes an obligation on employers to “deduct and withhold” the necessary amounts from employee wages.

- **What Amount is Deducted?**

- 0.5% of an employee’s earnings that are subject to Social Security taxes (\$147,000 for 2022).

Contributions – CT PFML

- Employee contributions should be included in the **employee's pay statements**, like other deductions.
- Employers who have not paid contributions yet
- Penalties assessed for non-compliance

Benefit Amount – CT PFML

- **Overall:** CT PFML is a wage-replacement benefit with caps tied to the state minimum wage (\$780 → \$840 July 1, 2022).
- **Beginning January 1, 2022:** Covered employees may be entitled to CT PFML benefits as follows:

Employee's Base Weekly Earnings ("BWE")	CT PFML Weekly Benefit
Less than or equal to 40 times CT minimum wage	95% of BWE, up to 60x state minimum wage
Greater than 40 times CT minimum wage	60% of BWE, up to 60x state minimum wage

Length of CT PFML Benefits and Amount of CT FMLA Leave

CT PFML

vs.

CT FMLA

As of January 1, 2022

12 weeks of paid family and medical leave benefits in a 12-month period

2 additional weeks of PFML benefits available for a serious health condition resulting in incapacitation during pregnancy

Current:

16 weeks in a 24-month period

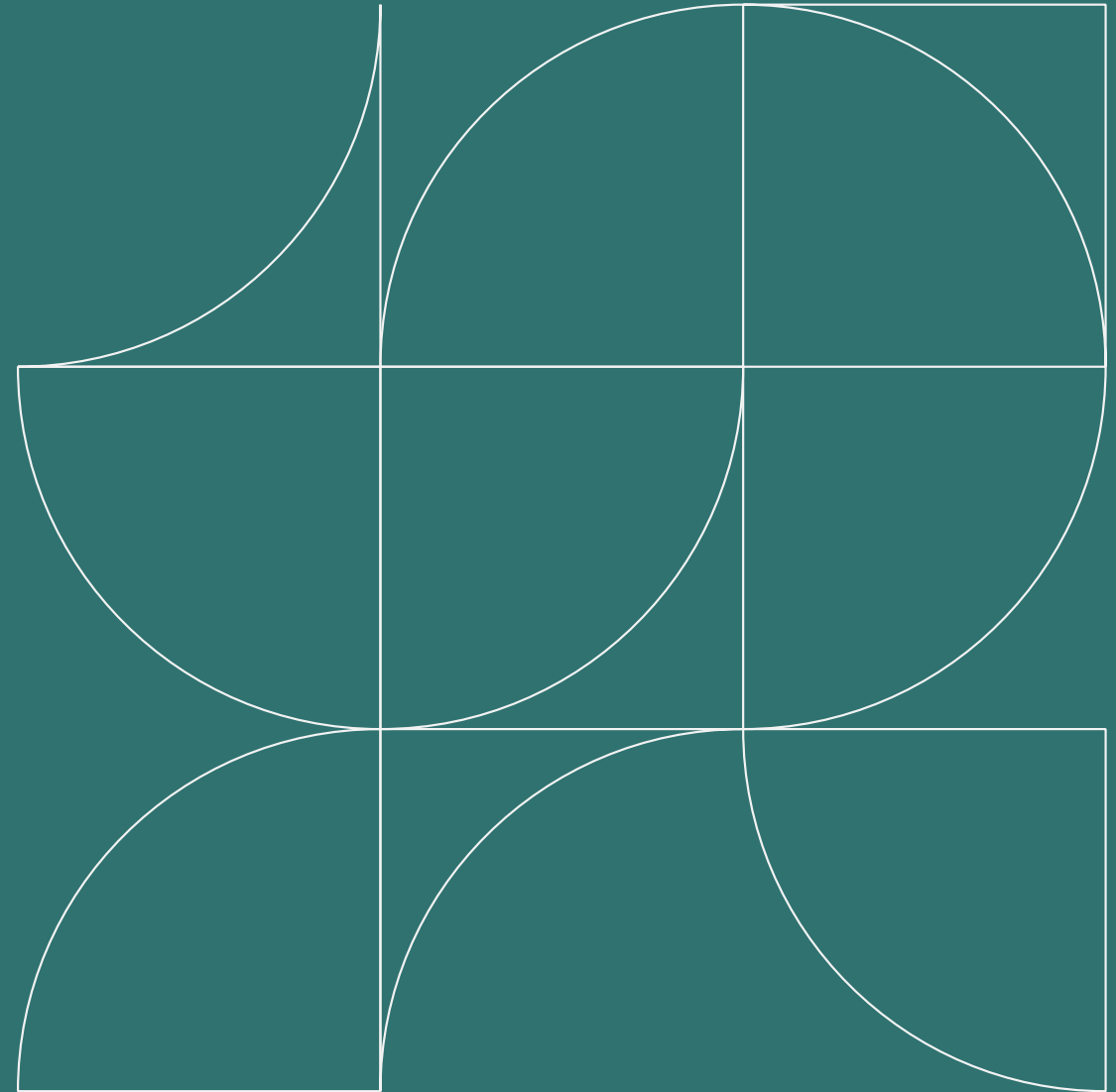
As of January 1, 2022:

12 weeks in a 12-month period **PLUS** same **additional 2 weeks** for incapacitation during pregnancy as under PFML

Intermittent Leave – CT FMLA and CT PFML

- The CT FMLA and CT PFML both allow for intermittent/reduced schedule leave
- Rules about intermittent leave similar to the federal FMLA
- When **medically necessary** can be used for:
 - employee’s own serious health condition (including organ/bone marrow donation)
 - to care for a family member with a serious health condition
 - to care for an injured servicemember
 - **Planned Medical Treatment:** Employer can temporarily transfer employee to an available alternative position (a) with equivalent pay and benefits and (b) that better accommodates the intermittent leave
- Must allow intermittent use for **Qualifying Exigency Leave** and **Family Violence Leave**
- Not required for **Bonding Leave** – employer consent required

Interaction Between CT PFML and Other Leave Laws/ Employer Policies



Interaction Between CT PFML and Other Leave Laws

- Generally, periods during which an employee receives CT PFML benefits can run **concurrently** with other leave periods
- But, may be circumstances where leave can be **stacked** because
 - eligibility criteria for particular type of leave (e.g., CT FMLA and federal FMLA) is not the same as for CT PFML and
 - the amount of leave available may differ under these laws (e.g., pregnancy disability up to 14 weeks under CT PFML/CT FMLA – only 12 weeks under federal FMLA)
- Periods during which an employee receives **CT PFML** is **not job-protected** unless covered by another law that provides job protection
 - CT FMLA or federal FMLA
 - Americans with Disabilities Act/CT Fair Employment Practices Act
 - Federal and CT pregnancy discrimination laws
 - CT Family Violence Leave Act

When employee applies for leave, need to analyze:

- Is the requested leave **covered by any leave law** (CT FMLA, federal FMLA, ADA, CT Fair Employment Practices Act, pregnancy discrimination laws)?
 - Look at eligibility criteria (length of service, number of hours, primary place of work)
- **How much leave** is the employee entitled to under each of these laws?
- Is the employee entitled to any **pay during leave**?
 - CT PFML benefits
 - Employer provided leave benefits - paid parental leave, short-term/long-term disability, salary continuation
 - Accrued paid time off (vacation, sick time, PTO, personal time, etc.)

Determining Available Leave and Benefits

CT PFML, CT FMLA & Federal FMLA Example

- Joe starts working for ABC Company on January 1, 2022 and works 200 hours per month. He needs leave for his own serious health condition. When is Joe eligible for
 - **CT PMFL** – Joe is eligible for CT PFML benefits immediately if he meets the financial eligibility criteria (at least \$2,325 during highest earning quarter within the base period) – the leave taken would not be job-protected
 - **CT FMLA** - Joe will be eligible to take CT FMLA leave beginning on April 1, 2022 – 3 months after his start date – this leave is job protected
 - **Federal FMLA** – Joe will not be eligible for federal FMLA until January 1, 2022 – must have worked for ABC Company for 12 months and worked at least 1,250 hours
- Depending on the start date, Joe may be eligible (i) only for CT PFML, (ii) for CT PFML and CT FMLA, or (iii) for CT PFML, CT FMLA, and federal FMLA
- In this scenario, Joe may be entitled to take 12 weeks of CT FMLA and then an additional 12 weeks of FMLA in the same benefit year.

Interaction with Employer Policies

- Many employers continue to offer benefits **in addition to** state-provided benefits like CT PFML
- Must determine how employer-provided benefits will interact with CT PFML
 - Most employers – will **reduce the employer-provided benefit** by the amount of the state-provided benefit
 - For example, if employee is eligible for CT PFML and for STD up to 80% of their base salary, Company will reduce the STD benefit by the amount of the CT PFML benefit for which the employee is eligible
 - Can make employer-provided benefit contingent upon employee first applying for state-provided benefit
 - Some employers allow employees to receive the state benefit and the **maximum amount of the employer-provided benefit** – up to 100% of the employee's regular salary

Accrued Paid Time Off & Other Paid Benefits

- Employers can **require or permit** use of accrued paid time off (e.g., sick time, vacation, PTO, personal time, etc.) to top up CT PFML benefit
 - if an employee uses accrued paid time that is equal to their regular base salary, they will not be eligible for CT PFML benefits for that period of time
 - that time period will not count against an employee's CT PFML benefit allotment
- If leave is subject to **CT FMLA law**, employers must allow employees to **maintain two weeks of vacation** or PTO
- Note – Employees may not receive CT PFML when receiving
 - Unemployment compensation
 - Workers' compensation
 - Any other state or federal wage replacement benefit

Leave Carrying Over Into 2022 – CT FMLA

As of Jan. 1, 2022, CT FMLA leave is capped at 12 weeks in the applicable 12-month period, **even if the employee was approved for and commenced 16 weeks of CT FMLA leave in 2021**

Generally, in 2022, the employer can **look back** over the **“applicable 12 month period”** to see if the employee has used any leave to determine if they have time available (see [newfmlaguidance \(ct.gov\)](#) for examples)

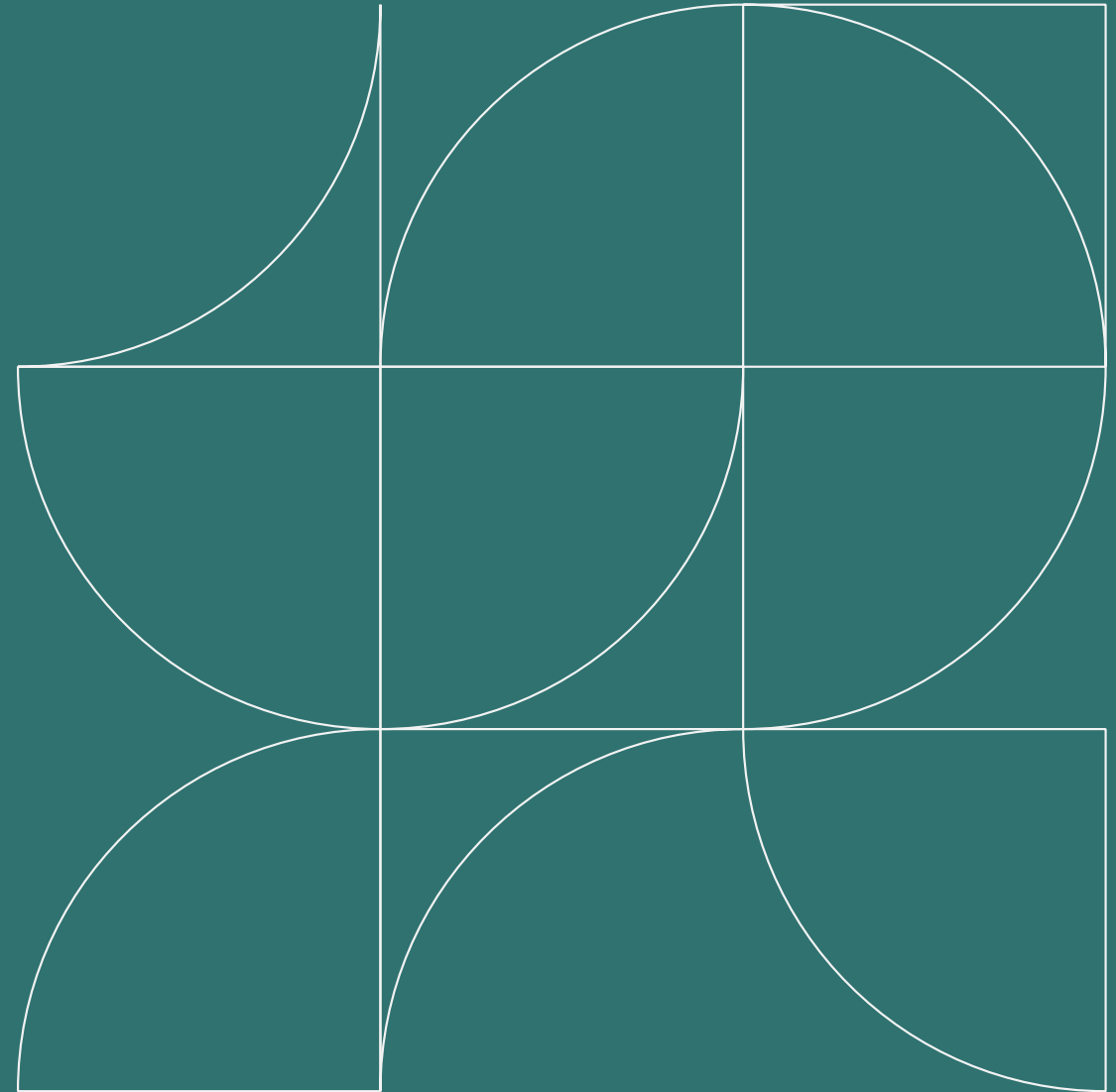
- rolling backwards
- first day of leave going forward
- calendar year
- fixed year

CT PFML is new so no benefits are available for leave taken before Jan. 1, 2022 – full benefit allotment available in 2022 regardless of leave taken in 2021

Pregnancy Leave Example

- Under CT PFML, CT FMLA, and federal FMLA – employee taking leave for birth, adoption, foster care must use **12 weeks** of leave **with 12 months** of birth or placement
- Employees only eligible for CT PFML benefits for leave taken from Jan. 1, 2022 forward
- Benefits will not be paid in connection with any leave taken in 2021
- For example, if an employee takes 12 weeks of bonding leave beginning Oct. 5, 2021, they will not be eligible for any CT PFML benefits because their bonding leave will end on Dec. 28, 2021
- But, if the employee waits to take bonding leave until sometime in 2022 and leave is taken within one year of the child's birth, adoption, or placement, the employee will be eligible for CT PFML benefits

CT PFML Claims Process



- Employee must notify employer of the need for leave
 - Foreseen: **30 days prior to the start of leave**
 - Unforeseen: as soon as practical
- Employee has 15 days from initial of claim to provide requested documentation
- Employer has 10 days from the date of the request for employment verification information to provide information to Aflac/CT Paid Leave Authority
- Approved claim payments made 2 weeks in arrears
 - Issued on Tuesdays
- Denied claims eligible for **reconsideration** by AFLAC
- Appeal to Connecticut DOL

Application Timeline- CT PFML

Claims Process for Employees - CT PFML

- Employees must submit their application (**45 days, unless good cause for delay**)
- Create a CTPL Account
- Provide supporting documentation
- Update account with absence information and information about other sources of money
- Notify employer about CTPL claim
- Receive notification by mail or email (employee selects method)

- Complete and submit Employment Verification Form **within 10 calendar days**
- Validate absences and sources of money as needed
- Notify employee about PTO policies (including STD policies)
- Avoid discriminating/retaliating against worker for CT PFML claim
- Employers will be notified by email that the employee claim has been approved

Claims Process for Employers – CT PFML

State Plan-Employer Verification Form - CT PFML

Employee Information (To be completed by the Employee)			
First Name:	Last Name:	Case Number:	
Phone Number:	Last 4 Digits of SSN:	Date of Birth:	
Street Address:	City:	State:	Zip Code:
Beginning Date of Leave:		End Date of Leave:	
Leave type: <input type="checkbox"/> Continuous <input type="checkbox"/> Intermittent <input type="checkbox"/> Reduced schedule			
Under penalties of perjury, I declare that to the best of my knowledge and belief, the information contained herein is true, correct, and complete. Any false statements or other failure to provide truthful, accurate, and complete information may result in monetary and other penalties as well as the possibility of criminal prosecution. I further certify that if benefits are paid in excess of the amount to which I am entitled, I will return to the Authority the amount that was overpaid, and I acknowledge that failure to do so may result in the accrual of interest and other penalties.			
Employee Signature and Title			Date
Employer Information (To be completed by the Employer)			
Employer Name:			
FEIN:	Tax ID:	SIC/NAICS code:	
Address:			
City:	State:	Zip Code:	
Contact Name:	Communication Preference: <input type="checkbox"/> Email (Preferred method) <input type="checkbox"/> USPS mail		
Contact Phone Number:	Contact Email:		
Employee's Date of Hire:	Employee's Date of Termination (If Applicable):		
Employee's Job Title:		Date Last Worked:	
Has the employee returned to work? <input type="checkbox"/> Yes <input type="checkbox"/> No Return to Work Date: _____ (<input type="checkbox"/> Actual <input type="checkbox"/> Estimated)			
Please select the work days that the employee typically works: <input type="checkbox"/> Sunday <input type="checkbox"/> Monday <input type="checkbox"/> Tuesday <input type="checkbox"/> Wednesday <input type="checkbox"/> Thursday <input type="checkbox"/> Friday <input type="checkbox"/> Saturday			

CTPL-0006 (07-2021)

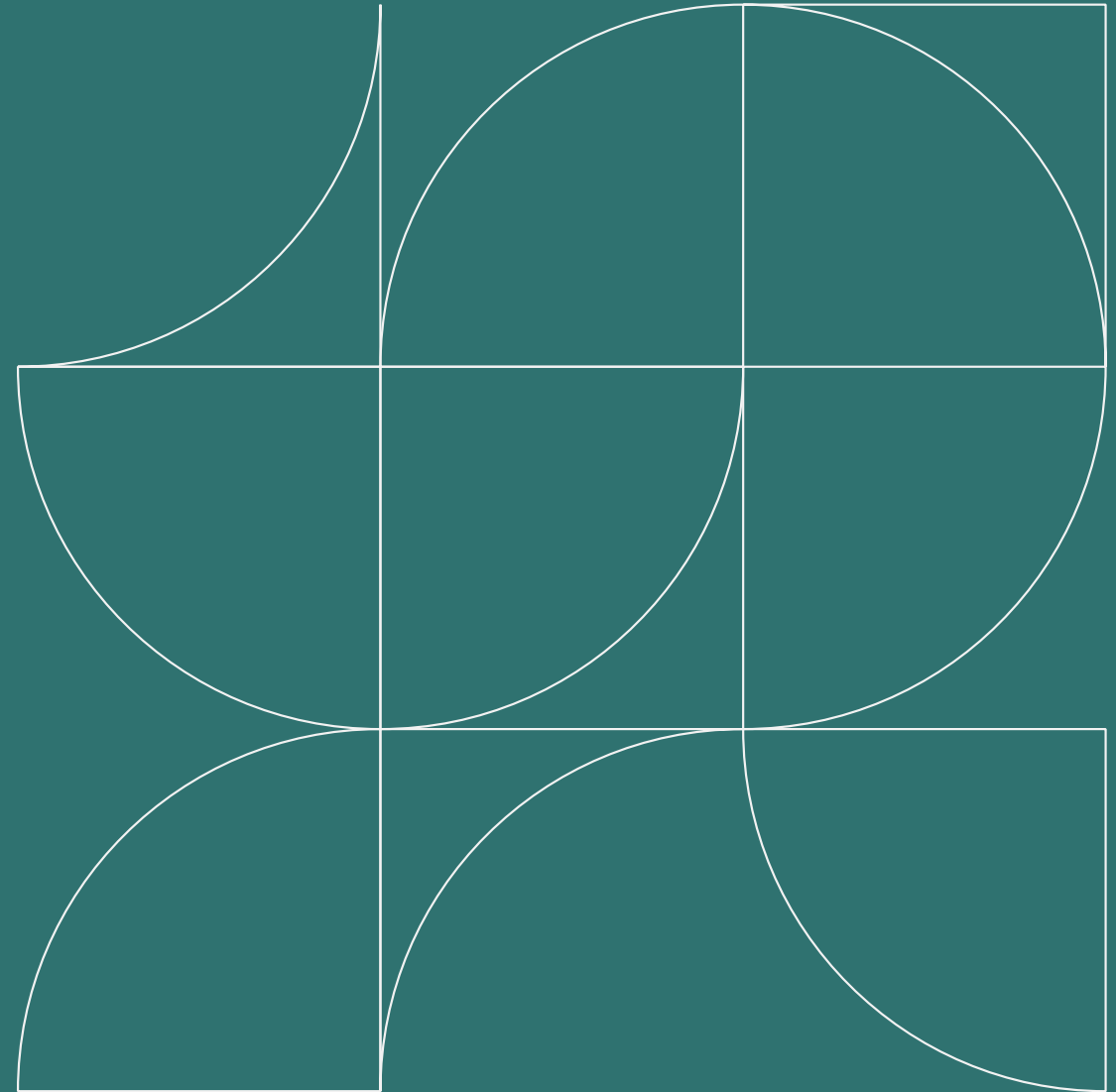
* Claims administered by American Family Life Assurance Company of Columbus or its affiliates.

Connecticut Paid Leave - Employment Verification

Employee First Name:	Employee Last Name:	Case Number:
Employer Information (continued)		
Please provide the scheduled work hours from the last 12 weeks that the employee reported to work:		
Week 1:	Week 2:	Week 3:
Week 4:	Week 5:	Week 6:
Week 7:	Week 8:	Week 9:
Week 10:	Week 11:	Week 12:
Other Potential Sources of Income:		
Is the leave request a result of employee's injury on the job? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> If yes, has the employee applied for Worker's Compensation payments/benefits? <input type="checkbox"/> Yes <input type="checkbox"/> No <ul style="list-style-type: none"> If yes, is the employee receiving Worker's Compensation payments/benefits? <input type="checkbox"/> Yes <input type="checkbox"/> No 		
Amount of Weekly Payment/Benefit: \$ _____ Effective date of benefits: _____		
Is the employee required or permitted to receive PTO, Sick, or other paid time off, prior to or while receiving Paid Leave benefits? <input type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> If yes, how many PTO, Sick or other paid time off hours does the employee have available? Hours: _____ Start date: _____ End date: _____ 		
Please advise if there are Company shutdowns scheduled and, if so, provide the dates:		
Please advise if there are Company holidays scheduled. <input type="checkbox"/> Yes <input type="checkbox"/> No		
<ul style="list-style-type: none"> If yes, what are the holiday dates? _____ 		
What amount of compensation would the employee receive? \$ _____		
Under penalties of perjury, I declare that to the best of my knowledge and belief, the information contained herein is true, correct, and complete. Any false statements or other failure to provide truthful, accurate, and complete information may result in monetary and other penalties as well as the possibility of criminal prosecution.		
Employer Signature and Title		Date

CTPL-0006 (07-2021)

Employer Obligations



Health Care Obligations - CT PFML and CT FMLA

- The CT PFML and CT FMLA laws **do not require** employers to maintain an employee on its health insurance plan while the employee is out of work on CT FMLA leave
- The federal FMLA **does require** employers to maintain the employee's health insurance
- If employer opts not to maintain employee on the employer's plan, may be **COBRA-triggering event** – ensure proper COBRA notice sent
- If an employer opts to maintain an employee on the employer-provided insurance plan while the employee is out of work on unpaid leave, the employer can:
 - **directly bill** the employee for the employee's share of the health insurance plan or
 - pay the employee's share and **seek reimbursement** from the employee when employee returns to work

Notice and Other Requirements – CT PFML

- **Notice:** **As of July 1, 2022**, employers must provide written notice to employees regarding CT PFML
 - upon hire
 - annually
- Notice **must include** information regarding:
 - entitlement to CT PFML
 - opportunity for employees to file a claim for CT PFML benefits
 - protection from retaliation for requesting or receiving CT PFMI benefits
 - right to file a claim with the CT Labor Commissioner
- **Posting:** No specific requirement
- **Register Your Company:** ctpaidleave.org

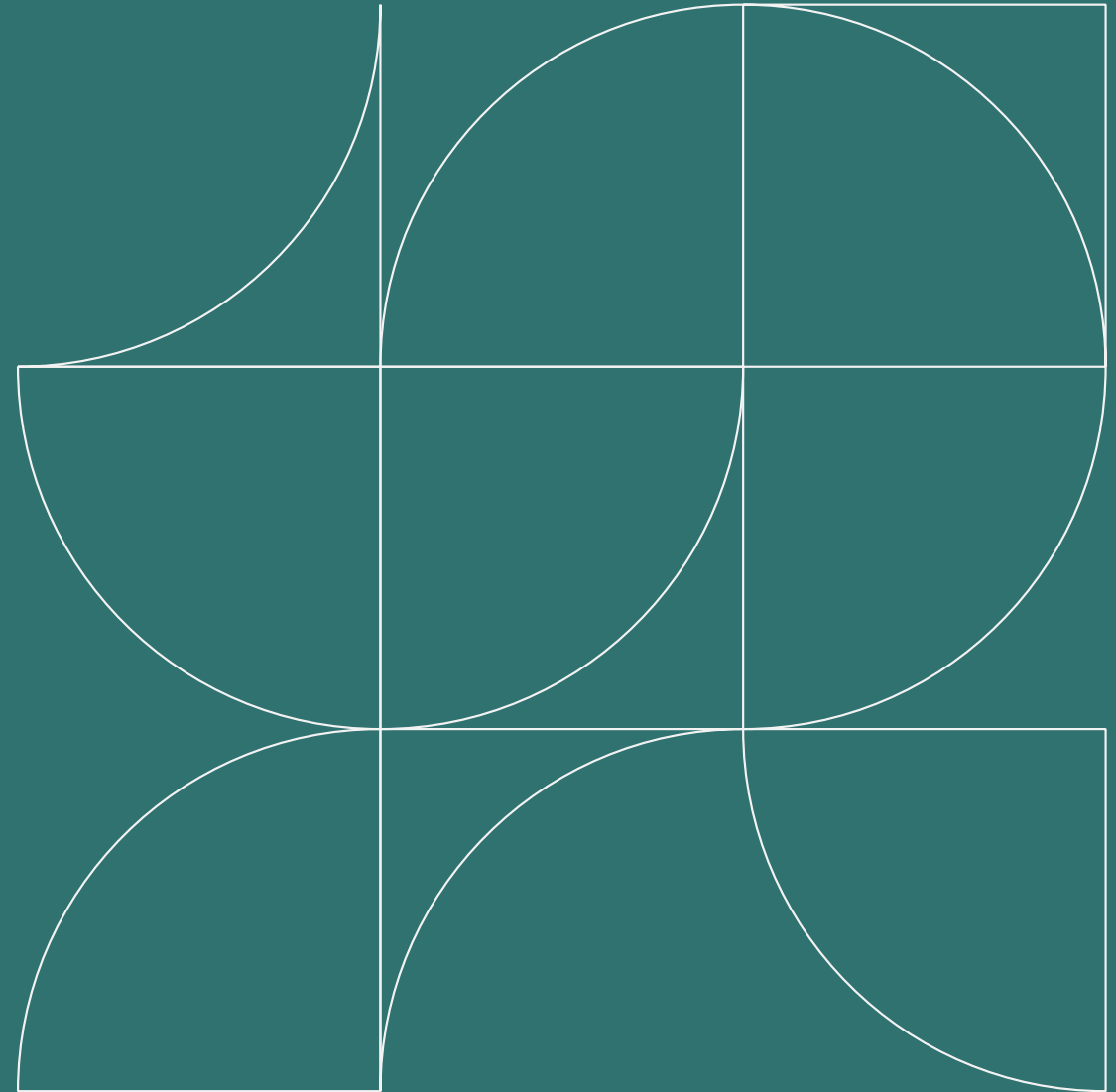
Reporting Obligations - CT PFML

- **Each quarter** employers are required to remit contributions and submit a quarterly report
- Must report all earnings in the quarter
 - If no earnings, indicate \$0
 - Employee name, SSN, wages withheld, calculated withholding amount, total wages YTD must be reported

Taxing of Benefits - CT PFML

- **Leave benefits are subject to federal and state taxes**
 - Taxes are not automatically withheld, but employees may request voluntary withholding
 - Beginning Q1 2023, the CT Paid Leave Authority will issue an annual form 1099-G to the employee to report benefits and withholding
 - Beginning 2021 calendar year, reflect employee contributions on W-2

Private CT PFML Plans



Private Plan Exemption Overview– CT PFML

- **Overall:** Private plan must confer all the same rights, protections, and benefits provided to employees under the CT PFML law.
- **Two Types of Plans:**
 - **Fully Insured:** This plan is through an approved insurance carrier.
 - **Self-Insured:** This plan requires a surety bond on a yearly basis.
- **Revised Policy & Procedures for Employers: available as of November 10, 2021**
- **Application Deadline:** Applications are accepted on a rolling basis, but must be approved no later than 30 calendar days before the end of the quarter in which the plan goes into effect.

For example, in order for contributions to be waived for the quarter beginning on January 1, 2022, the application must be approved by the Authority no later than December 1, 2021.

Private Plan Exemption-After Interim Period- CT PFML

- **After the interim period**, the employer applies to the state first
 - Plain Language Guide; and
 - Fact Sheet of Approved Insurance Policy Form or Approved Self-Insurance Document
- If self-insured, employer will provide surety bond
- Vote by employees
- Attestations
- Contact information for designated person to receive notice of appeals

Private Plan Exemption Voting– CT PFML

- A majority vote: (at least 50% + 1 of the total number of CT employees)
- Vote must include **all employees** (FT, PT, probationary), including employees on paid or unpaid leaves of absences
- Vote must be **anonymous**
- Plain Language Guide provided to employees **at least two weeks before the vote** and instructions regarding the vote process
- No coercion or threats
- Distribute information in same matter as other legally required notices.
- **Required question:** “Do you approve the company’s private plan to provide benefits required by the CT Paid Family and Medical Leave Insurance Act? Yes or No.”
- Employers may not ask any other form of this question

- **Approval:**

- Valid for 3 years
- Can request shorter timeframe

- **Reporting to the State:**

- No later than May 1, 2022
- Annually thereafter

- **Material Changes:**

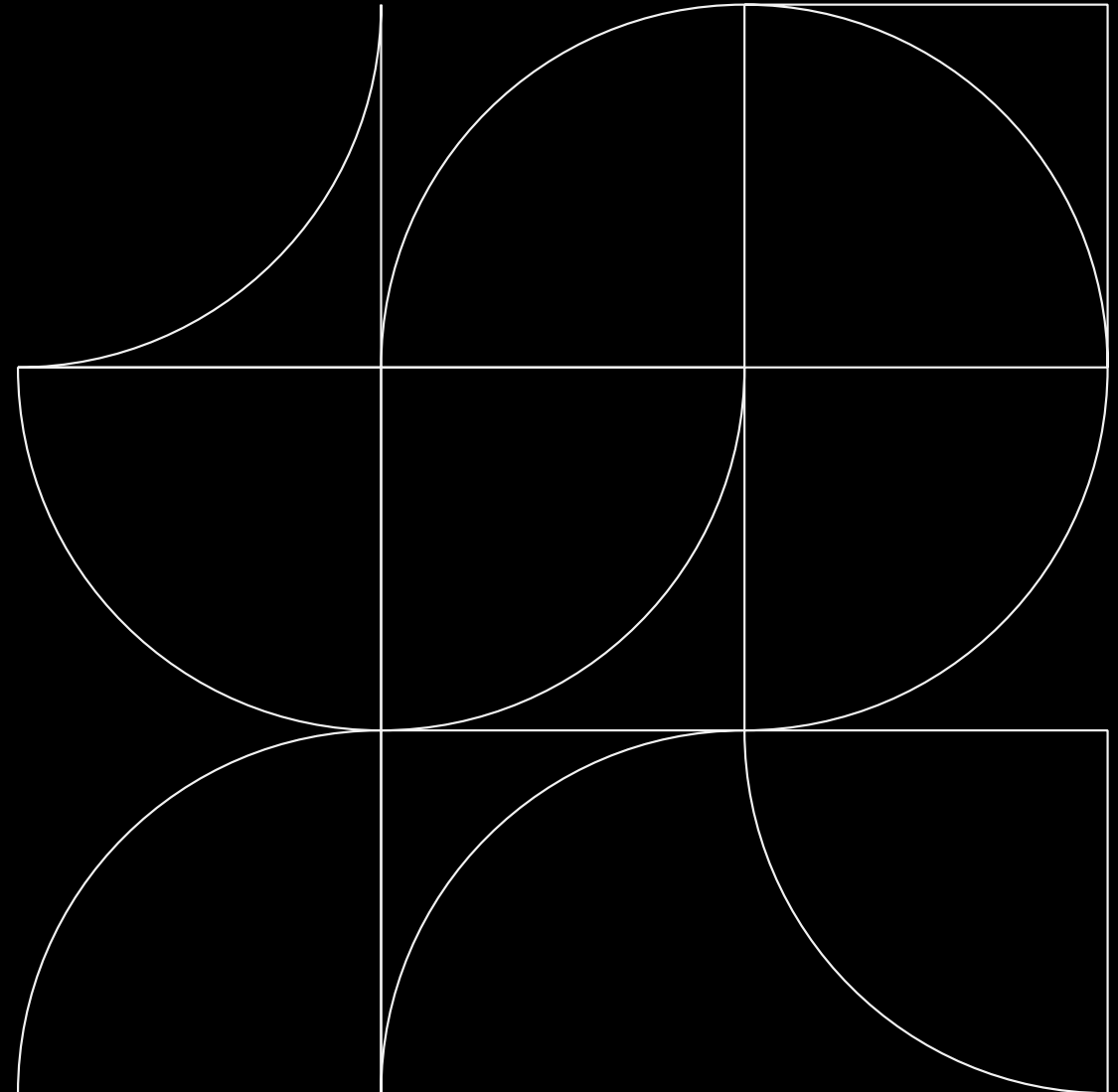
- Submit a new application
- Requires vote by employees

Private Plan Exemption Approval– CT PFML

Connecticut Paid Leave Resources

- [Connecticut Paid Leave Frequently Asked Questions](#)
- [Human Resources Tool Kit](#)
- [Fact Sheet](#)

Seyfarth Paid Family Leave Resources



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:

(1) 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

(2) 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>

Questions?

Thank You!