



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

Part II: Spotlighting California, Colorado, New Jersey, New York and Oregon Paid Family Leave Developments

March 9, 2021

Seyfarth Shaw LLP

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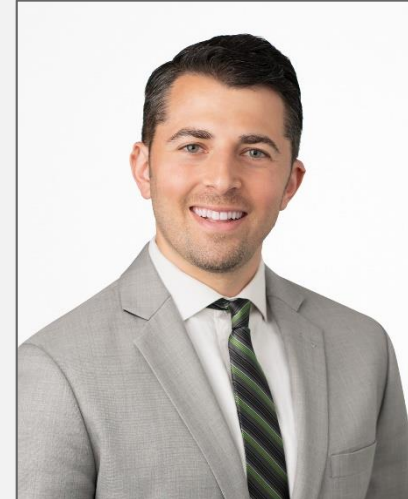
Tracy Billows
Partner
Chicago
tbillows@seyfarth.com



Marlin Duro
Associate
New York
mduro@seyfarth.com



Chelsea Mesa
Partner
Los Angeles - Downtown
cmesa@seyfarth.com



Joshua Seidman
Partner
New York
jseidman@seyfarth.com

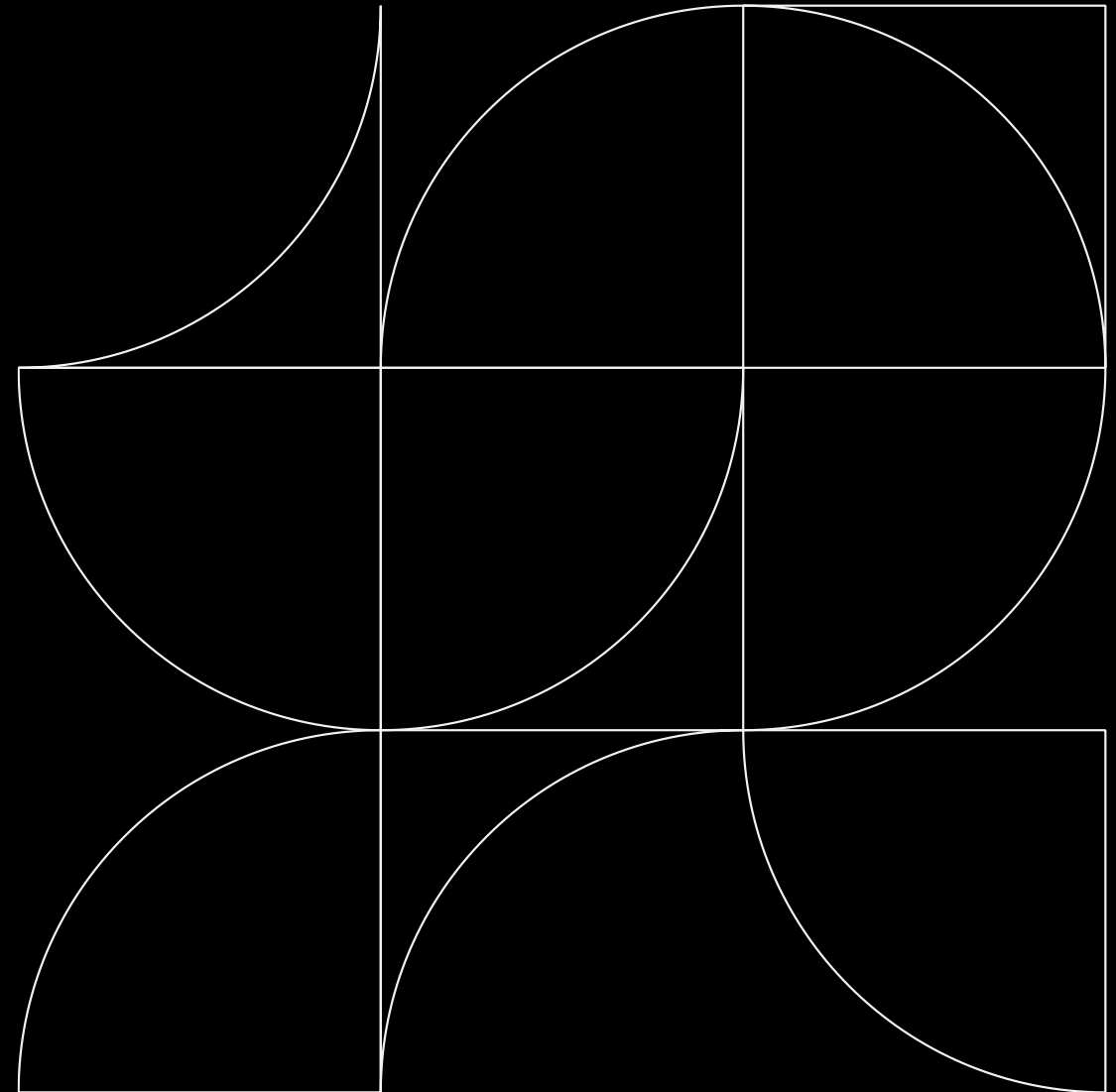


Megan Toth
Associate
Chicago
mtoth@seyfarth.com

Agenda

01	Federal Paid Family Leave Update <u>and</u> National Paid Family Leave Overview
02	Colorado Paid Family Medical Leave Overview
03	Oregon Paid Family Medical Leave Overview
04	California Paid Family Leave Update
05	New Jersey Paid Family Leave Update
06	New York Paid Family Leave Update

Federal Paid Family Leave Update





Families First Coronavirus Response Act (FFCRA) – Overview

- Paid leave mandates [sunset](#) on 12/31/2020
- **Highlights (for leaves of absences):**
 - (a) expanded family and medical leave (EFML);
 - (b) emergency paid sick time (EPST);
 - (c) tax credits for paid leaves
- **EFML and EPST Mandates:**
 - Only applied to private employers with ***fewer than*** 500 employees (plus certain public employers); Contained multiple exemptions
 - EPST = 80 hours (full-time EE); EFML = Unpaid (first 10 days) and paid (up to 10 weeks)
 - EPST available for broader reasons than EFML
 - Tax credits available to offset costs to covered employers; [Still available through 3/31/2021](#)



FFCRA – Outlook

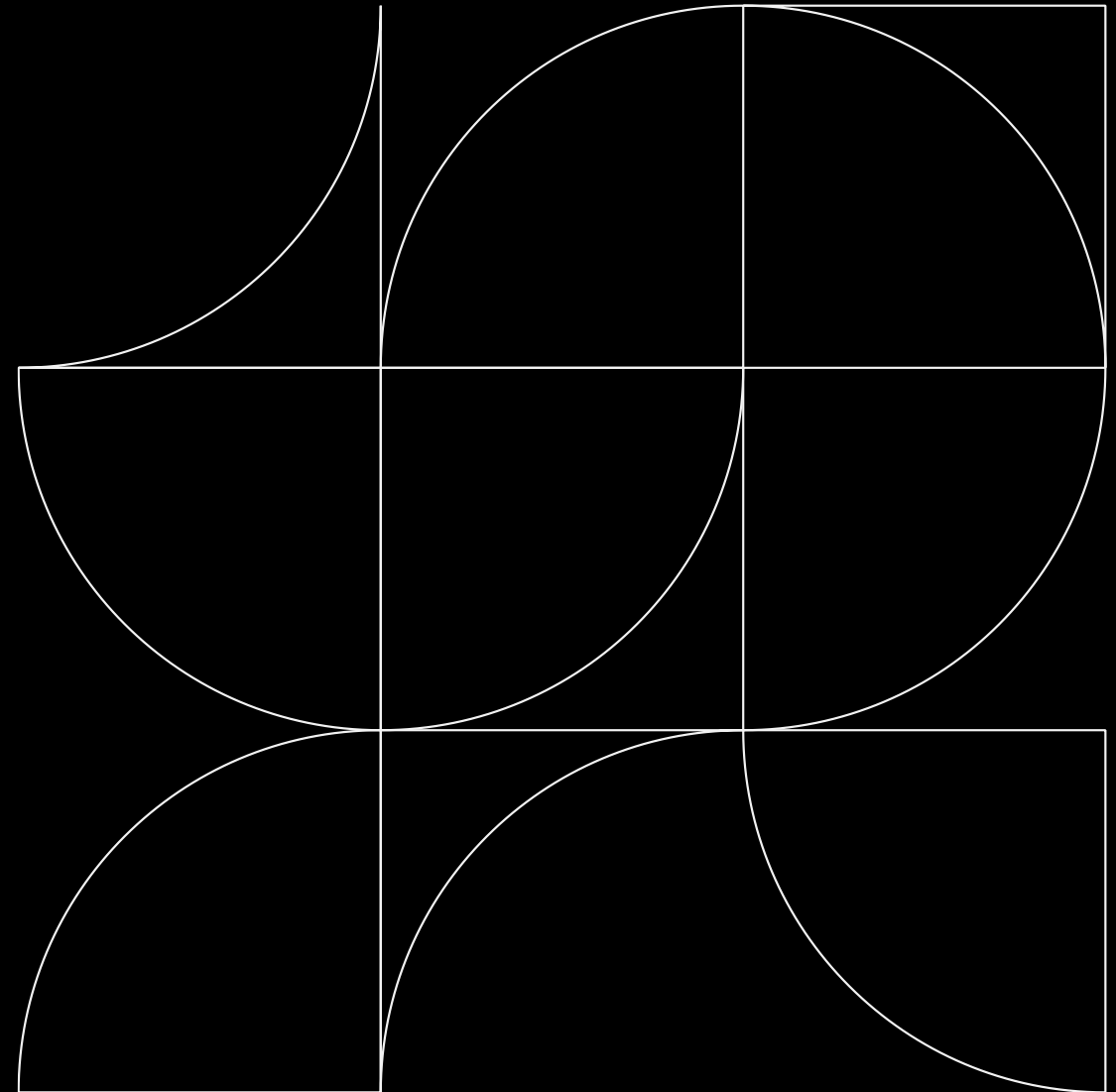
- **Biden Administration:** Initial calls for reenactment of FFCRA
- **Senate COVID-19 Relief Bill:**
 - Would not reinstate EPST and EFML mandates for employers of any size
 - Would extend tax credits for ERs with under 500 EEs who voluntarily provide EPST or EFML through September 30, 2021



Federal Paid Family Leave Proposals

- **FAMILY Act** (S. 248/H.R. 804 – 117th Congress)
 - Reintroduced on 2/4/2021
- **New Parents Act** (S. 920/H.R. 1940 – 116th Congress)
- **Advancing Support for Working Families Act** (S. 2976/H.R. 5296 – 116th Congress)

Nationwide Paid Family Leave Overview



Paid Family Leave Laws Overview

- **Existing PFL Laws: 11 TOTAL LAWS**
 - **Federal**
 - N/A - Families First Coronavirus Response Act = *Expired 12/31/2020*
 - **9 States + DC**
 - **CA, NJ, RI, NY, WA, DC, MA, CT, OR, CO**
 - **1 Municipality**
 - San Francisco, CA



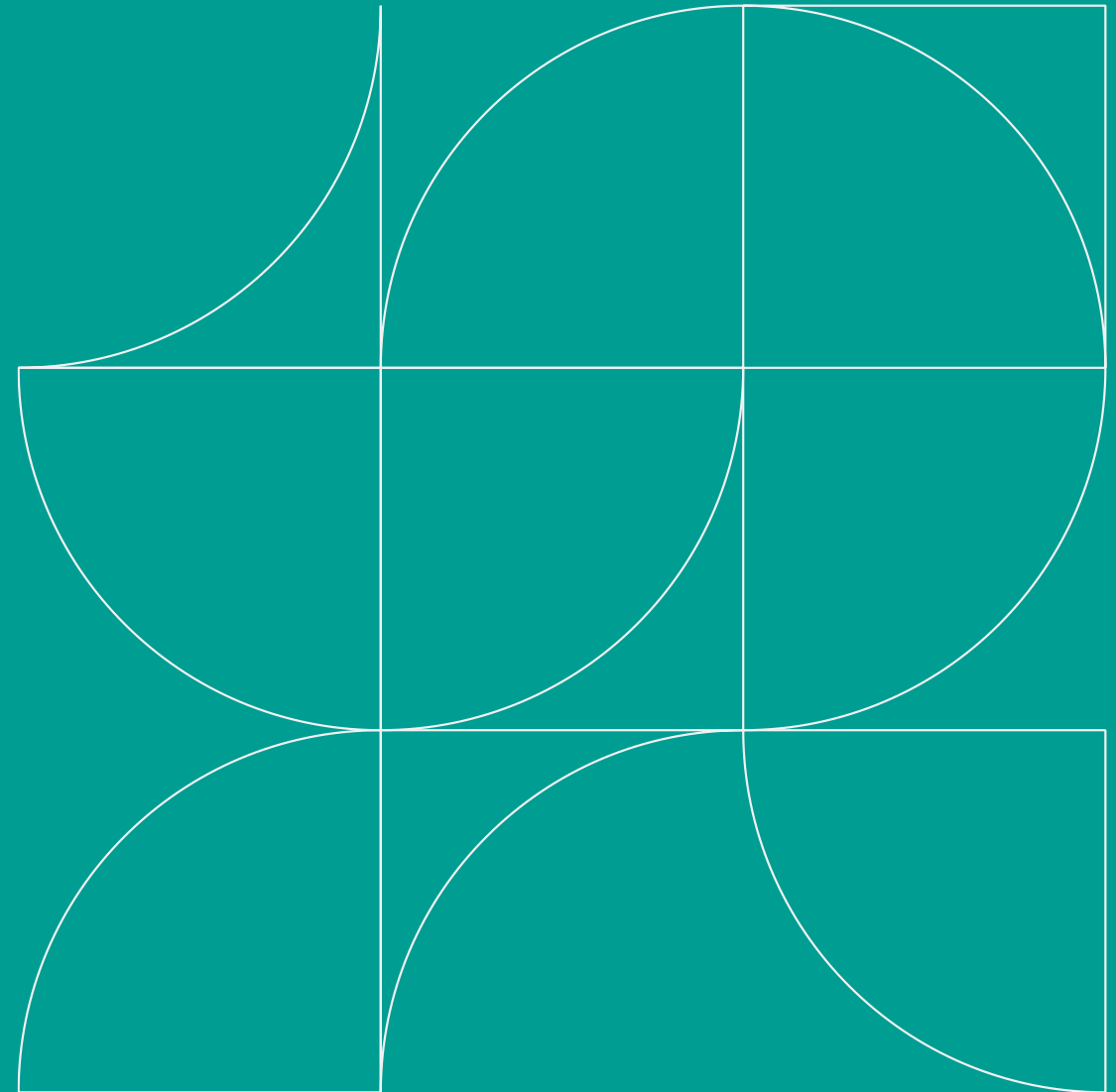
Polling Question



In which of these locations (CA, CO, NJ, NY, OR) does your Company or Organization have employees?

- 1. California Only**
- 2. Colorado Only**
- 3. New York / New Jersey Only**
- 4. Oregon Only**
- 5. At least 3 of CA, CO, NJ, NY and OR**
- 6. At least 4 of CA, CO, NJ, NY and OR**

Colorado Paid Family Medical Leave



Colorado PFML - Relevant Dates

- **Passed:** November 3, 2020 (as a ballot initiative)
- **Premium Withholdings Begin:** January 1, 2023
- **PFML Benefits Begin:** January 1, 2024

Colorado PFML - Eligibility and Coverage

- Employee Eligibility

- Employee – an individual performing labor or services for the benefit of another, who:

- Earned at least \$2,500 in wages subject to premiums under this law during the person's base period or alternative base period or is self employed and elects coverage

- Employer Coverage

- Employer – Any person engaged in commerce or an industry or activity affecting commerce that:

- Employs **at least one person** for each working day during each of 20 or more calendar workweeks in the current or immediately preceding calendar year; **or**
 - Paid wages of \$1,500 or more during any calendar quarter in the preceding calendar year.

Colorado PFML – Amount of Leave

12 weeks, in aggregate, for Paid Family & Medical Leave

4 additional weeks for a serious health condition related to pregnancy complications or childbirth complications

Colorado PFML – Reason for Leave

Eligible employees can take leave for the following reasons:

- Because of birth, adoption or placement through foster care, is caring for a new child during the first year after the birth, adoption or placement of that child;
- Has a **serious health condition**;
- Is caring for a **family member** with a serious health condition;
- Because of any **qualifying exigency** leave; and
- Has a need for **safe leave**.

- **Calculation of Weekly Benefit**

- The portion of the covered individual's average weekly wage that is equal to or less than 50 percent of the state average weekly wage shall be replaced at a rate of 90 percent; **and**
- The portion of the covered individual's average weekly wage that is more than 50 percent of the state average weekly wage shall be replaced at a rate of 50 percent.
- The **maximum weekly benefit** is 90 percent of the state average weekly wage, except that for paid family and medical leave beginning before January 1, 2025, the maximum weekly benefit is \$1,100.

Colorado PFML

- **Amount of Pay**

Colorado PFML – Funding Mechanism

- **January 1, 2023 – December 31, 2024**
 - 9/10th of 1% of wages per employee
- **2025 and Beyond**
 - The director will set a premium based on a % of employee wages
- **Employee Contributions**
 - 10+ employees – 50%
 - <10 employee – 50%, but ER shall only remit 50% of the premium required by section 8-13.3-407(3) to the fund.

- Beginning on January 1, 2023, for each employee, an employer shall remit to the fund established under section 8-13.3-418 premiums in the form and manner determined by the division.

Colorado PFML – Reporting and Remitting

Colorado PFML – Notice and Posting

Notice

- Each employer must notify its employees of the program, in writing, upon hiring and upon learning of an employee experiencing an event that triggers eligibility

Model Notice – Not yet available, but will be developed

vs.

Posting

- Each employer must post the program notice in a prominent location in the workplace

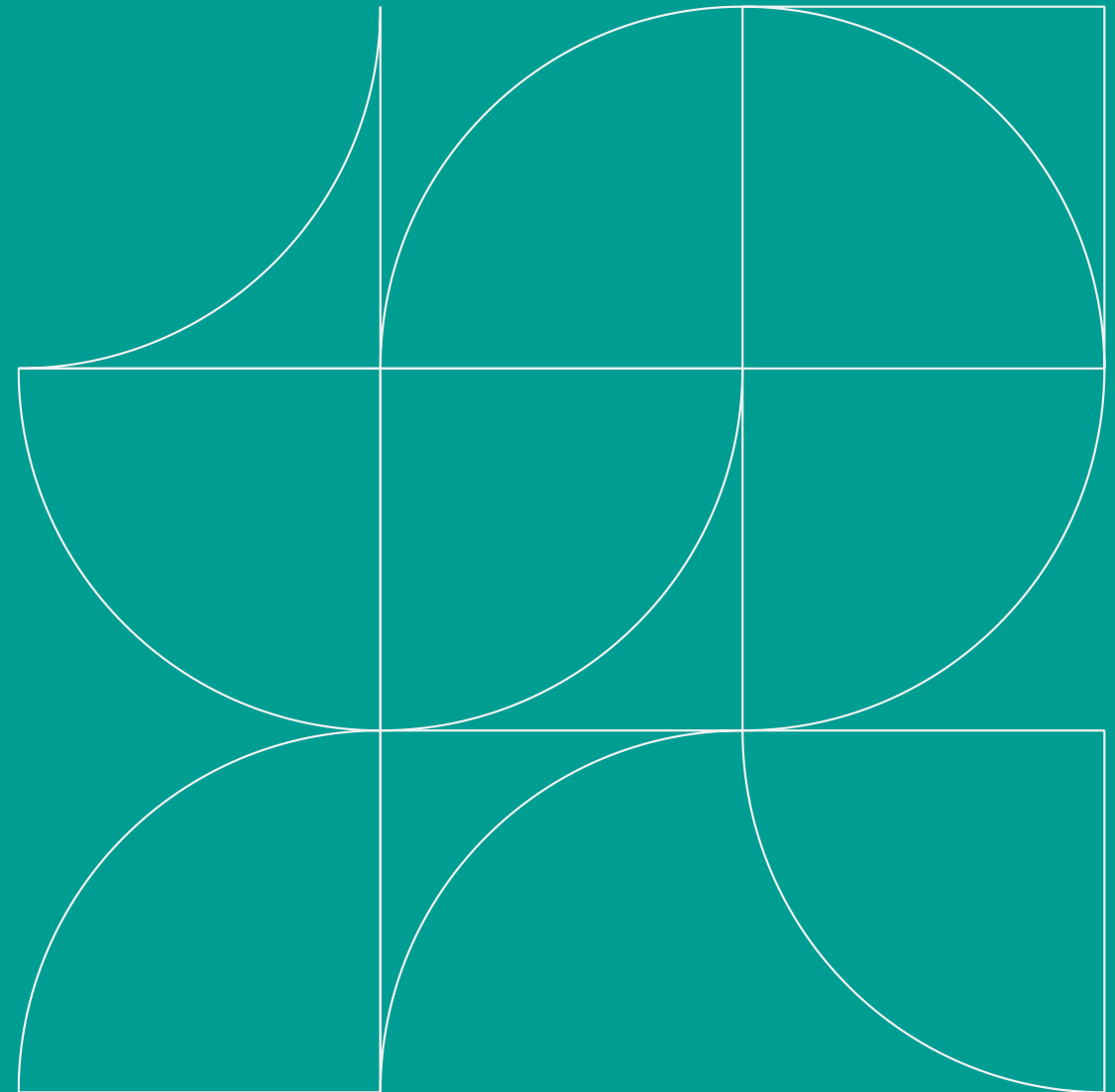
Colorado PFML – Reinstatement Following Leave

- **Job Protection if:**
 - employee was employed for 180 days prior to leave
- **Employees not entitled to:**
 - The accrual of any seniority or employment benefits during any period of leave; or
 - Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.
- Also includes prohibitions on retaliation, discrimination and interference

Colorado PFML – Private Plans

- Apply to division **for approval**
- **Requirements**
 - Same reasons for use
 - Same benefits
 - Allow intermittent leave (1 hour increments)
 - No additional conditions/restrictions
 - No greater costs to EEs
- **Other**
 - If self insurance plan, must furnish bond to the state
 - Must be provided to all eligible employees throughout employment
 - If the plan is in the form of a third party that provides for insurance, the forms of the policy must be issued by an insurer approved by the state

Oregon Paid Family Medical Leave



Oregon PFML - Relevant Dates

- **Enacted:** 2019
- **Rules to Be Issued Before:** September 1, 2021
- **Payroll Contributions Begin:** January 1, 2022
- **Written Notice to Employees:** January 1, 2022
- **PFML Benefits Begin:** January 1, 2023

Oregon PFML – Employee Eligibility and Coverage

- **Covered Individual**

- An eligible employee
- Independent contractors, employees of tribal governments, and federal government employees are not covered.
- Self-employed individuals and employees of tribal governments that opt into the program

- **Eligible Employee**

- earned at least \$1,000 in wages during the base year; or
- If not earned at least \$1,000 in wages during the base year, an employee who has earned at least \$1,000 in wages during the alternate base year; **and**
- Who may apply for paid family and medical leave insurance benefits under section 3 of this 2019 Act

Oregon PFML – Employer Eligibility and Coverage

- **Covered Employer**

- Employer – any person that employs **one or more** employees working anywhere **in the state**.
- “Employer” does not include the federal government or a tribal government.

- **Small Employer Exception:**

- Fewer than 25 employees = not required to pay the 40 percent employer contribution.
- If small **employer does pay** the 40 percent employer contribution, they are eligible to receive assistance grants.
 - may apply for one grant per employee, up to a maximum of 10 grants per year.
 - These grants cover: up to \$3,000 towards the cost of hiring temporary workers to replace employees on leave, and up to \$1,000 to reimburse for significant additional wage-related costs incurred while an employee is on leave.

Oregon PFML – Amount of Leave

12 weeks of **PFMLI** per benefit year for leave taken for family leave, medical leave or safe leave.

16 weeks **maximum combined** PFMLI and unpaid OFLA

2 weeks of benefits for limitations related to **pregnancy, childbirth or a related medical condition**, including but not limited to lactation.

**total time cannot exceed 18 weeks*

Oregon PFML – Amount of Pay

- If EE's average weekly wage is **65% or less** than the state average weekly wage = weekly benefit is 100% of EE's average weekly wage.
- If EE's average weekly wage **is more than 65%** of the state average weekly wage = EE's weekly benefit is the sum of:
 - (A) 65% of the state avg. weekly wage +
 - (B) 50% of the employee's avg. weekly wage that is greater than 65% of the state avg. weekly wage.
- The **maximum** weekly benefit amount will be 120% of the state average weekly wage. The **minimum** weekly benefit amount will be 5% of the state average weekly wage.

Oregon PFML – Covered Reasons for Use

Medical Leave

vs.

Family Leave

For employee's own **serious health condition**

- Illness, injury, impairment, or physical or mental condition that involves in patient care
- Illness, disease or condition that poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or
- Any period of disability due to pregnancy, or period of absence for prenatal care.

1. To care for and bond with a child during the first year after the child's birth or during the first year after the placement of the child through foster care or adoption; or
2. To care for a family member with a serious health condition.

Oregon PFML – Covered Reasons for Use

Safe Leave

- To seek legal or law enforcement assistance or remedies to ensure the health and safety (i.e., preparing for and participating in related civil or criminal legal proceedings)
- To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking
- To obtain counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking
- To obtain services from a victim services provider
- To relocate / secure an existing home to ensure the health and safety

Oregon PFML – Funding Mechanism

- EE and ER contributions start **January 1, 2022**
- **Total Premium: Not Yet Set**
 - Percentage of a total rate determined by the Director of the Employment Department.
 - Total rate will not exceed 1% of employee wages, up to a maximum of \$132,900 in wages.
 - Adjusted annually
- **Employer Contributions:**
 - 40% of the total rate determined by the director.
 - Deduct 60% of the total rate from employee.
 - an employer may elect to pay the required employee contributions, in whole or in part, as an employer-offered benefit.

- **Quarterly Reports**

- Form TBD

- **Deadlines**

- **Reports & premiums** due **quarterly** on last day of month following completed calendar quarter

Oregon PFML – Reporting and Remitting

Oregon PFML – Notice Requirement

- Employers must provide **written notice** (eff. January 1, 2022) to each employee of the duties and rights, including:
 - Right to claim/receive PFMLI
 - Procedure for filing a claim
 - Notice requirements
 - Job protection and benefit cont.
 - Right to appeal decision
 - No discrimination/retaliation
 - Right to bring claims
 - Health information will be kept confidential
- No poster requirement

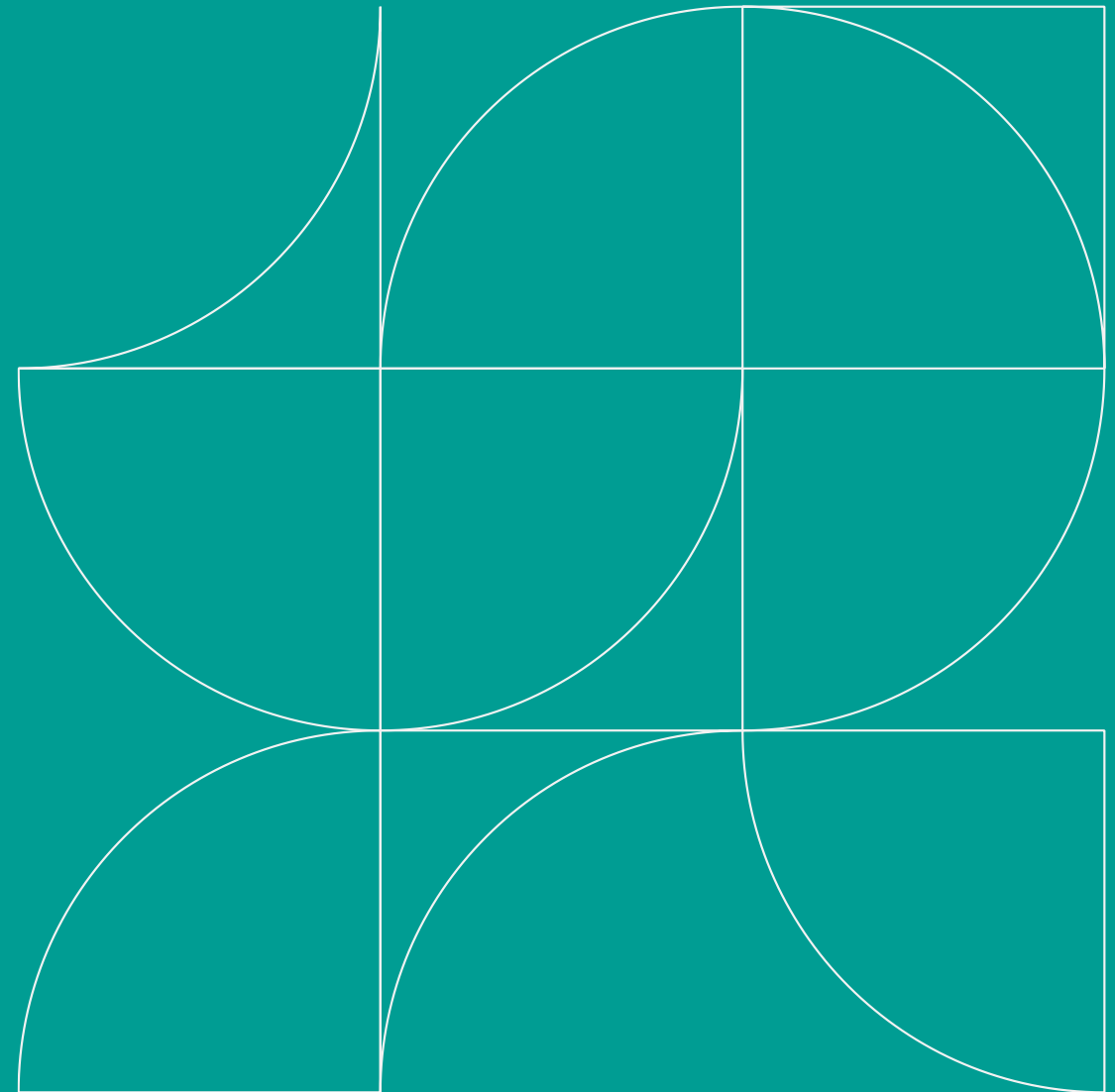
Oregon PFML – Reinstatement Following Leave

- **Job Protection if:**
 - employed **90 days** before taking leave
- **Exception for Small Employers:**
 - Fewer than 25 employees
 - If the position held by an eligible employee when the employee's leave commenced no longer exists, an employer may, at the employer's discretion based on business necessity, restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay.

Oregon PFML – Private Plans

- Apply to **director of the employment department for approval**
 - Application fee of \$250
 - Application form TBD
- Director **shall approve** if:
 - Plan is available to all employees who have been employed for **30 days**
 - Benefits are **equivalent or greater** than those provided under PFMLI (duration/amount)
- **Requirements:**
 - Cannot require employees be employed longer than 30 days
 - Employer can assume all or part of cost
 - Plan must remain in effect for at least a year

California Paid Family Leave Update



A Refresh on California Paid Family Leave

- What it is
 - a partial wage replacement program for California employees suffering a wage loss when taking time off to provide care for an ill child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, or registered domestic partner or bond with a newborn baby or a newly adopted child or child placed in foster care
 - Currently, provides about 60-70% of lost wages, depending on applicant's income (to a maximum cap)
 - Can be coordinated with vacation/sick/PTO up to 100%
- What it's not
 - a leave entitlement
 - a way to extend time off protections under CFRA or FMLA
 - benefits guarantee

2020 Updates

- Under SB 83, beginning July 1, 2020, the California Paid Family Leave benefit will be eight weeks in any 12-month period instead of six weeks.
- The bill requires the Governor's Office to convene a task force to develop a proposal by November 2019 to extend the duration of paid family leave benefits to six months by 2021-22 for parents to care for, and bond with, their newborn or newly adopted child.
- The November 2019 proposal will also address job protections for workers and the goal of providing a 90 percent wage replacement rate for low-wage workers utilizing the Paid Family Leave program to bond with a child.
- Approved by Governor Newsom on June 27, 2019, the bill became effective immediately.

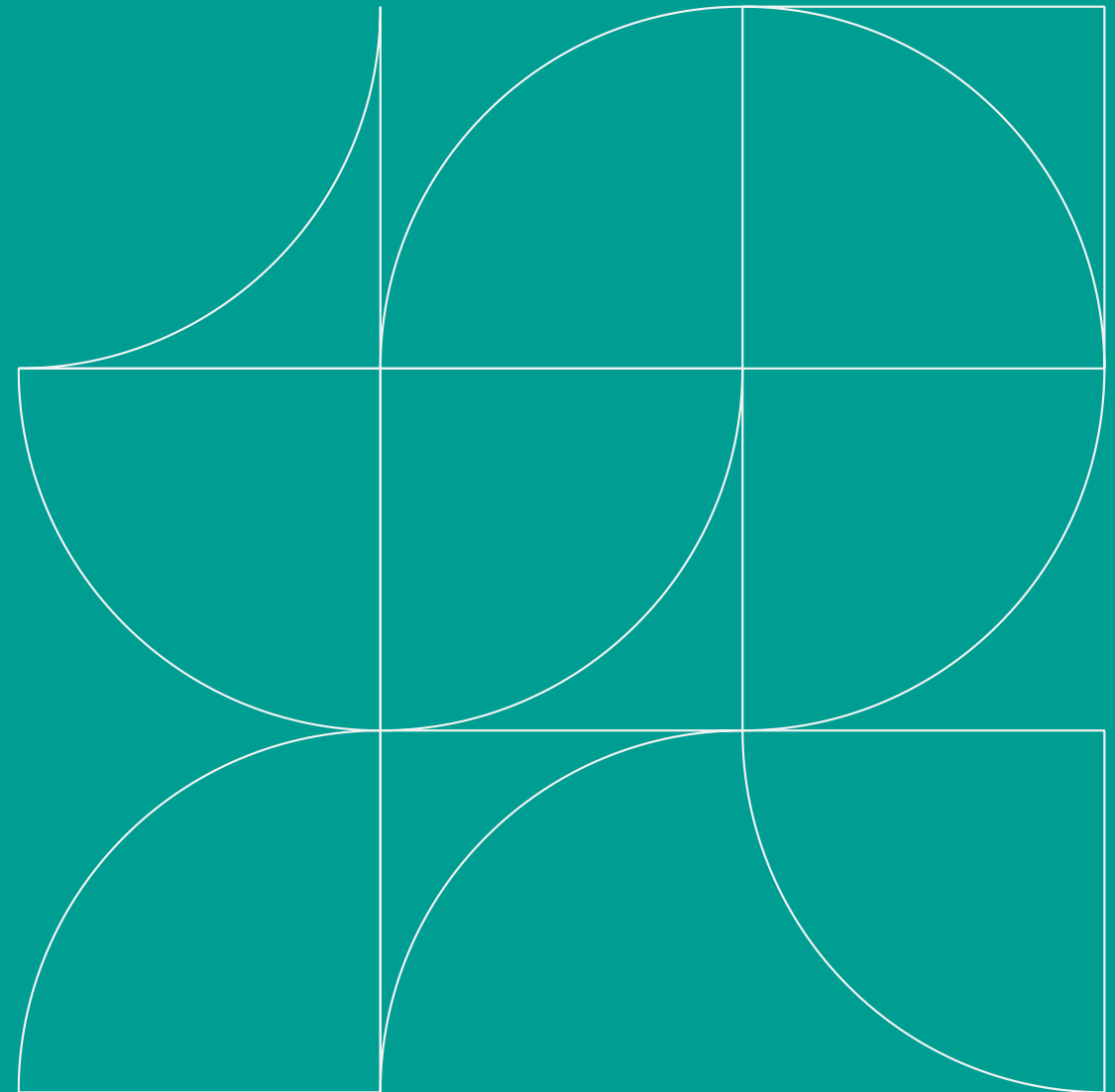
San Francisco Paid Parental Leave

- First jurisdiction to mandate fully-paid parental leave for bonding with a new child for most employees.
- Does not provide job-protected leave, just wage replacement.
- Provides eligible employees with 8 weeks of 100% pay during a bonding leave if they are receiving CA Paid Family Leave (PFL) benefits (increased from 6 weeks to 8 weeks on 7/1/20).
- Employers are required to provide supplemental compensation that equals 100% of the employee's gross weekly wages when combined with the PFL compensation the employee receives from the CA EDD.
- Eligibility:
 - Started employment at least 180 days before leave begins
 - Works at least 8 hours per week within San Francisco
 - At least 40% of weekly hours worked are within San Francisco
 - Is receiving PFL benefits
 - Both parents
 - Applies to part-time and temporary employees in addition to regular full-time employees

2021 Updates

- PFL now covers qualifying exigencies for employee's spouse, domestic partner, child, or parent in the Armed Forces
- Defines “military member” for—and revises definitions of “care recipient,” “care provider,” and “family care leave” in—the family temporary disability insurance program (paid family leave)
- These definitions would apply for purposes of the employee's “qualifying exigency” to covered active duty or call to covered active duty for members of the military

New Jersey Family Leave Insurance Law



COVID-19 NJ Leave Developments



- **A3848:** Signed into law by Gov. Murphy on **March 20, 2020**. **Effective immediately.**
 - No retaliation and provides right to reinstatement for EEs who request or are absent b/c of medical professional recommendation due to EE having or likely having “infectious disease”
- **S2304:** Signed into law by Gov. Murphy on **March 25, 2020**. **Effective immediately.**
 - Expands leave benefits due to COVID-19 under the Earned Sick Leave, Family Leave Act (FLA), Family Leave Insurance (FLI), and Temporary Disability Benefits (TDI) laws
- **S2374:** Signed into law by Gov. Murphy on **April 14, 2020**. **“This act shall take effect immediately and shall be retroactive to March 25, 2020.”**
 - Clarifies certain aspects of S2304 regarding FLA, FLI and TDI; Also expands certain aspects of these laws

NJ Family Leave Insurance (FLI) - Overview



- **2019 Amendments:** In Feb. 2019, the FLI (as well as certain other NJ leave laws) was amended. Some took effect immediately, while others were phased through mid-2020 (they are currently all in effect)
- **Highlights Includes:**
 - Doubled number of weeks of continuous FLI benefits are available from 6 to 12 weeks
 - Increased intermittent leave from 42 to 56 days
 - Increases monetary benefits available to employees
 - Expands reasons for use and covered family members
 - One week waiting period removed
 - Updated standard for interplay with employer-provided leave at full pay

NJ Family Leave Insurance (FLI) - Overview



- **Employer Coverage:** FLI applies to private businesses and state government employers subject to the New Jersey Unemployment Compensation Law.
- **Employee Eligibility:** To qualify for FLI in 2021, EE must have worked 20 weeks earning at least \$220 weekly, or have earned a combined total of \$11,000 in the base year.
- **Funding:** Financed by worker payroll deductions. ERs do not contribute to program.
 - For 2021: EEs contribute 0.28% of the first \$138,200 earned during the calendar year. Max yearly deduction for 2021 is \$386.96.

NJ Family Leave Insurance (FLI) – Covered Absences with COVID-19 Updates



NJFLI benefits are available for the following reasons:

1. Care for child during first 12 months after child's birth
2. Care for a child during first 12 months after adoption **or** foster care placement
3. Care for *family member* with serious health condition
4. Activities covered under the NJ SAFE Act
5. **(A)** During a state of emergency declared by Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, **(B)** leave taken for an illness caused by an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, **(C)** which requires in-home care or treatment of the *employee's family member* **(D)** due to: **(i)** the issuance by a healthcare provider or the commissioner or other public health authority of a determination that the presence in the community of the family member may jeopardize the health of others; **and (ii)** the recommendation, direction, or order of the provider or authority that the family member be isolated or quarantined as a result of suspected exposure to a communicable disease.

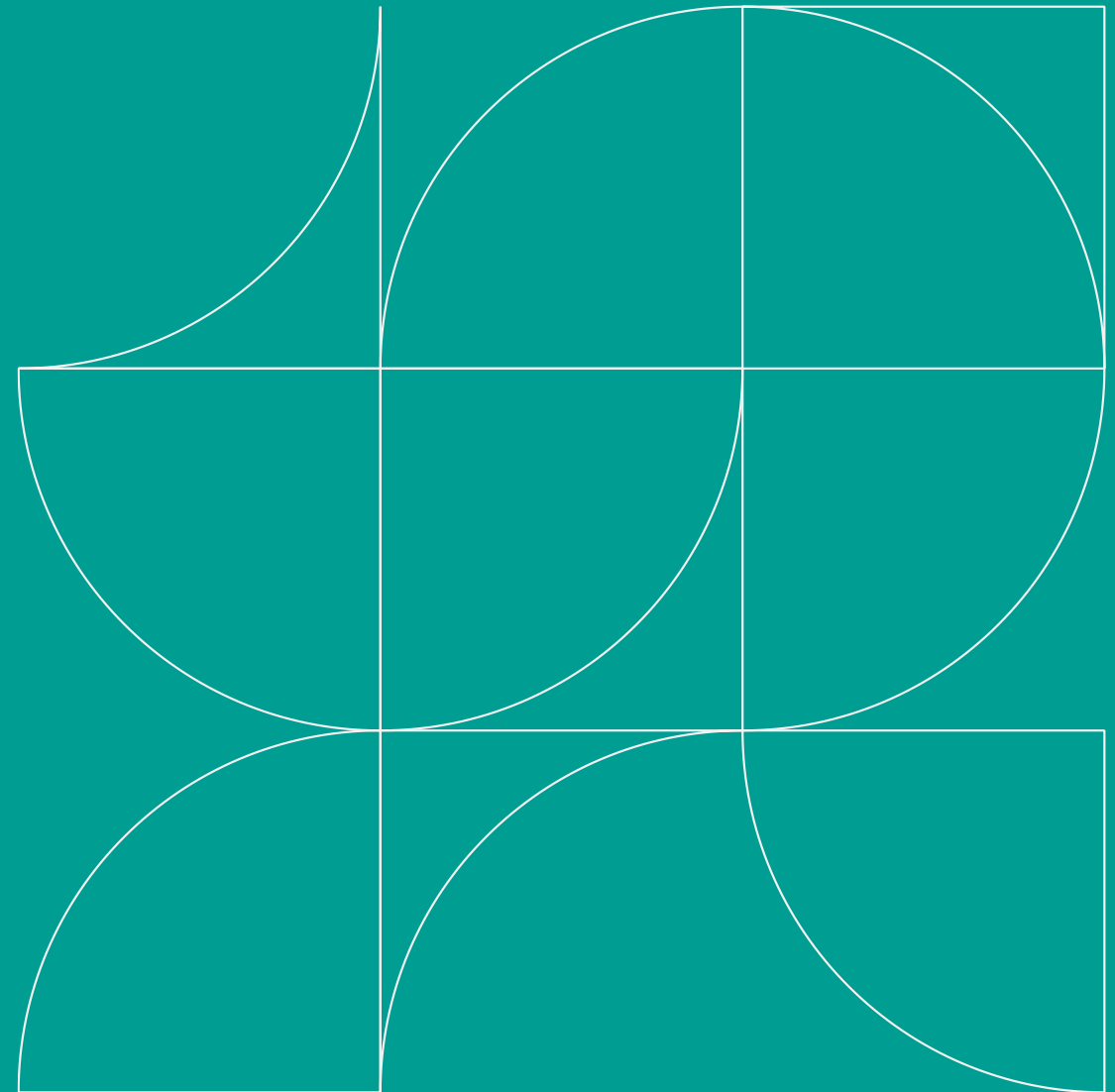
NJ FLI – Covered Family Members



Covered Family Members under the NJ FLI include:

1. Child
2. Parent
3. Parent-in-law
4. Sibling
5. Grandparent
6. Grandchild
7. Spouse
8. Domestic Partner
9. Civil Union Partner
- 10. Any other individual related by blood to employee**
- 11. Any other individual “that the employee shows to have a close association with the employee which is the equivalent of a family relationship.”**

New York Paid Family Leave



NY Paid Family Leave



- Implemented in phases starting January 1, 2018.
- Law was fully implemented as of January 1, 2021.
- **Eligibility:**
 - Full-time employees who work 20 or more hours a week: After 26 consecutive weeks of employment.
 - Part-time employees who work fewer than 20 hours a week: After 175 working days.

NY Paid Family Leave



- **Benefits:** Starting January 1, 2021: 67% of the employee's average weekly wage (up from 60% in 2020), not to exceed 67% of Statewide Average Weekly Wage of \$1,450.17.
- **Amount of Leave as of 1/1/2021:** 12 weeks of leave (up from 10 weeks in 2020)
- **Funding:** New York Paid Family Leave is funded by employees through payroll deductions. In 2021, the contribution is 0.511% of an employee's gross wages each pay period. The maximum annual contribution is \$385.34.

NY Paid Family Leave



- **Pre-COVID-19 PFL provides that employees may take time off of work to:**
 - (1) Care for a covered family member when the family member has a serious health condition;
 - (2) Bond with their child during the first year of birth, adoption, or foster care; or
 - (3) For any “qualified exigency” under the federal Family Medical Leave Act.

NY Paid Family Leave



- **Covered family members:**
 - (1) child;
 - (2) spouse;
 - (3) domestic partner;
 - (4) parent;
 - (5) grandchild; or
 - (6) grandparent.

NY Paid Family Leave COVID-19 Updates



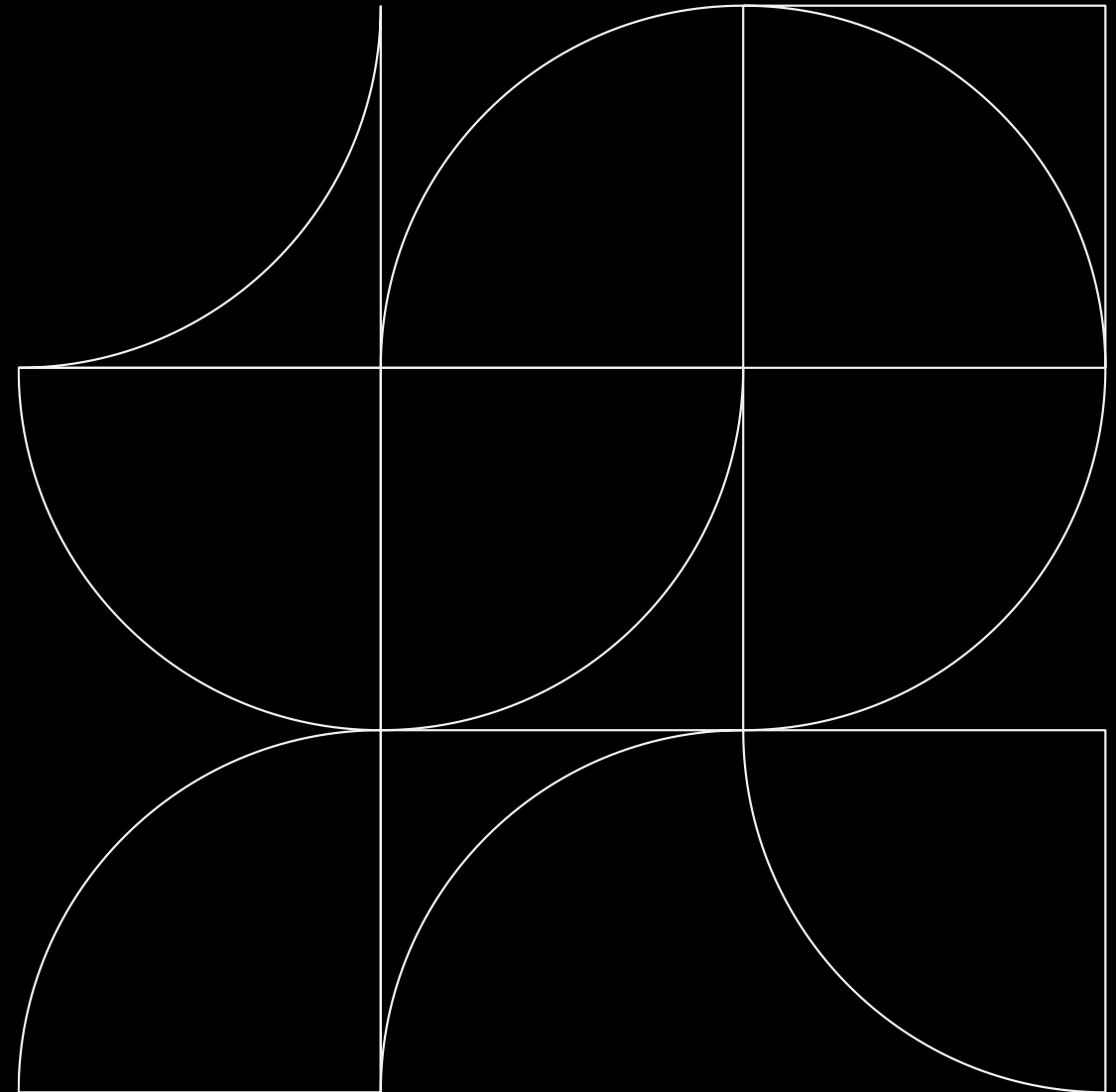
- **Amount and Types of Leave:**
 - **10 or less employees and net income of \$1 million or less as of 1/1/2020:** Employees are entitled to unpaid sick leave for the entire period of quarantine or isolation, and **employees will be eligible for paid family leave and disability benefits.**
 - **11-99 employees OR 10 or less employees and net income greater than \$1 million as of 1/1/2020:** Employees are entitled to 5 (calendar) days of paid sick leave, and unpaid leave for remainder of the quarantine or isolation. After exhausting the 5 days of paid sick leave, employees are eligible for paid family leave and disability benefits.
 - **100 or more employees as of 1/1/2020:** 14 (calendar) days of paid sick leave. Appears that no paid family benefits are available, with potential exception for care of child subject to covered order.

NY Paid Family Leave COVID-19 Updates



- **Qualifying Reasons for Use:**
 - Employee must be subject to a mandatory or precautionary order of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19.
 - **Expansion of paid family leave:** Employee can use **paid family leave to provide care for a minor dependent child of the employee** who is subject to a mandatory or precautionary order of quarantine or isolation issued by the state, the department of health, a local board of health, or any government entity duly authorized to issue such order due to COVID-19.

2021 PFL Outlook and Seyfarth Paid Family Leave Resources



Paid Family Leave Outlook – 2021 and on

Laws Scheduled to go Into Effect:

- Massachusetts (1/1/2021 or 7/1/2021) (benefits began / begin depending on nature of qualifying event)
- Connecticut (1/1/2022) (benefits begin)
- Oregon (1/1/2023) (benefits begin)
- Colorado (1/1/2024) (benefits begin)

Next Locations Likely to Adopt:

- Maryland
- Minnesota
- New Mexico
- Virginia
- Vermont
- Maine

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

(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>

Questions?

Thank You!