



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

**Part I: Spotlighting
Massachusetts, Connecticut,
Washington and Washington, D.C.
Paid Family Leave Developments**

January 28, 2021

Seyfarth Shaw LLP

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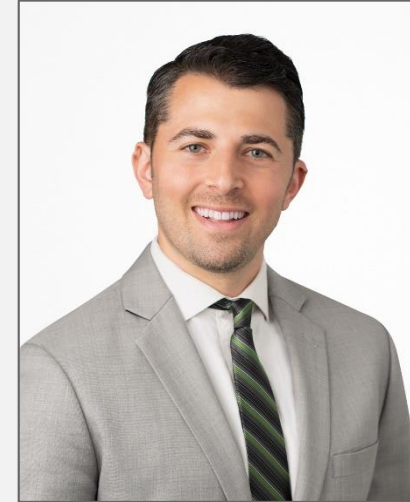
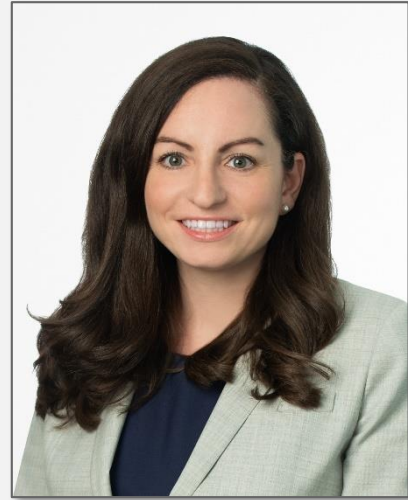
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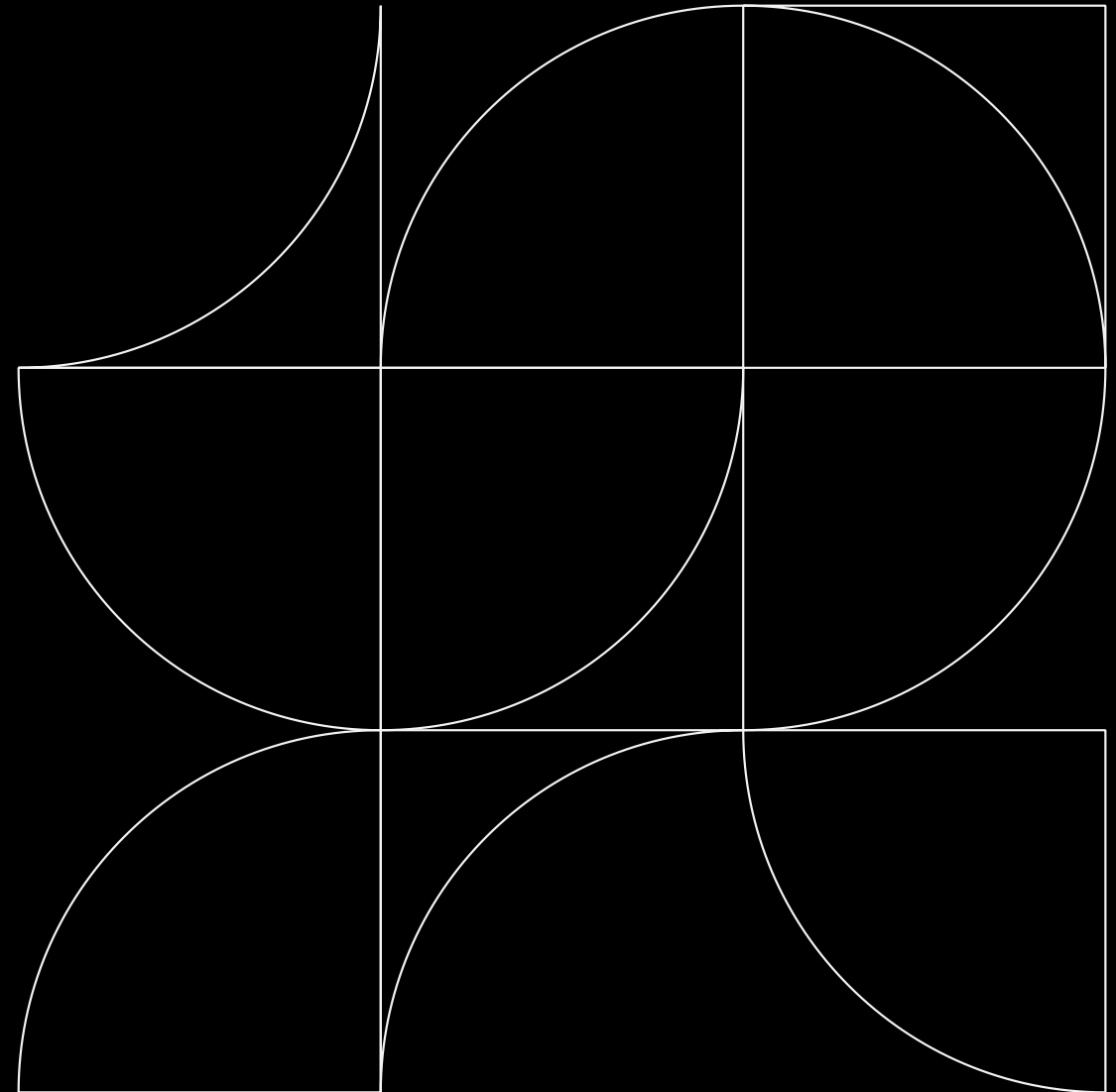
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Agenda

01	Nationwide Paid Family Leave Overview
02	Federal Paid Family Leave Update
03	Massachusetts Paid Family Medical Leave
04	Connecticut Paid Family Medical Leave
05	Washington, D.C. Paid Family Leave
06	Washington State Paid Family Medical Leave

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 12/31/2021*

- **9 States + DC**

- CA, NJ, RI, NY, **WA, DC, MA, CT**, OR, CO

- **1 Municipality**

- San Francisco, CA



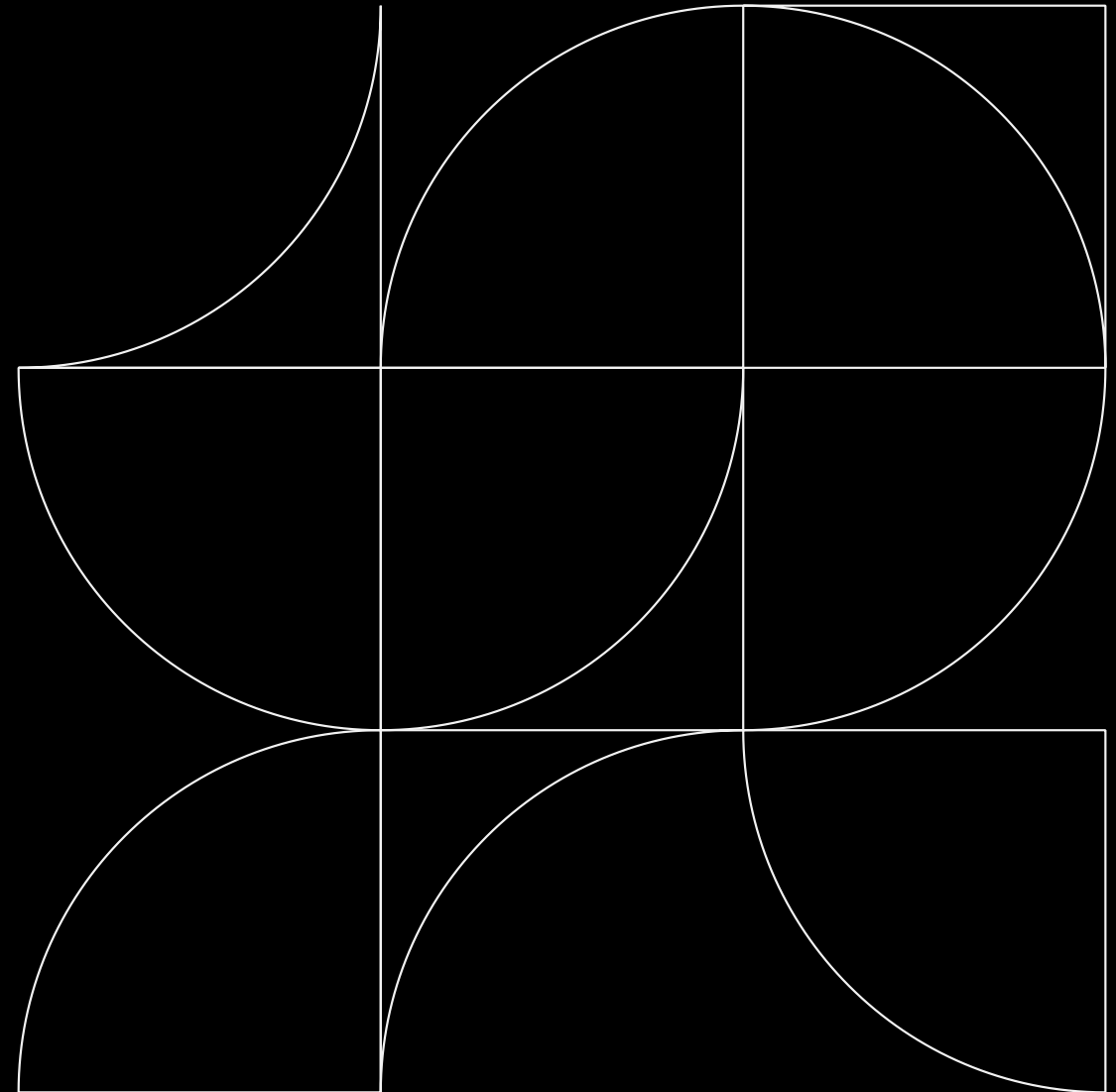
Polling Question



In which of these locations (MA, CT, DC, WA) does your Company or Organization have employees?

- 1. Massachusetts Only**
- 2. Connecticut Only**
- 3. Washington, D.C. Only**
- 4. Washington State Only**
- 5. At least 2 of MA, CT, DC and WA**
- 6. At least 3 of MA, CT, DC and WA**

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

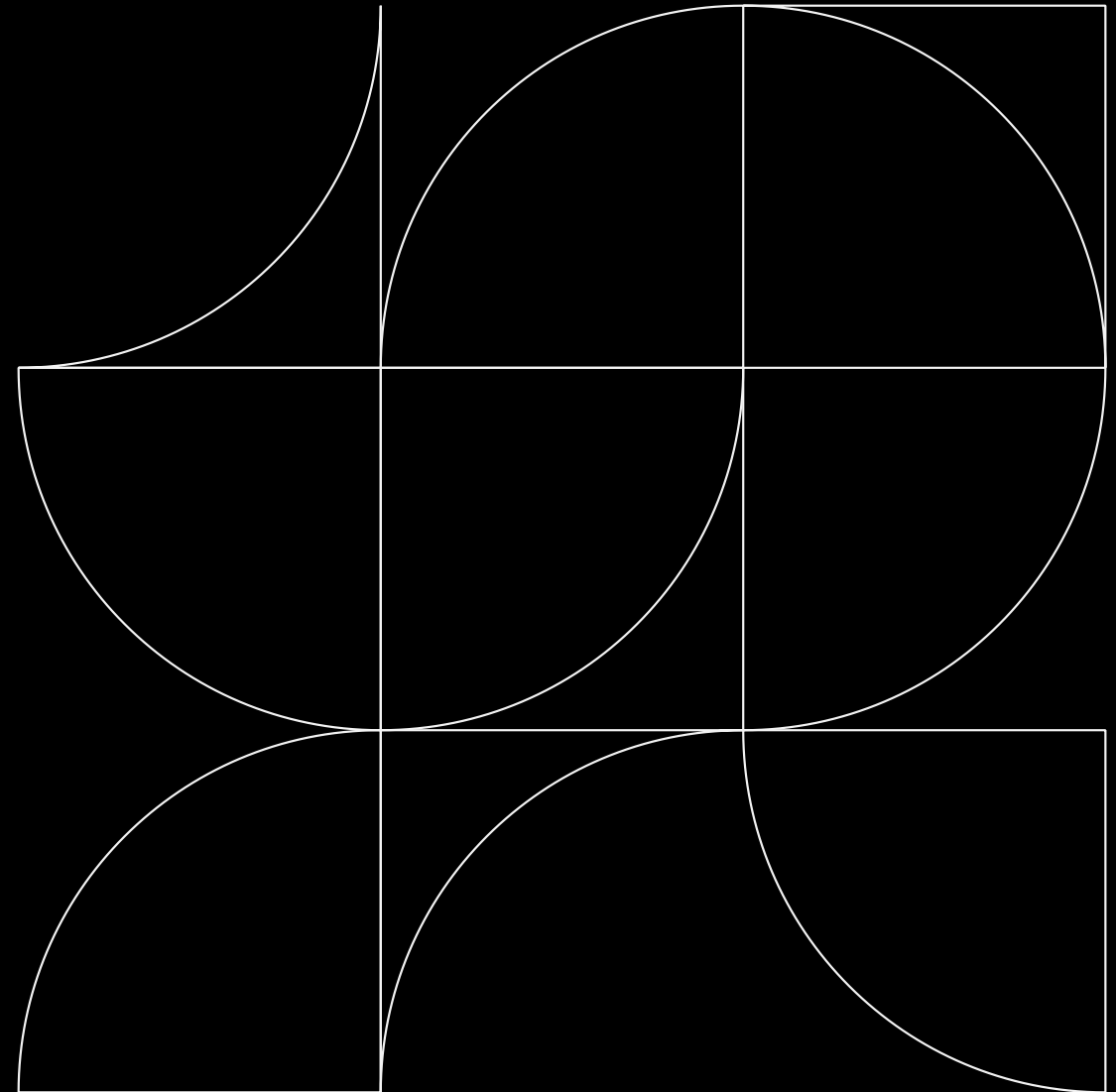
- **Biden Administration Proposal:** Calls for reenactment of FFCRA
- **Proposal Details:**
 - Reinstate EPST and EFML
 - Eliminate exemptions for: (a) ERs with more than 500 EEs, (b) ERs with less than 50 EEs, and (c) healthcare workers and first responders
 - Tax credits would be available for ERs with under 500 EEs
 - Extend emergency paid leave measures until September 30, 2021



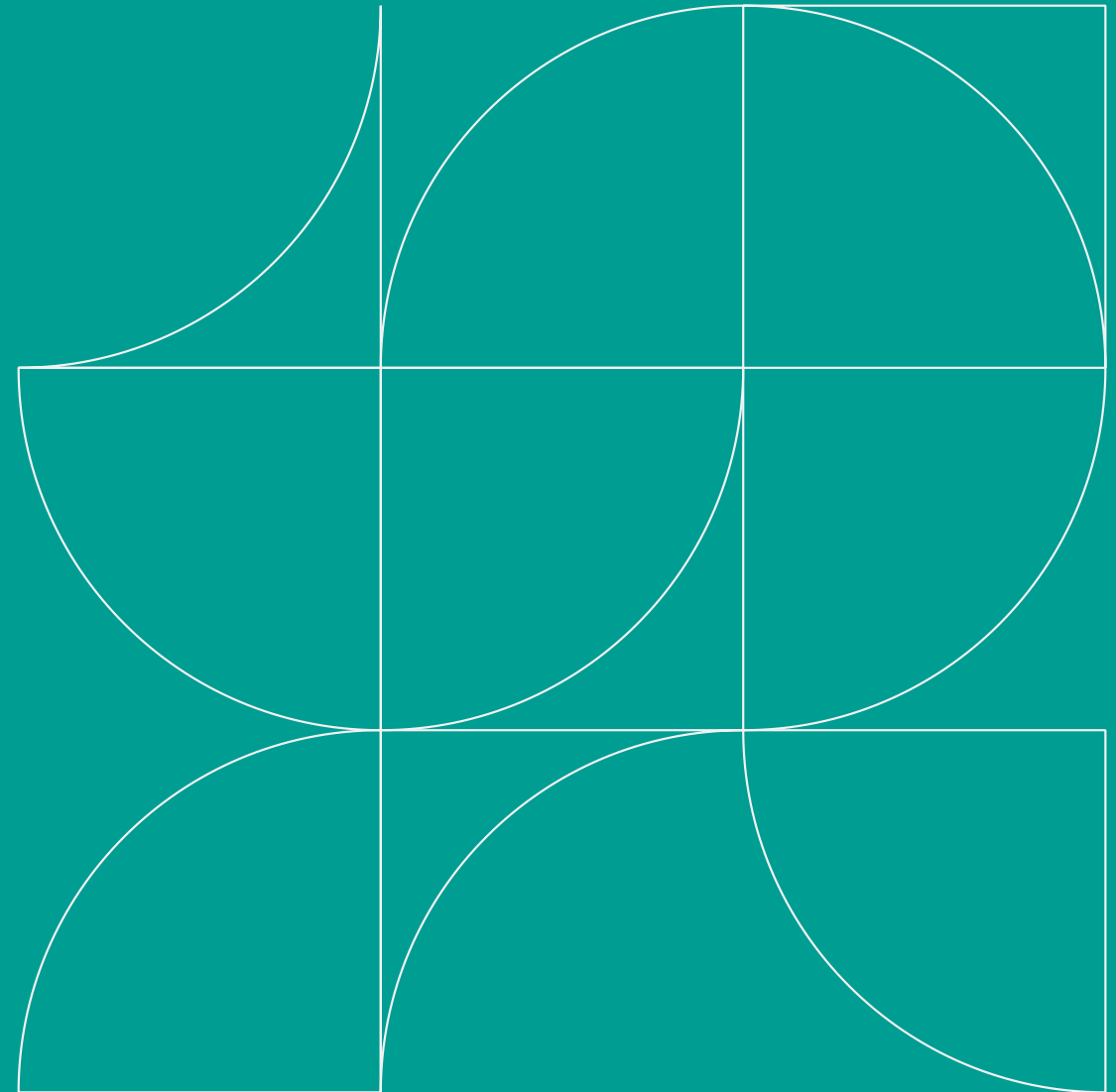
Federal Paid Family Leave Proposals

- **FAMILY Act** (S. 463/H.R. 1185)
- **New Parents Act** (S. 920/H.R. 1940)
- **Advancing Support for Working Families Act** (S. 2976/H.R. 5296)

Massachusetts Paid Family Medical Leave



Massachusetts PFML Overview



Massachusetts PFML Overview: Leave Allotment and Qualifying Reasons

- Up to **20 weeks** of paid, job-protected medical leave for the employee's own serious health condition (effective 1/1/21); and
- Up to **12 weeks** of paid, job-protected family leave (effective 1/1/21 for all but one type of leave)
 - to care for a family member with a serious health condition (effective 7/1/21);
 - to bond with the worker's child during the first 12 months after birth or the first 12 months after the placement of the child for adoption or foster care with the worker;
 - because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or
 - in order to care for a family member who is a covered servicemember with a serious injury or illness incurred or aggravated in the line of duty (for this particular reason, up to 26 weeks of leave may be taken in a benefit year).
- The law sets a **maximum aggregate of 26 weeks** of paid leave per benefit year.

Massachusetts PFML Overview: Employer Coverage & Employee Eligibility

- Unlike federal FMLA, MA PFML applies to employers with **one or more** employees working in Massachusetts
- Includes out-of-state employers with employees working in Massachusetts (including employees working remotely)
- All financially eligible Massachusetts employees may use PFML benefits
 - Includes part-time, temporary, seasonal, and former employees
 - No service requirement (unlike federal FMLA)
- To be eligible for paid family and medical leave, a worker must have earned at least **\$5,400** and at least 30 times their calculated weekly paid leave benefit amount in the last 4 completed quarters

Massachusetts PFML Overview: Benefits

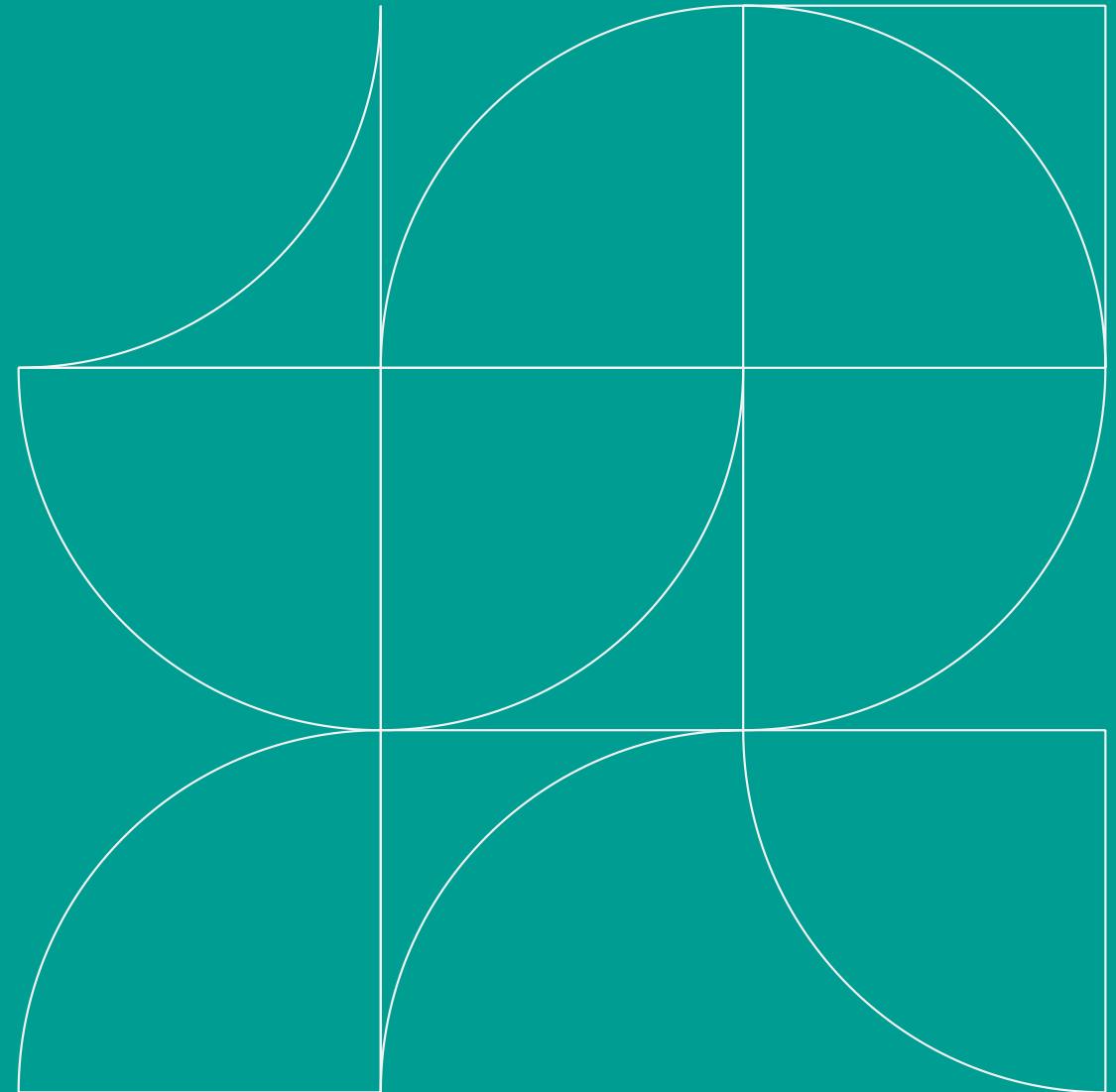
- Weekly Benefit Amount:
 - After a 7-day waiting period (during which they may use accrued paid sick leave), employees will earn 80% of their wages up to 50% of the state average weekly wage, and then 50% of their wages above that amount, up to an **\$850/week cap**.
- Although not paid by PFML, the 7-day waiting period is job-protected and will count against the maximum number of weeks of PFML.
- The \$850/week cap may be adjusted annually.

- Benefits funded through employee and employer contributions to the Public Trust Fund.

Massachusetts PFML Overview: Private Versus Public Plans

- Employers can apply for a private plan exemption for medical leave, family leave, or both from collecting, remitting, and paying contributions to the public trust fund.
 - Applications available on DFML website; applications accepted quarterly.
- If an employer is not exempted, it must remit contributions and employees can participate in the public program.

Recent Updates and Guidance



DFML Guidance: Intermittent Leave

- **Qualifying Uses:**
 - Employee's own serious health condition
 - To care for a family member with a serious health condition (effective July 1)
 - To care for a covered servicemember with a serious injury or illness
 - Family leave for a qualifying exigency arising out of family member's active duty or impending active duty
- Can only be used to bond with a child within the first 12 months after the child's birth, adoption, or foster care placement **only if** the employer and employee mutually agree.

DFML Guidance: Intermittent Leave

- On January 12, 2021, the DFML issued guidance regarding intermittent leave
- Employers may set a minimum increment for intermittent leave, but the minimum increment cannot exceed one hour. The minimum increment should be the same as what the employer uses for other forms of leave (e.g., FMLA).
- For claims under the public program, the Massachusetts Department of Paid Family Medical Leave (“DFML”) will not pay for benefits in increments of less than 15 minutes.
- Increments must therefore be between 15 and 60 minutes, and must be set in 15-minute intervals (e.g., 15, 30, 45, or 60 minutes).
- If an employer does not set a minimum increment, the DFML will default to 15 minutes.
- The DFML will only pay intermittent leave after 8 hours of intermittent PFML have accumulated, unless more than 30 calendar days has elapsed since the initial taking of such leave.

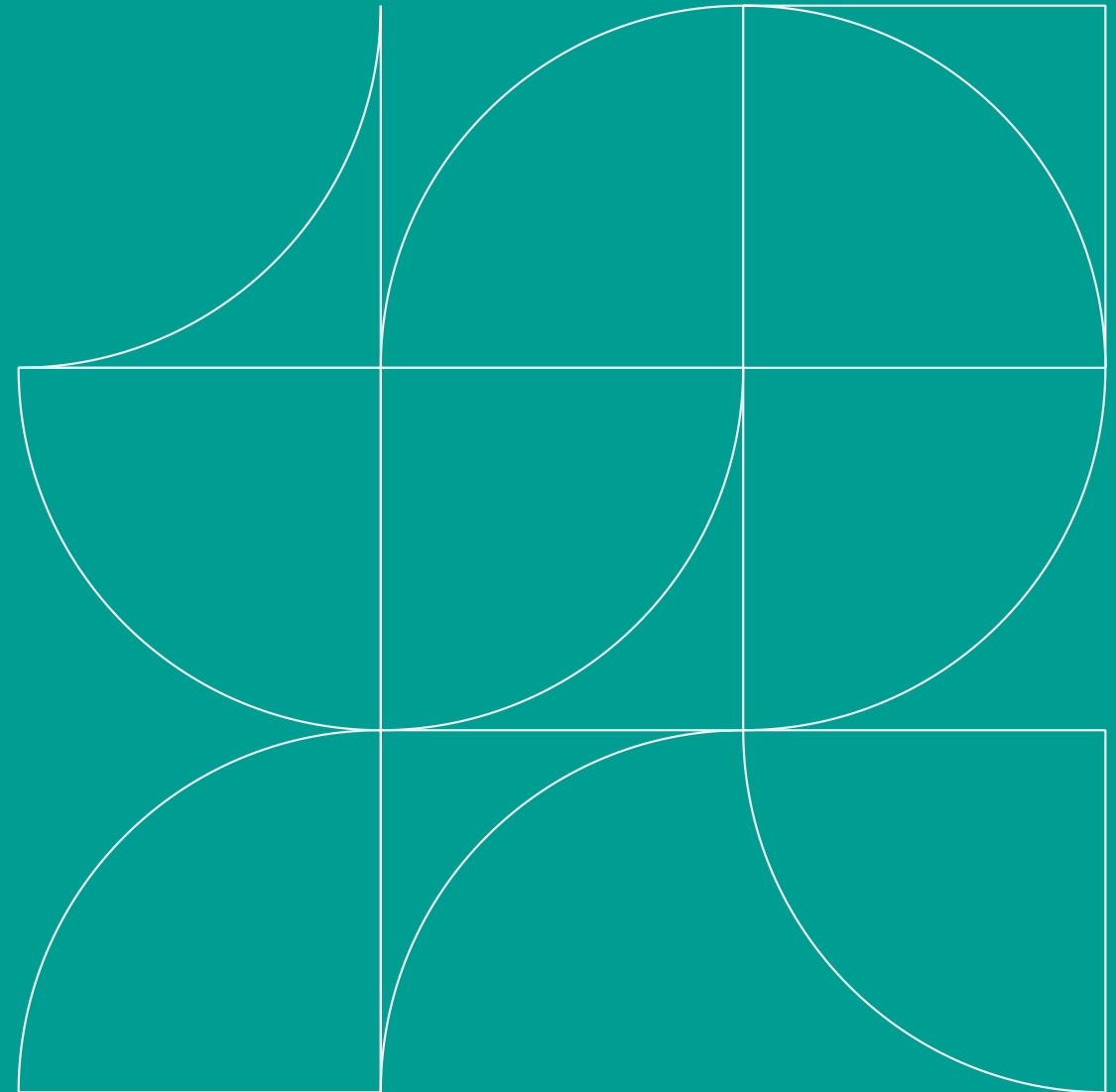
Final Regulation Updates: Anti-Retaliation Provision & *De Minimis* Negative Action

- Massachusetts issued updated Final Regulations in Fall 2020
- Under the prior regulations, “any negative change” to an employee’s seniority, status, benefits, pay, or other terms and conditions of employment within 6 months of returning to work from PFML leave would be presumed to be based on a covered individual’s use of leave.
- The Final PFML Regulations (“Final Regulations”) provide an exception to this presumption of retaliation:
 - **A negative change shall not include trivial, or subjectively perceived inconveniences that affect de minimis aspects of an employee’s work.**

Emergency Regulations

- [The DFML issued Emergency Regulations](#) that allow an EE of an acute care hospital to request that the period for taking PFML bonding leave for a birth, adoption or foster care placement that occurred during calendar year 2020, be extended beyond the normal 12-month post-birth/placement period as long as the EE completes the leave by December 31, 2021.
 - The Emergency Regulations do not impact medical leave or other types of family leave, including family bonding leave for a qualifying event that occurs during 2021.
- Regulations state that ER “may grant” EE’s request to extend the 12-month period, but they do not require ER to grant the request.
 - An employer’s decision to deny an employee’s request to extend the bonding leave period does not constitute retaliation under the PFML Law.
- The extension does [not](#) affect the total amount of leave available to the EE.

PFML's Interaction with Other Leave Laws and Employer-Provided Leave Policies



Interaction With Other Leave

- PFML through the State or a private plan will run **concurrently** with FMLA, MA Parental Leave, sick leave, vacation, compensatory time, PTO, STD, LTD, or any company-provided paid family or medical leave benefit taken for any PFML-qualifying reason.
- The time taken and paid for through use of such leave will count towards an employee's PFML allotment, **but the employer (i.e. the relevant policies) must notify employees of this consequence.**
- **Reimbursement Update:** Employers in the public program that also offer a paid temporary disability, family, or medical leave policy can be reimbursed by the DFML in certain circumstances. If an employer makes payments to a covered individual during a period of family or medical leave that are equal to or greater than the amount required by the PFML law, the employer may be eligible for reimbursement from the benefits the individual would have been paid by the Department. Employers are not eligible for reimbursement if the employee has received benefits from the State.

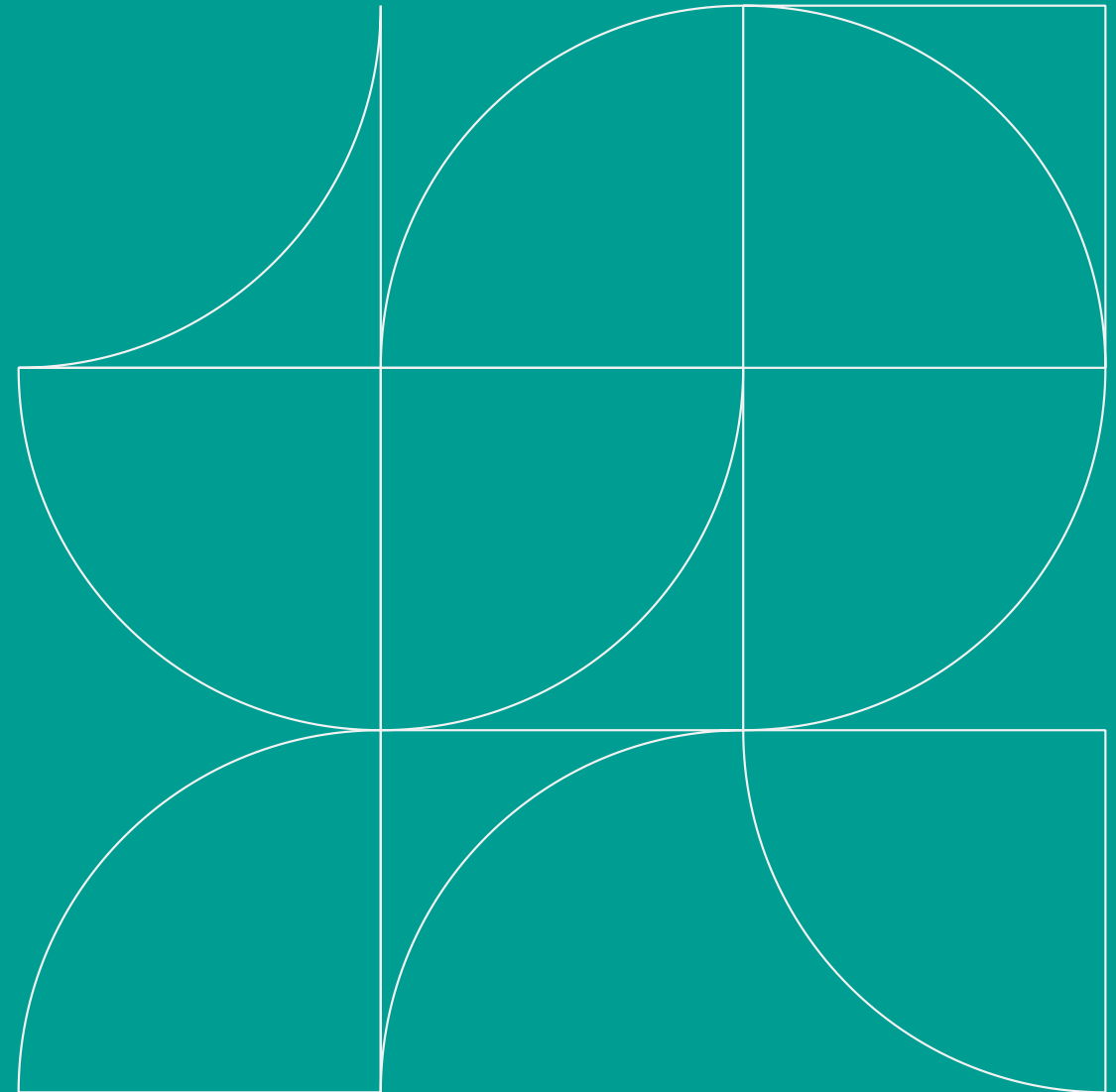
Interaction With Other Leave Continued

- The regulations differentiate between a covered individual's use of **employer-sponsored disability (STD, LTD), family, or medical leave** and **accrued leave** (PTO, sick leave, vacation, personal, or compensatory time).
- Employer-Provided STD, LTD, or Family/Medical Leave:
 - Employees can collect disability, family, or medical leaves benefits through their employer, AND collect PFML benefits from the State.
 - The State will offset from PFML benefits the amount of unemployment, SSDI, and workers' comp.
 - The State will only offset STD, LTD, or other employer-sponsored paid family or medical leave (e.g. more generous paid parental leave), after the combined amount reaches 100% of the employee's average weekly wage.

Interaction With Other Leave Continued

- “Accrued Paid Leave” = PTO, vacation, sick, personal, compensatory leave
- An employee can elect to use accrued leave instead of State PFML benefits. However, the employer cannot require an employee to apply for PFML instead of using accrued paid leave benefits. The employee has a right to choose.
- An employee **cannot** receive any State PFML benefits while using accrued leave.
- Even where an employee elects to use accrued leave instead of PFML, the time taken will count against the employee’s PFML allotment (but the employer/policy must provide notice).

Common Issues and Questions To Address Now



No Offset/Deduction for Family or Medical Leave Taken in 2020 (Both Private Plans & State Plans)

- The regulations provide that the weekly benefit amount shall be reduced by any paid family or medical leave that a covered individual on family or medical leave receives from any source for any qualifying reason in the 12-month period prior to filing an application for benefits.
- However, any leave taken by the covered individual for the same qualifying reason prior to January 1, 2021, shall not count against the covered individual's weekly benefit amount and/or leave allotment.

Employer-Paid Family/Medical Leave in 2020 vs. PFML in 2021

Scenarios:

- Employee had a child on April 2, 2020. Employee could be eligible for 12 weeks of paid family leave benefits from January 1, 2021 – April 2, 2021, regardless of amount of paid parental leave received in 2020.
- Employee gives birth on December 2, 2020 and suffers complications. Depending on her health care provider's assessment of her condition, as of January 1, 2021, she would be eligible for up to 20 weeks of medical leave for her own serious health condition and 12 weeks of family leave to bond with her child (capped at 26 weeks total), regardless of paid leave received in 2020.

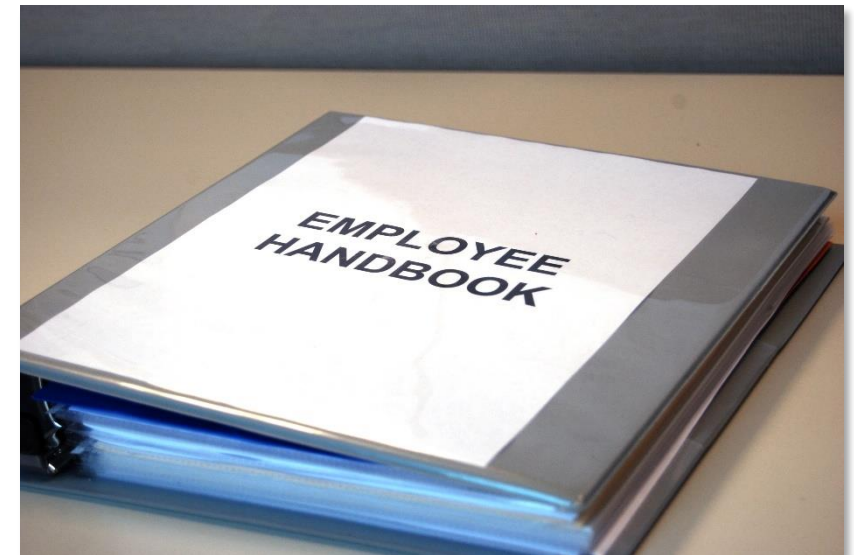
COVID Considerations: PFML Leave

- As of January 1, 2021, employees who contract COVID-19 and meet the definition of “serious health condition” are eligible for up to 20 weeks of paid medical leave for their own serious health condition.
- Family leave to care for a family member whose COVID-19 diagnosis qualifies as a serious health condition will not be available until July 1, 2021.
- PFML benefits are available to former employees, who may also seek to use paid leave for COVID-19 implications.

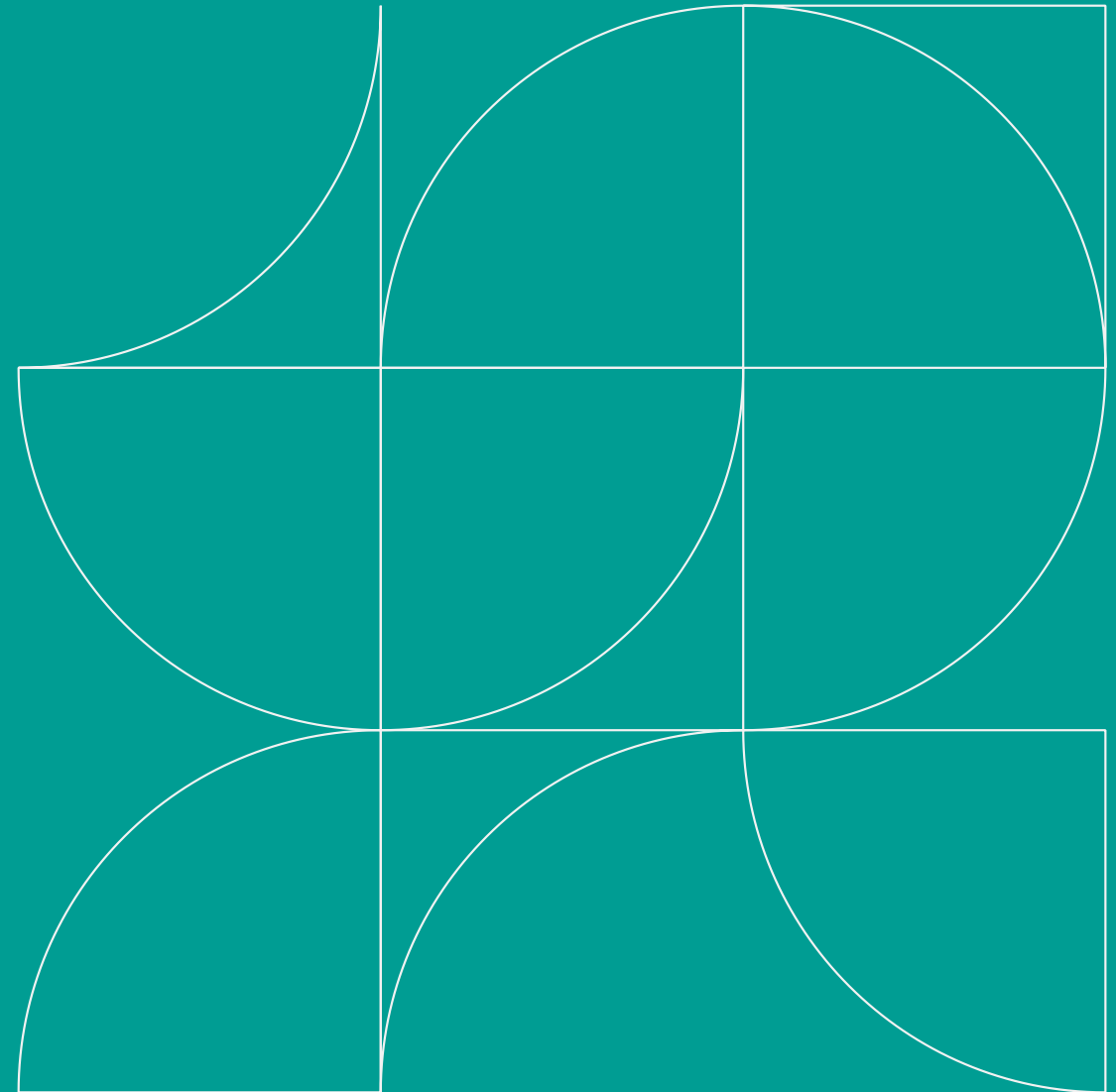


Employee Handbooks & Employer Policies

- Employers should update their handbooks and leave policies.
- Considerations:
 - Include language regarding PFML benefits running concurrently with other leave laws and employer-provided policies.
 - Consider interaction with employer-provided leave, STD, LTD, and PFML benefits.
 - Be clear about when benefits are available. For example, PFML benefits to care for a family member's serious health condition are not available until July 1, 2021.



Requirements / Process for Employee Claims for State Benefits

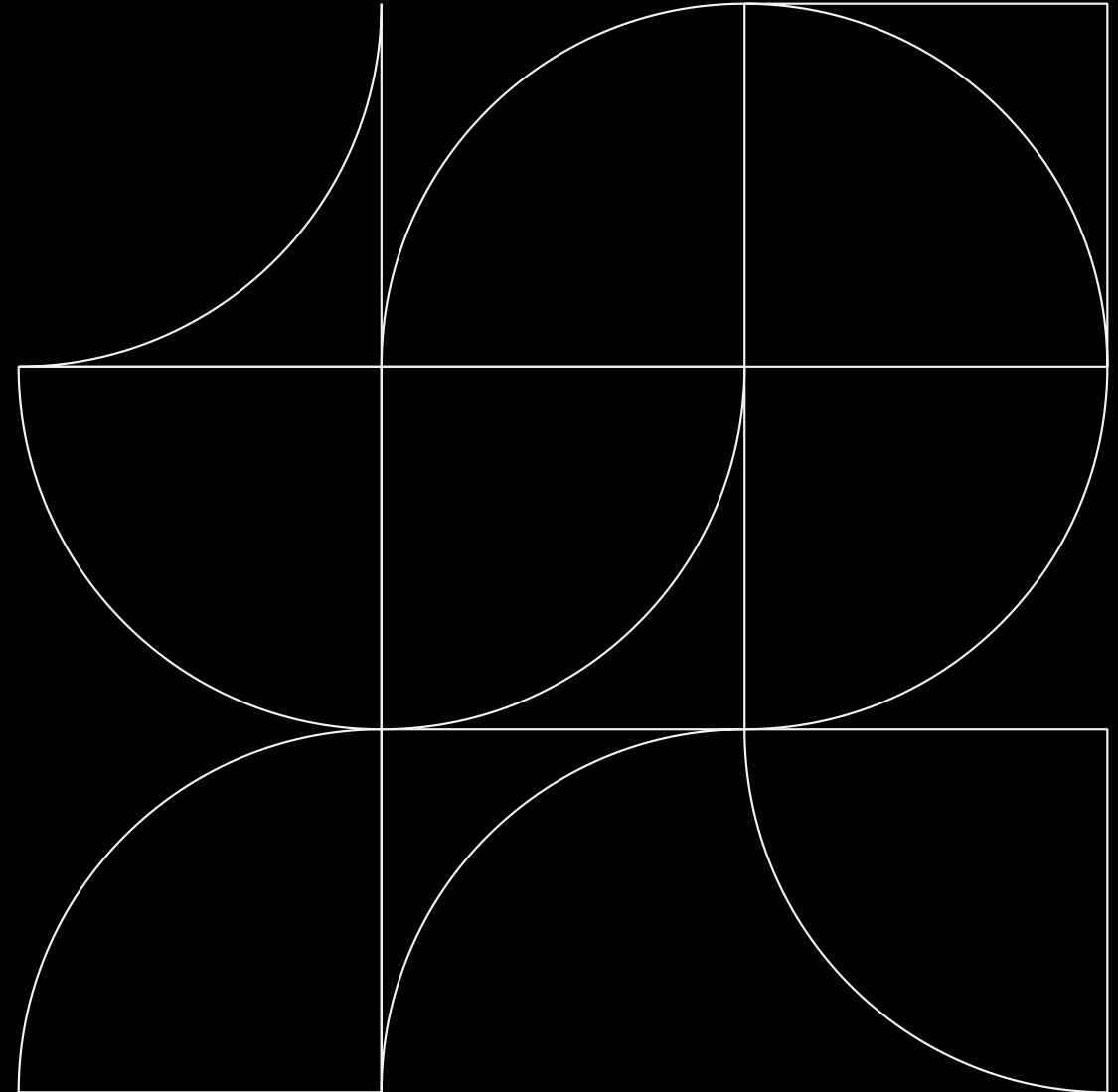


Covered Worker's Application for State PFML Benefits

- Applications are available on the DFML Website.
- First, covered individuals must provide notice of their need for leave to their employer prior to applying for benefits with the Commonwealth. Proof of this notice must be included in the application for benefits.
- Covered individuals should submit applications for benefits **at least 30 days in advance of the anticipated start of leave, but no more than 60 days in advance.**



Connecticut Paid Family Medical Leave



Overview

Connecticut Paid Family and Medical Leave (PFML)

- **Signed by the Governor of Connecticut:** June 25, 2019
- **Impact on CT Family and Medical Leave Act (CFMLA):** The CT PFML Act amends the CFMLA
- **Employee Premium Withholdings Started:** January 1, 2021
- **Remit Contributions to the State:** March 31, 2021 (1 month grace period)
- **PFML Benefits Begin:** January 1, 2022

Employer Coverage – Connecticut PFML and CFMLA

- **PFML:**

- 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

- **CFMLA:**

- 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 – Connecticut PFML and CFMLA

- **PFML:** Individual must satisfy two standards:
 - Earned **at least \$2,325** during the employee’s highest earning quarter within the base period, **and**
 - Meet one of the following conditions: **(1)** is presently employed; **(2)** was employed by the employer within the previous 12 weeks; **or** **(3)** is self-employed or a sole proprietor and Connecticut resident enrolled in CT PFML
- **CFMLA:**
 - Current: **(1)** employed for 12 months **and** **(2)** 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

Reasons for Use – Connecticut PFML

Covered Reasons for Use of PFML:

- 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 related to family violence

Covered Family Members – Connecticut PFML and CFMLA

Covered Family Members under CT PFML and CFMLA (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 – Connecticut PFML

- **Funding:** The program is funded through employee payroll deductions.
- **Employers Do Not Contribute to the Program**
 - Employers are required to “deduct and withhold” the contributions from employee wages.
- **Amount of Deductions:** Shall not exceed 0.5% of an employee’s earnings that are subject to Social Security taxes (\$142,800 for 2021)
- **Missed Payroll Deductions:** For the first two quarters of 2021, employers may deduct additional amounts up to 1% from employees to catch up for missed deductions.

Amount of Pay – Connecticut PFML

- **Overall:** CT PFML is a wage-replacement benefit with caps tied to the state minimum wage
- **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

Amount of Leave – Connecticut PFML and CFMLA

CT PFML – As of January 1, 2022

- **Length of Benefits:** 12 weeks of paid family and medical leave benefits in a 12-month period PLUS 2 additional weeks of PFML benefits available for a serious health condition resulting in incapacitation that occurs during a pregnancy

CFMLA

- **Current:** 16 weeks in a 24-month period
- **As of January 1, 2022:** Same as PFML

Private Plan Exemption- CT PFML

- **Overall:** Private plan must confer all the same rights, protections and benefits provided to employees under the CT PFML.
- **Two Types of Plans:** fully insured or self-insured
- **Application Requirements:**
 - **Majority Approval by Employees:** Employees must receive a copy of the plan at least two weeks prior to the vote.
 - **Deadline:** 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.

Intermittent Leave

Connecticut PFML and CFMLA

- **Intermittent Leave – SHC:**

- Permitted when “medically necessary”
- Employee also must satisfy applicable notice and certification requirements when seeking PFML benefits on an intermittent basis.

- **Intermittent Leave For 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
- **Only available for:** SHC (Employee or Family Member) and Organ/Bone Marrow Donation

- **Intermittent Leave/Reduced Schedule – Bonding:**

- Only permitted with employer consent

Notice and Other Requirements – Connecticut PFML

- **Notice:**

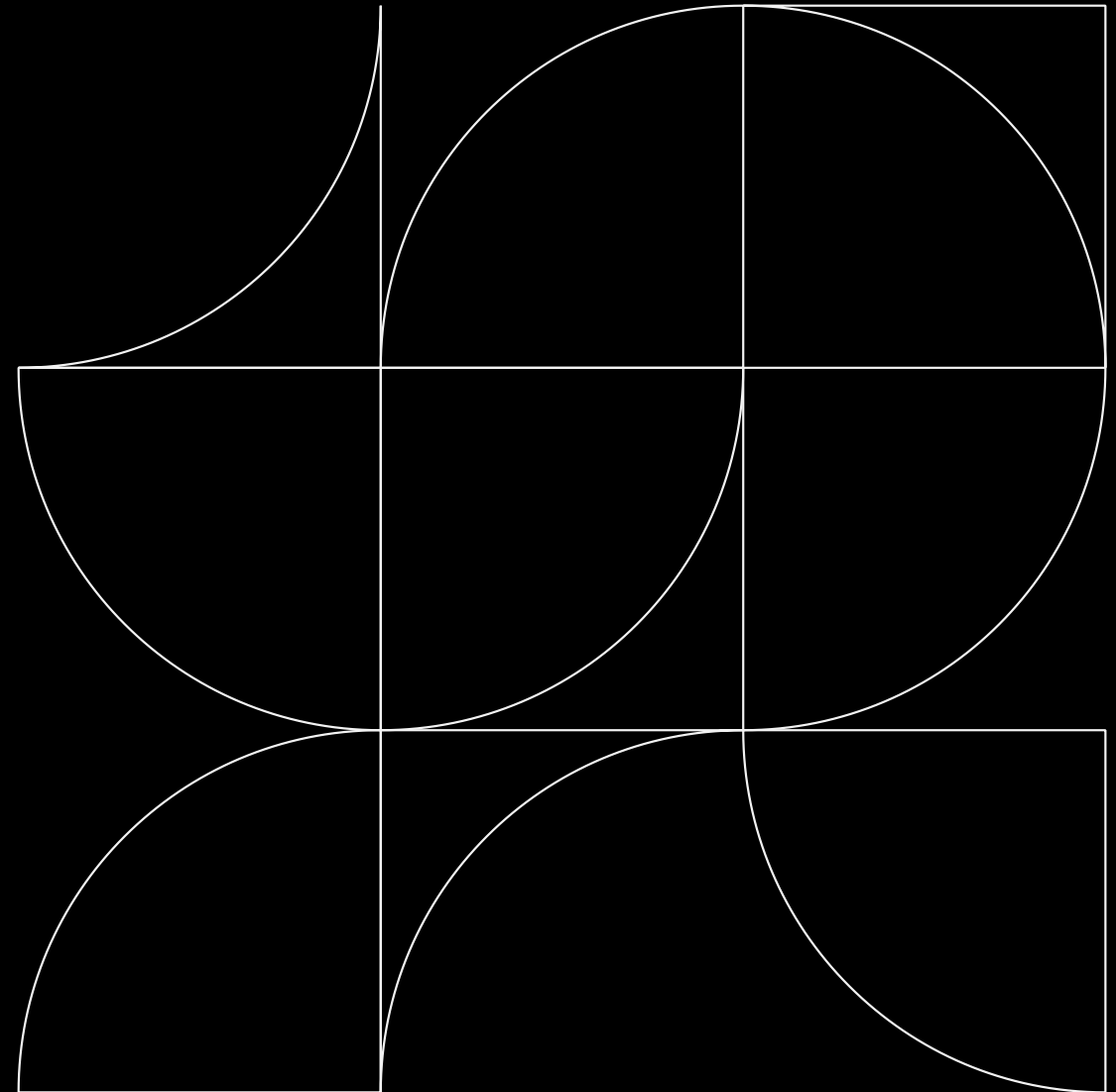
- Employer must provide written notice to employees regarding certain PFML rights **(a)** upon hire, and **(b)** annually thereafter
- Certain topics must be included in written notice

- **Posting:** No specific requirement

- **Register Your Company:** ctpaidleave.org

- **Remitting Contributions to the State**

Washington, D.C. Paid Family Leave



Key Dates– D.C. Paid Family Leave

- **July 1, 2019 – Wage Reporting and Payroll Taxes**
 - all reporting and payments must be made on the last day of the month following the close of the calendar quarter (i.e., July 31st, October 31st, January 31st, April 30th)
- **February 1, 2020 – Posting and Notice Requirements Take Effect**
- **July 1, 2020 – Benefits Available**

The Basics – D.C. Paid Family Leave

- **What is it?**
 - Up to **(1) *Eight weeks*** of paid parental leave, **(2) *six weeks*** of paid family leave, and **(3) *two weeks*** of paid medical leave per year for employees in DC
 - Maximum of eight weeks of PFL per year regardless of number of qualifying events
 - different than paid sick leave required under ASSLA
 - no separate job protection provisions (but an anti-retaliation provision)
- System is run similar to unemployment whereby employees file a claim for paid leave benefits
 - Payments under the act are funded by 0.62% payroll tax
 - No employee deductions permitted

Who Does It Apply To? – D.C. Paid Family Leave

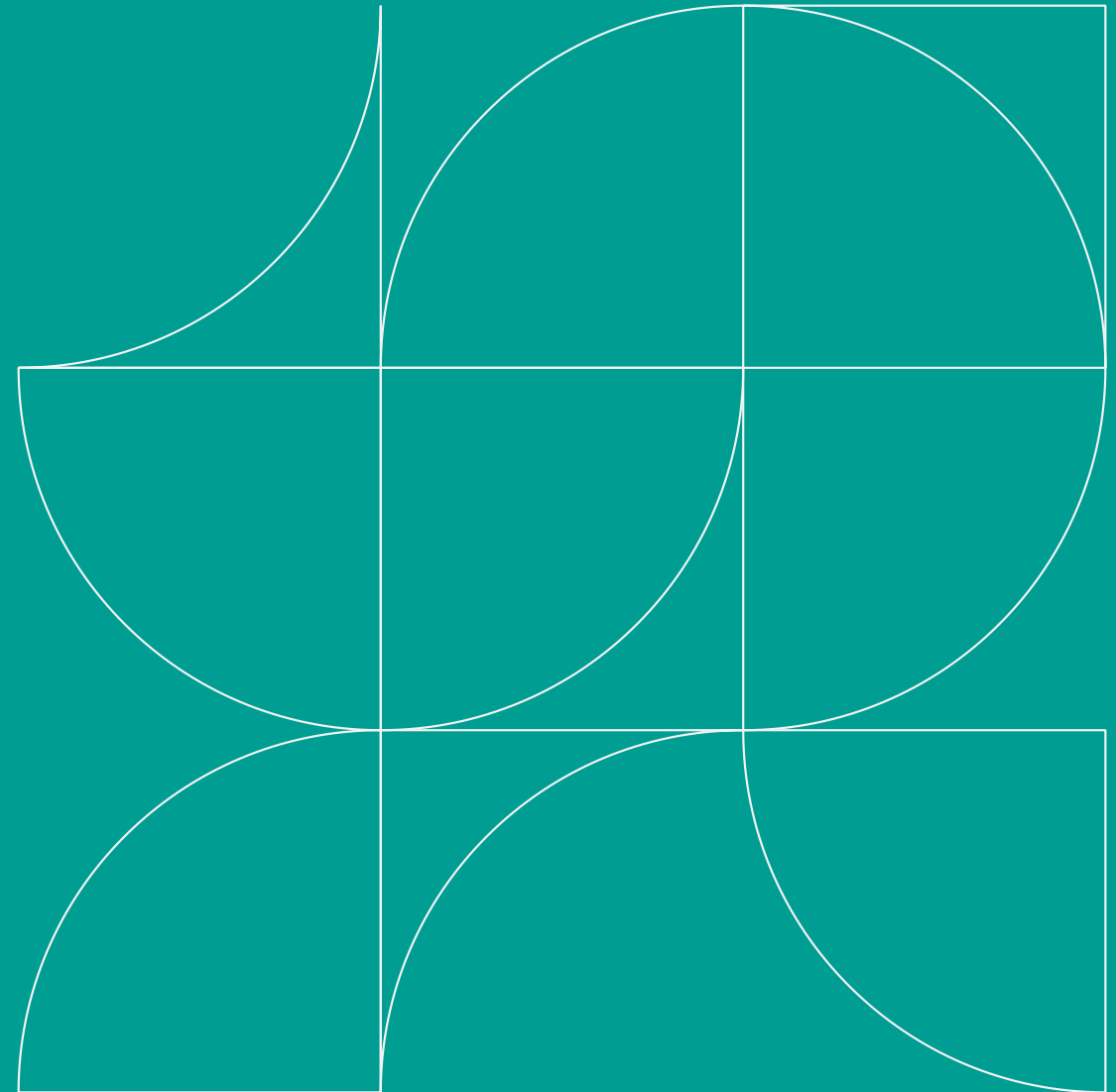
- **Who is a Covered Employer?**

- Anyone who is required to pay Unemployment Insurance (UI) Tax for its workers
- No employer size threshold – all must participate
- No exemptions for employers who offer more generous paid leave
- No Private Plan Option

- **Who is a Covered Employee?**

- Workers who spend more than 50% of time in DC; or
- Workers who are based in DC and:
 - regularly and customarily report to DC and not more than 50% of time in another jurisdiction
 - Work spent out of DC is incidental, temporary or isolated
- Rebuttable presumption of coverage if you are required to pay UI tax on employee

Employer Obligations Under DC PFL



Employer Obligations – D.C. Paid Family Leave

- File Wage Reports and Pay Contributions Through DOES Employer Self-Service Portal Account
- Posting and Notice Requirements
- Recordkeeping Requirements
- *Limited Role with Respect to Applications*
 - claims are filed with and paid directly by DOES
 - employers respond to requests for information by DOES
 - coordinate other statutory and employer-provided leaves

Reporting Wages and Paying the Tax

- **All reporting and tax payments must be made through DOES ESSP**
 - Same portal that is used for UI Tax reporting and payments
 - If you have existing account, no separate registration is required for PFL.
 - If you have a third party agent (e.g., payroll vendor) access your ESSP account for UI reporting and payments, that agent will be able manage the PFL reporting and payments in the same manner.
- **Taxes Collected on Quarterly Basis**
 - Log on to ESSP, enter the quarterly wage information, and the PFL tax due will be calculated within the portal.
 - No separate invoice issued or mailed
- **UC30 Form is Method to Report Wages**
 - Employers will only have to complete one wage report per quarter in the portal.

Posting and Notice Requirements

- **Posting**
 - Physical poster at each worksite
 - Send posters to remote or telework employees
- **Notice must be provided:**
 - At the time of hire
 - Annually (e.g., email blast)
 - At the time employer becomes aware that PFL may be needed

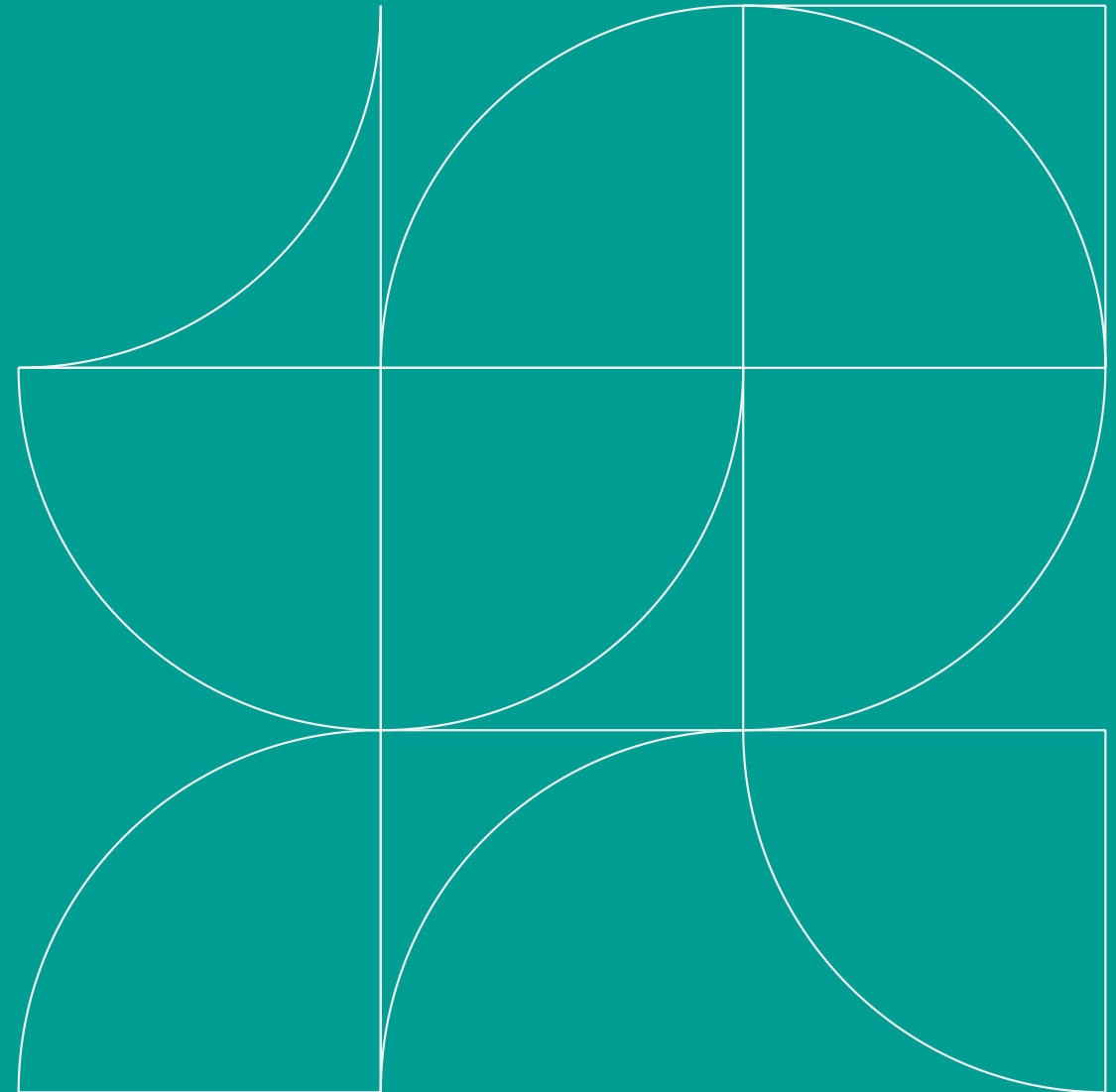
***Employer's Burden to Prove Notice*

Recordkeeping Requirements

All records relating to PFL must be maintained for 3 years

- **Covered Worker Wage Information**
 - Pay period dates, wages per period, method of payment, total earnings and dates paid
- **Covered Worker PFL Information**
 - Dates employee takes parental, medical or family leave
 - Copies of leave notices given to employees
 - Records of “disputes” over PFL
- **Copies of Required Notices**
- **Documents describing worker benefits**, including STD and LTD policies, sick leave, vacation leave and other leave policies

Benefit Claims Process



DC PFL Benefits Administration - Generally

- Eligibility and benefit award determinations made by DOES – employer is **not** involved
 - DOES also collects all relevant documentation and makes benefit payments
 - Employer may get notice of benefit determinations
 - Can revise policies to ensure employees do not receive more than 100% income replacement
- **Runs concurrently with FMLA/DCFMLA**
 - can also run concurrently with employer-provided paid leave
- No additional job protection but anti-retaliation provision enforced by DC Office of Human Rights

Timeline of a DC PFL Claim

- Prior to Qualifying Event
 - employee must provide notice to employer: 10 days if foreseeable need for leave
- Qualifying Event/Filing of Claim
 - employee files claim directly with OPFL
 - date of qualifying event is first day employee can file a claim for benefits and starts 7 day waiting period
- **OPFL Notice to Employer and Request for Information**
 - 3 Business Days After Filing Claim
 - OPFL Requests Response from Employer within 4 Business Days
- Determination of Claim and Benefits
 - within 10 business days of filing claim
 - **OPFL provides employer notice of determination**
- First Benefits Paid
 - within 10 business days of determination

Employer Communications with DC OPFL

- Request for Information from Employer
 - employment status of applicant
 - last day worked by applicant
 - which type of leave employee requested from employer
 - *whether employer agrees with employee's self-described workweek
- DOES Sends Notice to Employer After Determination
 - Approval or Denial
 - State and End Date of Approved Leave
 - Continuous vs. Intermittent Leave (with approved dates for intermittent leave)
 - *at the employee's election*, the benefit amount

Amount of Benefits

- Benefits Determined Based on Reported Wages for Last Five Completed Quarters
- Employees making \$22.50/hour or approximately \$46,800/year will receive 90% wage replacement
 - For employees compensated, at higher rate, smaller percentage of wage replacement
- Maximum Benefit Amount is \$1,000 per week until 10/21/2021
 - On October 1st, DOES will determine maximum benefit amount for following year

Coordination with Other Leaves – Common Issues

- Modifying Policies to Access Employer-Provided Leaves
 - employee’s right to short-term, employer-provided paid-leave benefits while receiving DC PFL benefits is determined by the employer's policies
 - expressly permitted to amend existing or future policies regarding employer-provided benefits
 - Not required to modify current policies
 - Limit aggregate payment of benefits to 100% wage replacement
 - Can require that benefit award amount be shared by OPFL or employee as condition of payment of employer-provided benefits
 - beware of encroaching on ASSLA (sick leave) entitlement
- Running Leaves Concurrently
 - prevents “extension” of paid leave period
 - however, even if employee has exhausted employer-paid leave, employer cannot restrict access to DC PFL
 - different approval processes for employer-administered leave and DC PFL
 - can also run consecutively (e.g., employer-provided leave kicks in when PFL is exhausted)

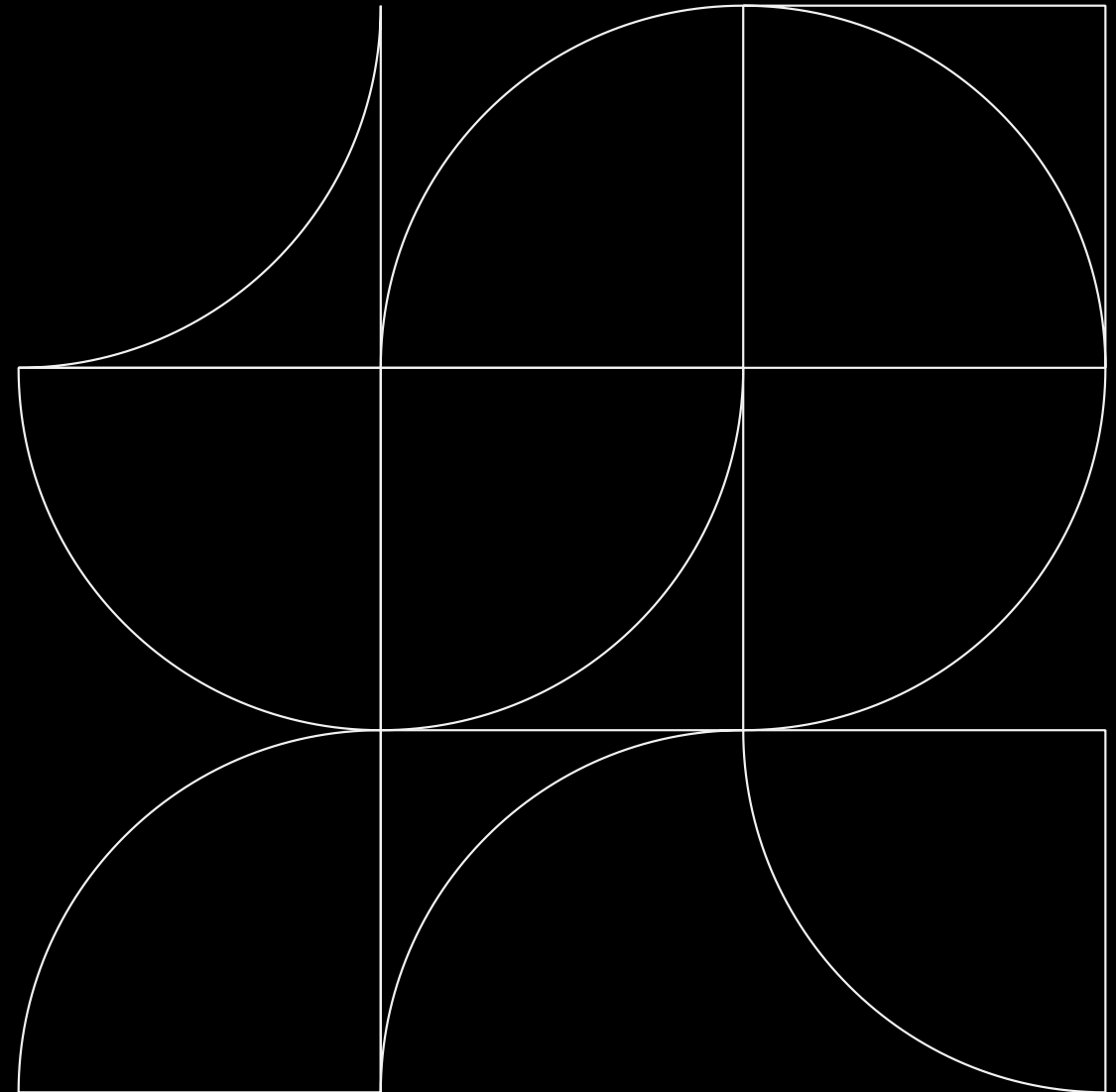
Coordination with Other Leaves – Common Issues

- **Leave Must Be Used in One-Day Increments**
 - on any paid benefit day, employee cannot perform his or her regular and customary work because of the occurrence of the qualifying event (includes telework)
- **No Minimum Service/Hours Requirement**
 - individuals can apply for benefits as long as they are currently employed
 - covers all workers regardless of number of hours worked
 - **creates coverage gaps between DC PFL and FMLA/DCFMLA
- **Special Considerations for Parental (Bonding) Leave**
 - can be taken within 52 weeks of birth, adoption or placement event
 - can be taken intermittently
- Employees may have multiple covered employers
- Application to COVID generally limited to positive diagnosis

**DC OPFL CLAIM
STATISTICS
(as of August 10, 2020)**

PFL CLAIM TYPE	AUGUST 10, 2020
Parental Leave	1179
Medical Leave	137
Family Leave	45
Total Claims Received	1361

Washington Paid Family Medical Leave



Washington PFML - Relevant Dates

- **Enacted:** 2017 (amended 2020)
- **Premium Withholdings Began:** January 1, 2019
- **PFML Benefits Began:** January 1, 2020

Washington PFML - Eligibility and Coverage

- Employee Eligibility
 - Employee – an individual who is **in the employment** of an employer
 - **820 hours** in “qualifying period”
 - Qualifying period – first 4 of last 5 completed calendar quarters (alternatively, last 4 completed quarters)
- Employer Coverage
 - Employer – any individual or organization having **any person in employment**
 - Employers in Washington
 - Out of state employers with employees performing work in Washington
 - Includes **staffing agencies**

Washington PFML – Amount of Leave

12 weeks Paid Family Leave

12 weeks Paid Medical Leave

(plus an additional 2 weeks if employee experiences a serious health condition with a pregnancy that results in incapacity)

16 weeks maximum combined Paid Family Leave and Paid Medical Leave

(18 weeks if employee experiences a serious health condition with a pregnancy that results in incapacity)

7-day waiting period for reasons other than birth/placement of child

Washington 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:
 - inpatient care or
 - continuing treatment

1. Care for a family member made necessary by family member's **serious health condition**
2. **Bonding** within 12 months of birth or placement of child under 18
3. **Qualifying exigency** as permitted under federal FMLA

Washington PFML – Funding Mechanism

- **2021 Premiums**
 - **0.4% gross wages** (up to Social Security cap)
 - Employees pay 63.33%
 - Employers pay 36.67%

- **Small Business Assistance Grant**
 - Fewer than **50 employees** in Washington
 - Not required to pay employer portion

- **Quarterly Reports**

- Names
- Social security numbers
- Wages paid & associated hours
- Total premiums deducted

- **Deadlines**

- **Reports & premiums** due **quarterly** on last day of month following completed calendar quarter
- Ex: Q4 2020 due **1/31/2021**

Washington PFML – Reporting and Remitting

Washington PFML – Notice and Posting

Notice

vs.

Posting

Employers must provide notice the later of:

- 5 business days after employee’s **7th consecutive day** of family/medical leave absence

OR

- 5 business days after employer becomes **aware that employee’s absence is due to family/medical leave**

Model Notice:

<https://paidleave.wa.gov/app/uploads/2020/09/PFML-ER-notice-to-EE-Final-09.03.2020.pdf>

Each employee shall **post and keep posted**, in conspicuous places on the premises, a **notice** to be prepared or approved by the commissioner, setting forth excerpts from, or summaries of, the **pertinent provisions** of this title and information pertaining to **filing a complaint**.

Model Poster:

https://paidleave.wa.gov/app/uploads/2020/11/2020.11.2.FNL_WPFML-poster_EN.pdf

Washington PFML – Reinstatement Following Leave

- **Job Protection if:**
 - employer has **50+ employees**
 - employed **12+ months**
 - worked **1,250 hours** for current employer in previous 12 months
- **Exception for Salaried Employees:**
 - **Highest paid 10%** within 75 miles of facility
 - Necessary to prevent **substantial and grievous economic injury** to operations of employer
 - **Notifies employee** of intent to deny restoration
 - Leave has commenced and **employee elects not to return** after receiving notice

Washington PFML – Private Plans

- Apply to **commissioner for approval**
 - Family leave, medical leave, or both
 - **Annual** approval for first 3 years
- Commissioner **must approve** if:
 - There is at least **one employee** and
 - Specified **criteria** are met
- **Effective:** **First day of quarter** following approval of plan
- **Requirements:**
 - Same **duration of leave** as state plan
 - Equivalent **monetary benefits**
 - **Payroll deduction** not higher than would be withheld under state plan
 - At least same **reasons for use**

Washington PFML – The First Year

Rulemaking Hearing:

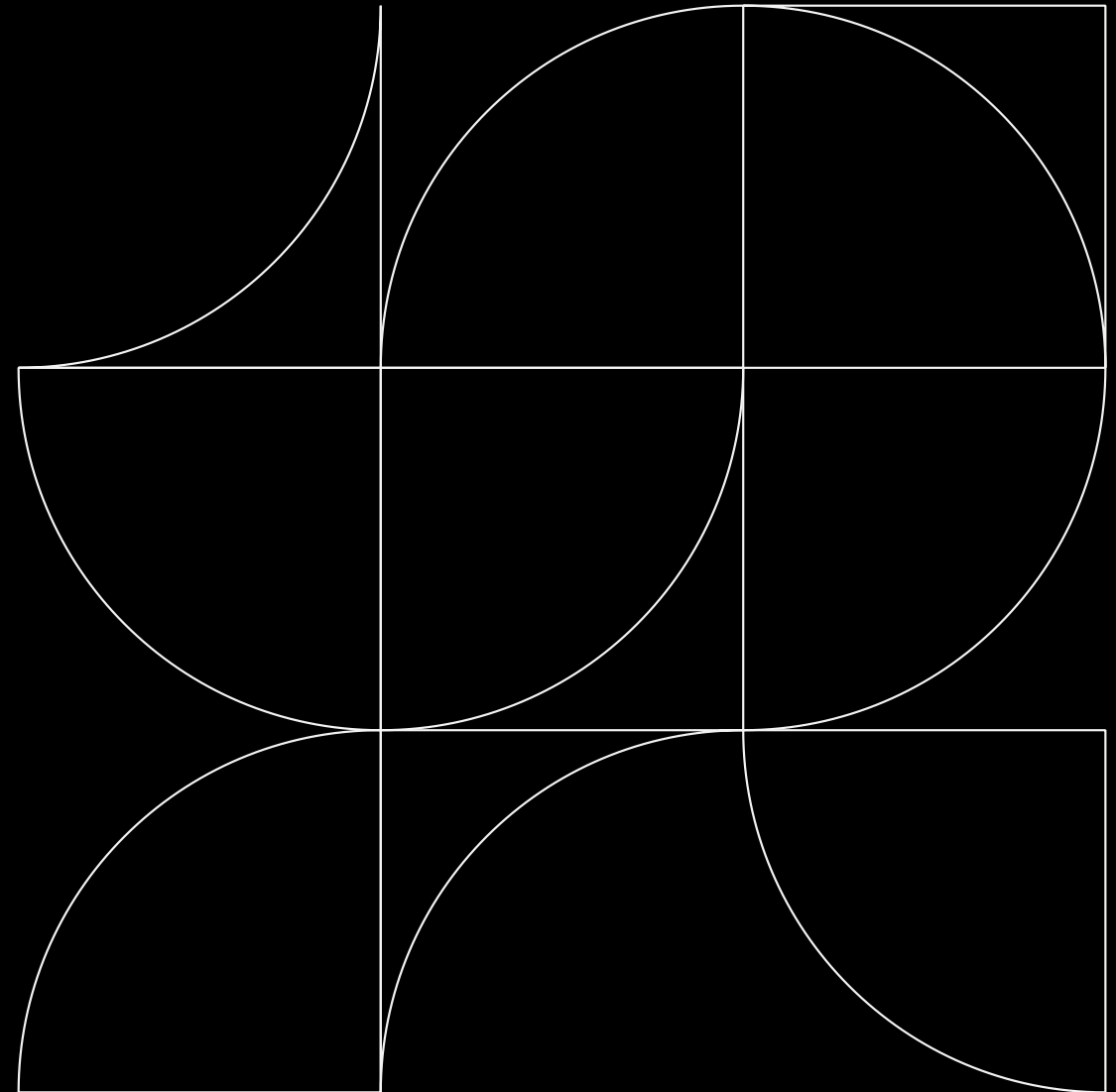
February 9, 2021

- Appeals
- Illegal Acts
- “Physically Works”
- Small Business Grants
- Employer Size
- Employment Restoration

COVID-19 and PFML

- Healthcare provider certification or other signed documentation required
 - Electronic signatures accepted
 - COVID test result insufficient
- **No PFML** for quarantine or school/childcare closures

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:

(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!