



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

Part VI: Spotlighting Connecticut, Delaware, Maryland and Washington, D.C. Paid Family Leave Developments

June 21, 2022

Seyfarth Shaw LLP

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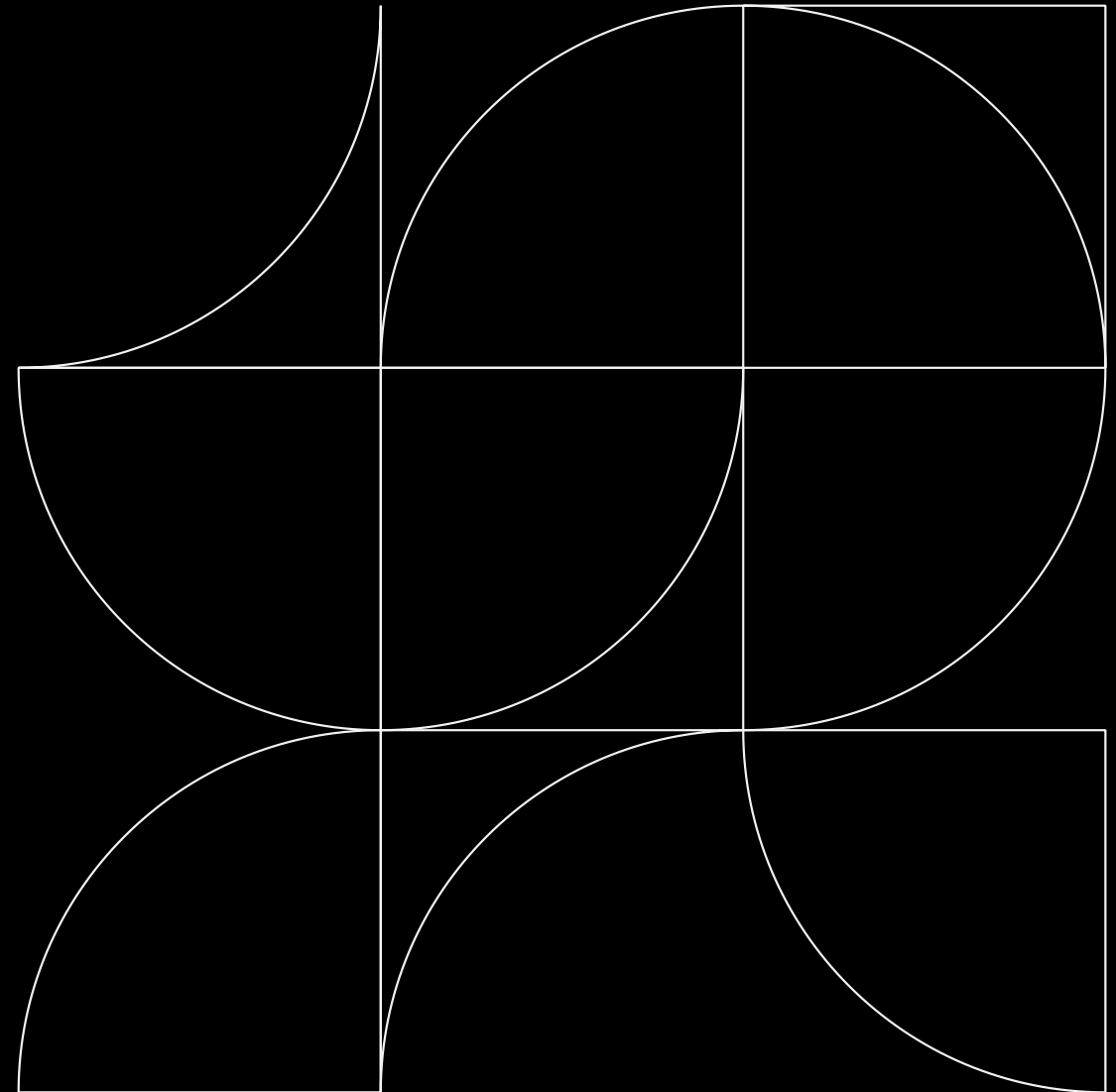


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Agenda

01	Nationwide Paid Family Leave Overview
02	Connecticut Paid Family Medical Leave Updates
03	Delaware Paid Family Medical Leave Updates
04	Maryland Paid Family Medical Leave Updates
05	Washington, D.C. Paid Family Medical Leave Updates

Nationwide Paid Family Leave Overview

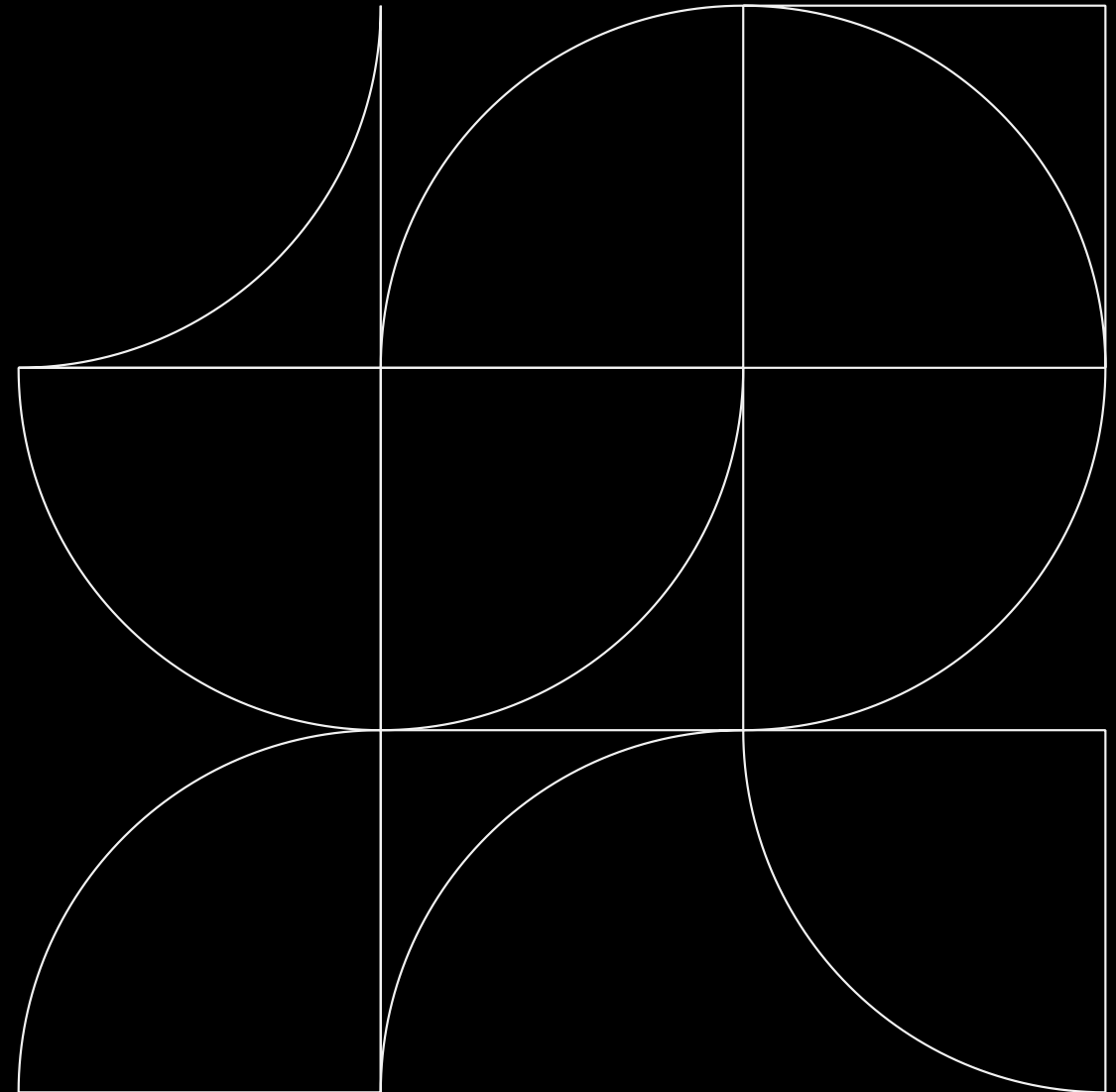


Paid Family Leave Laws Overview

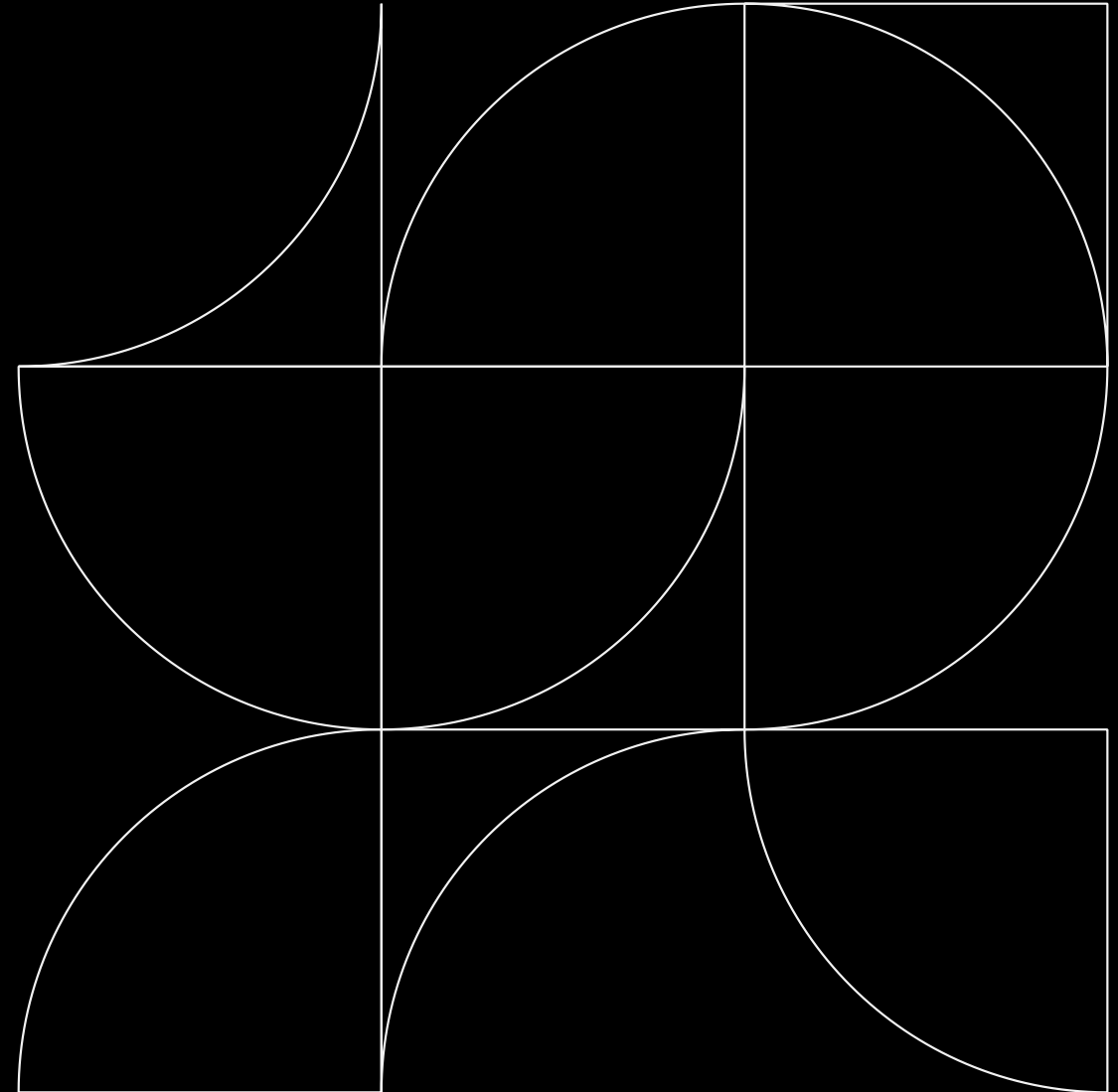
- **Existing PFL Laws: 14 TOTAL LAWS**
 - **12 States + DC**
 - CA, CO, CT, DC, DE, MA, MD, NH*, NJ, NY, OR, RI, & WA
 - **1 Municipality**
 - San Francisco, CA



State Paid Family Medical Leave Updates



Updates to Connecticut Paid Leave & CT FMLA



Overview – CT Paid Family & Medical Leave (PFML)

- **Signed by the Governor:** June 25, 2019
- **Employee Premium Withholdings Started:** January 1, 2021
- **Remit Contributions to the State:** Quarterly unless exempted
- **PFML Benefits Begin/CT FMLA Amendments in Effect:** January 1, 2022
- **Notice Requirement/Maximum Benefit Amount Increase:** July 1, 2022

Notice Requirements – CT FMLA/CT PFML

- **Notice:** **By July 1, 2022**, employers must provide written notice to employees
 - upon hire
 - annually
- Notice must include information regarding:
 - entitlement to family and medical leave
 - opportunity for employees to file a claim for compensation
 - protection from retaliation for requesting or receiving leave benefits
 - right to file a claim with the CT Labor Commissioner
- Provide to Employees Either: **Prototype Notice or Handbook**
- **Posting:** No specific requirement.

Increase in Amount of Pay – CT PFML

- Increase in maximum benefit amount to \$840/week on July 1st
- 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

CT FMLA Regulations/CT PFML Policies

- **CT FMLA (Regulations):**

- Proposed Regulations Posted
- Finalized by July 7, 2022

- **CT PFML (Policies):**

- November 10, 2021: Revised Policies and Procedures Regarding Private Plans
- April 14, 2022: Consolidated Policies
- June 9, 2022: Two Policy Revisions Approved (not published, available on request)
 - Clarify Definition of Concurrency Related to Government Benefits
 - Social Security Base Contribution Cap When Person Switches from Private to Public or Vice Versa
- May 24, 2022: Overpayment of Contributions to Employees with Multiple Employers (Still Undergoing Public Comment until June 24, 2022).

Notice and Designation Compliance Deadlines –CT FMLA

- Employee Notifies of the Need to Use Leave
- Employer has **5 business days** to Provide Notice of Eligibility and Rights and Responsibilities
- Employee Submits Certification Paperwork within **15 Calendar Days**
- Employer has **5 business days** to Designate CT FMLA (Sample Designation Form) from when the employer has enough information to make the determination.

- 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 calendar days** from initial of claim to provide requested documentation to state
- **Employer has 10 calendar days from the date of the request for employment verification information to provide form to AFLAC/CT Paid Leave**
- State has **5 business days** to approve once the application is complete.
- 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

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)

Use of Employer-Provided Benefits While On Leave- CT PFML

- Two Key Terms
 - **Paid Leave Compensation**: weekly benefit paid to employee by state
 - **Paid Leave Allowance**: total number of weeks for which employee receives Paid Leave Compensation in 12 month period
- Employee receives 100% pay from employer → Employee ≠ State Paid Leave Compensation from the state; Paid Leave Allowance Not Reduced
- Employee receives partial pay from employer → Employee receives State Paid Leave Compensation from the state; Paid Leave Allowance Reduced

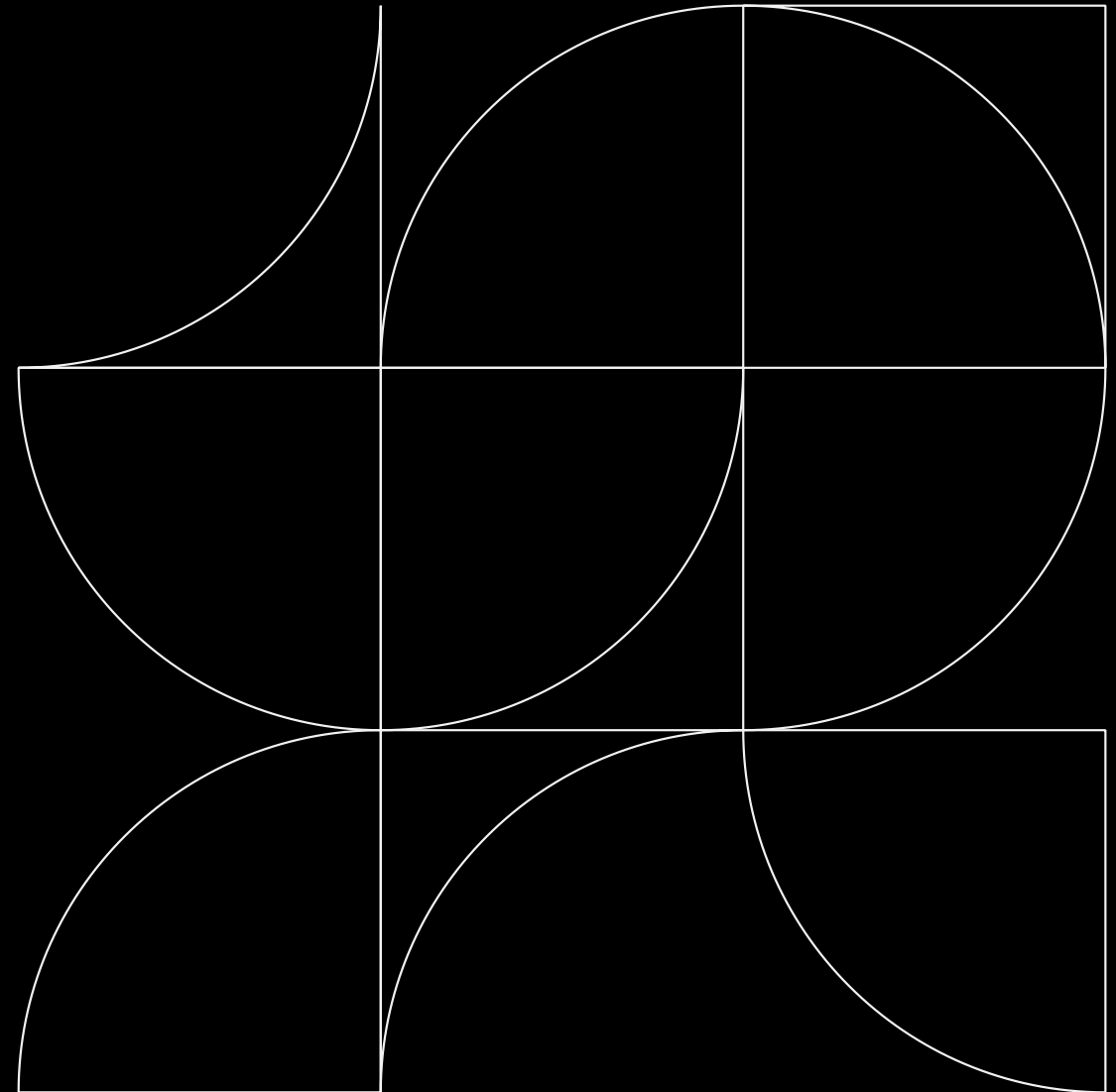
Company and State Benefits Coordination- CT PFML

- Determination of Offset
 - **Primary Payer**: Employer pays first without regard to Paid Leave Compensation from state. Paid Leave Compensation from the state is reduced first.
 - **Secondary Payer**: State pays Paid Leave Compensation first; employer tops off, reduces or does not pay benefit when Paid Leave Compensation from the state provided.
- **Recommendation**: review and update policies to coordinate benefits.

Connecticut Paid Leave Resources

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

Delaware Paid Family and Medical Leave



Delaware Paid Family and Medical Leave (PFML)

- **Approved by Delaware General Assembly:** April 14, 2022
- **Signed by the Governor of Delaware:** May 10, 2022
- **Payroll Deductions and Contributions to the State Begin:** January 1, 2025. Contributions must be made at least quarterly.
- **PFML Benefits Begin:** January 1, 2026

Employer Coverage – Delaware PFML

- **Overall:** Employer means those who employ employees working anywhere in the State of Delaware.
- “Employer” does **not** include:
 - anyone who employs less than 10 employees in Delaware
 - business that is closed in its entirety for 30 consecutive days or more per year
 - the federal government.
- Small businesses may opt-in

Employee Eligibility – Delaware PFML

- To be a “covered individual” under the Act, the individual must satisfy all of the following standards:
 - **(1)** submit an application for paid family and medical leave benefits
 - **(2)** meets certain administrative requirements under the Act
 - **(3)** has been employed with the employer for more than 12 months
 - **(4)** has worked at least 1,250 hours of service with the employer during the previous 12 months.

Reasons for Use – Delaware PFML

Covered Reasons for Use of DE PFML:

- **Parental Leave:** The covered individual is caring for a child during the first year after the birth, adoption, or placement of the child
- **Medical Leave:** The covered individual has a serious health condition (SHC) that makes them unable to perform the functions of their position
- **Family Caregiving Leave:** The covered individual **(a)** is caring for a family member with a serious health condition, **or (b)** has a qualifying exigency as defined under the federal FMLA

Covered Family Members – Delaware PFML

Covered Family Members under DE PFML include:

1. Child
2. Spouse
3. Parent

How Leave is Funded – Delaware PFML

- **Funding:** The program is funded through employee payroll deductions AND employer contributions.
- **Employers Contribute to the Program**
 - Contribute at least quarterly, in the form and manner determined by the Department.
- **Amount of Deductions:**
 - **Parental Leave:** 0.32% contribution rate for 2025 and 2026.
 - **Family Caregiving Leave:** 0.08% contribution rate for 2025 and 2026.
 - **Medical Leave:** is 0.4% contribution rate for 2025 and 2026.

Amount of Leave – Delaware PFML

- **Length of Benefits:**

- Up to **maximum 12 weeks** of paid family and medical leave benefits in an application year
- Can consist solely of parental leave, family caregiving leave, or medical leave or some combination thereof
- **Parental Leave:** Maximum of 12 weeks of payable per application year
- **Medical Leave and Family Caregiving Leave:** Maximum aggregate number of weeks payable in an application year is 6 weeks in any 24-month period

Amount of Pay – Delaware PFML

- **Beginning January 1, 2026:** Covered employees may be entitled to DE PFML benefits as follows:
 - 80% of the covered individual's average weekly wages rounded up to the nearest even \$1.00 increment
 - The minimum weekly benefit may not be less than \$100
 - The maximum weekly benefit in 2026 and 2027 must be \$900

Intermittent Leave

Delaware PFML

- **Act only addresses intermittent leave / reduced schedule leave for:**
 - (a) SHC for the care of the employee, **and (b)** care of a family member who has a SHC.
- **Among other things, the covered individual's certification for DE PFML must provide:**
 - (1) statement that the intermittent leave or reduced schedule leave is (a) medically necessary, either for the covered individual or to care for the family member who has the SHC, or (b) will assist in the family member's recovery, and
 - (2) the expected duration and schedule of the intermittent leave or reduced leave schedule.
- **Increments:** Family and medical leave benefits are not payable for less than 1 work day of covered leave taken in 1 work week.

Job Protection Delaware PFML

- Covered individual is entitled to job protection when taking DE PFML as follows:
 - (1) to be restored by the employer to the position they held when the covered leave commenced, or
 - (2) to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits.

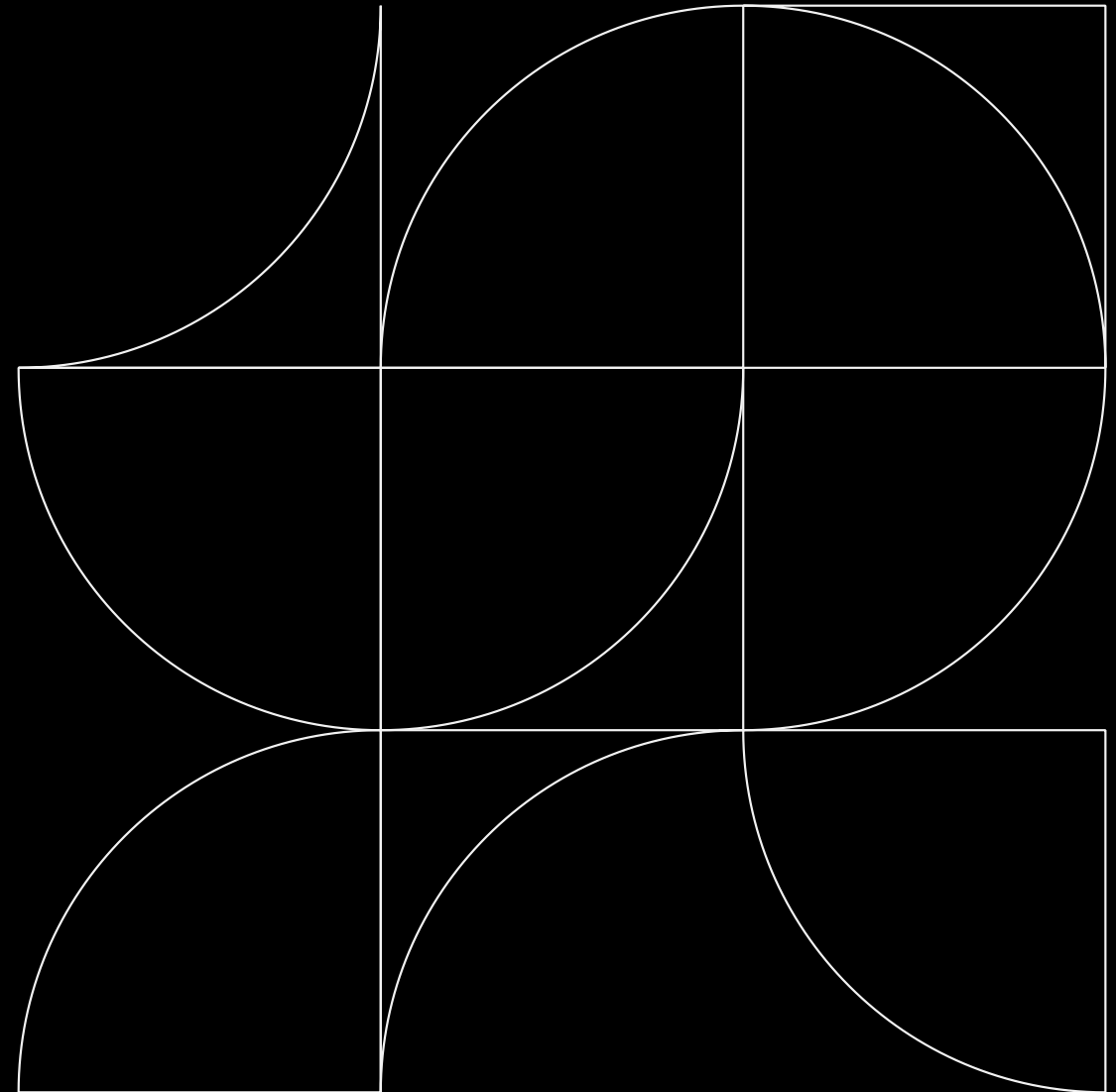
Private Plan Exemption- Delaware PFML

- **Overall:** Private plan must provide benefits equal to those required under the law for one or more of the reasons set forth in the law, i.e. Family Caregiving leave, Medical leave, or Parental leave.
- **Application Requirements:** There are many. Samples include:
 - (1) Provide one or more of the following:
 - Family caregiving leave; Medical leave; Parental leave
 - (2) Do the following:
 - if in the form of self-insurance- furnish a bond running to the State, with a surety company authorized to transact business in this State as surety
 - provide for all eligible employees throughout their period of employment
 - if plan provides for insurance, the policy must be issued by an admitted insurer
 - submit a certification to the Department
 - **Deadline to Notify Department:** January 1, 2024.

Posting and Notice Requirements

- **Posting**
 - Display & maintain a poster in a conspicuous place accessible to all employees
 - Sample poster to be provided by DOL
 - In English, Spanish, & any language that is the first language spoken by at least 5% of the workforce.
-
- **Notice must be provided:**
 - (1) On hiring of the employee
 - (2) When the employee requests covered leave
 - (3) When the employer acquires knowledge that an employee's leave may be for a qualifying event

Maryland Paid Family and Medical Leave



Maryland Paid Family and Medical Leave (PFML)

- **Governor's Veto Overridden by Legislators:** April 9, 2022
- **Regulations to be Adopted:** June 1, 2023
- **Remit Contributions to the Fund:** October 1, 2023
- **PFML Benefits Begin:** January 1, 2025

Maryland PFML – Employer Coverage / Employee Eligibility

- **Employer Coverage:**

- Overall: Most Maryland employers will be subject to the PFML program.
- Legal Standard: any person or governmental authority that employs at least one (1) individual in the state of Maryland

- **Employee Eligibility:**

- Employees who have worked at least 680 hours over the 12-month period immediately preceding the date on which the leave is to begin are “covered individuals” under the Act.
 - Self-employed individuals may also elect to participate in the program.

Maryland PFML – Reasons for Use

Covered Reasons for Use of PFML:

- to care for a child during the first year after the child's birth or after the placement of the child through foster care, kinship care or adoption
- to care for a family member with a **serious health condition**
- for the employee's own serious health condition that results in their being unable to perform the functions of their position
- to care for a service member who is the employee's next of kin
- for a qualifying exigency arising out of the deployment of a service member who is a family member of the employee.

Maryland PFML–Covered Family Members

Covered Family Members Under MD PFML Include:

- the biological, adopted, foster or step-child of the employee
- a child for whom the employee has legal or physical custody or guardianship
- a child for whom the employee stands in loco parentis (regardless of the child's age)
- a biological, adoptive, foster or step-parent of the employee or the employee's spouse
- the legal guardian of the employee or the ward of the employee or the employee's spouse
- an individual who acted as a parent or stood in loco parentis to the employee or their spouse when they were a minor
- the employee's spouse
- a biological, adoptive, foster or step-grandparent, grandchild or sibling of the employee

Maryland PFML– How Leave is Funded

- **Funding:** Beginning October 1, 2023, (a) employers with 15 or more employees, (b) all employees, and (c) all self-employed individuals who elect to participate in the program, shall start making contributions to the Fund.
- **Amount of Deductions:** Secretary of Labor shall set the respective rates of contribution by June 1, 2023. Funding requirements will be subject to change based on bi-annual studies and recommendations by the Secretary of Labor.

Maryland PFML – Amount of Pay

- **Overall:** Starting January 1, 2025, partial wage replacement of up to 90% of the employee's average weekly wages, with a maximum weekly benefit amount of \$1,000
 - If the covered individual's average weekly wage is 65% or less of the state average weekly wage, 90% of the individual's average weekly wage;
 - If the covered individual's average weekly wage is greater than 65% of the state average weekly wage, the sum of: (a) 90% of the covered individual's weekly wage up to 65% of the state average weekly wage; and (b) 50% of the covered individual's average weekly wage that is greater than 65% of the state average weekly wage; **or**
 - if the covered individual is taking partially paid leave, the lesser of: (a) the amount required to make up the difference between the wages paid to the covered individual while the covered individual is taking partially paid leave and the full wages normally paid to the covered individual; and (b) if the covered individual's weekly wage is greater than 65% of the state average weekly wage, the sum of: (i) 90% of the covered individual's average weekly wage up to 65% of the state average weekly wage, and (ii) 50% of the covered individual's average weekly wage that is greater than 65% of the state average weekly wage
- **Beginning January 1, 2026:** the maximum weekly benefit will be adjusted annually to reflect the annual percentage growth of the area's Consumer Price Index.

Maryland PFML – Amount of Leave / Job Protection

- **Overview:** No more than **12 weeks of benefits** in an application year (i.e., the 12-month period beginning on the first day of the week in which an employee applies for benefits).
 - However, an employee may receive an additional 12 weeks of benefits if the individual qualifies for both parental leave (i.e., bonding with a new child) and a medical leave due to their own serious health condition in the same application year.
- **Continuous or Intermittent:** Leave benefits will be available on a continuous or intermittent basis; however, an employee may not take intermittent leave in an increment of less than 4 hours.
- **Leave is Job Protected:** The Act requires employers to restore an employee to an equivalent position of employment upon the expiration of the leave.
 - Extends to an employee who “receives benefits” or “takes leave from work for which benefits may be paid” under the Act.
 - Employers may only terminate an employee on such a leave “for cause” and deny the employee’s restoration rights if the denial is necessary to prevent “substantial and grievous” economic injury to the employer’s operations **and** the employer provides the employee notice of the intent to deny restoration rights at the time the employer determines the economic injury would occur.
 - Employers must also maintain an employee’s health benefits during any leave in the same manner required under the FMLA.

Maryland PFML – Private Plan Exemption

- **Overall:** A covered employer can also satisfy the Act's requirements through a private employer-plan that meets or exceeds the benefits and coverages provided in the Act and is approved by the Maryland Department of Labor. An employer that elects the private plan option (and its employees) will be exempt from the contribution requirements.

Maryland PFML – Notice and Other Requirements

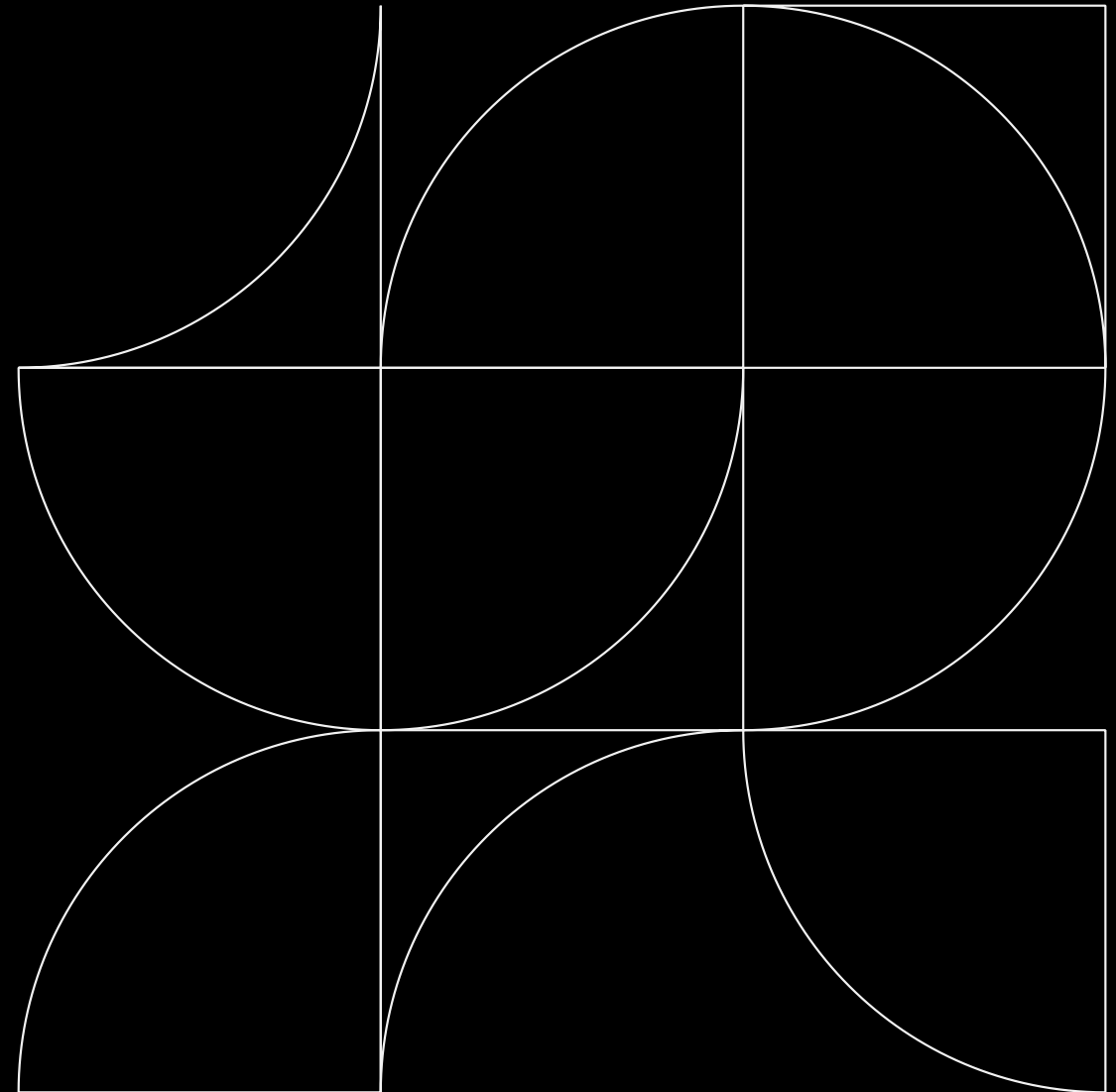
- **Notice:**

- Employee must provide notice, if foreseeable, of 30 days before commencing the leave. If the need for leave is not foreseeable, employee shall: (1) provide notice to the employer as soon as practicable; and (2) generally comply with the employer's notice or procedural requirements for requesting or reporting other leave.
- Employer shall provide written notice:
 - to each employee of the rights and duties of an employee under this Title at the time of hire and annually.
 - Within 5 days of an employee notifying of the request or need for leave.

- **Posting:** No specific requirement

- **Policy:** No specific requirement

Washington, D.C. Paid Family Leave



The Basics (Pre-Amendments) – 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

Key Dates– D.C. Paid Family Leave Amendments and Recent Activity

- **October 1, 2021 – PFL Amendments Took Effect**
 - Universal Paid Leave Emergency Amendment Act of 2021
 - Addresses sliding scale of amount of leave benefits, among other topics
- **February 2022 – Issuance of Rules**
 - Included in DC Register Volume 69, No. 6
- **March 1, 2022 – Letter from Acting Chief Financial Officer (CFO)**
 - Addresses amount of PFL benefits and PFL employer contribution rate

Expanded Leave Benefits— D.C. Paid Family Leave Amendments

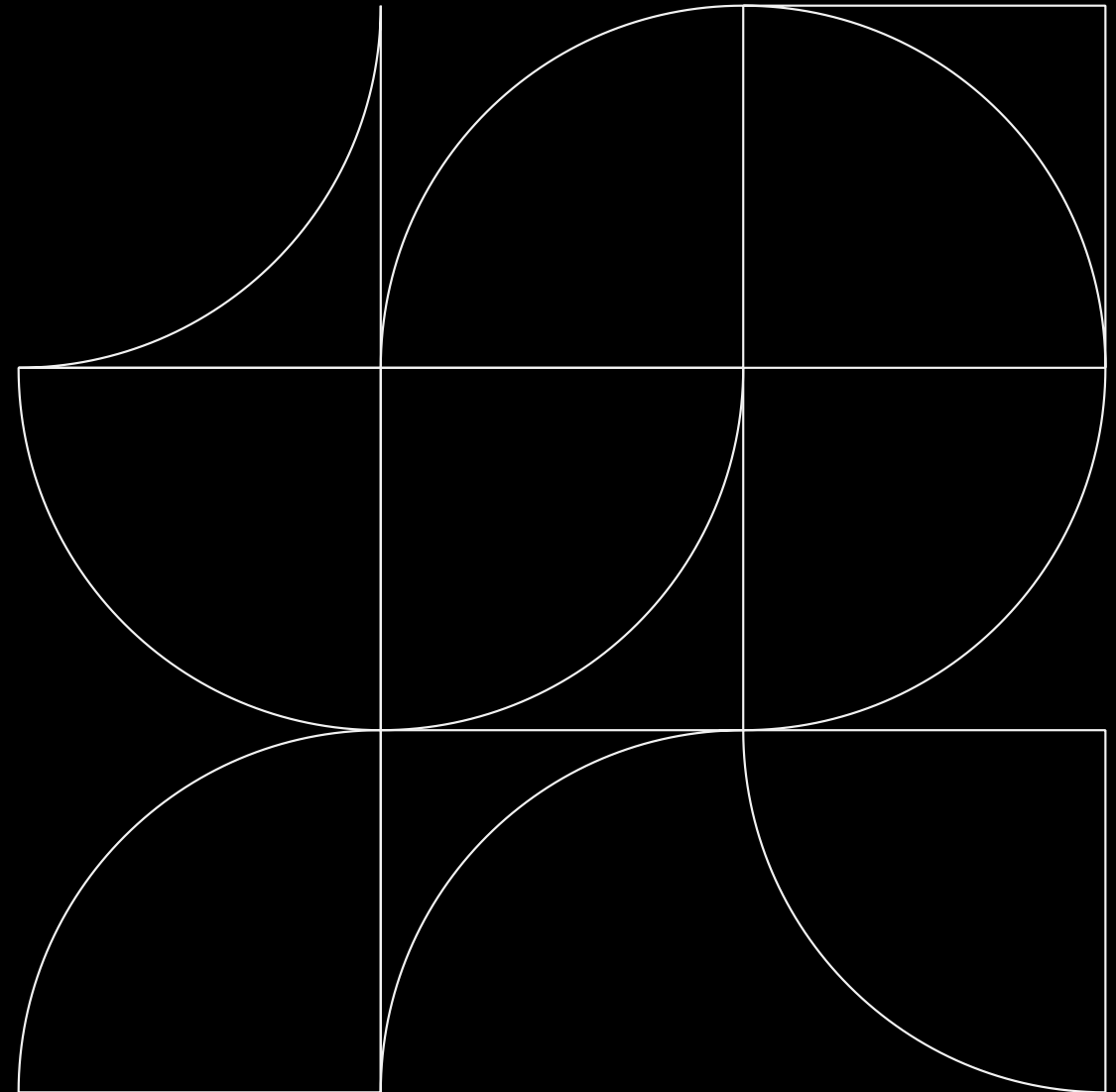
Type	Pre-Amendments/ Minimum Leave Availability	Current Leave Availability	Maximum Leave Availability (Subject to Annual Reevaluation)
Medical	2 weeks	6 weeks	12 weeks
Family	6 weeks	6 weeks	12 weeks
Parental	8 weeks	8 weeks	12 weeks
Pre-Natal	NA	2 weeks	2 weeks

As of October 1, 2022, D.C. PFL benefits are moving to the above maximum values

Expanded Leave Benefits– D.C. Paid Family Leave Employer Contribution

- **Background:** Unlike most other existing PFL programs, D.C. PFL does not allow employers to cover some or all of the PFL premium cost through employee payroll deductions. Instead, D.C. PFL is funded solely by mandatory employer contributions.
- **Maximum Contribution Amount:** 0.62% tax on the wages of each of the employer's covered employees.
- **Remitting:** The contribution is due quarterly.
- **Recent Changes:**
 - Per 3/1/22 D.C. CFO annual certification, the contribution rate for employers is **decreasing** from 0.62% to 0.26%.
 - Effective for 2022 Q3 (i.e., 7/1 – 9/30/22)

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>

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 Paid Leave + CT, DC, OR and NH PFL updates
- Part 5 – CT PFML detailed review
- Part 6 – 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 new 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>

Questions?

Thank You!