



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

Part VII: Spotlighting Colorado, Oregon and Washington Paid Family Leave Developments

October 25, 2022

Seyfarth Shaw LLP

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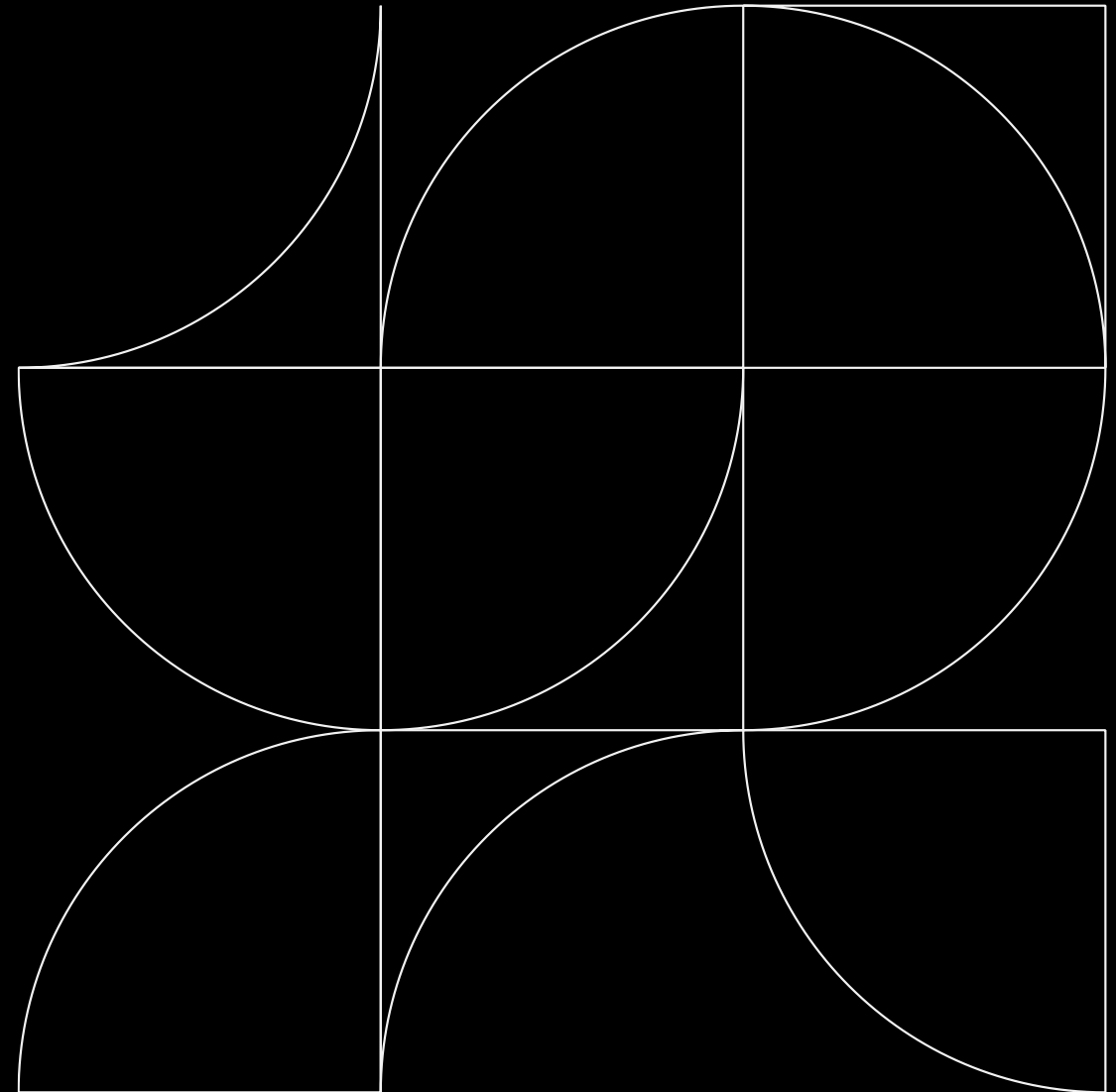


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Agenda

01	Nationwide Paid Family Leave Overview
02	Oregon Paid Family Medical Leave Updates
03	Colorado Paid Family Medical Leave Updates
04	Washington Paid Family Medical Leave Updates
05	2023 Paid Family Leave Law Outlook

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



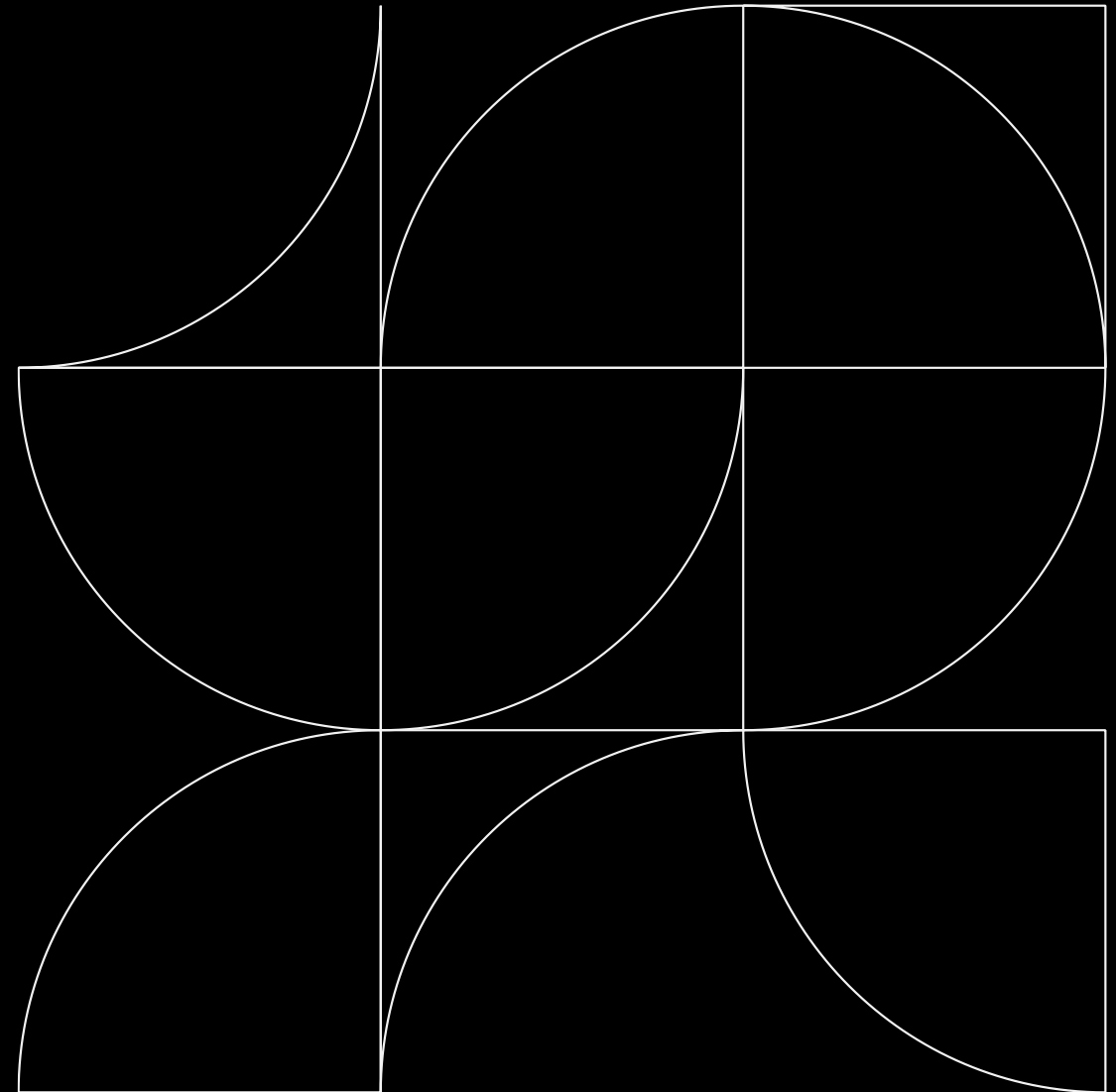
Polling Question



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

- 1. Colorado Only**
- 2. Oregon Only**
- 3. Washington State Only**
- 4. At least 2 of CO, OR and WA**
- 5. All three**

Oregon Paid Family Medical Leave



Oregon PFML - Relevant Dates

- **Enacted:** 2019
- **Application for Equivalent Plans Began:** September 6, 2022
- **Contribution Start:** January 1, 2023
- **Employer Post Model Poster:** January 1, 2023
- **PFML Benefits Begin:** September 3, 2023
- **Assistance Grants Start:** September 3, 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

Earn at Least

- \$1,000 in wages during the base year or alternate 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;

Oregon PFML – Qualifications for Benefits

- A. Contribute to the PFMLI Fund during base or alternate base year.
- B. Experience a qualifying purpose for benefit.
- C. Have current Oregon employment or self-employment.
- D. Submit an application for benefits.
- E. Have not exceeded their maximum paid leave and benefits amount.
- F. Have no current disqualification from receiving benefits.

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 – Covered Reasons for Use

Medical Leave

vs.

Family Leave

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

- Illness, injury, impairment, or physical or mental condition of a claimant or their family member that:
 - 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 or continuing care; or
 - involves period of “**incapacity**,” or
 - involves multiple treatments for restorative surgery or for a condition; or
 - Any period of disability due to pregnancy, or period of absence for prenatal care; or
 - Any period of absence for donation of a body part, organ, or tissue.

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 – Employee Written Notice Requirements

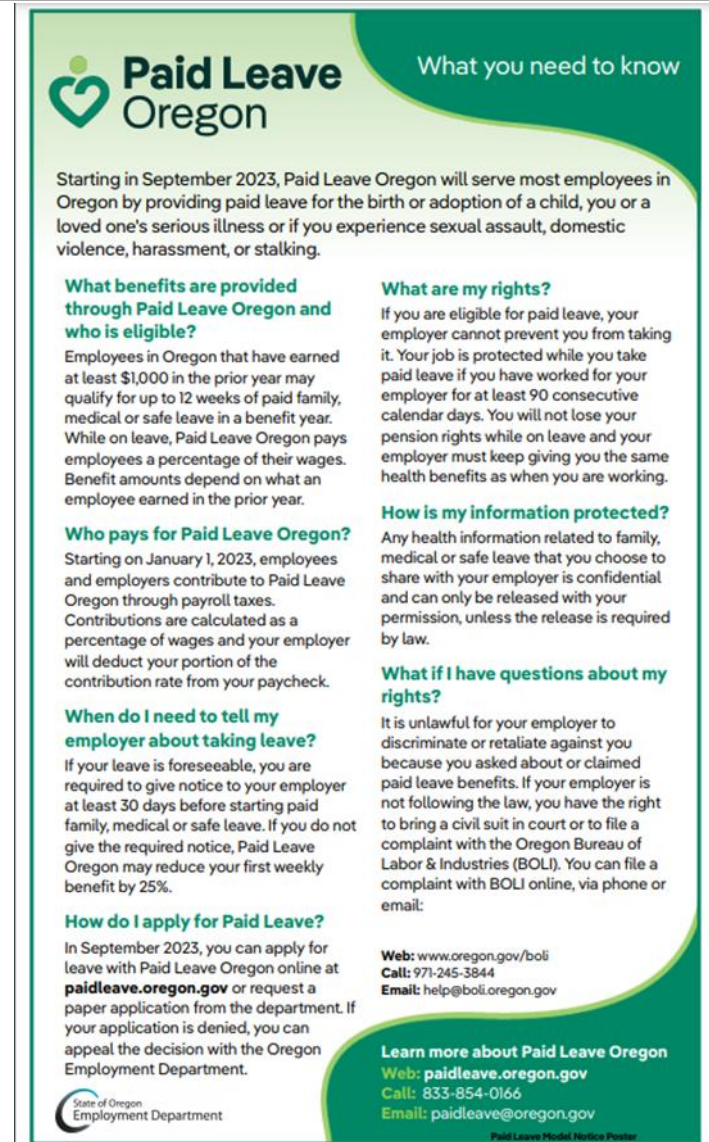
- An employer may require written notice to include:
 - Employees name, type of leave, explanation, and anticipated timing and during of leave.
- Written notice includes:
 - Handwritten or typed notices, electronic communication (i.e. texts or email) consistent with employer's policies.
 - Notice need only be given one time whether leave is continuous or intermittent.
- Employers that require eligible employees to provide advance written notice before leave commences must outline requirements in employer's written policies.

Oregon PFML – Funding Mechanism

- EE and ER contributions start **January 1, 2023**
- **Total Contribution Rate for 2023: 1%**
 - 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 1% contribution rate.
 - 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.

Oregon PFML – Notice / Poster Requirement

- Employers must provide **written notice** (eff. January 1, 2023) 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
- Poster requirement



Paid Leave Oregon What you need to know

Starting in September 2023, Paid Leave Oregon will serve most employees in Oregon by providing paid leave for the birth or adoption of a child, you or a loved one's serious illness or if you experience sexual assault, domestic violence, harassment, or stalking.

What benefits are provided through Paid Leave Oregon and who is eligible?
Employees in Oregon that have earned at least \$1,000 in the prior year may qualify for up to 12 weeks of paid family, medical or safe leave in a benefit year. While on leave, Paid Leave Oregon pays employees a percentage of their wages. Benefit amounts depend on what an employee earned in the prior year.

Who pays for Paid Leave Oregon?
Starting on January 1, 2023, employees and employers contribute to Paid Leave Oregon through payroll taxes. Contributions are calculated as a percentage of wages and your employer will deduct your portion of the contribution rate from your paycheck.

When do I need to tell my employer about taking leave?
If your leave is foreseeable, you are required to give notice to your employer at least 30 days before starting paid family, medical or safe leave. If you do not give the required notice, Paid Leave Oregon may reduce your first weekly benefit by 25%.

How do I apply for Paid Leave?
In September 2023, you can apply for leave with Paid Leave Oregon online at paidleave.oregon.gov or request a paper application from the department. If your application is denied, you can appeal the decision with the Oregon Employment Department.

What are my rights?
If you are eligible for paid leave, your employer cannot prevent you from taking it. Your job is protected while you take paid leave if you have worked for your employer for at least 90 consecutive calendar days. You will not lose your pension rights while on leave and your employer must keep giving you the same health benefits as when you are working.

How is my information protected?
Any health information related to family, medical or safe leave that you choose to share with your employer is confidential and can only be released with your permission, unless the release is required by law.

What if I have questions about my rights?
It is unlawful for your employer to discriminate or retaliate against you because you asked about or claimed paid leave benefits. If your employer is not following the law, you have the right to bring a civil suit in court or to file a complaint with the Oregon Bureau of Labor & Industries (BOLI). You can file a complaint with BOLI online, via phone or email:

Web: www.oregon.gov/boli
Call: 971-245-3844
Email: help@boli.oregon.gov

Learn more about Paid Leave Oregon
Web: paidleave.oregon.gov
Call: 833-854-0166
Email: paidleave@oregon.gov

State of Oregon Employment Department
Paid Leave Model Notice Poster

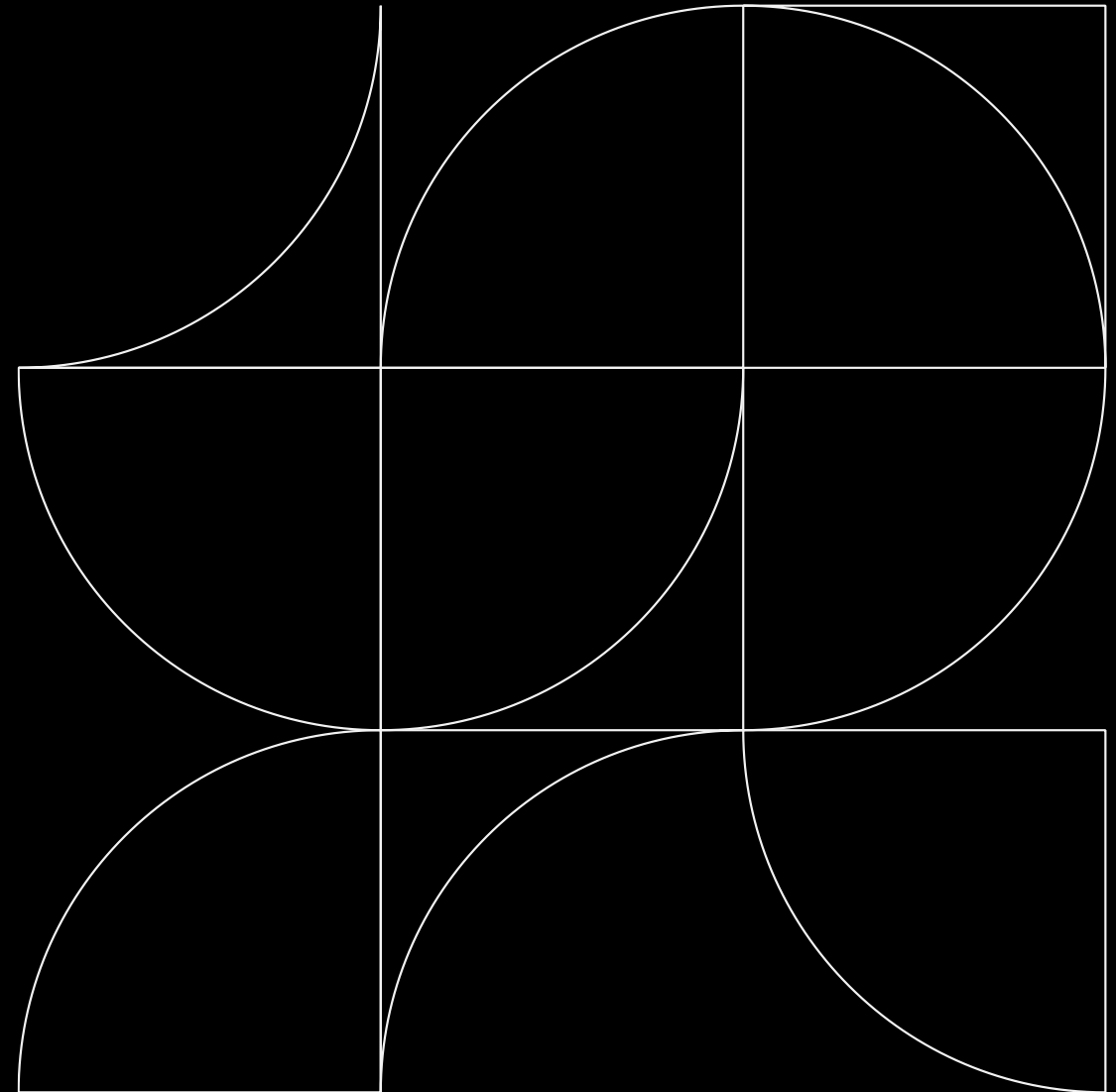
Oregon PFML – Equivalent Plans

- Apply to **director of the employment department for approval.**
 - Employers could apply beginning **September 6, 2022.**
- Provide benefits to employees that are **equal to or greater** than those provided by state PFML.
- Employers must **reapply** for approval every year for 3 years or if the plan changes.

Oregon PFML – Equivalent Plan Deadlines for 2023

- To be exempt from the required quarterly contribution payments, employers must submit their equivalent plan application as follows:
 - By **Nov. 30, 2022**, to be exempt from paying contributions beginning with the first quarter that starts Jan. 1, 2023.
 - By **Feb. 28, 2023**, to be exempt from paying contributions beginning with the second quarter that starts April 1, 2023.
 - By **May 31, 2023**, to be exempt from paying contributions beginning with the third quarter that starts July 1, 2023.
- Equivalent plans will be effective starting on Sept. 3, 2023, when benefits start.

Colorado Paid Family Medical Leave



Colorado PFML - Relevant Dates

- **Passed:** November 3, 2020 (as a ballot initiative)
- **Premium Withholdings Begin:** January 1, 2023
- **Posting / Notice Obligation:** January 1, 2023*
- **First Reporting and Remitting Deadline:** April 30, 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**.

Colorado PFML – Family Member

For CO PFML purposes, “family member” includes:

- Child
- Parent
- Spouse or Domestic Partner
- Grandparent
- Grandchild
- Sibling
- Any other individual with whom the covered individual has a **significant personal bond** that is or is like a family relationship, regardless of biological or legal relationship
 - **NEW** – *Totality of circumstances test*

- **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**
 - Premium Amount = 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 to the fund.

- Beginning on January 1, 2023, for each employee, an employer shall remit to the fund required PFML premiums.
- **NEW** – *All employers must begin paying premiums in 2023. Those with approved private plan will get reimbursed.*
- Wage reports also are due quarterly basis, starting with 2023 Q1.

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

NEW – *Model Notice* –
<https://famli.colorado.gov/sites/famli/files/FAMLI%20Break%20Room%20Poster%20Officialv3.pdf>

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

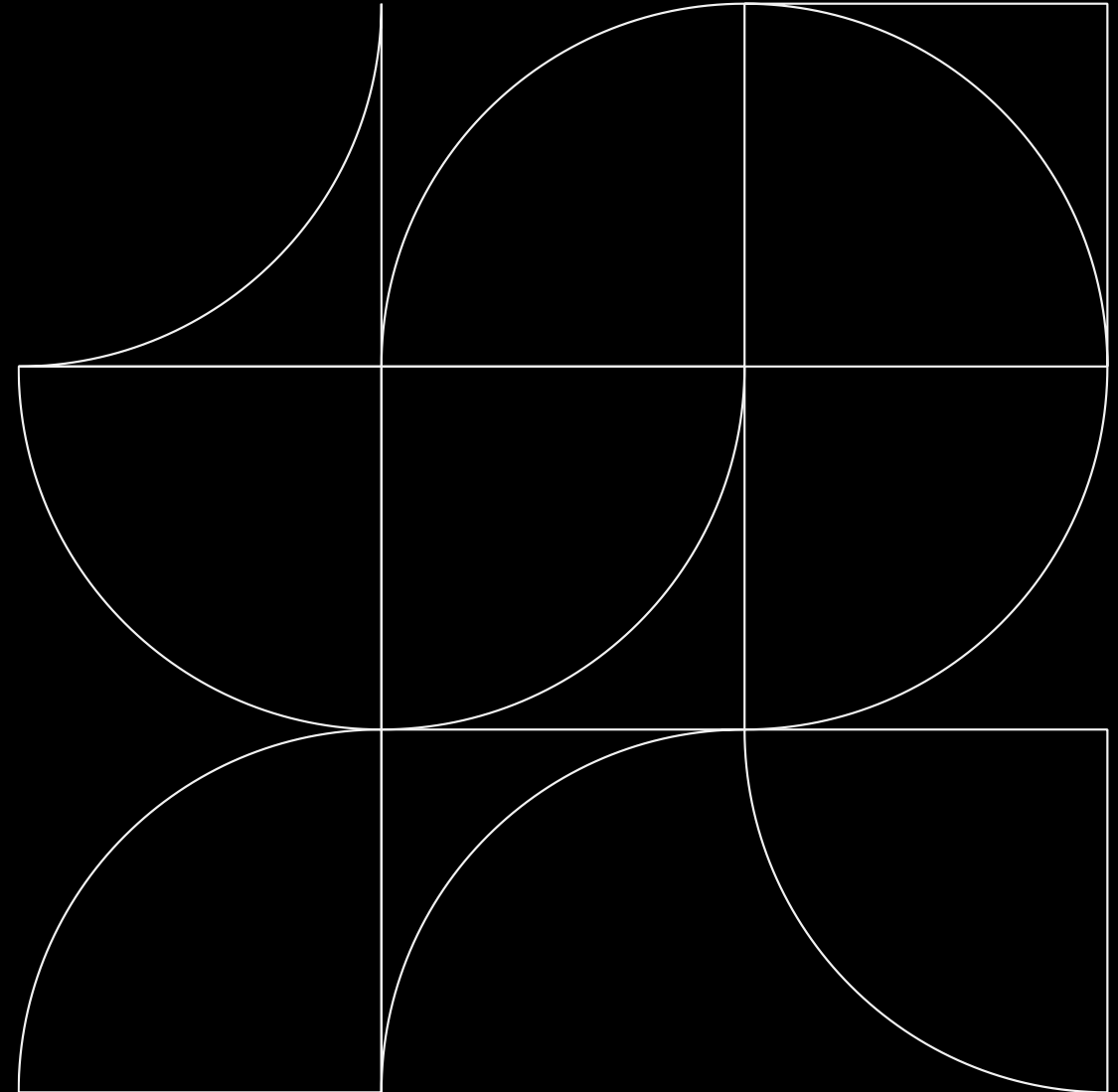
Colorado PFML – Private Plans

- Apply to division **for approval**
 - **NEW** – *private plan rules forthcoming*
 - *Must still comply with premium requirements as of 1/1/2023; Will receive reimbursement if private plan approved*
 - *Deadline to apply and receive 2024 private plan exemption – 10/31/2023*

Colorado PFML – **NEW** Other Recent Updates

- Documentation Requirements
- Claim Filing Process
- Intermittent Leave
- Recordkeeping
- Coordination of Benefits – ***Forthcoming. Rulemaking hearing scheduled for 11/1/2022.***

Washington Paid Family and Medical Leave



Washington PFML – Overview

- **State-administered paid family and medical leave program**
- **Administered by the Employment Security Department**
- **Funded by employee- and (in some instances) employer-paid premiums**
- **Employer duties:**
 - Notify employees about the benefit
 - Calculate and collect premiums
 - Remit premiums and report hours and wages
- **Subject to approval, voluntary plans allowed**

Washington PFML – Amount of Leave

12 weeks Paid Family or Medical Leave

16 weeks maximum combined Paid Family Leave
and Paid Medical Leave

18 weeks maximum combined Paid Family Leave
and Paid Medical Leave if employee experiences
a condition in pregnancy that results in incapacity

7-day *waiting period* for reasons other than birth/placement
of child, bereavement leave for death of a child, and
qualifying exigency under FMLA

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
- **NEW** Includes **postnatal leave** (i.e., leave taken in the first six weeks after birth)

- Care for a family member made necessary by family member's **serious health condition**
- **Bonding** within 12 months of birth or placement of child under 18
- **Qualifying exigency** as permitted under federal FMLA
- **NEW Bereavement** leave for death of a child

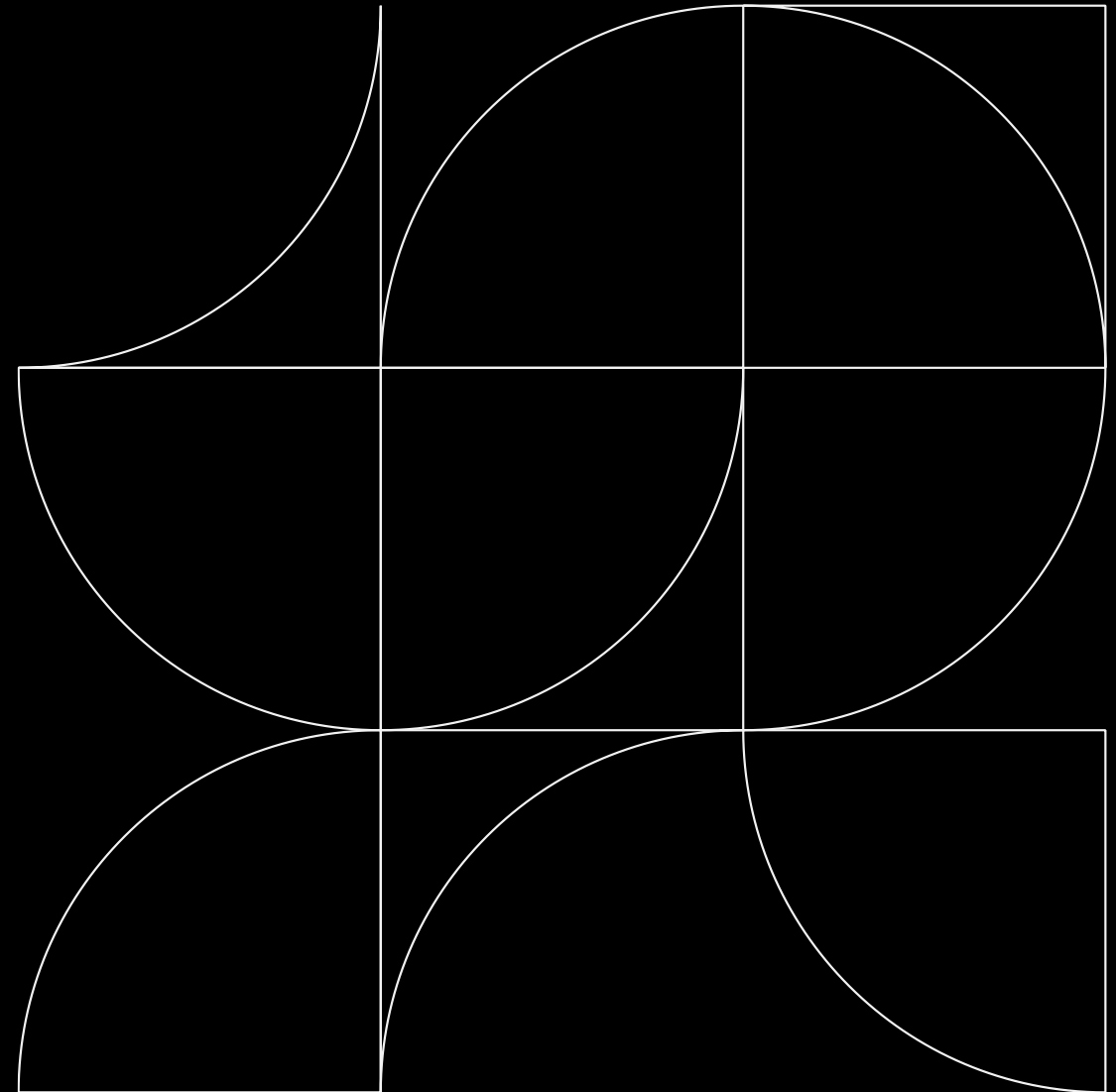
Washington PFML – Funding Mechanism

- **2022 Premiums** *NEW*
 - 0.6% gross wages** (up to Social Security cap)
 - Employees pay 73.22%
 - Employers with 50± employees pay 26.78%
- **Small Business Assistance Grant**
 - Fewer than **50 employees** in Washington
 - Employers not otherwise required to pay employer portion

Washington PFML – **NEW** Updates Effective June 9, 2022

- Bereavement leave for death of a child
- Postnatal leave
- Waiting period clarification
- Expiration of collective bargaining exemption

2023 Paid Family Leave Outlook



Paid Family Leave Outlook – 2023 and on

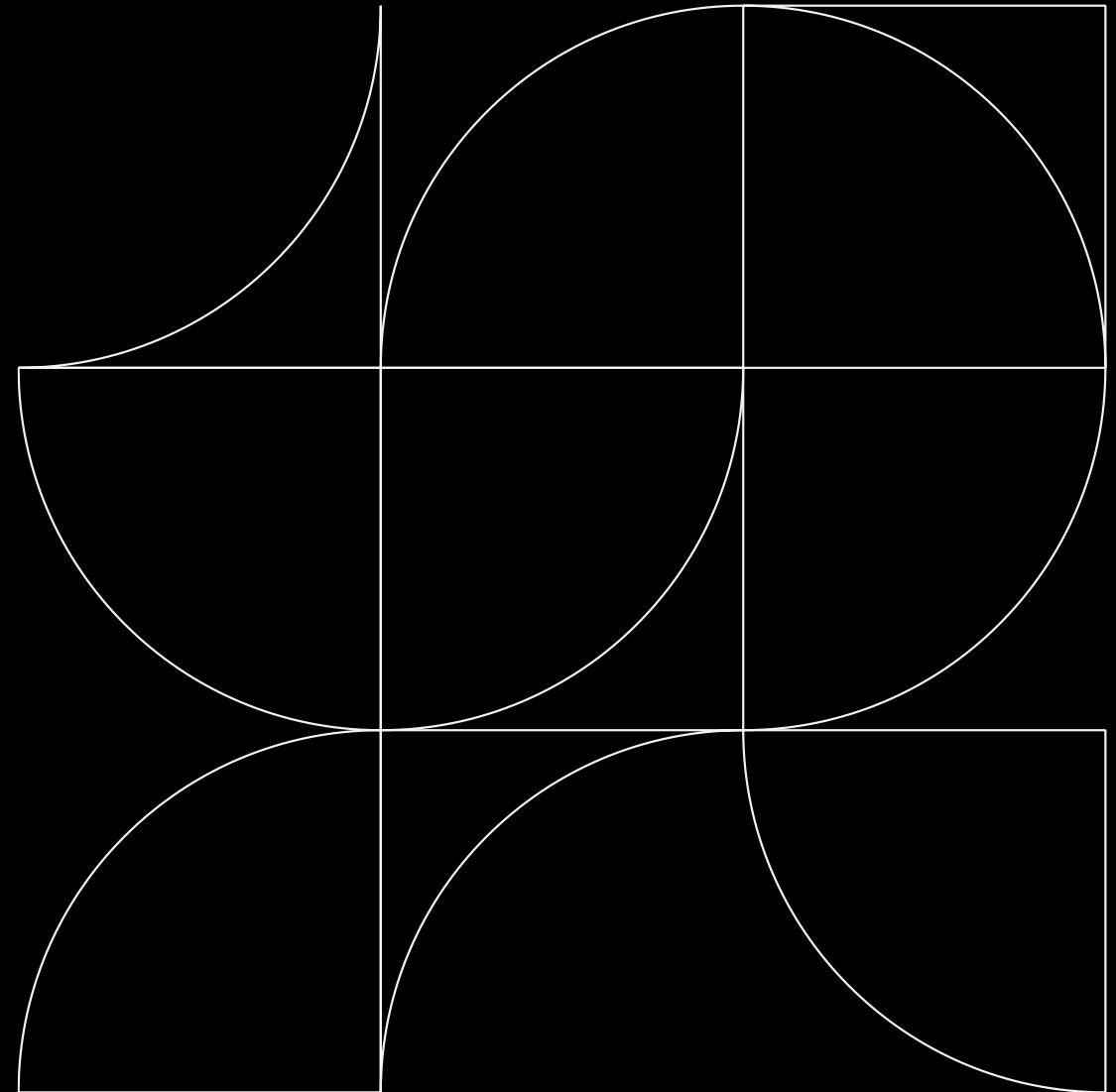
Laws Scheduled to go Into Effect:

- OR (1/1/2023 // 9/3/2023) (payroll deductions // benefits begin)
- CO (1/1/2023 // 1/1/2024) (payroll deductions // benefits begin)
- MD (10/1/2023 // 1/1/2025) (payroll deductions // benefits begin)
- DE (1/1/2025 // 1/1/2026) (payroll deductions // benefits begin)

Next Locations Likely to Adopt:

- Federal??
- Minnesota
- New Mexico
- New Hampshire
- Virginia
- Vermont
- Maine

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 + CT, DC, OR and NH PFL updates
- Part 5 – CT PFML detailed review
- Part 6 – DE, MD, DC, MA and CT PFL updates
- Part 7 – 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!