



## **Paid Family and Medical Leave (PFML) Frequently Asked Questions (FAQ's)**

**Note:** This FAQ is designed to help employers and employees better understand their rights and responsibilities and to navigate Maine Paid Family Medical Leave Law. This document provides guidance but does not replace the authority of the Law or program Rules. The information in this guidance may be subject to change. Visit <https://www.maine.gov/paidleave/> for the most up-to-date information.

### **Overview of the Paid Family and Medical Leave law:**

#### **1. What is the Paid Family and Medical Leave Program (PFML Program)?**

Maine's PFML law will provide up to 12 weeks of paid leave for family leave, medical leave, to deal with the transition of a family member's pending military deployment or stay safe after abuse or violence. This law went into effect in October 2023, with the major components of the law having 2025 and 2026 implementation dates. The Maine Department of Labor (MDOL) is responsible for the implementation of this new program.

### **Contributions:**

#### **2. Where do the contributions come from beginning January 1, 2025? Are the contributions paid by the employee, the employer, or combined?**

Both the employer and the employee contribute to the PFML Fund. All funds are pooled to pay for future claims and other administrative costs. Payroll withholdings from employee's pay for the Paid Family Medical Leave program will begin with pay dates on or after January 1, 2025, and be transferred to the Maine Paid Family and Medical Leave Fund. ("PFML Fund").

#### **3. If benefits do not go live until 2026, why are contributions being made in 2025?**

Although benefits are scheduled to begin on May 1, 2026, payroll contributions will begin in 2025 to allow time to accumulate sufficient funds to pay for benefits and the operations of the program.

#### **4. What is the contribution rate for Paid Family and Medical Leave?**

For calendar years 2025-2027, the joint contribution rate for employers and employees is set at either 0.5 or 1 percent of wages based on the size of the employer. No more than 0.5 percent can come from the employee. Employers with 15 or more employees will contribute 1 percent of wages and may deduct up to half of the contribution from the employees' wages. Employers with less than 15 employees will contribute 0.5 percent of wages and may deduct the entire amount from the employees' wages.

#### **5. Are wages for the PFML program calculated pre-tax or post-tax?**

Premiums are *calculated* on total subject wages, before federal income tax, state income tax, and Social Security and Medicare taxes are deducted.

#### **6. Are PFML Premiums taxable? That is - does the premium amount get deducted from other federal and state programs?**

The question of whether PFML premiums are taxable is reliant on the guidance and processes of the Federal Internal Revenue Service. Employers should work closely with their tax professionals on this question.

#### **7. Who is responsible for remitting contributions to the PFML Fund?**

The employer is responsible for remitting contributions to the PFML Fund through the Maine Paid Leave portal

#### **8. What are the penalties for an employer if the employer fails to pay contributions or submit wage reports on time?**

The penalty for an employer failing to pay contributions and/or submit wage reports is 1 percent of the employer's total quarterly payroll. This penalty shall be assessed if the employer fails to pay all or a part of the contributions owed to the Department on a quarterly basis. Employers will receive a notification if they have failed to pay contributions or submit a wage report and will have a period of time to correct the issue before the penalty is assessed. If an employer discovers they need to amend a wage report after the due date to make corrections, they will be provided with a timeframe to remit a new premium obligation before the penalty is assessed.

#### **9. I am a self-employed individual, am I eligible?**

Self-employed individuals are eligible for Paid Family and Medical Leave but must choose to opt in for coverage. For calendar years 2025-2027, the premium rate has been set at 0.5 percent of the individual's income from self-employment. Self-employed individuals can elect coverage through the Maine Paid Leave portal.

**10. I am a self-employed individual but earn wages as an employee of my company, am I automatically covered in the law?**

The wages that a self-employed individual makes as an employee of their company are subject to premiums and must be included in wage reports. For example – the reasonable wages that a self-employed individual receives as an employee of their S-Corp business is subject to premiums and must be included on wage reports.

**11. How are Tribal Governments affected by this law?**

Tribal governments have the option in the law to elect coverage for their employees if they wish. Tribal governments can opt-in as an employer through the Maine Paid Leave portal to elect this coverage.

**Collective Bargaining Agreements:**

**12. How does the PFML law apply to public sector collective bargaining agreements?**

Public employers and employees that are subject to a collective bargaining agreement that was in effect on October 25, 2023, are not required to participate until the collective bargaining agreement expires. Neither party will make contributions pertaining to the Paid Family and Medical Leave program until that collective bargaining agreement expires, and individuals will not be eligible for benefits until either the expiration of the collective bargaining agreement or May 2026, whichever comes later. MDOL will use the end date listed on the applicable collective bargaining agreement, regardless of when the subsequent collective bargaining agreement is ratified.

**13. What if both parties in a public sector collective bargaining agreement agree to contributions prior to the agreement expiring?**

Public employers and employees who agree, through relevant public bargaining law and process, to contribute to the Paid Family Medical Leave program prior to the expiration of a collective

bargaining agreement that was in effect on October 25, 2023 may do so. Withholdings would begin on the first pay date after an agreement was ratified or the first pay date in January 2025, whichever is later.

**14. How does this apply to public employees not subject to a collective bargaining agreement?**

The Paid Family and Medical Leave law will apply to any public employees who were not subject to a collective bargaining agreement on October 25, 2023. Also, any public employees who are not subject to a collective bargaining agreement in general are covered by the program in the same manner as private sector employees.

**15. Are employees exempted from the law due to a public collective bargaining agreement described above listed on wage reports?**

Employees who are exempt from the law due to being subject to a public collective agreement should not be included in wage reports until the end date of the collective bargaining agreement.

**16. How does PFML law apply to private sector collective bargaining agreements?**

The exemption in section 850-B (10)(D) does not apply to private sector collective bargaining agreements.

**Definition of Wages:**

**17. What is the definition of wages for the program?**

Wages include all forms of compensation for personal services, such as regular salary, tips, commissions, bonuses, and severance pay. It does not cover payments made to independent contractors.

For payroll and premium purposes, wages are calculated similarly to how Maine Unemployment wages are determined but applied to a larger base of employees that are not traditionally subject to the Maine Unemployment contributions tax. All wages earned in Maine should be reported on wage reporting and the premium amount will be calculated to exclude amounts above the annual base limit set by the U.S. Social Security Administration.

## **Determination of Wages Earned in Maine:**

### **18. How is the locality of Wages earned in Maine determined?**

The PFML program will use the same test of locality under the Maine unemployment law. In general – if an employer subject to Maine Unemployment Insurance (UI) includes an employee on a Maine UI report based on UI locality, that employee is also subject to Maine PFML. If an employer includes an employee on a UI report to another state based on UI locality, PFML takes the position that the employee’s work is localized in that same state for PFML purposes.

However, in instances where an employer or an employee type is not subject to Maine or other state unemployment law but is subject to Maine PFML, then locality must be established. A worker earning Maine wages can be determined through a four criteria sequential test, applied to the employee:

Four factors, taken in sequence, determine whether or not employment is reportable in Maine:

- **Place Where Work Is Performed:** If the employee performs all work in Maine, or if the work outside Maine is incidental (temporary or minor), then Maine law applies. If this does not apply, continue to next factor.
- **Base of Operations:** If the employee performs work in Maine and other states, if the base of operations is in Maine, Maine law applies. The base of operations is the primary location from which the employee starts work and returns regularly. If this does not apply continue to next factor.
- **Place from Which Service Is Directed or Controlled:** If the employee performs some work in Maine and the service is directed or controlled from Maine, Maine law applies. This refers to the place of general authority rather than direct supervision. If this does not apply, continue to next factor.
- **Place of Residence:** If none of the above criteria apply, and the employee performs work in Maine and other states, and resides in Maine, then Maine law applies. If none of the above apply, the employment is not reportable in Maine.

## **Maine Paid Leave Portal:**

### **19. Where will employers be able to submit premiums and wage reports?**

Employers can submit premiums and wage reports through the **Maine Paid Leave Portal that will be available in early 2025**. All employers will be required to register with the Department via this portal to determine their liability for PFML contributions and to designate a third-party payroll or employee leasing company if they wish. All liable and active employers must create an account in the portal to electronically file quarterly wage reports and make contribution payments.

**20. How frequently are employers to submit premiums and wage reports for the PFML Program?**

Employers must submit their premium amounts and contribution reports **quarterly** and are due on or before the last day of the month following the end of each quarter. Payments and reports are considered timely if received electronically by the due date. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is extended to the next business day. Employers may have their payments and reports submitted by an employee leasing company or an authorized third-party administrator.

**21. Will there be an ability to submit bulk uploads to the portal?**

Third party administrators will be able to submit bulk wage reports in specified file formats. Employers will be able to upload an excel sheet of their employee and wage information in their quarterly wage report. They will have to follow a template that the Department provides.

**Definition of Covered Employee and Premium Liability:**

**22. Who is the covered employee?**

A “covered employee” is an employee who earns wages in Maine. However, wages do not include wages earned from federal employment, federal work study financial aid, during incarceration, by certain volunteers as specified in the proposed rule, or by an employee subject to the Railroad Unemployment Insurance Act. Independent contractors may elect coverage, and if so would report wages earned and submit contributions in order to be a covered individual.

**23. To determine premium liability for employers, how do you count the number of employees?**

For the purposes of determining premium liability, any employer that employed 15 or more covered employees per the employer's Federal Employer Identification Number (FEIN) on their established payroll in 20 or more calendar workweeks in the 12-month period preceding September

30th of each year. This count includes the total number of persons on establishment payrolls employed full or part time who received pay for any part of the pay period.

Temporary and intermittent employees are included, as are any workers who are on paid sick leave, on paid holiday, or who work during only part of the specified pay period. On October 1, 2024, and October 1 of each year thereafter, the employer shall calculate its size for the purpose of determining premium liability for calendar year 2025 and each calendar year thereafter. This employer count will be reported upon first registering with the Maine Paid Leave Portal, and during Quarter 3 wage reporting annually thereafter.

**24. Are employees included in the employer size count and on wage reports even if they do not earn enough to be eligible for benefits?**

For the purposes of employer size count, wage reporting, and premium liability, employees with any wages earned in Maine must be included. Thus, the employee has the opportunity to earn the wage base necessary for benefit eligibility across multiple jobs and through changes in employment throughout their benefit year. Eligibility of benefits from meeting the wage threshold is determined when a covered employee applies for benefits.

**Reporting Premiums and Tax Information:**

**25. What should be listed in Box 14 on the W-2 form for employee contributions?**

Employee premium contributions should be listed under Box 14 of the W-2 form with the label “MEPFML”.

**Private Plans:**

**26. I am an employer with a current policy that provides paid time off (PTO), sick leave and/or a short-term disability policy. Can my leave policy be considered a substantially equivalent plan under the Maine PFML Law?**

Section 850-H(2) states that to be approved as a substantially equivalent private plans, among other requirements which will be outlined in rule, the plan must be either a self-funded plan that requires a surety bond paid to the State or a fully-funded plan purchased from an insurance company. An internal leave policy, on its own, does not meet these requirements. Additional details regarding the process and requirements for private plans are outlined in rule.

## **Type of Private Plans:**

### **27. What types of plans are considered to be a private plan under the Maine Paid Family and Medical Leave law?**

A plan must be a fully insured plan or a self-insured plan.

### **28. What is a fully insured plan?**

A fully insured plan is an insurance plan offered by an insurance carrier authorized to do business in the State of Maine. The plan must have been certified as compliant with the requirements under the Maine Paid Family and Medical Leave Act and Rule. Insurance plans that have not received certification of compliance with the Act and Rule are not eligible for substitution.

### **29. What documentation is required for a fully insured substitution application?**

Fully insured plans will require the name of the insurance company, policy number, and an uploaded scan of the insurance policy issued to that specific employer. While the employer must have been issued the policy of a certified plan at the time of their application, the employer can choose to delay benefit coverage for claims until May 1, 2026.

### **30. What is a self-insured plan?**

A self-insured plan is an insurance plan provided directly by an employer, rather than through an insurance carrier.

### **31. What documentation is required for a self-insured plan?**

Employers must provide through the Maine Paid Leave Portal a scan of the proposed plan documents, the self-insurance private plan application, provided by the Department, along with a scan of the surety bond from an authorized surety company in the form and amount specified by the Department in the application document.

## **Application Process and Review:**

### **32. When and how can employers apply for a private plan substitution?**

Applications may be submitted after April 1, 2025. Applications must be submitted online through the Maine Paid Leave Portal, which is set to release in early 2025.



**33. How much does it cost to apply for a private plan substitution?**

There is an application fee of \$250 for review which is non-refundable whether the application is approved or denied. There is an additional \$250 administrative cost reimbursement fee if approved. Fees are subject to increase.

**34. How long is an approved private plan substitution valid for?**

An approved substitution is valid for three years.

**35. Who will be responsible for the review of applications?**

The Department will be responsible for review of private plan applications.

**36. If an application is approved, when will the substitution take effect?**

The exemption from the obligation of premiums begins on the first day of the quarter in which the substitution is approved, except if the application for substitution is submitted less than 30 days prior to the end of a quarter, in which case the exemption is effective on the first day of the quarter following when the application for substitution was submitted, assuming it is approved. Premiums owed prior to the exemption effective date must still be remitted to the program through the Maine Paid Leave Portal.

**37. Can an employer appeal a decision regarding their private plan substitution?**

Yes, an employer can appeal a denial of substitution, a denial of cancellation, a revocation, or the issuance of any penalty for violation. Appeals must be made within 15 business days of receiving notice of the decision.

**Employer Requirements for Compliance with Private Plan:**

**38. Could my private plan substitution be revoked during the three-year period.**

Yes, if the Department finds the terms and conditions have been violated. Examples of a violation could be an employer fails to submit quarterly wage reports or fails to submit data reports if the employer is using a fully insured plan.

**39. What are the consequences of a violation of the terms and conditions with the approved plan?**

Violation of the terms and conditions may lead to revocation of the substitution and the employer will be responsible for paying premiums to the PFML Fund beginning the first quarter following revocation. Employers with a revoked substitution cannot reapply for a new substitution for three years from the date of the revocation. If the employer's plan is self-insured, payments for missed premiums may be collected through the surety bond provided.

#### **40. What reporting requirements are there during an approved substitution period?**

Employers must continue to submit wage reports quarterly through the Maine Paid Leave Portal. Premium liability will be zero on these reports during the substitution period. Employers must also submit an annual data report through the Maine Paid Leave Portal by July 1 of each year that outlines performance metrics of the private plan. Failure to submit required reports may result in a revocation of a private plan substitution.

#### **Renewal of approved substitution:**

#### **41. How can an employer renew an approved private plan substitution?**

Employers must apply for renewal at least 30 days before the end date of their approved substitution. The Department will notify employers through the Maine Paid Leave Portal 60 days before the end date of the employer's approved substitution.

#### **42. What happens if an employer fails to renew an approved private plan substitution?**

If an employer does not apply to renew their substitution or if the renewal is denied, the employer is responsible for premiums to the PFML Fund starting on the day of the substitution expiration.

#### **Changes & Cancellations of Private Plan Substitution:**

#### **43. What happens if an insurer decides to stop offering a fully insured plan?**

If an insurer decides to stop offering a fully insured plan, the insurer must notify the Maine Bureau of Insurance three months in advance and provide six months' notice to the affected employers prior to non-renewal.

#### **44. Can an employer cancel an approved substitution before it expires?**

Employers may only request cancellation if they can demonstrate a significant direct negative business impact, such as a evidence of an unanticipated and unreasonable premium increase. If a

cancellation is approved by the department for the employer to return to coverage from the State fund, the employer cannot apply for another substitution for a period of 3 years. Requests to withdraw a substitution can be done through the Maine Paid Leave Portal.

**45. Can an employer make changes to an approved plan?**

Employers must notify the Department at least 60 days in advance of any material changes to the plan and receive written approval.

**46. Can an employer switch an approved plan (between insurance carriers or between fully insured and self-insured)?**

The employer can apply for a new private plan substitution through the Maine Paid Leave Portal during a period of a substitution. The application and administration fee must be repaid and if approved, the substitution 3 years will start anew based on the new approval date.