

# Maine DOL Issues Proposed Rules for Paid Family and Medical Leave Program

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The Maine Department of Labor published proposed rules for Maine's new Paid Family and Medical Leave (PFML) Program on May 20, 2024, providing initial clarification for employers regarding covered employees, contribution amounts, substitution of private plans, and other facets of the program established in July 2023. Public comment is available on the proposed rules, and comments may be submitted online through July 8, 2024.

## Quick Hits

- The Maine Department of Labor issued proposed rules for the state's Paid Family and Medical Leave Program, providing employers with initial clarification regarding covered employees, contribution amounts, substitution of private plans, and other facets of the law.
- The public comment period for the proposed rules is open through July 8, 2024.

While the department's [proposed rules](#) answer several critical questions, revisions to the proposal are expected following the public comment period. According to the PFML Benefits Authority (the fifteen-member committee tasked with advising the department on its rulemaking process), the department will issue revised rules this fall, after reviewing and addressing public comments submitted by the July 8 deadline. Further, the department likely will provide a second comment period after issuing revised rules. The PFML Benefits Authority next meets with the department for a public hearing on June 10, 2024. The department has not addressed concerns related to the January 1, 2025, deadline for issuing final rules, which is the same day employer contributions are scheduled to begin.

## Covered Employees

The proposed rules emphasize the tremendous breadth of the PFML's coverage, defining "covered employees" as employees performing services and earning wages in Maine, including full-time, part-time, seasonal, and temporary employees, as well as self-employed individuals electing coverage. While "family" is broadly defined to include individuals with whom a covered employee has a "significant personal bond ... like a family relationship, regardless of biological or legal relationship" (an "affinity relationship"), the proposed rules limit a covered employee to only one such designated affinity relationship per benefit year. Additionally, the proposed rules do not define "child" or

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otherwise provide an age limit.

For PFML purposes, the proposed rules state that employees are not subject to waiting periods before utilizing PFML and are covered employees if they earned wages in Maine during the first four of the last five completed calendar quarters immediately preceding the first day of their benefit year. While the number of days an employee has worked for an employer will not impact the employee's eligibility to take leave for a qualified reason, protections upon return to work will only be available to employees who have worked for their employers for at least 120 consecutive calendar days prior to the leave date.

While employers would be permitted to run PFML concurrently with leave provided under the federal Family and Medical Leave Act (FMLA), they would not be permitted to require employees to exhaust paid time off or other company-sponsored benefits prior to utilizing PFML. The proposed rules do not address whether employees utilizing PFML for reasons not covered by federal law or other state law will be entitled to stack these leave periods.

### **Notice and Undue Hardship**

The proposed rules outline the minimum information employees would be required to provide to their employers, emphasizing that employers may not require written notice of the need for PFML. Additionally, the proposed rules list several actions employers would be required to take prior to asserting undue hardship, including providing a written explanation of the undue hardship and attempting in good faith to create a leave schedule that meets the employee's needs. The department would retain authority to assess the reasonableness of an employer's undue hardship claim and the proposed rules set forth a nonexhaustive list of factors it may consider, including the impact on the employee and the "nature and extent of attempts" made by the employee and employer to schedule the leave such that it does not cause undue hardship.

### **Fund Contributions**

For the purposes of determining premium liability for calendar year 2025, employer size would be determined by the number of covered employees employed for the employer in Maine on October 1, 2024. This would include full-time, part-time, seasonal, and temporary employees. The proposed rules provide additional guidance related to employers' quarterly remittance of premium amounts and contribution reports, requesting refunds of premium overpayments, exemption for employers approved for private plan substitutions, and other relevant contribution details.

### **Private Plans**

Employers seeking to substitute "substantially equivalent" private plans would first have to obtain the department's approval. The proposed rules list criteria that the department would use to determine whether a private fully insured or self-insured plan is substantially equivalent. Notably, while the department will accept applications for substitution plans at any time after January 1, 2025, exemptions will not be effective until April 1, 2026—this means that employers will be responsible for premium payments from January 1, 2025, through April 1, 2026. Approved substitutions would be valid for three-year periods, with the department retaining authority over employers' ability to cancel or make changes to approved plans. Notably, leave benefits provided pursuant to employer policy would not be eligible for substitution.

### **Enforcement**

The department would be responsible for enforcement, and at present, the PFML does not appear to provide a private right of action. The proposed rules describe the department's obligation to investigate complaints or reports of suspected fraud and set forth investigatory procedures and consequences for individuals involved in the commission of PFML fraud. Additionally, the proposed rules provide for a penalty (1 percent of an employer's "total payroll for the quarter") for employers that fail to timely remit quarterly premiums and contribution reports, and fines for failing to provide notice to employees.

### **Next Steps**

Employers with workforces in Maine may want to consider reviewing and commenting on the proposed rules, particularly to the extent that ambiguities remain. Employers may also want to budget for the additional taxes and research, price out private plans, decide on the public or private option, and revisit leave policies and benefit offerings.

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