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The DOL Issues New Guidance On The Relationship Between The FMLA and State Paid Family Medical Leave Programs

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Employers face a complicated patchwork of state, local and federal laws governing time off for family and medical reasons. The intersection of these often-overlapping laws creates numerous issues including how to handle time off that qualifies under both state paid family medical leave (PFML) laws and the federal Family and Medical Leave Act (FMLA). On January 14, 2025, the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) issued an opinion letter stating that employers cannot require employees to use their employer-provided paid time off such as vacation time while the employee is taking leave under the FMLA and receiving pay under a state or local PFML program. The WHD explained that the DOL's FMLA regulations on substitution of paid leave apply to leave taken under a PFML program in the same way they apply when an employee is on FMLA leave and receiving benefits under a paid disability plan.

Background

Thirteen states and the District of Columbia have adopted mandatory PFML programs, and more states are considering similar legislation. Each state program is unique, but generally PFML programs provide income replacement for a certain number of weeks from a state fund for employees who are absent from work for specified family reasons, such as the birth of a child, and/or medical reasons, such as the employee's own serious health condition. State and local PFML laws vary widely in their payment and eligibility structures but often employees who are eligible for leave and benefits under a state program are also eligible for unpaid leave under the FMLA.

Substitution of Paid Leave

When an employee takes job-protected leave under the FMLA, the regulations state that an employee may elect, or an employer may require an employee, to "substitute" accrued employer-provided paid leave (i.e., paid vacation, paid sick leave) for any part of the unpaid FMLA entitlement period. However, if an employee taking FMLA receives payments under a disability plan or worker's compensation program, the employer cannot unilaterally require the employee to use accrued employer-provided paid time off.

DOL's Guidance

Against this backdrop, the DOL opined that while state and local PFML programs are not directly addressed in the FMLA regulations, the same principles apply to such programs as those that apply to employees that receive payments on FMLA from workers' compensation insurance programs or disability plans. These principles include:

1. Where an employee takes leave under a state or local PFML program, if the leave is covered by the FMLA, it must be designated as FMLA leave and the employee must be given notice of the designation, including the amount of leave to be counted against the employee's FMLA leave entitlement.
2. Where an employee, during leave covered by the FMLA, receives compensation from a state or local PFML program, the FMLA substitution provision does not apply to the portion of leave that is compensated. This means that an employee or employer cannot unilaterally require the concurrent use of employer-provided paid leave for leave that is already compensated by the PFML program.
3. Where an employee is receiving compensation through the state or local PFML program that does not fully compensate the employee for their FMLA covered leave, the employer and employee *may agree*, if state law permits, to use the employee's accrued employer-provided paid leave to supplement the payments under the state or local leave program, but the employer cannot require it.
4. If an employee is eligible for a state or local PFML program under circumstances that do not qualify as FMLA leave, the employer cannot apply the leave against the employee's FMLA entitlement.
5. If an employee's leave under a state or local PFML program ends before the employee has exhausted the full FMLA entitlement, the employee is still entitled to the protections of the FMLA and the employee could elect, or the employer could require the employee, to substitute the employer-provided paid leave consistent with the FMLA rules and regulations.

The DOL provides a useful example to illustrate these principles:

- Yvette takes eight weeks of continuous FMLA leave to care for her mother following her mother's inpatient surgery. Yvette's employer notifies her that the eight weeks are designated as FMLA leave. Caring for a parent with a serious health condition is also a qualifying reason under her state's family leave program, and she applies for and receives benefits that replace two-thirds of her normal income each week that she is on leave, for up to six weeks.
- During the six weeks that Yvette is receiving paid leave benefits under the state program, under the FMLA, her employer cannot require, and she cannot unilaterally elect, to substitute her accrued vacation under her employer's leave plan and thereby receive full pay from her employer in addition to the state-paid benefit. However, if Yvette's state permits an employee to use accrued paid leave concurrently with the state's paid leave, the FMLA permits Yvette and her employer to agree that Yvette will use one-third of a week of her vacation time each week to supplement the portion of her full pay that is not provided by the state's paid leave benefit.
- During the final two weeks of Yvette's FMLA leave, she will have exhausted her state program's paid leave. At that point, her leave becomes unpaid leave, and the FMLA substitution provision applies. Yvette elects to use her employer-provided accrued paid vacation time to receive pay during the final two weeks of her FMLA leave.

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