MN PAID FAMILY & MEDICAL LEAVE (PFML) – TIME IS RUNNING OUT

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Agenda

- PFML Overview
- 2025 Legislative Session
- Compliance Timeline and Considerations

PFML Overview

Paid Family and Medical Leave

Three cost impacts of PFML:

1. Hard dollar cost: premiums
   - Uncommitted money doesn't exist in current budgets for premium costs
2. Soft dollar cost: increased incident rate of leaves
   - PFML provides more reasons for job-protected leave than under FMLA
3. Soft dollar cost: increased duration for individual leaves
   - Because PFML is paid, and because it is paid richly for lower wage workers, leaves are likely to be longer

- Possible soft dollar costs include:
  - Overtime
  - Staffing agency fees
  - Increased stress on coworkers
  - Lower team productivity

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Paid Family and Medical Leave

Covered employers and employees

- Covers <u>all employers</u> regardless of size, except for 1) federal governmental employers, and 2) self-employed individuals
  - **No** small employer exemption
- All employees in "covered employment" and who have earned 5.3% of the state's average annual wage over the previous 52 weeks are eligible
  - Employees covered by Railway Labor Act **not** eligible
- With one exception (*next slide*), "covered employment" for a covered employer includes any employee (***regardless of FT/PT status***) who either:
  - Physically performs 50% or more of their work in Minnesota, or
  - 1) is a MN resident for 50% or more of the year, 2) performs "some" employment in MN during the year, and 3) has no single state in which 50% or more of their work is performed throughout the year
    - Not covered example: MN resident works 80% in ND and 20% in MN
    - Covered example: MN resident works 40% in ND, 40% in SD, and 20% in MN

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Paid Family and Medical Leave

Covered employees

- Exception: "seasonal employees" in "hospitality" working fewer than 150 days per year are not covered
  - Boarding establishments
  - Food and beverage serving establishments
  - Food carts
  - Hotels/motels/Lodging establishments
  - Mobile food units
  - Resorts
  - Restaurants
  - Seasonal temporary or permanent food stands
  - School concession stands
  - Special event food stands
- Hospitality employer must have average receipts during any 6 months of the calendar year that are no more than 33% of average receipts for other 6 months
- Employers must apply to DEED and certify that workers meet seasonal definition

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Paid Family and Medical Leave

Leave amount and protections

- Provides up to 20 weeks per year of job-protected time off per benefit year
  - Maximum of 12 weeks for medical leave, maximum 12 weeks for family leave, but no more than 20 total weeks per benefit year
  - Up to 480 hours of time can be used intermittently per benefit year (*including for bonding*)
- Employees have a right to reinstatement to same position or true equivalent
  - Same/equivalent position includes compensation, scheduling, geographic location, etc.
  - Right to reinstatement begins 90 days after date of hire
  - No right to reinstatement if employee would have lost employment had they been continuously employed
- Employees cannot waive rights to pursue or receive benefits under the law (*much like unemployment or workers' compensation*)

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Paid Family and Medical Leave

Reasons for which leave can be taken and benefits received

1. An employee's serious health condition (***includes work comp injuries and illnesses***)
   - The definition of "serious health condition" is similar to the FMLA's definition, and specifically includes "telemedicine" and examinations to determine if serious health condition exists
2. Medical care related to an employee's pregnancy
   - Includes prenatal care, recovery from childbirth, stillbirth, and miscarriage
3. Bonding (*includes time off in connection with adoption and foster care placement*)
   - Ends 12 months after birth, unless baby remains in hospital longer than mom
   - DEED FAQ indicates that "employees welcoming children in 2025 are still eligible for leave and benefits in 2026, so long as leave is taken within 12 months of child's birth/adoption/foster placement" https://mn.gov/deed/paidleave/employees/faq/
4. Family care for a family member's or military family member's serious health condition
5. Qualifying exigencies arising from a family member's military active duty
6. Safety for employees/family members who are the victims of domestic assault, sexual assault, or stalking

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Paid Family and Medical Leave

Definition of "family members"

- "Family members" for whom leave can be taken include:
  - Spouse
  - Child (includes foster child, *in loco parentis*, legal guardian, and "de facto" custodians)
  - Parent/legal guardian (includes foster parent, *in loco parentis*, legal guardian, and "de facto" custodians)
  - Domestic partner
  - Sibling
  - Grandparent (including spouse's grandparent)
  - Grandchild
  - Son / daughter-in-law
  - Any "individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together"

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Paid Family and Medical Leave

Employer notice requirements

- Employer notices to employees
  1. Poster must be posted in English and primary language of 5 or more employees
     - English version and a few other languages now available: https://mn.gov/deed/paidleave/employers/resource/
  2. Individualized notice must be provided to employees by December 1st (or within 30 days of hire)
     - Notice must be in an employee's primary language
     - Notice can be in paper or electronic format
     - Employees must acknowledge receipt
     - English version of both public program and private plan notices have recently been posted by DEED: https://mn.gov/deed/paidleave/employers/resource/
  3. Paystubs must reflect any premium deductions + amounts paid by the employer
  4. Individualized notice of private plan details (*likely to be provided by the carrier*)

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Employee notice requirements

- Employee notice to employer
  - At least 30 days in advance of foreseeable leaves
  - As soon as practicable for unforeseeable leaves
  - As soon as practicable if need for leave changes, such as frequency, duration, etc. (*discussed later*)
  - Employees cannot be required to find a replacement to cover their absences
  - You can require employees to follow normal call-in/reporting procedures and potentially discipline them if they fail to do so

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State program notice requirements to employers

- Once DEED determines an applicant is entitled to benefits, it will provide formal notice to the applicant's employer(s) of the benefit award that includes, at a minimum:
  1. The name of the applicant;
  2. That the applicant has applied for and received benefits;
  3. The week the benefits commence;
  4. The weekly benefit amount payable; and
  5. The maximum duration of benefits.
- DEED will also provide employers with an attestation from the employee that the employee has formally notified the employer of the need for leave
  - Employers may contest false attestations (*discussed* later)

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Benefit payments

- Benefits eligibility usually (but not always) requires a "seven-day qualifying event"
  - Benefits based on a "single event of at least seven calendar days' duration"
    - The days must be consecutive, unless the leave is intermittent
  - Benefits are payable retroactive to the 1st day of absence
  - Bonding benefits are not subject to the 7-day qualifying event requirement and are payable immediately
- Leave time is paid at a percentage of the employee's regular wages based on their highest earning quarter over the previous four quarters capped at a max equal to 100% of the state's average weekly wage
  - Starting 10/1/2025, the state's average weekly wage is $1,423 (*this amount is revised annually*)
- Employers generally shouldn't need to worry about benefit determinations or calculations, since they will be made by DEED or private carriers/third-party administrators

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Paid Family and Medical Leave

Benefit payments (con't)

- Benefit amount received will be determined by the following formula:
  1. 90% of wages that do not exceed 50% of the state's average weekly wage; plus
  2. 66% of wages that exceed 50% of the state's average weekly wage but not 100%; plus
  3. 55% of wages that exceed 100% of the state's average weekly wage.
- Examples for employee with different average weekly wages:
  - $576.92/week (*$30,000/year*) = $519.23 (*90% of the employee's regular weekly wages*)
  - $807.69/week (*$42,000/year*) = $703.84 (*87% of the employee's regular weekly wages*)
  - $1,500/week (*$78,000/year*) = $1,152.84 (*77% of the employee's regular weekly wages*)
  - $2,500/week (*$130,000/year*) = $1,423 (*formula result exceeds state max, so result is capped at state's max of $1,423, which = 57% of the employee's regular weekly wages*)
- Taxation of benefits paid is complex and, in some cases, uncertain
- Workers' Compensation:
  - If work comp pays below PFML benefit levels, PFML will supplement work comp
  - Employers may want to revise work comp claim procedures to include PFML info

Paid Family and Medical Leave

Coordination with employer paid leave policies

- For employers with formal Short-Term Disability or wage continuation programs, PFML benefits are considered primary and will pay first
  - STD can be designed to supplement or pay on top of PFML benefits
- Other types of employer paid leave programs (e.g., paid parental leave, PTO, sick/vacation, etc.) will be considered primary and pay before PFML, unless employers choose to allow them to be used to supplement payments received from PFML
  - If an employer doesn't allow supplementation, employees can choose to use employer paid leave in lieu of receiving state benefits, although few are likely to do so, given richness of PFML benefits
  - Employees can't be required to use employer paid leave
- Employers wanting to allow supplementation must amend their paid leave policies to explicitly state that they can be used as a supplement

Paid Family and Medical Leave

Premium costs of participating in the state program

- Premium costs are based on a percentage of an employee's wages up to the FICA annual maximum rounded to the nearest $1,000 *($176,100 for 2025, but is reset annually)*
  - Premiums don't have to be paid on wages above the FICA annual max
- Premium rates will be reviewed and reset by DEED each year by July 31st
  - 2026 rates have been set at .88% of FICA wages (at least .44% must be paid by ER)
    - Small employers (fewer than 30 EEs) must pay at least .22% (EEs will still pay .44%)
- Employers must pay at least 50% of premiums
  - If private plan premiums are **higher** than state rates, employees can only be required to pay up to 50% of state rates
  - If private plan premiums are **lower** than the state rate, employees can probably only be required to pay 50% of lower private premiums
- Employee premium payments paid from after-tax wages (i.e., not pretax)
  - Employee shared portion of premiums can't drop EE pay below minimum wage
  - Employers choosing to pay some/all of EE premium costs will have to treat those payments as imputed income so that EEs are taxed on their value

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Paid Family and Medical Leave

Substituting a private plan in lieu of participating in state program

- Employers can substitute a private plan approved by the state
  - Application made through an employer's Paid Leave Administrator Account
    - Details for applying can be found here: https://mn.gov/deed/paidleave/employers/equivalent/
  - Employers substituting a private plan will have to pay a fee to DEED for initial plan approval (*and upon any amendment such as changing insurance carriers*)
    - $250 for employers with fewer than 50 employees
    - $500 for employers with 50-499 employees
    - $1,000 for employers with 500+ employees
  - DEED is saying annual fee needs to be paid (*but statute doesn't support that*)
- Employers seeking to self-fund must file a surety bond along with its application to use private insurance to opt out of the state's program
  - "in an amount equal to the employer's annual premium that it would otherwise be required to pay to the family and medical benefit insurance account"

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Paid Family and Medical Leave

Substituting a private plan in lieu of participating in state program (con't)

- Benefits of private plan over state program participation:
  - Employee experience will be better
    - Quicker claim turnaround time (1-2 weeks vs. 4-5 weeks)
    - More accessible application portal
    - Easier to ask questions
  - Employer experience will be better
    - Clients will have an account executive assigned to them
    - Claims approval notices will be delivered more quickly
    - Reporting will be better than state
    - Appeal process easier and more likely to be successful
- We recommend that if the cost of a private plan quote is anywhere near the state rates, employers should always go the private plan route

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2025 Legislative Session

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2025 Legislative Session

What DIDN'T happen:

- PFML program was NOT repealed in its entirety
- Start date was NOT pushed back to 01/01/2027
- Employers with fewer than 50 employees NOT exempted from participating
- Definition of "family member" was NOT reduced to align with federal FMLA
- Number of total weeks of leave in a year was NOT reduced to 12 weeks (or 6 weeks for employers with fewer than 50 employees)
- Richness of benefits paid through the program was NOT reduced by capping payments to 67% of an employee's average weekly wage
- Private plans were NOT allowed to offer less time off or lower benefits

What DID happen:

- Statute establishing the maximum contribution limit lowered from 1.2% of FICA wages to 1.1% of FICA wages

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DEED Developments

- Private plan substitution application process now active
  - https://mn.gov/deed/paidleave/employers/equivalent/
  - Employers wanting a private plan effective 1/1/2026 will need to have application submitted by 11/10/2025 or earlier
- DEED confirms that employers can move from public program to private plan quarterly throughout the year
- DEED has set up online and phone Contact Centers to answer questions about PFML
  - 651-556-7777 or 844-556-0444
  - https://mn.gov/deed/paidleave/about/contact-us/
- DEED has created benefit calculator that employees can use to estimate the amount of benefits they might receive
  - https://mn.gov/deed/paidleave/employees/leave-time/

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Compliance Timeline and Considerations

Paid Family and Medical Leave

Planning considerations

- Where will the money come from to pay premiums?
- Will you cover any portion of the employee premiums?
- Will you participate in the public program or opt for a private plan?
- How will you administratively manage PFML supplementation of work comp indemnity?
- If you have an existing STD plan, will you keep it in place?
- If you have an existing paid parental leave benefit, will you keep it in place?
- How will you coordinate your other leave policies (*e.g., PTO, MPLA, FMLA, unpaid personal leave, etc.*) with PFML?
- How will you manage the likelihood of more employee leaves that are longer in duration?

Date	Compliance Steps
	2025
January 1, 2025 – October 31, 2025	▪ Employers should decide whether to enroll in private plan or state program ▪ DEED is currently accepting applications from employers to substitute private plans (https://mn.gov/deed/paidleave/employers/equivalent/) ▪ Employers should consider adding PFML policies to their handbooks ▪ Employers should consider establishing internal HR protocols / practices for processing leave requests and tracking approved leaves ▪ Employers should decide how to integrate existing leave and wage replacement practices with PFML benefits ▪ Employers should plan for how they will manage the workplace impact of greater numbers of employee absences for longer periods of time
November 1, 2025	▪ Protections from retaliation begin ▪ Employees with leave needs that will exist on 01/01/2026 can start filing claims (benefits will only be paid for leave time occurring in 2026)
November 10, 2025	▪ Employers wanting to substitute a private plan in lieu of public program participation effective 01/01/2026 will need to submit applications by 11/10/2025 (employers can switch from public program participation to a private plan quarterly throughout the year)
December 1, 2025	▪ PFML poster must be posted with other workplace posters ▪ Employees must be provided with individualized personal notices about their PFML rights (employees must formally acknowledge receipt of these individualized notices)
	2026
January 1, 2026	▪ Benefits become available/payable ▪ Employers begin collecting premiums through payroll deductions (unless employers choose to cover full cost) ▪ New hires must be provided with individualized PFML notices within 30 days from date of hire
April 30, 2026	▪ First quarter premiums due from employers

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CPAs AND BUSINESS ADVISORS

Questions?

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