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## **RLG FAQs: Minnesota's Paid Family and Medical Leave ("PFML") Program**

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### **Future Legislation/Rulemaking**

#### **Q1: What do you think the chances are of the bill passing to delay the launch of MN PFML?**

A: We don't think this is likely. As a result, employers should take action as needed to ensure they are complying with Minnesota PFML by the various associated deadlines.

#### **Q2: How about changes as to eligibility or service time requirements?**

A: We're keeping an eye on this but as of now we are not expecting these changes to move forward.

### **PFML Eligibility Requirements**

#### **Q3: To determine your employee count, is it based on your FEIN or your benefit control group count?**

A: The employee count is based on the wage detail report that employers submit to the state each quarter for Minnesota unemployment insurance.

#### **Q4: Who is covered?**

A: To be eligible for benefits, the employees work must be localized in Minnesota and have earned wage credits paid within the 4 most recent completed calendar quarters – this is not tied to time spent at a specific or single job. Those wages must be at least 5.3% of the SAWW rounded down to the next lower \$100 before an employee is eligible for benefits.

- This includes part-time employees.
- Self-employed individuals and independent contractors may opt-in.
- Seasonal employees are not covered (see below).

Former employees are eligible for coverage regardless of whether they are covered by the State Plan or a Private Plan for up to 26 weeks after their employment has ended, or until they begin a new job with a different employer.

**Q5: When does eligibility begin?**

A: Employees are eligible to apply for PFML benefits when they have earned 5.3% of the state average annual wage (currently around \$3,700) in the 12-month period preceding leave. Benefits are portable, meaning that income earned across all covered Minnesota employers in that 12-month period counts toward the total. That means that if they have earned at least \$3,700 for a previous Minnesota employer in the last 12 months before they start working for you, they are eligible immediately.

**Q6: Where do employees need to be located to be covered by Minnesota Paid Leave?**

A: This is based on where the employee **works**, not where the employee resides, i.e. their job needs to be based in Minnesota. Specifically, an employee is covered if:

- At least 50% of their hours worked are performed in Minnesota; or
- Less than 50% of hours of their hours worked are performed in any single state or Canada, but some work is in Minnesota for at least half the year.

Employees who live in Minnesota but work solely in another state are not covered.

**Q7: How do we account for employees that live outside of Minnesota but work more than half their time in Minnesota?**

A: If an employee does not live in Minnesota, but they perform 50% or more of their work in Minnesota in the calendar year, then the employee's entire employment in the calendar year constitutes covered employment for purposes of Minnesota PFML, meaning that person would need to be counted as an employee in your quarterly wage detail report.

**Q8: What about for transportation/logistics companies with drivers that drive across multiple states and might do more than 50% in MN one month but not the next month?**

A: It's based on their entire employment during the calendar year.

**Q9: If we hire seasonal employees, do we automatically have them set up to pay into the PFML fund?**

A: Yes. To have an employee classified as an exempt seasonal employee, you'll need to apply to the Department of Employment and Economic Development ("DEED") to have them exempted. The seasonal employee exemption to Minnesota PFML is limited to only the hospitality industry.

A seasonal employee is defined as an individual who is employed for no more than 150 days during any consecutive 52-week period in hospitality by an employer whose average receipts during any six months of the preceding calendar year were not more than 33 percent of its average receipts for the other six months of that year.

**Q10: Does the employer or the PFML provider decide if the employee is eligible or not?**

A: For the Minnesota PFML program, eligibility for PFML benefits is decided by DEED. For private plans, since the insurer administering the private plan functionally replaces DEED, the insurer would decide on eligibility for PFML benefits and must do so in a manner that complies with MN PFML's minimum eligibility requirements under the state's program.

**Q11: How do self-employed contractors opt-in for PFML?**

A: As of now, it's unclear. Presumably the state will create an application process or online portal for self-employed individuals and independent contractors to opt-in.

**Interaction with Supplemental Benefits/Other Employer-Sponsored Benefits**

**Q12: What does this do to short-term disability? Should companies be changing their STD benefits?**

A: Short-term disability still offers important benefits that can fill in for payment caps associated with PFML and provide replacement income beyond what PFML offers.

**Q13: What if they receive full STD this year, can they get PFML next year?**

A: Yes, provided the employee meets all the eligibility requirements to apply and be approved for PFML benefits.

**Q14: If they use PTO and STD in order to save or bank their PML is this time job protected?**

A: Yes. The statute provides that employees who use vacation pay, sick pay, paid time off, or disability insurance payments in lieu of PFML benefits for PFML reasons, are entitled to the same employment protections they would receive under PFML.

**Q15: We require employees to use PTO when on FMLA. Does that mean that we can't make an employee use PTO on PFML?**

A: Employers cannot require employees to use PTO instead of PFML, but employees may elect to do so. Additionally, employers may allow employees to use PTO concurrently with receipt of PFML benefits.

**Q16: How will PFML coordinate with workers' compensation, if at all?**

A: An employee who is receiving workers' compensation equal to or exceeding the benefits they would get under PFML is not eligible for PFML benefits. If PFML benefits would exceed worker's compensation benefits, they can receive PFML benefits reduced by the amount they're receiving from workers' compensation.

**Q17: Is there a waiting period that must be met before benefits are received?**

A: There is not a waiting period, however for a continuous PFML, the qualifying event has to last for 7 consecutive calendar days, which, once met, the benefits are retroactive to day 1. This does not apply to bonding leave, and the 7 days do not have to be consecutive for intermittent leaves.

**Q18: If there is a delay in payments from the state and the employee wants to supplement with STD or PTO, how would we go about that to avoid overpayment? (added 4/30/2025)**

A: When an employee is receiving PFML benefits, it is up to the employer as to whether to offer that employee the ability to use other forms of benefits (such as PTO or STD) to supplement their income to receive, for example, 100% of their pay while using PFML. If the total amount of paid benefits under and the supplemental benefits paid exceed the employee's usual salary, the employee is required to refund the excess to either the employer or the paid leave division.

However, the existing statutory scheme raises more questions than it resolves in terms of how this will work in practice. First, it's unclear whether the 7-day qualifying act requirement will functionally operate as a waiting period. Second, while DEED is required to notify the employer "promptly" of the weekly PFML benefit amount that will be paid to the employee, it is unclear when exactly that notification will be sent to the employer. Coupled together, these uncertainties (unless addressed in DEED's PFML rulemaking) could create situations where employers are left to guess as to how much to pay the employee for the supplemental benefits when affording that option to employees and increases the chances that overpayments will occur.

**Coordination of PFML with Other Leave Laws**

**Q19: What would the process be if someone has their baby in October or November 2025? Could they have PFML starting January 1, 2026? What about medical leave in 2025?**

A: Yes. For bonding leave, an employee's eligibility for PFML benefits ends 12 months after birth, adoption, or foster placement of the child. So, if an employee has their baby in October or November 2025, they would be eligible for bonding leave until October or November 2026 (i.e., within 12 months after the birth, adoption, or foster placement of the child).

**Q20: For the birth of a child in 2025, would PFML still apply if the husband took the 12 weeks of FMLA in 2025? Would this allow the employee to "double dip" due to timing and get 24 weeks off—12 weeks in 2025 and 12 weeks in 2026?**

A: Yes.

**Q21: How does PFML integrate with MN Pregnancy and Parenting Leave law? If the employee takes 12 weeks for an injury and 8 weeks for a bonding leave and therefore has hit the 20 weeks of MN PFML - would they still get an additional 4 weeks under MN Pregnancy and Parenting Leave?**

A: No. Employers can require that leave taken under the PFMLA runs concurrently with leave under the MPPLA, but only where the leave aligns for a reason for taking MPPLA.

**Q22: What if it is not for a birth and/or bonding but rather someone that was off for FMLA in 2025 (own illness) for 12-weeks, totally recovered in 2026, are they eligible for PFML?**

A: If the employee has totally recovered from their own serious health condition in 2026, absent additional facts, the employee would likely not be eligible for PFML in 2026 for that serious health condition since the 12-month look back only applies to bonding leave.

**Q23: If we are a company that terminates benefits after FMLA is exhausted, how will we handle this with the new law since employers probably won't find out if employees are approved until weeks after the leave starts?**

A: See legal counsel!

**Q24: If an employee opts not to apply for PFML and instead use PTO, is the employer required to provide them with the same job protections associated with PFML? (added 4/30/2025)**

A: Yes. The statute provides that employees who use vacation pay, sick pay, paid time off, or disability insurance payments in lieu of PFML benefits for PFML-covered reasons, are entitled to the same employment protections they would receive if they had used PFML.

**Q25: Are the protections of PFML similar to FMLA? (added 4/30/2025)**

A: Yes, they are quite similar. Like the FMLA, the PFMLA prohibits retaliation against an employee for requesting or obtaining PFML benefits. It also prohibits interference with an employee's application for PFML benefits and guarantees the employee the right to the same position they had when they left.

**Q26: If the reason for the leave is a covered reason under both FMLA and PFMLA, can the employer require that they run concurrently? (added 4/30/2025)**

A: Yes. Employers can require that FMLA and PFML run concurrently when an employee is eligible for both leaves.

## Reasons for Receiving PFML Benefits/Length of Leave

**Q27: For bonding leave, is the husband eligible for leave as well as the wife?**

A: Yes, both spouses are eligible for bonding leave under the PFML program.

**Q28: For bonding leave, when you have a married couple that both work for you and they have a baby, are they both eligible for 12 weeks of leave under PFML?**

A: Yes.

**Q29: With regards to bonding leave, it sounds like grandparents can take this as well? What if the person has a “personal relationship?”**

A: *Bonding leave* is only available to biological, adoptive, or foster parents. However, the definition of family member for purposes of *caretaking leave* includes “an 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.”

**Q30: What about someone who had a baby March or earlier this year? Since the lookback is 12 months, do they not get the full 12 weeks in 2026 since the start would be more than 12 months and 12 weeks prior to the end of the new leave?**

A: Correct. Parents who welcomed a child on March 1, 2025, would need to take their leave between January 1, 2026 and March 1, 2026. For bonding leave, an employee’s eligibility for PFML benefits ends 12 months after birth, adoption, or foster placement of the child.

**Q31: If a woman has a baby in 2025, wouldn't the parent only be eligible for bonding leave in 2026? Not medical leave?**

A: Generally, yes, but some women may experience medical issues associated with a birth in 2025 that continue into 2026, which could make her eligible for PFML benefits in 2026 based on a serious health condition.

**Q32: For the “medical” portion of a maternity leave is it a guaranteed 12 weeks? Or will it be up to the doctor?**

A: It will depend on the employee’s medical status. There is no set amount of medical leave for childbirth written into the law.

## PFML Benefit Payments

**Q33: Who does the calculation on how much additional money they can earn? The employer or DEED?**

A: DEED will calculate this based on data provided by the employer. For an estimate, employers can use [this calculator](#) provided by the state.

**Q34: Do we have any idea how DEED will communicate payments to employers?**

A: At this point, no.

**Q35: What wages are used in the calculation? Base wage or 2024 wages with overtime?**  
(added 4/30/2025)

A: Gross income, including overtime, bonuses, and commissions. For employers who are required to submit wage reports as part of their responsibilities for unemployment, note that the wages you report for PFML are the same as the wages you report for unemployment.

## Employer Obligations

**Q36: What obligations do employers have?**

A: Some of the most important employer obligations include:

- Inform their employees about this benefit:
  - On or before the later of:
    - 30 days from the time of hire; or
    - 30 days before premium collection begins
  - When an employee is a seasonal employee and will not be eligible to receive MN Paid Leave benefits
- Display and maintain a poster in a highly visible place that's accessible to employees at the employer's place of business. In addition to English, the notice must be available in the following languages: each language that is the primary language of at least 5 employees or independent contractors at the workplace, as long as the notice is available in that particular language from the State.
- Submit wage and hour reports electronically every quarter, whether they have a Private Plan or participate in the State Plan.
- Since MN Paid Leave provides job protection, employees who return to work are entitled to be restored to the position they held when starting their leave or a position with equivalent terms and benefits.
- Additionally, employers need to continue providing health insurance benefits to an employee who is out on this type of leave. The employee, on the other hand, must continue to make any regular contributions to the cost of the health insurance premiums.

**Q37: Are employers required to tell employees who had the leave during 2025 that they can get PFML in 2026?**

A: Nothing in the statute requires employers to proactively notify employees that their specific situation entitles them to leave.

**Q38: Is there a cap on rates? (added 4/30/2025)**

A: The statute currently provides that the annual rate for the state plan shall never exceed 1.2% of the employee's taxable wages.

**Q39: Are employers allowed to charge employees more than 50% of the PFML deduction? Is that the difference in state vs. private that is being passed on to the employee? (added 4/30/2025)**

A: You are correct that the employer cannot charge more than 50% of the state rate for any given year. If a private plan's rate is lower than the state rate, the rate employers may charge remains 50% of the state rate.

**Q40: Let's say the state rate is .88, so I can charge .44. I then go with a private carrier who charges 1.00. I still can only charge my employees .44, correct? (added 4/30/2025)**

A: Correct. The maximum amount you can charge employees is half of the state rate, regardless of the rate of your private plan.

**Q41: How does payment happen for a separated employee, and what happens if they left, worked for another employer for a month, and then applied for benefits. Are both employers responsible for payments? Just the most recent? (added 4/30/2025)**

A: If the most recent employer uses the state plan, the state is responsible for payments. If the most recent employer uses a private plan, the private plan provider is responsible for payments.

### **Impact on Collective Bargaining**

**Q42: I was under the impression that the taxation split between the employer and employee was negotiable. How is this handled with unions?**

A: The employer must pay at least 50% of the premiums and can choose to pay more or agree to pay more as a concession in union negotiations.

**Q43: Can you talk about negotiations in reference to reducing current sick leave accruals? As a school district, we've always had generous sick leave policies and adding ESST provisions makes it even more generous. We cap at 120 days for our teachers' union and now that there will be PFML, we're considering how to negotiate that down.**

A: For specific advice on your CBA, it's best to work with counsel. Generally, ESST can be satisfied by existing leave policies that are more generous than the ESST law requires, but this may depend on your contract and the specifics of your policy.

### **Private Plans**

**Q44: I'm hearing if a private plan is chosen - we need to keep paying an employee for up to 26 weeks?**

A: The 26-week language comes from situations where an employee has been separated from employment by an employer with a private plan. In such instances, where the former employee has been separated from employment by an employer with a private plan, and the separation took place less than 26 weeks before the employee files an application for PFML benefits, the statute provides the following two avenues for the former employee:

1. If the former employee remains unemployed on the date that an application for benefits is filed, the former employee must submit an application for benefits with the private plan of their former employer.
2. If the former employee has become employed by a different employer at the time that an application for PFML benefits is filed, the former employee shall submit an application for benefits based on their new employer's coverage. If the new employer is covered under the state plan, the former employee must submit the application to the state. If the new employer has an approved private plan, the individual must submit the application for benefits to the private plan in accordance with the requirements established by their new employer.

**Q45: Can you cost share a private plan?**

A: You cannot require employees to pay more toward the cost of benefits under a private plan than they would pay under the state plan.

**Q46: Is there a deadline for when employers need to decide on whether or not we can have a private plan? Can any employer have a private plan? (added 4/30/2025)**

A: There is not a hard deadline for when an employer needs to decide whether to have a private plan. However, employers potentially considering a private plan must remember that the private plan must be reviewed *and approved* by DEED, so they should build in enough lead time to account for the review and approval process. We do not know how long such approvals are taking, so the sooner you can make a decision on state vs. private,

the better. Remember, PFML starts January 1, 2026, so you'd need to have a plan in place by that date.

**Q47: Does the size of a company influence the consideration of public vs. private plan? (added 4/30/2025)**

A: The size of your company can certainly impact your decision, including the rates you might pay under a private plan.

### **Miscellaneous**

**Q51: What guardrails are there to limit fraud and abuse under the PFML program?**

A: Anybody found to have received benefits due to fraud or misrepresentation must repay the benefits plus interest and a 15% fee and will be subject to criminal penalties up to and including prison. Employers who assist in fraud are subject to a fine equal to the amount of fraudulently obtained benefits or \$500, whichever is greater, and additional penalties.

**Q52: Do you think the PFML premium payments will go up to the max of 1.2% in 2027?**

A: At this point, nobody can say. We'll see how it plays out in 2026.

**Q53: Will you be providing a timeline on what employers should be doing between now and January 1, 2026?**

A: Check out [our Employer's Guide to Minnesota PFML PowerPoint on our website](#), which contains a timeline for what employers should be doing between now and January 1, 2026!

**Q54: Is there guidance on whether the state premiums are pre- or post-tax? (added 4/30/2025)**

A: The premiums are calculated based on the taxable wages of the employee, meaning the calculation will be pre-tax.

**Q55: Is it a PFML premium or is it a tax? (added 4/30/2025)**

A: The PFML premium is a type of payroll tax. If an employer chooses to have employees share in the employer's premium payment responsibilities, the amount is deducted from the employee's pre-tax income.

**Q56: Since we can't collect PFML retroactively, we wouldn't be able to arrear their deduction and collect it when they're back from leave, correct? (added 4/30/2025)**

A: It's unclear how an employer will be able to collect an employee's share of premiums when an employee is on leave (especially if the leave they are on is unpaid). Since collection of the employee's share of premiums is done via payroll deductions, employers should still keep in mind that deductions must not cause an employee's wage, after the

deduction, to fall below the rate required to be paid to the employee by any applicable statute (such as minimum wage), regulation, rule, ordinance, or government resolution or policy, whichever rate of pay is greater.

*These are fast-moving times, and the information provided is only current as of today's date (May 2, 2025). The information provided does not, and is not intended to, constitute legal advice; instead, all information is prepared and provided for general informational purposes only.*

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