



## FAQ's for Employers

2/27/2020

### **Q: I want to let my employees use their accumulated paid time off with the PFML. How does that work? Are there special rules?**

Employers can choose to allow their employees to use their accumulated paid time off to supplement the PFML, though you are not required to do so. These are known as supplemental benefits. If you choose to allow them, you have two options:

1. Use before PFML
2. Use to top up PFML to 100% of pay

If you allow employees to use PTO before PFML, the PFML will stack on top of the PTO. This means the employee could use up to the 12 (16) weeks of PFML **after** any accumulated PTO. Because of the delay in payment from the State, many of your employees may be using their accumulated PTO prior to the State's payment. This means that the PFML benefits will start after the accumulated PTO payments end, and the employee will have the entire PFML benefit period available.

If you allow employees to use PTO to top up their PFML benefits, keep in mind that the PFML benefits are paid based on total compensation, while your PTO is based on base pay. So you will need to know what the PFML is going to pay in order to calculate how much PTO is needed to pay 100% of base pay between the two. Also, PTO is usually a bank of hours and the PFML is dollars of benefit, so you will need to calculate how many hours will equal the dollars needed to provide the top up.

Many people have asked how to calculate the top up amount. There are three possible options:

1. Wait until you have approval and notice from the State of how much compensation your employee will receive, and then top up from that.
2. Assume the State will pay their maximum benefit of \$1,000 per week, top up from that, and then true up once you know how much the State pays.

3. Use the highest two quarters of salary data you reported to the State and use the benefit calculator on the WA PFML website to determine a benefit estimate, and then true up if needed once you know how much the State pays.

Since the State won't allow you to provide pay that would result in a benefit that is higher than 100% of total compensation, we would advise that you calculate conservatively if you intend to estimate the PFML payment.

### **Q: What are supplemental benefits and how do they work with the State benefits and reporting?**

Any accumulated PTO your employee uses either prior to, or to top off, the PFML benefits are called supplemental benefits. Your employee will need to indicate use of supplemental benefits rather than regular pay or PTO, or the State will not pay. Supplemental benefits are not attributable to hours worked, and the State will not pay any PFML for a day where there are hours worked. If any of their paid time off is not supplemental, your employee will need to indicate so during their weekly claim filing.

Any supplemental benefits paid out of your employee's accumulated PTO cannot be included in your quarterly filing to the State as hours worked. Again, this is because the State would deem any day with hours worked as ineligible for PFML benefits.

### **Q: What if I'm allowing my employees to use their accumulated PTO to pay their health plan premiums? Is that considered a supplemental benefit?**

We think the State would treat this as a supplemental benefit. You need to ensure that the amount you are using to pay premiums and the PFML benefit does not exceed 100% of total compensation – the State won't allow you to supplement more than 100% of an employee's total compensation.

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## FAQ's for Employers (continued)

### **Q: How does job protection work between FMLA and PFML? Can my employees use both and have job protection?**

For employers who are subject to federal FMLA, the PFML will run concurrently with FMLA. This means that for the first 12 weeks of FMLA qualified leave, the FMLA job protection and continuation of benefits will apply. We would coach you to require that your employees apply for FMLA when applying for PFML so that their FMLA usage is recorded and you can continue their health benefits as required by FMLA.

For employers with 50 or more employees, if your employee meets the criteria for FMLA (worked 1,250 hours in the 12 months preceding the start of the leave), all of their PFML time would be job protected.

So for employees who have FMLA and work for employers with more than 50 employees, they could use 12 weeks of FMLA and be paid through accumulated time off or other employer provided pay programs, and have an additional 12 (16) weeks of PFML, all job protected. This may impact how you wish to allow your employees to use their accumulated paid time off to supplement the PFML.

### **Q: I know short term disability (STD) benefits will be offset by the PFML, but how does it work?**

If you offer an STD plan, you know that your premiums were lowered beginning January 1, 2020. This is because your STD contract has a provision whereby your STD plan will reduce benefits by any "statutory" or "compulsory benefit act or law", which includes the Washington PFML. So your STD carrier will pay up to the plan's usual benefits, minus the amount paid by the PFML. Remember, the PFML benefit is based on total compensation, and most STD plans pay a percentage of base pay.

Most carriers will not pay an STD benefit until they have received the benefit amount for the PFML so that they know what to offset. Some are estimating, and then triuing up once the PFML benefit amount is known. How this is being handled depends on the carrier.

With the long delay in the State paying benefits under the PFML, some employees were wondering if they could access their STD benefit while they wait. Because the STD plan will offset the PFML, the employee can apply for both at the same time, but the STD plan either won't pay until they know what the PFML will pay, or they will assume the employee is getting the \$1,000 State maximum and will true up once the PFML benefit is known.

### **Q: Are any carriers offering insurance that we can purchase that would take the place of the PFML?**

Not at this time.

### **Q: What if my employee applies for the PFML, is absent from work, and subsequently their PFML is denied? What are the implications for the employee's job? Are there circumstances where the PFML would be denied?**

The existence of the PFML should not negate your usual policies around what you require in order to approve extended medical or family leave. Most companies have in-place policies requiring medical documentation for employees who are ill or caring for an ill family member to approve these types of leaves. For those who are subject to FMLA, this would include FMLA medical certification. So if your employee is absent from work, their application for PFML benefits is not a certification that they are approved for leave under your usual leave policies. If the documentation you receive does not support the need for the leave, you could safely assume that the State will also not pay a benefit.

### **Q: How do we handle intermittent leave? How does the State?**

The PFML (and FMLA) allows leave to be taken intermittently. The PFML can be used in no less than 8 hour increments. Employers will then also allow intermittent leave in no less than 8 hour increments when employees are using the

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## FAQ's for Employers (continued)

PFML. The State will require weekly verification of leave so that your employee can indicate days worked, days being paid through supplemental benefits (accumulated PTO), and PFML-paid days. For example, if you have an employee who is taking every Thursday off to care for a sick loved one, they would file their claim with the State, indicate each week that they worked every day except Thursday, and the State would provide benefits for just one day per week. For those who use leave intermittently, they will be eligible for 12 weeks of leave or 60 intermittent days.

### **Q: What type of notice does my employee have to give prior to leave? What if they don't provide adequate notice?**

The PFML statute requires your employee provide 30-days' notice to the employer prior to taking leave for non-emergency situations. Notice must be in writing, which includes email and text messages. If your employee does not provide proper notice, you have the right to not approve the leave. You can always be more generous than the statute, but if you are, you must be consistent in your practice to avoid discrimination.

If the leave is taken due to an emergency, notice is required at the first possible opportunity, and can be provided by someone other than the employee.

### **Q: How will I know when my employee submits a PFML claim? What's my role in the PFML claims process?**

When your employee applies for PFML benefits, the State will send you notice of their application. At that time, you will have 18 days to dispute the leave, which could include lack of proper notice. Once the claim has been approved, you will also receive notice. These notices are currently being sent through the USPS. In the future, employers will have a portal to look up claims, receive notices, etc.

If you have more questions, contact your Parker, Smith & Feek account team.

### **Q: I hear that employees with babies born in 2019 may be able to take leave in 2020. Is that true?**

It is true. The PFML allows bonding time under family leave up until the baby's first birthday (or one year after placement for adoption). This includes babies born or placed in 2019 – your employees will have a full 12 weeks of paid family leave for bonding in 2020. If the employee meets the FMLA criteria as of the start of their PFML leave, the leave would be job protected, even if they used their entire federal job protected FMLA in 2019. Remember, they have to provide you 30 days' notice of their intent to take leave and they can choose to take it all at once, or intermittently. Once the baby turns one, eligibility for bonding leave ends.

If the mother is already on leave from the birth of her baby in 2019, she can tack on 12 weeks of bonding leave to her leave in progress as long as she gives 30 days' notice. She does not need to come back to work in order to start her PFML leave.

Again, once the baby turns one, eligibility for bonding leave ends.

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#### DISCLAIMER

*The information provided here is based on the Washington PFML statute, website information, benefit guides, and questions Parker, Smith & Feek has posed to the State. It is not intended to provide legal or actuarial advice. The issues and analyses presented here should be reviewed with outside counsel before serving as the basis of any legal or other decision.*

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