

PAID LEAVE: WASHINGTON (PFML) V. OREGON (PLO)

SUMMARY COMPARISON OF KEY DIFFERENCES

	Washington Paid Family Medical Leave Act (PFML)	Paid Leave Oregon (PLO)
Effective Date	<ul style="list-style-type: none">• Premiums began being collected in January 2019 (with temporary CBA exemptions), and benefits available in January 2020	<ul style="list-style-type: none">• Premiums collected starting January 1, 2023, and benefits available on September 3, 2023.
CBA Exception to Effective Date	<ul style="list-style-type: none">• For CBAs in existence as of October 19, 2017, PFML does not apply until the CBA is renegotiated or expires.	<ul style="list-style-type: none">• None currently.
Covered Employers	<ul style="list-style-type: none">• All Washington employers; differences on premiums and reinstatement rights depending on size of employer, based on number of Washington employees	<ul style="list-style-type: none">• All employers with any employees working in Oregon; differences on contribution requirements depending on total number of employees (worldwide).
Covered Employees	<ul style="list-style-type: none">• Any employee who worked at least 820 hours in a qualifying period for some WA employer(s). The qualifying period is usually the immediately preceding four quarters, but there are some alternative formulas, including in relation to the CV19 lockdowns. Note, there is an exception for “casual labor” which could conceivably apply to some employees, but one of the requirements is that the labor performed “does not promote or advance the employer’s customary trade or business.”	<ul style="list-style-type: none">• Employees are eligible for PLO if they have earned at least \$1,000 in Wages in Oregon (from any/all employers) within the first four of the last five quarters preceding the benefit year. The self-employed and employees of tribal governments in Oregon who have opted in may also be eligible for certain benefits yet to be established.

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SUMMARY COMPARISON OF KEY DIFFERENCES, CONT.

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Remote Employees/ Place of Performance	<ul style="list-style-type: none">• PMFL contributions are required for employees whose work is localized to Washington, which means they primarily work in Washington OR when some of the employees work is in Washington and the employer's base of operations is in Washington or the work is directed and controlled from Washington. Washington's program has a premium waiver process for out-of-state workers that requires that the employer submit an application, that is signed by the employee and the employer, attesting that the employee (a) primarily performs work outside of the state; (b) is employed in the state on a limited or temporary work schedule; and (c) is not expected to be employed in the state for eight hundred twenty hours or more in a period of four consecutive completed calendar quarters.• Where the employee may work in both Oregon and in Washington, the two states have aligned their rules relating to place of performance and remote work. More information is available in the Washington place of performance letter.	<ul style="list-style-type: none">• Contributions for Paid Leave Oregon are required for employees that primarily work in Oregon, even if employees live in another state, occasionally work in another state, or if the business is located/headquartered in another state but the employee works remotely from Oregon. Oregon and Washington, for example, aligned their rules relating to place of performance and remote work. More information is available in the Washington place of performance letter.• Where an employee may work in multiple states, employers will have to make a determination about whether they must withhold premiums/make contributions. See the Place of Performance Fact Sheet.

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Assessed on What Wages	<ul style="list-style-type: none"> The premium is assessed on gross wages, up to the Social Security Wage Cap. 	<ul style="list-style-type: none"> The premium is assessed on gross wages, up to the Social Security Wage Cap.
Premiums	<ul style="list-style-type: none"> Total premium is 0.8% of Social Security Wage Base (new rate beginning 1/2023). For 2023, the SS Wage Base = \$60,200, so the maximum 2023 premium per employee = \$1,281.60 per year. Beginning 2023, employees pay 72.762% of the total premium through payroll deductions; employers with 50+ employees pay 27.24%. An employer who does not deduct the employee's share from the employee's paycheck is responsible for paying the employee's share, and may not retroactively recoup the employee premiums the employer neglected to deduct. 	<ul style="list-style-type: none"> As of January 1, 2023, covered employers are required to remit to the Employment Security Department a contribution of 1% of each employee's wages. Employees are to pay 60% of the contribution and employers are to pay 40%. Employers with less than 25 employees are exempt from paying the employer portion of the contribution, but may elect to contribute. Employers may not deduct from employee wages to pay the employer portion of the contribution.
Premium Deduction Mandatory Item of Bargaining?	<ul style="list-style-type: none"> A WA PERC decision says that taking the deductions is a mandatory item of bargaining. See <i>Whatcom Co. Deputy Sheriff's Guild v. Whatcom County</i> (May 12, 2020): "before the employer could implement the PFML premiums, the employer was required to give notice to the union and, upon request, bargain in good faith to an agreement or impasse. In the event the parties reached an impasse, they were statutorily required to pursue the issue through mediation, and, if necessary, interest arbitration." 	<ul style="list-style-type: none"> The statutorily required deductions are not subject to bargaining, but the effects of such deductions on mandatory subjects ("wages, hours, and other terms and conditions of employment" 29 USC §158(d) (NLRA §8(d))) must be negotiated.

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Covered Reasons for Use	<ul style="list-style-type: none"> PFML eligible employees may take PFML leave for the following reasons: (a) Their own serious health condition, including but not limited to incapacity due to pregnancy, prenatal medical care or child birth [Medical]; (b) The need to care for a family member with a serious medical condition [Family]; (c) To welcome a child into their family (through birth, adoption or foster placement) [Family]; and (d) To prepare for a family member's pre- and post-deployment activities, as well as time for childcare issues related to a family member's military deployment [Family]. One week of PFML leave for bereavement for the death of a newborn is also allowed. 	<ul style="list-style-type: none"> The medical conditions covered are similar to what is covered by the Oregon Family Leave Act (OFLA), but there are some differences. Employees are eligible for PFMLI benefits if they need leave: (1) To receive treatment for a personal serious health condition; (2) To care for their family member's serious health condition; (3) To care for an infant for the first year after the child's birth; (4) To be with a child after the child's placement with them for adoption or foster care; (5) For reasons related to domestic violence, sexual assault, stalking, or harassment.
"Family Member" Means	<ul style="list-style-type: none"> The employee's child, grandchild, grandparent, parent, sibling, or spouse/ registered domestic partner, or individual who in effect stands in such position to the employee (e.g. adoptive, foster, step-) and anyone who regularly resides in the employee's home where there is an expectation that the employee would provide care for the individual. 	<ul style="list-style-type: none"> Spouse, child or child's spouse or domestic partner, parent or parent's spouse or domestic partner, sibling or stepsibling, grandparent or grandparent's spouse or domestic partner, grandchild or grandchild's spouse or domestic partner, any individual related by blood or affinity whose close association is equivalent of a family relationship..

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“Serious Health Condition” Means	<ul style="list-style-type: none">Effectively the same as FMLA	<ul style="list-style-type: none">Effectively the same as OFLA/FMLA.
Notice to Employer of Need for Leave	<ul style="list-style-type: none">If foreseeable, the employee can be required to provide the employer 30 days advanced notice of the need for leave. If the need for leave is unforeseen, the employee must notify the employer as soon as is possible. An employer can waive these notice rights.	<ul style="list-style-type: none">Employers may require employees to provide written notice at least 30 days before starting a period of leave. The employer also may require an explanation of the need for leave. Employees may start leave without providing 30 days’ notice if the need for leave is not foreseeable. Employees taking family or medical leave must give oral notice to the employer within 24 hours of starting such leave and must provide written notice within three days after leave starts. Employees taking safe leave must give the employer reasonable advance notice of the intention to take safe leave, unless giving advance notice is not possible. Employees that do not provide required notice to their employers may have their first weekly benefit amount reduced by 25 percent

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Amount of Leave	<ul style="list-style-type: none">An employee is entitled to up to 12 weeks of either Medical or Family leave in a 52 week period. If the employee needs both Medical and Family leave in a 52-week period, they can take a combined leave of up to 16 weeks. Employees experiencing a serious health condition during pregnancy that results in incapacity can take up to 18 weeks combined.	<ul style="list-style-type: none">Paid leave is available for up to 12 weeks, and a total of up to 16 weeks of paid and unpaid leave may be provided. Covered employees may qualify for up to two additional weeks of benefits for limitations related to pregnancy, childbirth or a related medical condition.
Benefit Year	<ul style="list-style-type: none">The PFML Benefit Year is calculated as the 12 months commencing on the Sunday before the first day of leave.	<ul style="list-style-type: none">The PLO Benefit Year is calculated as the 12 months commencing on the Sunday before the first day of leave.
Best Efforts to Not Disrupt	<ul style="list-style-type: none">If the leave is foreseeable and related to planned medical treatment, the employee is supposed to make reasonable efforts to schedule treatment so as not to unduly disrupt operations.	<ul style="list-style-type: none">N/A
Amount of Benefits	<ul style="list-style-type: none">Partial wage replacement benefit, based on the employee's usual earnings, up to a maximum weekly benefit. Maximum weekly benefit changes each year, based on inflation formula. In 2023, the maximum weekly benefit will be \$1427.	<ul style="list-style-type: none">Weekly wage replacement benefits are to be payable at 100% of the worker's average weekly wage for the portion of the wage that is up to 65% of the state average weekly wage, and at 50% of the employee's average weekly wage for the portion of the wage that is more than 65% of the state average weekly wage. The minimum weekly benefit is 5% of the state average weekly wage. The maximum weekly benefit is 120% of the state average weekly wage.

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Waiting Period	<ul style="list-style-type: none">Technically a week waiting period before can collect benefits, but PFML weeks always start on Sunday, so a PFML leave that begins the previous Friday (e.g.) would satisfy the waiting period by the next Sunday.	<ul style="list-style-type: none">N/A
Supplementing State Benefits	<ul style="list-style-type: none">Employers may (but are not required to) allow employees to use employer provided paid leave benefits during the waiting period and to supplement the PFML benefits. An employer cannot require an employee to use employer provided paid leave to supplement PFML benefits or cover the waiting period. Must be careful to report these as “supplemental” benefits and not as “vacation” or “PTO”	<ul style="list-style-type: none">Employers may permit an employee to use all or a portion of paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving PLO benefits. Absent a policy specifying any limitations on usage, it will be presumed to be at the employee’s discretion and not capped at 100% of their regular weekly wages.<i>Note: While it is optional in the PLO context, if the leave is also covered by OFLA, the employee is entitled to draw down other paid leaves.</i>

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Run Concurrently with FMLA and/or OFLA in Oregon?	<ul style="list-style-type: none">Can run concurrently, but it is possible for the employee to stack FMLA and PMLA. For example, the employee can first ask for and receive FMLA leave and then after that expires apply for PFML leave. Or an employee could be eligible for PFML but not yet eligible for FMLA because they have not worked 12 months for the employer yet, so the employee could use PFML and then some time later take FMLA after they qualify for FMLA. Also, there is some leave that would be covered by PFML but not FMLA, which would leave the FMLA time still available. Employers cannot require employees to apply for PFML even if the reason is a qualifying one.	<ul style="list-style-type: none">It is the employee's choice to use PLO benefits, but once they are using Paid Leave Oregon benefits must also draw down available leave balances under OFLA when the reason for leave qualifies under both laws. In that circumstance, the total amount of leave available to the employee is limited to 16 weeks in the same benefit year (12 paid by PLO and four (4) unpaid via OFLA) or up to 18 where pregnancy/ childbirth is involved. However, of PLO benefits for events which are not covered by OFLA (such as Safe Leave) do not draw down an employee's OFLA entitlement. Additionally, there is an exception for leave taken under the Oregon Military Family Leave Act (which provides up to 14 days of leave)—although it counts against OFLA, it is not subject to the 16-18 week limit even if a Paid Leave benefit year has begun. See here.

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Employer Approves Leave?	<ul style="list-style-type: none">No. The employee applies to the state (Employment Security Department), the state gathers all the information and records (like medical records), and determines whether the employee qualifies. Employer just accepts ESD's decision	<ul style="list-style-type: none">No. If the employer participates in the state Paid Leave program and not an equivalent plan, the employer will receive a notice from OED that the employee has applied for Paid Leave. The employer will then receive a second notice from OED once a decision (approve or deny) has been made for the Paid Leave application.
Can Leave be Taken Intermittently?	<ul style="list-style-type: none">Yes. But the employee will only receive paid benefits if they take at least eight (8) consecutive work hours off at a time. Could be four (4) hours Monday night and four (4) hours Tuesday morning, for example.	<ul style="list-style-type: none">Yes, but in no less than whole day increments.
Reinstatement Rights	<ul style="list-style-type: none">Reinstatement rights only apply to employers with at least 50 WA employees. The reinstatement rights otherwise mirror FMLA eligibility requirements—12 months with this employer, 1250 hours in the previous 12 months with this employer, etc.	<ul style="list-style-type: none">After taking family or medical leave, an employee has the right to return to their prior job, similar to FMLA/OFLA protections. The employee must have worked for their employer for 90 days to have these rights. Employers with fewer than 25 employees do not have to reinstate if the employee's position no longer exists for reasons other than the employee's leave.

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Voluntary Plan Instead?	<ul style="list-style-type: none">Employers can create a voluntary plan that replaces the state PFML. The greatest benefit is the ability to coordinate all the applicable paid leaves. Let me know if you would like more information on this.	<ul style="list-style-type: none">Employers that offer equivalent benefits to PLO may apply to be exempted from the state program.
Employer Notice Requirements - Posters	<ul style="list-style-type: none">Employers are required to post excerpts or summaries of the pertinent provisions of PFML and info on filing a complaint. Info on PFML is included in the general state mandated posters. Violations of the posting policy are subject to \$100 penalties for each offense.	<ul style="list-style-type: none">A mandatory poster must be posted at jobsite and made available to any remote worker by January 1, 2023—and in any language(s) used to communicate with employees. See here.
Employer Notice Requirements - Individual Form	<ul style="list-style-type: none">When an employee notifies the employer of some condition that appears to be covered by PFML, the employer must provide a state mandated notice to the employee, even if the employer thinks the employee may not qualify, or the reason may not be covered. The notice must be provided to the employee within five business days after the employee's seventh consecutive day of absence for family or medical leave, or after the employer has received notice that the employee's absence is due to family or medical leave. The notice is available here.	<ul style="list-style-type: none">There is not yet any template notice for employers to use, but providing a copy of the model notice poster (see above) is currently recommended.

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Record Keeping	<ul style="list-style-type: none">Hours and premiums are reported quarterly to the Employment Security Department. Employer records supporting the premium assessments and hours are to be kept at the employer's place of business. Basically, this is going to be pay and time records, plus any information related to an employee's request for leave, and any payment of supplemental benefits. Records must be kept for six years.	<ul style="list-style-type: none">Employers are to report wages paid and remit contributions on a quarterly basis. Reports are to be filed with the state Department of Revenue by the last day of the month after the reported three-month quarter. Oregon employers must maintain records for at least three years that include employee contributions and expenses, total hours worked by employees, and the amount of leave taken by employees for the current year and preceding three years. These records must be open for inspection by Oregon Employment Department officials upon request.
Anti-Retaliation/ Noninterference Provisions	<ul style="list-style-type: none">Yes, with a private cause of action or a complaint filed with the department. Employee can choose either complaint or private lawsuit. If files a complaint, must withdraw it before a determination by the department in order to pursue lawsuit. There is a 3 year statute of limitations on private claims.	<ul style="list-style-type: none">Yes. Discrimination and retaliation for use of leave is prohibited. Enforcement by Oregon Bureau of Labor and Industries, and private right of action under ORS 659A.885.

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Potential Damages for Violation	<ul style="list-style-type: none">(a) any compensation or benefits denied or lost to the employee because of the violation, (b) if no lost comp/wages, then actual monetary loss related to violation, like having to hire someone to provide care, (c) interest at the “prevailing rate” on damages, (d) for a willful violation, liquidated damages equal to the combined amount of damages plus interest [“willful” means a knowing and intentional act that is not accidental or the result of a bona fide dispute]	<ul style="list-style-type: none">Employers may be assessed a fine of up to \$1,000 for willfully making false statements or failing to report material facts regarding an employee’s claim for family-leave benefits. Employers failing to file required reports or pay contributions due for a year by Sept. 1 of that year may be assessed a penalty of 1% of wages paid to employees in the preceding year. The department notifies employers of penalties assessed by Oct. 20 of each year. Penalties may be waived for good cause if the employer files required reports and payments. The employer must by Nov. 10 submit a written waiver request to the department containing specific reasons for the failure to file required reports or payments. If the request is denied, the decision becomes final unless the employer files a request for a hearing within 20 days of receiving the decision denying the request.
Websites	<ul style="list-style-type: none">www.paidleave.wa.gov	<ul style="list-style-type: none">www.paidleave.oregon.gov

Disclaimer: This summary is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps employers must take under applicable laws. For legal advice on these or related issues, please consult qualified legal counsel directly.