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	• Premiums began being collected in January 2019 (with temporary CBA exemptions), and benefits avaialble in January 2020.	• Premiums collected starting January 1, 2023, and benefits available on September 3, 2023.
CBA Exception to Effective Date	• For CBAs in existence as of October 19, 2017, PFML does not apply until the CBA is renegotiated or expires.	• None currently.
Covered Employers	• All Washington employers; differences on premiums and reinstatement rights depending on size of employer, based on number of Washington employees.	• Public and private employers with at least one employee are covered by the state's family-leave insurance law.
Covered Employees	• Any employee who worked at least 820 hours in a qualifying period for some WA employer(s). The qualifying period means the first four of the last five completed calendar quarters or, if eligibility is not established, then the last four completed calendar quarters immediately preceding the application for leave. Note, there is an exception for "casual labor" which could conceivably apply to some emplyees, but one of the requirements is that the labor performed "does not promote or advance the employer's customary trade or business."	• Employees are covered by the family-leave insurance law when they have earned at least $1,000 in the first four of the last five quarters preceding the benefit year, or the last four completed calendar quarters preceding the benefit year. Types of covered employment generally include any services for wages.

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Assessed on What Wages	• The premium is assessed on gross wages, up to the Social Security wage cap.	• Starting Jan. 1, 2023, employees will be assessed a premium on gross wages up to the Social Security wage cap.
Premiums	• As of January 1, 2025, the premium rate is 0.92 percent of each employee's gross wages, not including tips, up to the 2025 Social Security wage cap. Beginning 2025, employees pay 71.52 percent of the total premium through payroll deductions; employers with 50+ employees pay 28.48 percent. 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 retroactivey recoup the employee premiums the employer neglected to deduct.	• Effective Jan. 1, 2023, employers are required to remit to the Employment Security Department a contribution of 1 percent of each employee's wages. Employees are to pay 60 percent of the contribution and employers are to pay 40 percent. 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?	• A WA PERC decision says that taking the deductions is a mandatory item of bargaining. See *Whatcom Co. Deputy Sheriff's Guild v. Whatcom County* (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."	• 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	• 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 loss of a child is also allowed [Parental Bereavement Leave].	• Employees are eligible for PLO 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 bond with a new child within the first 12 months after birth, adoption, or foster placement; (4) to complete necessary activities before a child's adoption or foster care placement; or (5) for reasons related to domestic violence, sexual assault, stalking, harassment, or bias crimes.

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"Family Member" Means	• The employee's child, grandchild, grandparent, parent, sibling, or spouse/ registered domestic partner, any individual who in effect stands in such position to the employee (e.g. de facto or loco parentis, adoptive, foster, step-), or any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person and that individual depends on the employee for care. This definition does not include an indivdiual who simply resides in the same home as the employee with no expectation that the employee care for the individual.	• Spouse or domestic partner; child or child's spouse or domestic partner; parent or parent's spouse or domestic partner; sibling or step-sibling or the sibling's or step-sibling's spouse or domestic partner; 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	• Effectively the same as FMLA	• An illness, injury, impairment, or physical or mental condition that requires inpatient care in a hopital, hospice, or residential medical care facility; an illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; any period of disability due to pregnancy, or period of absence for prenatal care; or any period of absesnce for the donation of a bodypart, organ, or tissue, including preoperative or diagnostic services, srugery, post-operative treatment, and recovery.

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Notice to Employer of Need for Leave	• 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.	• 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 and the actual or anticiapted timing and duration of leave. Employees may start leave without providing 30 days' notice if the need for leave is not foreseeable. Employees taking unforeseeable 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.

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Amount of Leave	• An eligible 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.	• Paid leave is available for up to 12 weeks. Covered employees may qualify for up to two additional weeks of benefits for limitations related to pregnancy, childbirth, or a related medical condition.
Best Efforts to Not Disrupt	• 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.	• N/A
Amount of Benefits	• 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. For new claims filed on or after January 1, 2026, the maximum weekly benefit will be $1,647.	• Weekly benefits for family-leave insurance are to be payable at 100 percent of the worker's average weekly wage for the portion of the wage that is up to 65 percent of the state average weekly wage, and at 50 percent of the employee's average weekly wage for the portion of the wage that is more than 65 percent of the state average weekly wage. The minimum weekly benefit is 5 percent of the state average weekly wage. The maximum weekly benefit is 120 percent of the state average weekly wage.

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Waiting Period	• Technically a week waiting period before can collect benefits, but PFML weeks always start on Sunday so, for example, a PFML leave that begins the previous Friday would satisfy the waiting period by the next Sunday. The waiting period does not apply in certain situations, including when medical leave is taken upon the birth of a child, family leave is taken for bonding after a child's birth or placement, or family leave is taken for reasons related to a qualified military exigency.	• N/A
Supplementing State Benefits	• 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. Employers must be careful to report these as "supplemental" benefits and not as "vacation" or "PTO."	• Employees are entitled to use any accrued paid leave during a period of PLO leave, to the extent that the total combined amount of accrued paid leave and benefits received by the employee does not exceed an amount equal to the employee's full wage replacement. An employer may, however, permit an employee to use accrued paid leave in addition to receiving PLO benefits, such that the total combined amounts exceed the employee's full wage replacement amount.

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Run Concurrently with FMLA?	• Can run concurrently, but it is possible for the employee to stack FMLA and PFML. 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 eligilbe 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 coverd 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.** • ***Effective January 1, 2026:*** Employers may run leave under FMLA and PFML concurrently, provided that the employer provides written notice to the employe within five (5) business days of the employee's initial request for leave and on a monthly basis for the remainder of the leave year that states: (1) the employer is running the two leaves concurrently, specifying the amount the employee has used and has remaining, as well as the amount of FMLA leave counting against the employee's PFML leave balance; (2) the leave year start and end dates being applied; and (3) that the employee's eligibility for leave under PFML is not impacted by the employer's decision to run the leave concurrently.	• Leave under the Oregon Family Leave Act (OFLA) does not run concurrently with PLO. Family and medical leave runs concurrently with the Family Medical Leave Act (FMLA) leave. However, it is possible for the employee to "stack" FMLA and PLO. For example, the employee can first request and receive FMLA leave and then, after they exhaust their FMLA leave, apply for benefits under PLO. Alternatively, an employee could be eligible for PLO but not yet eligilbe for FMLA, so the employee could use available leave under PLO and then some time later take FMLA after they qualify for FMLA. Another factor here is that some leave that would be coverd by PLO but not FMLA, which would leave the FMLA time still available. Employers cannot require employees to apply for PLO even if the reason is a qualifying one.

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Employer Approves Leave?	• No. The employee applies to the State (Employment Security Department, or "ESD"), the State gathers all the information and records (like medical records), and determines whether the employee qualifies. Employer just accepts ESD's decision	• No.
Can Leave be Taken Intermittently?	• Yes, but the employee will only receive paid benefits if they take at least eight (8) consecutive work hours off at a time.	• Yes, but in no less than whole day increments.

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Reinstatement Rights	• Reinstatement rights only apply to employers with at least 50 Washington employees. The reinstatement rights othewise mirror FMLA eligiblility requirements -- 12 months with this employer, 1250 hours in the previous 12 months with this employer, etc. • ***Effective January 1, 2026:*** Employees are eligible for reinsatement rights after 180 days (6 months) of employment with the employer. In addition, eligibility requirements for these protections are expanded to smaller employers incrementally according to the following timelines: (1) beginning January 1, 2026, employees who have worked for an employer with 25 or more employees will be entitled to job protections; (2) beginning January 1, 2027, employees who have worked for an employer with 15 or more employees will be entitled to job protections; and (3) beginning January 1, 2028, employees who have worked for an employer with 8 or more employees will be entitled to job protections. These protections apply to employees who (1) take leave under PFML, or (2) take unpaid leave under FMLA, if the employee is also eligible for leave under PFML during the same period. Subject to certain exceptions, when an employee is taking unpaid sick leave or temporary disability for pregnancy or childbirth, these job restoration rights will apply, even if the employee did not apply for or receive PFML benefits.	• After taking family or medical leave, an employee has the right to return to their prior job, similar to 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.

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Reinstatement Rights (Cont'd.)	• To be eligible for the above-mentioned job protections, employees must exercise their right to reinstatement on the first scheduled workday after their continuous or combined intermittent leave. For any period of leave that exceeds either two workweeks of continuous leave or 14 workdays of combined intermittent leave, employers must provide the employee with at least five (5) days' written notice of their first scheduled workday, as well as the estimated expiration of the employee's restoration rights.	• N/A

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Health Insurance Coverage Continuation?	• Employers must maintain an employee's health insurance coverage during a period of leave. ***Effective January 1, 2026**, there will be three possible exceptions to this general rule: (1) if the employee is not employed by the employer at the time they file their application for PFML benefits, that employer is not required to continue the employee's health benefits; (2) if the employee is not eligible for the above-described job protections under PFML, then the employee is also not entitled to any health benefit continuation; or (3) if the employee did not timely exercise their right to employment protections under PFML, then they are not entitled to any health benefit continuation.	• Employers must maintain an employee's health insurance coverage during a period of leave.

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Voluntary Plan Instead?	• Employers can create a voluntary plan that replaces the state PFML. The greatest benefit is the ability to coordinate all the applicable paid leaves. Please let us know if additional information regarding voluntary plans would be helpful. Some information published by the State is available here.	• Employers that offer their own family and medical leave insurance benefits that are at least equal to those provided under PFMLI may apply to be exempted from the state program, if they obtain the requisite approval.
Employer Notice Requirements - Posters	• Employers are required to post excerpts or summaries of the pertinent provisions of PFML and information pertaining to the filing of a complaint. Information on PFML is included in the general state-mandated posters. Violations of the posting policy are subject to $100 penalties for each offense.	• Poster must be posted at the jobsite and made available to any remote worker by January 1, 2023, and in any language(s) used to communincate with employees. See Paid Leave Oregon's model notice here.

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Employer Notice Requirements – Individual Form	• 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 witin 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.	• Employers are not required to provide any notice to employees, except access to the above-referenced poster. However, when an employee notifies the employer of some condition that may be covered by PLO and/or their intent to apply for PLO benefits, employers may direct the employee to the above-referenced poster or company policy and/or provide the employee with an individualized letter that summarizes the information they may need to submit their application. A sample letter published by the Oregon Employment Department is available here.

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Record Keeping	• Hours and premiums are reported quarterly to the ESD. 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.	• 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 that include employee contributions and expenses, total hours worked by employees, and the amount of leave taken by employees for the current calendar year and preceding three calendar years. These records must be open for inspection by Employment Department officials upon request.
Anti-Retaliation/ Noninterference Provisions	• Yes. Employees may choose to file a private cause of action or a complaint with the ESD. A private right of action is only available to an employee who (1) has not filed a complaint with ESD; (2) has withdrawn their complaint filed with ESD; or (3) has "resolved" a complaint filed with ESD according to statute. The statute of limitations for a private cause of action or complaint filed with ESD is generally three years.	• 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	• In the event an employer is found liable for a violation of the PFML statute(s) or rule(s), damages owed to the employee may include (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, and/or (c) interest at the “prevailing rate” on damages. If the violation is found to be “willful,” damages may also include liquidated damages equal to the combined amount of damages plus interest. The term “wilful” means a knowing and intentional act that is not accidental or the result of a bona fide dispute.	• “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 PLO benefits. Employers failing to file required reports or pay contributions due for a year by September 1 of that year may be assessed a penalty of 1 percent of wages paid to employees in the preceding year. The department notifies employers of penalties assessed by October 20 of each year. Penalties may be waived for good cause if the employer files required reports and payments. The employer must by November 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	• www.paidleave.wa.gov	• www.paidleave.oregon.gov

This summary is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change, with or without notice. 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.