



ABSENCE ADVISORY

REGULATORY UPDATES FROM
AFLAC'S GROUP LIFE, ABSENCE AND
DISABILITY SOLUTIONS DIVISION



FEBRUARY 2025

We are pleased to share the February 2025 Absence Advisory, along with information related to state and other paid leave legislation.

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IRS GUIDANCE ON STATE-PAID FAMILY AND MEDICAL LEAVE

The IRS has released [Rev. Rul. 2025-4](#) that provides guidance on taxation of contributions and benefits paid under a state-paid family and medical leave (PFML) program, including reporting requirements. This guidance does not apply to private-plan administration or self-funded PFML plans.

TAX ON CONTRIBUTIONS

Employee contributions

- Even though these amounts are withheld from the employee's wages, the contributions satisfy the employee's tax liability under the PFML Act. It should be included in the employee's gross income and wages from a federal employment tax perspective.
- If an employee chooses to itemize their tax deductions, they may deduct their contributions to the state PFML fund as state income taxes to the extent that their deductions do not exceed the state and local tax deduction limit.
- Employers must report the employee's contribution amount on their W-2 form.

Employer contributions

- Contributions required of an employer to a state-paid family and medical leave program will be excluded from employees' gross income and will not be considered wages for employees.
- The employer's contributions may be treated as state excise taxes, which may be taken as a tax deduction by the employer.

- If the employer voluntarily pays for any portion of their employees' contribution amount, they may treat the amount as a compensation deduction. However, these amounts must be considered additional income for the employees and reported as wages on the employees' W-2 forms and will not be treated as employer-funded.

TAX ON BENEFITS

Paid family leave benefits

- Benefit payments must be included in the employee's gross income for federal income tax purposes.
- Benefits do not count as wages for federal employment tax (i.e., FITW, FICA, FUTA) purposes.
- These payments are reported using a 1099 form when payments are \$600 or more aggregately.

Paid medical leave benefits

- The amount attributable to the employee's contribution to the program, including an employer-covered portion, is excluded from the employee's federal gross income and is not subject to federal employment taxes.
- The amount attributable to the employer's contributions must be included in the employee's federal gross income and is subject to federal employment taxes.
- Third-party sick pay reporting rules apply to medical leave benefits.

TRANSITION PERIOD

This revenue ruling is in effect for payments made on or after Jan. 1, 2025. The IRS is designating the 2025 calendar year to be considered a transition period for allowing all parties to adjust to these taxation and reporting elements. During this transition period, certain penalties will not be enforced for errant withholding, payment or information reporting.

For more details, please visit [Rev. Rul. 2025-4](#).



DELAWARE

On Feb. 1, 2025, the Delaware Department of Labor published their [order](#) of the final round of regulations with non-substantive changes for the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave. The public was granted the opportunity to provide comments on the proposed changes to the division at a public hearing. The order goes into effect 10 days from the date of its publication in the Delaware Register of Regulations in accordance with 29 Del.C. §10118(g).

You can locate the final order [here](#).

MAINE

As a reminder, employers should have already registered for the [Maine Paid Family and Medical Leave \(PFML\) portal](#). All employers with at least one Maine-based employee should have started payroll withholding on Jan.

1. The first quarterly wage reports and premium payments are due by April 30, 2025.

Employers can contact the Maine PFML call center at **207.621.5024** between 8 a.m. and 5 p.m., Monday through Friday.

In addition, The Maine Department of Labor has published additional resources for employers for private plan guidance. Employers can access all resources [here](#).

Once an insurance carrier has an approved Maine PFML policy approved by the Bureau of Insurance and DOL, employers can begin applying for an insured private plan through the portal. Employers can also apply for a self-insured plan through the portal.

Maine PFML benefits begin May 1, 2026. For more information, please visit maine.gov/paidleave/.



WASHINGTON

On Jan. 16, 2025, the Washington Employment Security Department filed [CR-103](#) with rules effective Feb. 16, 2025, for the Washington Paid Family and Medical Leave.

This Concise Explanatory Statement is regarding adoption of the following rules:

Proposed WAC Sections and Titles	Effect
WAC 192-500-090: Health care provider.	This amendment would allow naturopaths based in Washington who are licensed under chapter 18.36A RCW to sign medical certifications.
WAC 192-510-031: What are reportable wages for self-employed persons electing coverage?	This amendment would replace gender-specific pronouns used in the example with gender-neutral pronouns. The amendment has no practical impact.
WAC 192-570-050: How are damages and liquidated damages assessed by the department, awarded and paid?	This amendment would set the interest rate for late payments related to employer damages at one percent per month.
WAC 192-610-040: Can an employee backdate an application or a weekly claim for benefits?	This amendment would align timelines related to backdating an application for good cause with operational timelines related to backdating an application for any other purpose.
WAC 192-620-020: What information will the department request from an employee when filing for weekly benefits?	This amendment would align WAC language with statutory language and operational requirements. The amendment has no practical impact.
WAC 192-620-035: When will a weekly benefit amount be prorated?	This amendment would align WAC language with statutory language and operational requirements. The amendment has no practical impact.
WAC 192-800-150: Can an employee designate a representative to act on their behalf?	This amendment would give the department the flexibility to develop processes that would allow for verbal authorization in some cases.
WAC 192-500-200: Pandemic leave assistance.	The proposal would repeal rules related to the pandemic leave assistance grant program, which has expired.
WAC 192-530-100: Are voluntary plans required to pay pandemic leave assistance benefits?	The proposal would repeal rules related to the pandemic leave assistance grant program, which has expired.
WAC 192-610-100: What is the attestation required for an employee claiming pandemic leave assistance?	The proposal would repeal rules related to the pandemic leave assistance grant program, which has expired.

To review the Concise Explanatory Statement, click [here](#). For more information about Washington Paid Family and Medical Leave, click [here](#).

DOL OPINION LETTER FMLA2025-01-A

On Jan. 14, 2025, the DOL published an opinion letter, [FMLA2025-01-A](#), that addresses the designation of leave under the federal Family and Medical Leave Act (FMLA) when both a state-paid PFML and federal FMLA apply to the same absence event. In addition, the opinion letter also addresses whether a covered employer can require the employee to exhaust employer-provided accrued paid leave (e.g., sick, vacation, PTO) if the employee is receiving income-replacement benefits from a state-paid leave program.

REVISITING FMLA SUBSTITUTION RULES

The FMLA rules concerning the use of accrued paid leave during FMLA indicates that one of the following may apply:

1. An employer may allow an employee to choose to apply accrued paid leave concurrent with unpaid FMLA.
2. An employer may require the employee to use accrued paid leave concurrent with unpaid FMLA, except when the employee is receiving full or partial income replacement from a disability benefit plan or workers' compensation. If the employee is receiving partial income replacement from a disability benefit plan or workers' compensation, the employer and the employee may agree, when state law allows, to apply accrued paid benefits to supplement the difference, aka "top up."

The DOL opinion letter clarifies that state-paid leave is treated the same as an employee who is receiving income-replacement benefits from a disability plan or through workers' compensation. Meaning, the employee cannot be required to use accrued paid leave if they are receiving income replacement through a state-paid program. However, the employer and employee may agree to the use of employer-provided accrued paid leave to supplement the difference between applicable benefits to regular income.

Additionally, the DOL opinion letter reinforces that when the reason for leave taken under a state/local paid leave program is a covered reason under FMLA, the time taken must be designated as FMLA if the employee is eligible and has FMLA available.

Don't forget! The FMLA requires that the Rights and Responsibility notice include the employee's right to use accrued paid leave and outline whether it will be optional or required, when applicable. Now is a good time to revisit FMLA policies in employee handbooks and FMLA communications.



These are educational materials only. Employers should consult their own counsel for obligations for state-mandated leave and disability programs. Products and services are provided by Continental American Insurance Company. In New York, products and services are provided by American Family Life Assurance Company of New York. In California, coverage is offered by Continental American Life Insurance Company. Products may not be available in all states and may vary depending on state law.

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