

Oregon Paid Family and Medical Leave

September 8, 2022

11:00 a.m. PT

A recording and a copy of the slides will be sent to attendees.

This content is not to be considered legal advice. We recommend Clients speak with legal counsel specializing in labor and employment law to ensure your organization meets requirements.

This webinar is for you if...

- ✓ You have employees working in Oregon
- ✓ You're trying to understand your OR PFML obligations
- ✓ You are considering an equivalent plan



Maddy Wiggins

Senior Employee Benefits
Representative
Sun Life

We are eager to offer OR PFML and meet your integrated benefit needs. Quoting is now available.

Where to get more information

- Visit us at sunlife.com/pfml and click on Oregon
 - OR PFML overview, milestones and FAQs
 - Recording of today's webinar

What we'll talk about today

- Overview of OR PFML
 - *How OR PFML interacts with unpaid OFLA*
 - *The Equivalent Plan Application Process*
- PFML trends
- Benefits of integration with Sun Life and the continued importance of Short-Term Disability insurance

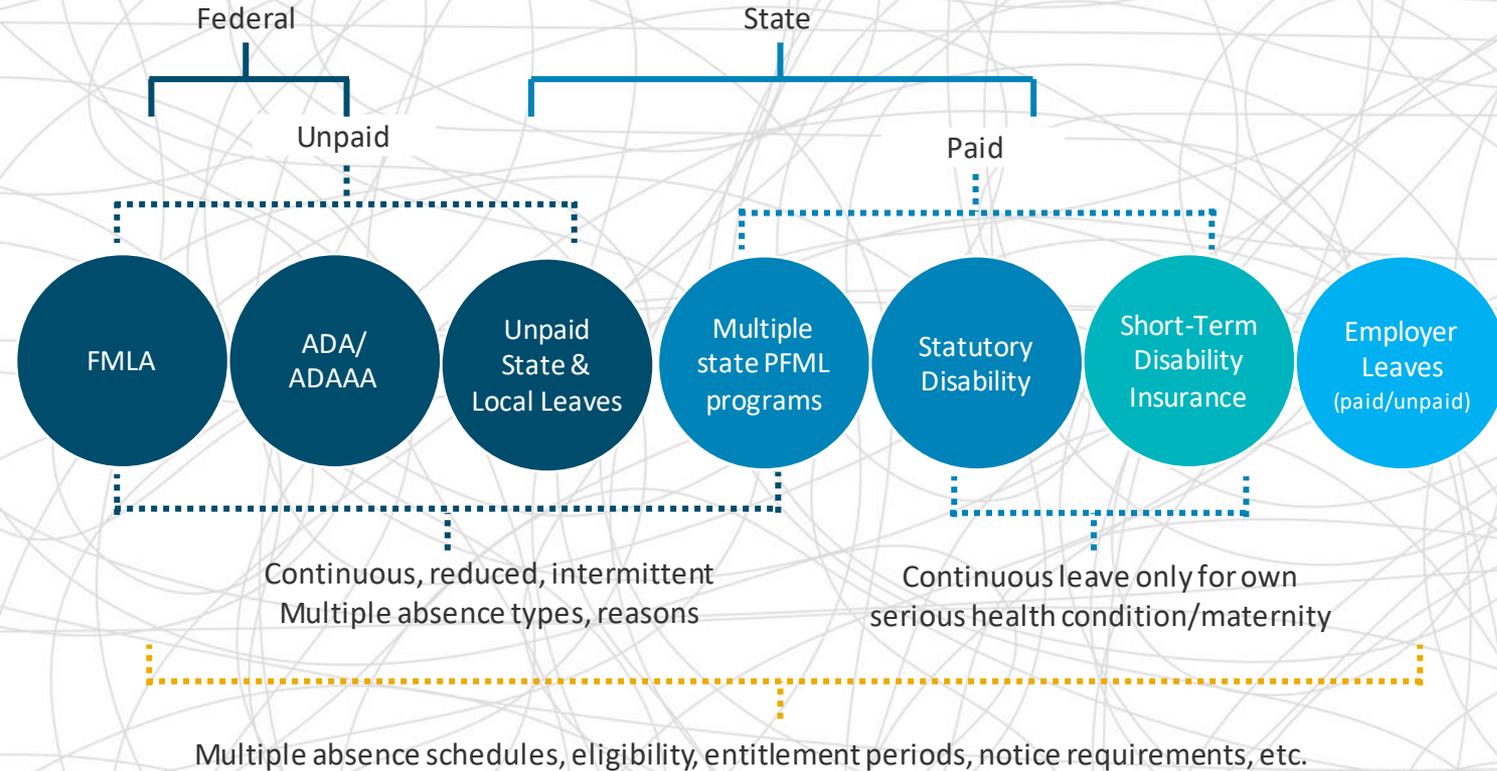


Abigail O'Connell
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Managing and navigating absence is complex



Claims often run concurrently

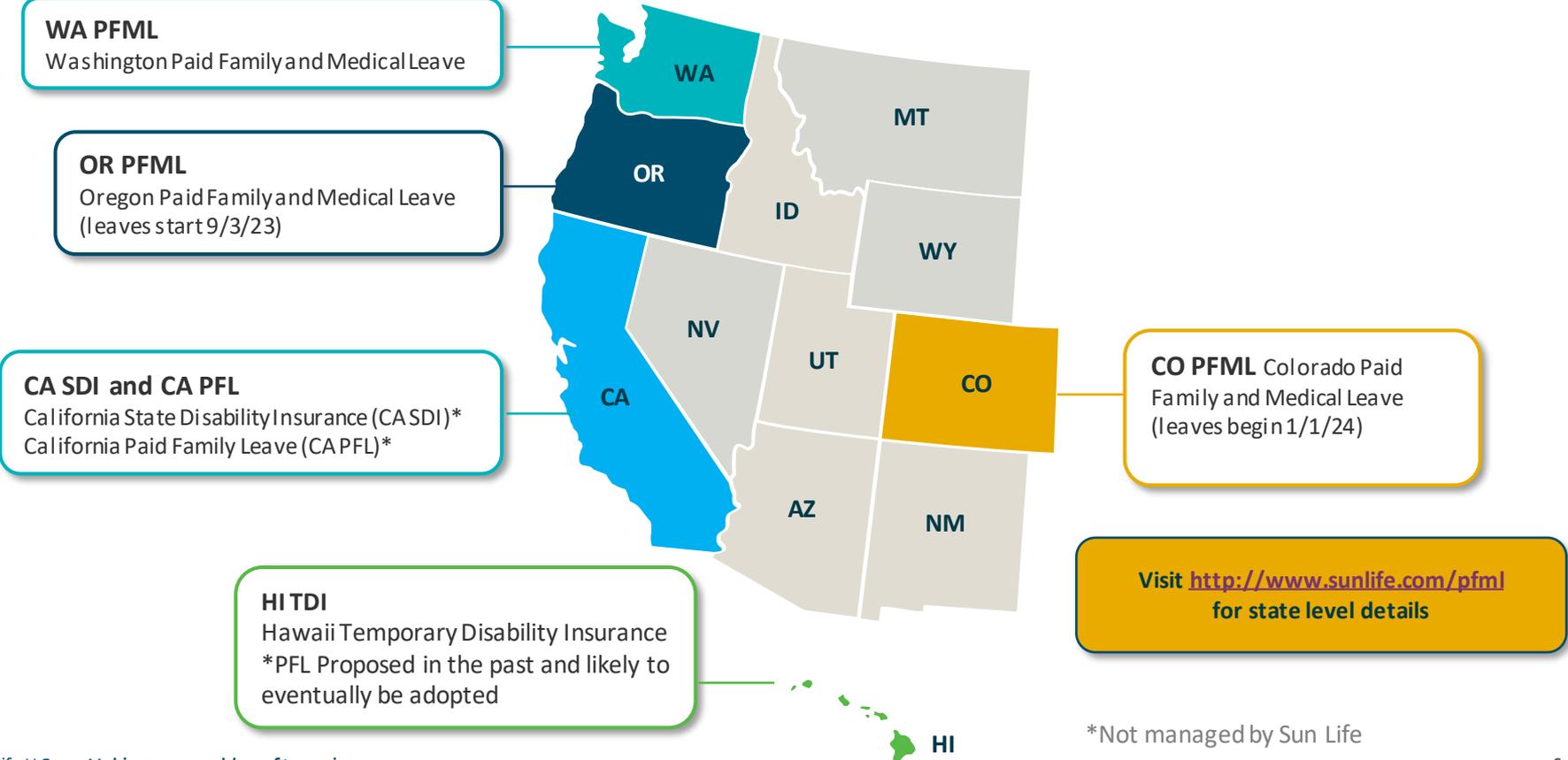
This can be confusing for HR and for employees, leading to:



- Compliance risk
- Potential excess costs
- Dissatisfied Employees
- HR strain

Our solution makes absence easier.

Growth of PFML in western states



OR PFML Milestones

- **August 9**
OR PFML law was passed



- **September 6**
Paid Leave Oregon began taking applications for Equivalent Plans through Frances Online



- **January 1**
Premiums begin – 1% of each employee's wages up to \$132,900



- **May 31**
Last day to submit an Equivalent Plan application to be exempt from paying and remitting contribution payments beginning with the third quarter that starts July 1, 2023



2019

2022

2023



- **November 30**
Last day to submit a Declaration of Intent to the department to be exempt from paying and remitting contribution payments beginning the first quarter that starts January 1, 2023

- **February 28**
Last day to submit an Equivalent Plan application to be exempt from paying and remitting contribution payments beginning with the second quarter that starts April 1, 2023

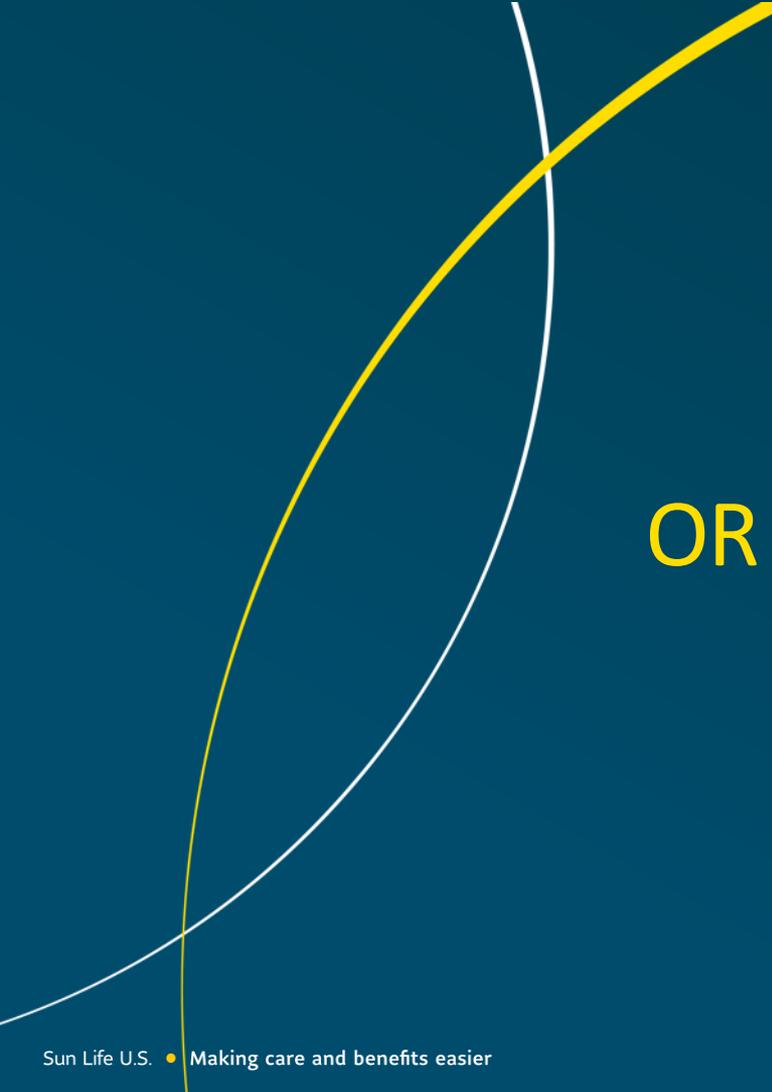


- **September 3**
Benefits are payable



Poll #1

Do you have employees in other states with PFML or statutory paid leave programs?



OR PFML Overview

Oregon Paid Family & Medical Leave at a glance

This information is preliminary – Leaves begin 9/3/23; premium deductions begin 1/1/23

Type of Leave	Annual benefit year allotment
Family and Medical (Employee's own serious health condition, family leave or safe leave)	12 weeks
Limitations related to pregnancy, childbirth, or related medical condition including lactation	+2 weeks
<i>Combined Limit on Job Protection</i> (available in combination of the paid leave under OR PFML and unpaid leave under the Oregon Family Leave Act)	16 weeks
Maximum weekly benefit	120% of SAWW



Employers covered by OR PFML



All private employers, state agencies and local government agencies in the state of Oregon are subject to the law



Self-Employed Individuals or Tribal governments can choose to elect coverage but do not have to participate

Employee eligibility

- Employees are eligible if they have earned at least **\$1,000 in wages** the base year, or alternate base year; and
- Work in Oregon.
 - **Base year** means the first 4 of the last 5 completed calendar quarters preceding the benefit year.
 - **Alternate base year** means the last 4 completed calendar quarters preceding the benefit year.



ADDITIONAL INFORMATION:

- There is no length of employment requirement to receive OR PFML benefits.
- OR PFML is job-protected if the employee has been at their current job for at least 90 days.
- Equivalent plans can also include the requirement to work for 30 days prior to taking leave.
- Equivalent plans can be more generous and may waive the eligibility earnings test and job protection tenure requirement.

Covered reasons for leave

- **Family leave** is available to an EE:
 - To bond with a covered individual's child during the first 12 months after the child's birth, or placement of a child under 18 years of age.
 - To care for a family member with a serious health condition.
- **Medical leave** is available due to EE's own serious health condition.
- **Safe leave** is available when needed due to Domestic Violence, Sexual Assault, Harassment or Stalking.



The definition of serious health condition is similar to that used under the federal FMLA.

What does a Serious health condition mean?

- This is a lower standard than disability.
- Used for medical leave and family leave to care for a family member.
- A serious health condition is an illness, injury, impairment or physical or mental condition involving inpatient care or continuing treatment.
 - Similar to the federal FMLA's definition of serious health condition;
 - Includes any period of disability due to pregnancy or period of absence for prenatal care;
 - Includes any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.

*Edited for clarity following 9/8/22 webinar recording.

More on safe leave

Safe leave is available:

- To seek legal or law enforcement support to ensure the health and safety of the EE or the EE's minor child or dependent, including preparing for and participating in protective order, civil, or criminal proceedings.
- To seek medical treatment for, or to recover from, injuries to EE or the EE's minor child or dependent.
- To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional.
- To obtain services from a victim services provider for the eligible EE or the EE's minor child or dependent.
- To relocate or take steps to secure an existing home to ensure the health and safety of the eligible EE or the EE's minor child or dependent.



Covered family members under OR PFML

- Spouse or **Domestic Partner**
- **Sibling**
- Child
- **Grandparent**
- **Grandchild**
- Parent
- Individual **related by blood or affinity** whose close association with a covered individual is **equivalent of a family relationship**



Intermittent/reduced schedule leave

- ✓ Leave can be taken continuously or intermittently.
- ✓ Intermittent leave can be taken one work-day or work week at a time.
- ✓ When an EE takes leave in less than a full work week, the benefit will be paid on a prorated basis.





How is duration measured?

- The benefit year (or “claim year”) requires the use of a rolling forward 52-week period starting on the Sunday prior to leave.

Who pays the premium in the state plan?



Payments are shared

- EE pays 60%
- ER pays 40% (unless <25 EEs)
 - ERs < 25 EEs nationwide are exempt from remitting premium



Starting 1/1/23 the initial rate will be 1% up to \$132,900 in wages; Rate will be set annually but will not exceed 1%



The maximum amount of employee wages, which premium is assessed against, will be adjusted annually



How does premium funding work for Equivalent Plans?

- ✓ ER's can charge the EE up to 60%, but they can also pay the EE's share in whole or in part.
- ✓ For the private plan, ERs "may" charge EEs for the premium.

A replacement worker who is hired to temporarily replace an EE on OR PFML leave will not be counted as an EE in determining the number of EEs working for an ER

Benefit amounts are based on total wages

The max weekly benefit is **120% of the SAWW** which will be adjusted once per year.

The min weekly benefit is **5% of the SAWW** which will be adjusted once per year.

Two-Tiered Benefit Calculation:

- 100% of the employee's average weekly wages (AWW) for wages up to 65% of the SAWW;
- any amount of the employee's wage that exceeds 65% of the SAWW will be paid at 65% of the SAWW plus 50% of the amount earned over 65% of the SAWW.



AWW is EE's total annual wages divided by 52

Disqualifiers and Offsets

What we know so far

- The OR PFML benefit cannot result in payment of more than 100% of AWW to the EE if the eligible employee is simultaneously covered under more than one employer's plan.
- If the employee is receiving unemployment or WC benefits, they cannot qualify to receive OR PFML concurrently.



Job Protection under OR PFML

- To be eligible for job protection, the EE must have been employed for the ER for at least 90 days before taking leave under OR PFML.
- After returning to work from a period of OR PFML, an eligible EE is entitled to be restored to the same or equivalent position.
 - Equivalent position means a position with equivalent employment benefits, pay and other terms and conditions of employment.
- **For ERs that employ fewer than 25 EEs:** if the position held by an eligible EE when the EE's leave commenced no longer exists, an ER may, at the ER's discretion based on business necessity, restore the eligible EE to a different position with similar job duties and with the same employment benefits and pay.

Health Care Continuation & other protections

- During a period of leave, **the ER must maintain any healthcare benefits** the EE had prior to taking leave for the duration of the leave, as if the EE had continued in employment continuously during the period of leave.
- An eligible EE who has taken leave **does not lose any employment benefits**, including seniority or pension rights, accrued before the date on which the leave commenced.

ERs cannot interfere with an EE's leave rights or discriminate or retaliate against an EE for taking leave.



Employer Notice obligations

- An ER must provide written notice to all EEs of their duties and rights. The notice must explain, at a minimum, the following:
 - The right to claim and receive benefits; the procedure for filing a claim; the EE notice obligations; the penalties for not complying with notice requirements; the right of an eligible EE to job protection and benefits continuation; the right of an eligible EE to appeal a claim decision; the anti-discrimination and anti-retaliation rights included; the right to bring a civil action or file a complaint; and the privacy protection afforded to any health information related to the leave.
- The notice must be provided to an employee in the language the employer typically uses to communicate with the employee. **The director will make model notices available.**



OFLA Persists!

OR Family Leave Act (OFLA) applies to ERs with 25+ EEs in OR

Subject-	Provisions
Eligible Employee	<ul style="list-style-type: none"> • EE who has worked an average of 25 hours per week for 180 days for all leave reasons except parental leave. • For parental leave, EE need only work 180 days.
Family member	Spouse, parent, child (regardless of age), grandparent, grandchild, parent-in-law
Qualifying reasons	<ul style="list-style-type: none"> • To bond with new child • To care for family member with SHC • For the EE's own SHC • To care for child who is suffering from illness, injury or condition that is not a SHC but requires home care (includes child care/remote learning due to school or place of care closure for public health emergency) • To deal with death of a family member (w/in 60 days of notice of death) by: <ul style="list-style-type: none"> – Attending funeral or alternative to a funeral of family member – Making arrangement necessitated by death of family member or – Grieving death of family member
Amount of leave	<ul style="list-style-type: none"> • 12 weeks of leave which can include 2 weeks per death of each family member • Female EE may also take 12 weeks within any one-year period for an illness, injury or condition related to pregnancy or childbirth that disabled EE from performing job (in addition to 12 weeks for other leave) • EE who takes 12 weeks of family leave to bond with new child can also take another 12 weeks to care for a sick child
Married couple rule	If both work for same ER, they may not take concurrent family leave unless one EE has a SHC, child is suffering from SHC, leave is for death-related reasons, or ER allows it.
Job Protection/ Health Care Continuation	Provides job protection and right to continuation of health benefits

OR PFML and OFLA Leave Reason and Eligibility Comparison

OR PFML Leave Reasons	OFLA Leave Reasons	OR PFML Eligibility	OFLA Eligibility
Own Serious Health Condition	Own Serious Health Condition	Employees	Employees
Care for a Family Member	Care for a Family Member	EEs are eligible if they have earned at least \$1,000 in wages the base year, or alternate base year.	EE who has worked an average of 25 hours per week for 180 days for all leave reasons except parental leave. For parental leave, EE need only work 180 days.
Bonding	Bonding	To be eligible for Job Protection, the employee must have been employed for the ER for at least 90 days before taking leave.	Job protected.
Safe Leave	Sick Child Leave	Employers	Employers
	Bereavement Leave	Must have at least 1 employee.	Must have at least 25 employees.

Benefit durations (paid and unpaid)

OR PFML PAID BENEFITS (STARTING 9/3/23):



- A combined total of 12 weeks for all covered reasons in any 12-month period
- Additional 2 weeks for limitations related to pregnancy, childbirth or a related medical condition, including lactation

OR UNPAID OFLA:



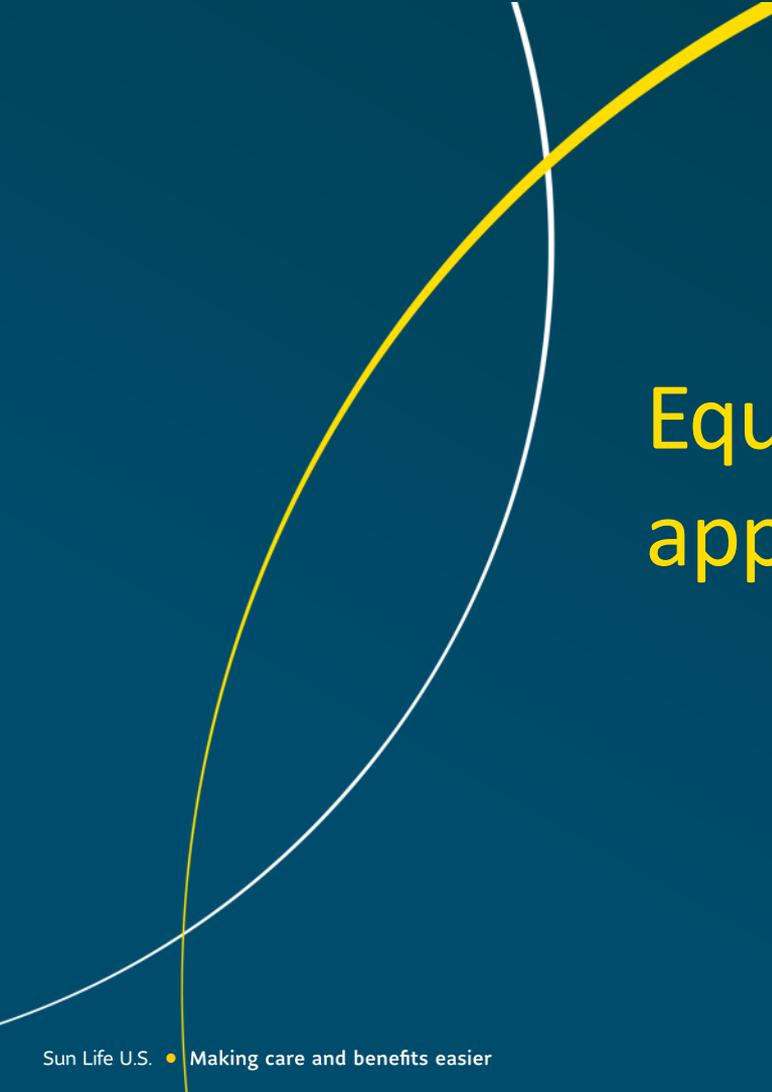
- Under OFLA, you can take up to a total of 12 weeks* of time off per leave year for any of these reasons:
 - Parental leave
 - Serious health condition
 - Pregnancy disability leave
 - Sick child leave
 - Bereavement leave (up to 2 weeks)*

Leave under OR PFML and OR FLA is subject to a 16-week combined limit

- The 16-week limit runs Rolling-Forward, based on the first usage of OR PFML.
 - The period during which the combined limit applies is not “set” until an employee takes time under OR PFML and their rolling forward 52 week leave year is established.
 - OFLA time used for leave reasons that are not also covered under OR PFML (i.e., bereavement & sick child) will not trigger the 16-week limit but will count towards the limit if used after an OR PFML Entitlement Period has been established.
 - Also notable, the 16 week limit does not limit the use of OFLA, it only limits the employee’s use and entitlement to OR PFML. For example, an employee not eligible for OFLA, but eligible for OR PFML can use up their OR PFML and still have time available under OFLA.
 - The 16-week limit does not include time used under Oregon Military Family Leave.

Poll #2

**Will you seek an
Equivalent Plan for OR PFML?**

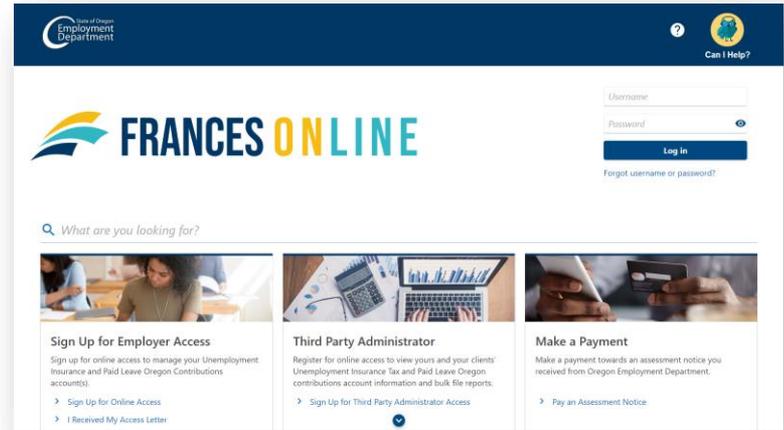


Equivalent plan exemption application process

Oregon PFML Private Plan Submission

What we know so far

- Private plan submission through Frances Online began 9/6/2022
- The state anticipates needing 30 days to review and respond to an application
- An application fee of \$250 will apply
 - A renewal fee of \$150 will apply
 - Employers must reapply for approval every year for three years or when the plan changes
- Employers will provide Sun Life with proof of exemption approval
- Tools and Resources:
 - [Equivalent Plan Checklist](#)
 - [Equivalent Plan Guidebook](#)



Establishing an Equivalent plan

- If approved before November 30, 2022, the ER will not be required to remit ER or EE contributions to the state plan.
 - The ER may deduct EE contributions to fund an equivalent plan, provided the contributions do not exceed the amount the EE would remit under the state plan. Any contributions taken by the ER to fund an equivalent plan must be used for plan expenses and are not considered ER assets.
- ERs offering equivalent plans are required to meet reporting, notice, records, job protection and benefits continuation requirements.
- If an employer completes a Declaration of Intent but does not end up with an approved equivalent plan in effect on September 3, 2023, they will be liable for all contributions as of Jan 1, 2023.



PFML trends

Comparing CO PFML, OR PFML & WA PFML

	CO PFML	OR PFML	WA PFML
Private or Equivalent Plans available?	Yes, Fully Insured or Self-Insured	Yes, Fully Insured or Self-Insured	Yes, only Self-Insured available currently
Benefit durations	<ul style="list-style-type: none"> • 12 weeks of family and medical leave • 4 additional weeks available for employees incapacitated by a serious health condition during pregnancy 	<ul style="list-style-type: none"> • 12 weeks of family and medical leave • 2 additional weeks available for pregnancy, childbirth or a related medical condition, including lactation 	<ul style="list-style-type: none"> • 12 weeks for family leave • 12 weeks for medical leave • Up to 16 weeks combined max • Additional 2 weeks for pregnancy incapacity • Up to 7 calendar days for child bereavement
Job protection	Yes, for employees with 180+ days employment with their current employer.	To be eligible for job protection, the employee must have been employed for the employer for at least 90 days before taking leave under OR PFML.	Yes, Job Protection applies with slightly lower threshold for tenure and hours in a voluntary plan.

Comparing CO PFML, OR PFML & WA PFML

	CO PFML	OR PFML	WA PFML
Funding	Premium shared by ER and EE in all three state programs		
Leave reasons	<ul style="list-style-type: none"> • Bonding with EE’s newborn, newly adopted or newly placed foster child; • Caring for a family member with a serious health condition; • Employee’s own serious health condition; • For a qualifying military exigency; or • For safe leave, which is leave needed because either the employee or family member is a victim of domestic violence or abuse, sexual assault or abuse, or stalking of either the employee or a family member 	<ul style="list-style-type: none"> • Bonding with a covered individual’s child during the first 12 months after the child’s birth, or placement of a child under 18 years of age; • Care for a family member with a serious health condition; • Employee’s own serious health condition; or • Safe leave when needed due to Domestic Violence, Sexual Assault, Harassment or Stalking 	<ul style="list-style-type: none"> • Bonding (birth, adoption, or foster-care placement); • Care for a family member with a serious health condition; • Employees own serious health condition; • Child bereavement within a year of the birth or the placement of the child for adoption or foster care; • Qualifying military exigency as defined by the federal FMLA

Comparing CO PFML, OR PFML & WA PFML

	CO PFML	OR PFML	WA PFML
Covered family members	<ul style="list-style-type: none"> • Spouse or domestic partner • Child • Parent or the parent's of spouse or domestic partner • Grandchild of the employee or of their spouse or domestic partner • Sibling of the employee or of their spouse or domestic partner • any other individual with whom the employee or covered individual has a significant personal bond that is or is like a family relationship regardless of biological or legal relationship. 	<ul style="list-style-type: none"> • Spouse or domestic partner • Child or the Child's spouse or domestic partner • Parent or the parent's spouse or domestic partner • Grandparent or the grandparent's spouse or domestic partner • Grandchild or the grandchild's spouse or domestic partner • Sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner • any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. 	<ul style="list-style-type: none"> • Spouse or domestic partner • Child or the Child's spouse or domestic partner • Parent or parent's spouse or domestic partner • Grandchild • Grandparent • Sibling • any individual who regularly resides in the employee's home or where relationship creates an expectation that the employee care for person and that individual depends on the employee for care.



Integration and the continued importance of Short-Term Disability

How PFML and Short-Term Disability work together to close coverage gaps

Interaction of OR PFML with other benefits



ER benefits

- Covered EEs **may receive OR PFML benefits concurrently with ER benefits** provided total compensation does not exceed the EE's regular rate of compensation
- **OR PFML is primary and pays first.** ERs can allow "top ups"



Worker's compensation benefits

- A covered EE **is not eligible** for OR PFML benefits if receiving worker's compensation

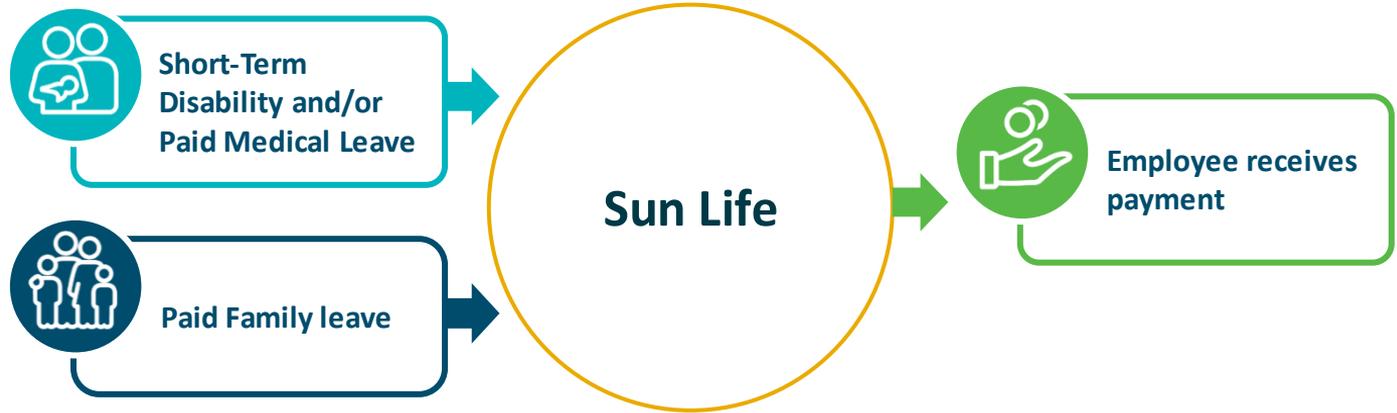


Unemployment compensation benefits

- A covered EE **is not eligible** for OR PFML benefits if receiving unemployment compensation

The most immediate benefit to employee: a single entity manages the whole claim process

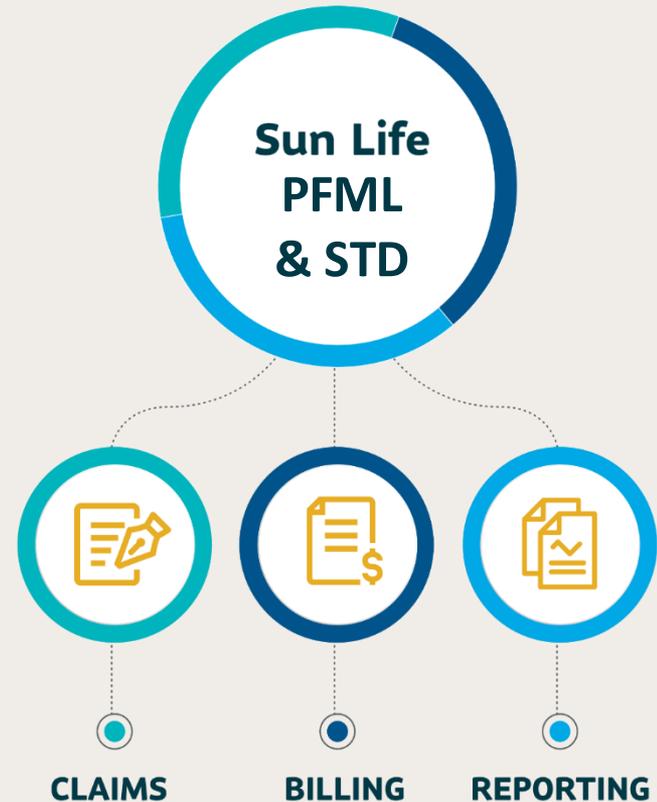
As your administrator, we will pay/advise of the full benefit amount the employee is eligible to receive. This means the employee will not have to seek payment from the state for any paid leave benefits and will only receive benefit payments from the Sun Life voluntary plan (or the employer if self-insured with no check cutting).



- ✓ Single claim intake for STD/PML or PFL
- ✓ One certification form
- ✓ One claim number
- ✓ One integrated case specialist
- ✓ Integrated communications

More benefits of having Sun Life administer PFML for employees

- ✓ **Coordination** between PFML and Short-Term Disability AND PFML and Absence Management Solutions, if applicable
- ✓ **Robust reporting**
- ✓ **Excellent claims management** and access to return to work services
- ✓ **Compliance guidance** on PFML and other leave issues



How PFML plans & Short-Term Disability work together

It will be important for employees to know:

How much their benefits will pay . . .

For an employee's own serious health condition *that is also a disability*, the amount of the PFML benefit will likely reduce their Short-Term Disability benefit

- The PFML plan pays first, up to a maximum benefit
- The Short-Term Disability benefit may adjust for (“offset”) the statutory benefit
- This means the Short-Term Disability benefit may provide an additional amount on top of the PFML benefit (depending upon the employee's income and the specifics of the plan)
- Many carriers have reduced or are reducing the cost of Short-Term Disability premium in response to the offset

. . . and for how long

- In the event an employee exhausts their PFML benefits in a given benefit period, Short-Term Disability may still be available to them

This approach for coordination of benefits, if allowed by the policy, is true whether the PFML benefits are administered by Sun Life or the OR state plan

Do employees still need Short-Term Disability?

Yes, to prevent gaps in coverage

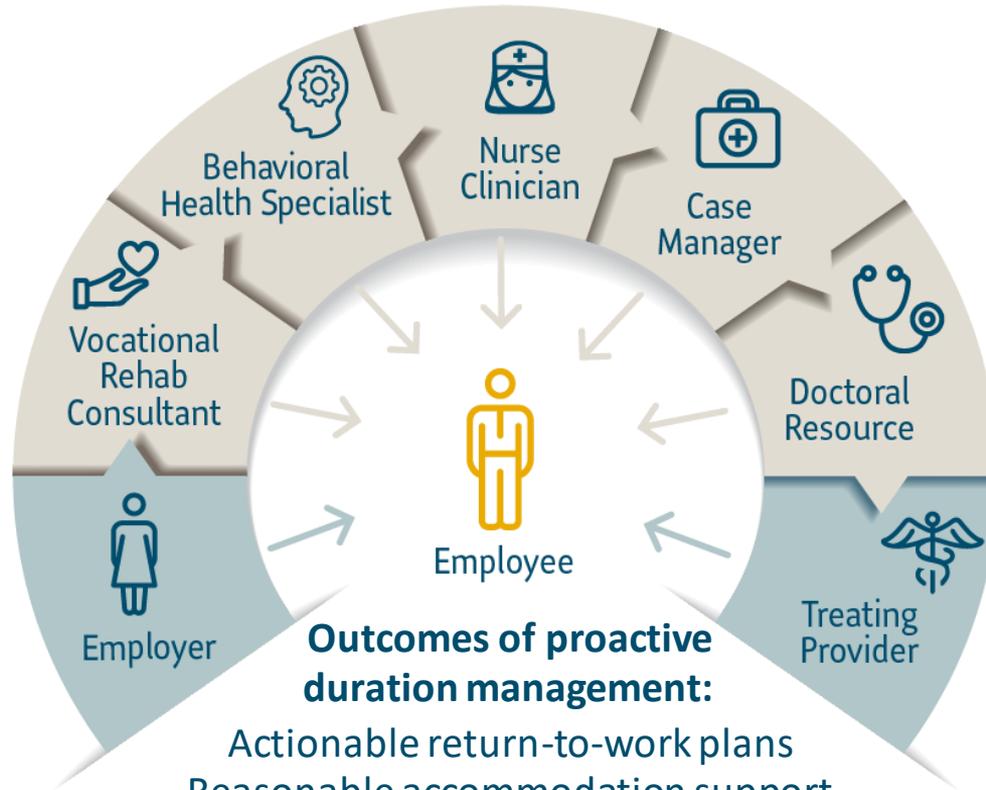
Dropping coverage may leave EEs without sufficient protection if they become disabled

Evaluation Issue	Consideration
There is a benefit cap per week under PFML	<ul style="list-style-type: none">• If you have higher earners, your STD benefits may provide more suitable benefits for those persons
The allotments of paid leave often have shared or combined maximums	<ul style="list-style-type: none">• There is a maximum of PFML that generally can be taken• In OR, if an EE takes 12 weeks PFL, the EE will have no paid medical leave left
PFML laws allow leave to be taken intermittently	<ul style="list-style-type: none">• Because PFML can be taken intermittently, an EE could exhaust available paid leave benefits and not have benefits if EE subsequently becomes totally disabled• EEs may not be adequately protected without private Short-Term Disability

Disability policies and programs provide additional benefits like return-to-work benefits

Sun Life's clinical model for complex claims

Interdisciplinary team collaborates early to build an individualized action plan



EE receives foundational support from ER and treating provider

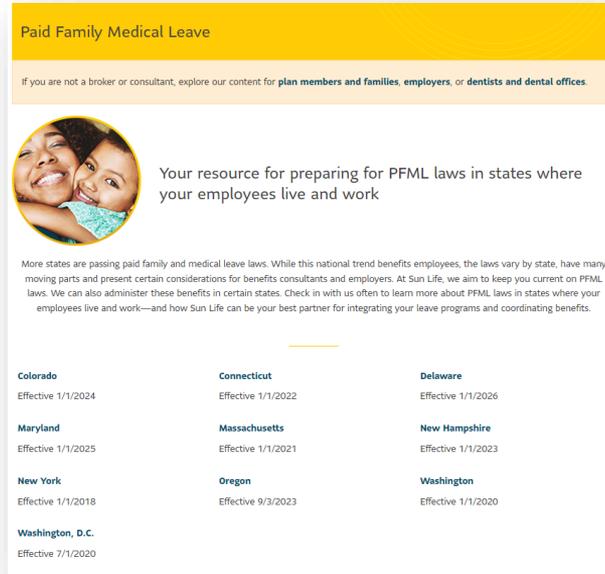
Outcomes of proactive duration management:

- Actionable return-to-work plans
- Reasonable accommodation support
- Return to productivity

More sources of information about OR PFML

Visit us at sunlife.com/pfml

- Click on Oregon or any other state
- A recording of this webinar will be posted to the Oregon page



Paid Family Medical Leave

If you are not a broker or consultant, explore our content for **plan members and families, employers, or dentists and dental offices.**

Your resource for preparing for PFML laws in states where your employees live and work

More states are passing paid family and medical leave laws. While this national trend benefits employees, the laws vary by state, have many moving parts and present certain considerations for benefits consultants and employers. At Sun Life, we aim to keep you current on PFML laws. We can also administer these benefits in certain states. Check in with us often to learn more about PFML laws in states where your employees live and work—and how Sun Life can be your best partner for integrating your leave programs and coordinating benefits.

Colorado Effective 1/1/2024	Connecticut Effective 1/1/2022	Delaware Effective 1/1/2026
Maryland Effective 1/1/2025	Massachusetts Effective 1/1/2021	New Hampshire Effective 1/1/2023
New York Effective 1/1/2018	Oregon Effective 9/3/2023	Washington Effective 1/1/2020
Washington, D.C. Effective 7/1/2020		



For information about Sun Life products and services, contact your Sun Life Employee Benefits Representative or your Client Relationship Executive. You may also call Client Services Support at 800-247-6875, Mon - Fri, 8 a.m. to 8 p.m. ET.

Consider Sun Life for equivalent plan administration of your OR PFML plan alongside your already existing group benefits policy with us.



Thank you

This webinar is not intended to provide and should not be considered legal advice. We recommend Clients speak with legal counsel specializing in labor and employment law to ensure your organization has met all of the requirements under the Oregon Paid Family & Medical Leave (PFML) Act, and other applicable leave laws, including but not limited to the federal FMLA and the Oregon Family Leave Act. When available, Sun Life's fully insured OR PFML coverage will be issued by Sun Life Assurance Company of Canada (Wellesley Hills, MA). Sun Life's self-funded or administrative-services-only OR PFML solution will be administered by Sun Life Assurance Company of Canada (Wellesley Hills, MA). This service is not insurance.

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PFMLPPT-955-a

SLPC 31787 09/22 (exp 09/23)

Appendix

Method for determining # of EEs: 471-070-3160

- Size calculated by # of EEs on OR quarterly tax report, which is the sum of EEs who pay OR taxes and out of state EEs minus any temporary workers hired to replace someone on leave.
 - For calendar year 2023, ER size will be determined by April 30th based on the 1st quarter tax report of 2023.
 - For calendar year 2024, ER size will be determined on or before September 20, 2023 based on the average EE counts from the first and second quarter's tax reports.
 - For calendar years beginning on or after January 1, 2025, the ER size is determined on or before Sept. 30 each year for the following year by averaging the EE counts on quarter tax reports for the preceding 4 completed quarters.

What notice is required to take leave?

- **For foreseeable leave:** an ER may require an EE to provide written notice of the need for leave at least 30 days before the start of family, medical or safe leave.
- **For unforeseeable leave:** the EE may begin leave without 30 days' advance notice.
 - If the EE begins leave without prior notice, the EE must give oral notice to the ER within 24 hours of the start of the leave and must provide written notice within three days of the start of the leave.
 - Failure to give notice can result in the first weekly benefit amount being reduced by up to 25%.
 - For safe leave, the employee is obligated to give reasonable advance notice that he or she intends to take safe leave, unless giving advance notice is not feasible.

Notably, these are notice requirements to the Employer; most insurers and administrators do not require advance notice in their administration of benefits.