# Paid Family and Medical Leave Insurance

## (Payroll Tax in Funding the Program)

Legislative Revenue Office

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# Paid Family Leave in the U.S.

- Congressional Research Service – Updated May 29, 2019
  https://crsreports.congress.gov/product/pdf/R/R44835
- Paid family leave (PFL) – partially or fully compensated time away from work for specific and generally significant family caregiving needs (e.g. new child, serious illness of a close family member)
- The Family and Medical Leave Act (FMLA) of 1993 provides eligible workers with a federal entitlement to unpaid leave for a limited set of family caregiving needs
- No federal law requires private-sector employers to provide paid family leave of any kind
- Some employers offer PFL; eight states and D.C. either offer state PFL or in the process of creating one (Connecticut and Oregon in 2019)

## Table 2. State Family Leave Insurance Program Provisions as of May 2019 *

| State and Year Program Took Effect | Qualifying Events | Benefit Formula | Maximum Benefit in 2019 | Weeks of Benefits | Eligibility | Financing[a] | Job Protection for Benefit Recipients[b] |
|---|---|---|---|---|---|---|---|
| California<br>2004 | Arrival of a new child by birth, adoption, or foster care.<br>Serious health condition of a close family member.[c]<br>(California also provides temporary disability benefits to workers for wage loss related to their own medical conditions through a state disability insurance program.) | Benefits are paid weekly and are calculated as a percentage of the worker's recent weekly earnings (approximately 60%-70%), up to a maximum amount determined annually; minimum benefits are $50 per week.<br>For a four-year period that started on January 1, 2018, wage replacement rates are based on whether the worker's wages are at or above or below one-third of the state average wage, with workers with lower earnings receiving higher replacement rates. | $1,252 per week. | 6 weeks for family care. | Worker has earned $300 in wages in California that were subject to the insurance tax over the worker's "base period."[d] | Payroll tax on employees.<br>1% SDI Tax on Employees | No |
| District of Columbia<br>Contributions start July 2019 and benefits payable in July 2020. | Arrival of a new child by birth, adoption, or foster care.<br>Serious health condition of a close family member.[c]<br>Worker's own serious medical condition. | For workers with average weekly wages less than or equal to 150% of 40 hours compensated at the DC minimum wage (i.e., "DC minimum weekly wage"), benefits are 90% of the worker's average weekly wage. For workers with average weekly wages above this threshold, benefits are 150% of the DC minimum weekly wage plus 50% of the average amount earned above the DC minimum weekly wage, up to a maximum amount. | N/A—First benefit payments will be in July 2020, when the maximum benefit will be $1000 per week. | 8 weeks, of which up to 8 weeks may be for parental leave, up to 6 weeks for family leave, and up to 2 weeks for the worker's own medical leave. | In general, at least 50% of work occurs in the District of Columbia for a covered DC-based employer. Has been a covered employee for at least one week during the 52 calendar weeks preceding the qualifying event for leave. | Payroll tax on covered employers, which does not include the federal government.<br>0.62% Tax on Employers | No |

*https://crsreports.congress.gov/product/pdf/R/R44835

| State and Year Program Took Effect | Qualifying Events | Benefit Formula | Maximum Benefit in 2019 | Weeks of Benefits | Eligibility | Financing[a] | Job Protection for Benefit Recipients[b] |
|---|---|---|---|---|---|---|---|
| Massachusetts<br>Contributions start July 2019 and benefits payable in January 2021. | Arrival of a new child by birth, adoption, or foster care.<br>Serious health condition of a close family member.[c]<br>Needs related to the military deployment of a close family member.<br>The care of a military family member with a serious illness or injury (i.e., military caregiver leave).<br>Worker's own serious medical condition (i.e., medical leave). | Workers whose average weekly wage is 50% or less than the state average weekly wage receive 80% of their average weekly wage, up to $850/week. Otherwise, workers receive 50% of their average weekly wage, up to $850/week.<br>The maximum benefit is adjusted annually on October 1 to be 64% of the state average weekly wage, taking effect on January 1 of the following year. | N/A—First benefit payments will be in January 2021, when the maximum benefit will be set at $850 per week. | 26 weeks total, of which 12 weeks may be used for the arrival of a new child, a close family member's serious health condition, or a close family member's deployment needs; 26 weeks may be used for military caregiver leave; and 20 weeks for the worker's own medical leave. | Meets the financial eligibility for receiving unemployment insurance (i.e., received wages during the base period that total at least 30 times the weekly UI benefit rate).<br>Former employees must meet the same financial eligibility criteria and have separated from employment for no more than 26 weeks. | Family leave (i.e., leave for all qualifying events except the worker's own medical needs) is financed by a payroll tax on employees.<br>Medical leave is financed by a payroll tax on both employees and employer if the employer has at least 25 employees. Employers with fewer than 25 employees are exempt from contributions. | Yes, with some exceptions (e.g., changes in business operations that are independent of a worker's leave status). |

Sharing – a bit Complicated*

*https://www.mass.gov/info-details/family-and-medical-leave-contribution-rates-for-employers#contribution-rate-split-for-employers-with-25-or-more-covered-individuals-

| State and Year Program Took Effect | Qualifying Events | Benefit Formula | Maximum Benefit in 2019 | Weeks of Benefits | Eligibility | Financing[a] | Job Protection for Benefit Recipients[b] |
|---|---|---|---|---|---|---|---|
| New Jersey 2009 | Arrival of a new child by birth, adoption, or foster care.<br>Serious health condition of a close family member [c]<br>Needs related to domestic or sex violence to the employee or a family member.<br>(New Jersey also provides temporary disability benefits to workers for wage loss related to their own medical conditions through a state disability insurance program) | Approximately 67% of average weekly wage (based on earnings in the eight calendar weeks immediately prior to the week in which the leave begins), up to a maximum amount.<br>Effective July 1, 2020, 85% of average weekly wage, up to a maximum weekly benefit of 70% of the statewide average weekly wage. | $650 per week. | Six weeks for family care. Effective July 1, 2020, 12 consecutive weeks for family care (or 56 intermittent days of caregiving). | At least 20 calendar weeks in which the worker has covered New Jersey earnings of $172, or the worker has earned at least $8,600 in covered New Jersey employment in the 52 calendar weeks preceding the week in which leave began. | Payroll tax on employees.<br>0.08% Tax on Employees | No.[e] |
| New York Program phase-in started in 2018. It will be fully implemented in 2021. | Arrival of a new child by birth, adoption, or foster care.<br>Serious health condition of a close family member.[c]<br>(New York requires covered employers to provide temporary disability benefits to workers who are unable to work due to disability.) | Benefits are calculated as a percentage of the employee's average weekly wage, up to a maximum amount determined by the product of the replacement rate in a given year and the New York average weekly wage. Replacement rates are scheduled to be 55% in 2019, 60% in 2020, and 67% in 2021. | $746.41 per week. | 10 weeks in 2019 and 2020, and 12 weeks starting in 2021. | Full-time employment for 26 weeks or 175 days of part-time employment. | Payroll tax on employees.<br>0.27% Tax on Employees | Yes |

| State and Year Program Took Effect | Qualifying Events | Benefit Formula | Maximum Benefit in 2019 | Weeks of Benefits | Eligibility | Financing[a] | Job Protection for Benefit Recipients[b] |
|---|---|---|---|---|---|---|---|
| Rhode Island<br>2014 | Arrival of a new child by birth, adoption, or foster care.<br>Serious health condition of a close family member.[c]<br>(Rhode Island also provides temporary disability benefits to workers for wage loss related to their own medical conditions through a state disability insurance program.) | 4.62% of wages received in the highest quarter of the worker's base period (i.e., approximately 60% of weekly earnings), up to a maximum.[d] The minimum weekly benefit is $98. In some cases the worker may receive a dependency allowance. | $852 per week. | 4 weeks for family care. | In general, to be eligible a worker must have earned wages in Rhode Island, paid into the insurance fund, and earned at least $12,600 in the base period; a separate set of criteria may be applied to persons earning less than $12,600.[d] | Payroll tax on employees.<br>1.1% Tax on Employees | Yes |
| Washington<br>Contributions start January 2019 and benefits payable starting January 2020. | Arrival of a new child by birth, adoption, or foster care.<br>Serious health condition of a close family member.[c]<br>Needs related to the military deployment of a close family member.<br>Worker's own serious medical condition (i.e., medical leave). | Workers whose average weekly wage is 50% or less than the state average weekly wage receive 90% of their average weekly wage. Otherwise, workers receive approximately 25% of the state average weekly rate plus 50% of their average weekly wage, up to a statutory maximum amount.<br>The minimum benefit is $100 per week or the full weekly wage for employees with an average weekly wage below $100 per week. The maximum weekly benefit in January 2020 is $1,000; this maximum will be adjusted annually in September of each year. | N/A—First benefit payments will be in January 2020, when the maximum benefit will be set at $1000 per week. | In general, 16 weeks, of which family leave may be no more than 12 weeks, and medical leave may be no more than 12 weeks.<br>Benefits may be extended to 18 weeks (i.e., 2 additional weeks of medical leave) if an employee's pregnancy results in incapacity. | Worked at least 820 hours of employment during the qualifying period.[d]<br>Federal employees are not covered. | If the employer has at least 50 employees, leave is jointly financed by employees and the employer; otherwise, it is employee-financed. | Only for employees that meet certain conditions. |

Sharing -
0.4% Tax on Employers (63.33% of 0.4%) and Employees (rest)

# Oregon’s Paid Family and Medical Leave

- HB 2005 (2019) creates Oregon’s Paid Family and Medical Leave (PFML) insurance program
- Provides eligible employees compensated time off from work for specified purposes (family leave, medical leave, safe leave)
- Allows Oregon Employment Department (OED) either to administer the program or contract with a third party
- Directs OED to set the contribution rate to the program at up to one percent of wages
- Specifies that the contribution be made by employees (60% of total) and employers (40%) through payroll deduction
- Exempts certain employers from contribution

# HB 2005 (2019) Revenue Impact

**Revenue Impact (in $Millions):**

| | Biennium | | |
|---|---|---|---|
| | 2019-21 | 2021-23 | 2023-25 |
| **Total Contribution to Family and Medical Leave Insurance Fund** | **$0.0** | **$1,571.9** | **$2,246.5** |
| By Employers (40%; Excludes Exempt Employers) | $0.0 | $542.3 | $775.0 |
| By Employees (60%) | $0.0 | $1,029.6 | $1,471.5 |

Note: The impact analysis here assumes a **one percent** contribution rate, the maximum rate allowed within the measure, throughout the analysis horizon.

# More on Contribution

- Employers contribute 40% of the total rate set by the OED Director; the remaining 60% by employees - the rate is applied to employee wages
- Employers may pay employees' portion as an employer-offered benefit; employers with PFML-equivalent plans do not have to contribute
- Employers with fewer than 25 employees are exempt from paying the employer portion of the contribution - but, if such employers pay into the program, they are eligible for grants to help cover the cost of replacement workers
- Employees of exempt employers are still required to contribute their share and are eligible for PFML benefits
- Self-employed individuals and tribal government employers can opt into the program

# Rates Will Vary, Reflecting Program Costs

- The impact analysis assumes a one percent contribution rate, the maximum rate allowed within the measure
- However, the measure allows OED to set contribution rates below one percent, reflecting the specified fund balance needs
- The measure requires the fund balance to be enough to pay at least six months of benefits
- On top of the contributions to the fund as inflow, the outflow of funds in the form of benefit payments and other costs will also come into play in deciding the adequacy of the fund balance

# Contributions and Benefit Payments

- Contributions to the fund do not begin until January 1, 2022 - as a result, the revenue impact for the 2021-23 reflects 18 months of the biennium
- The contributions are expected to grow around 4% annually, in line with similarly projected nominal wage growth rates that are consistent with the June 2019 Quarterly Economic and Revenue Forecast
- Benefit payments will not start until January 1, 2023 allowing the fund balance to grow
- Benefits are capped as specified in the measure but also have floors for minimum payments
- As is the case in the unemployment insurance trust fund management, the contribution rate can fluctuate depending on funding needs and conceivably be set below the maximum one percent rate

# Appendix

## Funding Paid Family Leave in the U.S. (as of September 2019)

- Paid family leave (PFL) – partially or fully compensated time away from work for specific and generally significant family caregiving needs (e.g. new child, serious illness of a close family member)
- The Family and Medical Leave Act (FMLA) of 1993 provides eligible workers with a federal entitlement to unpaid leave for a limited set of family caregiving needs
- No federal law requires private-sector employers to provide paid family leave of any kind
- Some employers offer PFL; eight states and D.C. either offer state PFL or in the process of creating one (Connecticut and Oregon passed bills in 2019)

### California - https://www.edd.ca.gov/Payroll_Taxes/What_Are_State_Payroll_Taxes.htm

State Disability Insurance (SDI) Tax

The State Disability Insurance (SDI) program provides temporary benefit payments to workers for non-work-related disabilities. SDI tax also provides Paid Family Leave (PFL) benefits. PFL is a component of SDI and extends benefits to individuals unable to work because they need to care for a seriously ill family member or bond with a new child.

SDI is a deduction from employees' wages. Employers withhold a percentage for SDI on the first $118,371 in wages paid to each employee in a calendar year.

The 2019 SDI tax rate is 1.00 percent (.010) of SDI taxable wages per employee, per year. SDI is set by the California State Legislature and may change yearly. This includes the rate for PFL. The maximum tax is $1,183.71 per employee, per year ($118,371 x .010).

### Washington D.C. - https://does.dc.gov/page/about-dc-office-paid-family-leave

For Employers

Private sector employers in the District will pay a .62% tax beginning July 1, 2019 to fund the paid-leave benefit. The Paid Family Leave tax is 100% employer-funded and may not be deducted from a worker's paycheck.

The first collection of PFL employer contributions begins July 1, 2019, for wages paid to covered workers from April 1 through June 30.

## Massachusetts - https://www.mass.gov/info-details/family-and-medical-leave-contribution-rates-for-employers#contribution-rate-split-for-employers-with-25-or-more-covered-individuals-

Beginning Oct. 1, 2019, most Massachusetts employers will be required to make payroll withholdings on behalf of their workforce in compliance with the Paid Family and Medical Leave law. These withholdings are based on contribution rates set by the Department of Family and Medical Leave to fund the administration of benefits. Individual contributions are capped by the Social Security income limit, which is currently set at $132,900.

(1) *Medical leave* - Contribution rate split for employers with 25 or more covered individuals

**Employers with 25 or more covered individuals** will be required to remit a contribution to the Department of Family and Medical Leave of 0.75% of eligible wages. This contribution can be split between covered individuals' payroll or wage withholdings and an employer contribution.

Up to 40% of the medical leave contribution can be withheld from a covered individual's wages (0.248% of eligible wages). Employers are responsible for contributing the remaining 60% (0.372% of eligible wages).

**Employers with fewer than 25 covered individuals** must remit an effective contribution rate of 0.378% of eligible wages. This contribution rate is less because small employers are not required to pay the employer share of the medical leave contribution, reducing the total contribution amount.

Small employers are responsible for remitting the funds withheld from covered individuals' earnings but are under no obligation to contribute themselves. However, they may elect to cover some or all of the covered individuals' share.

(2) *Family leave - all employers*

Up to 100% of the family leave contribution can be withheld from a covered individual's wages (0.13% of eligible wages).

## New Jersey - https://myleavebenefits.nj.gov/worker/fli/

The family leave program is financed 100% by worker payroll deductions. Employers do not contribute to the program.

Starting January 1, 2018, each worker contributes 0.09% of the taxable wage base. For 2018, the taxable wage base is the first $33,700 in covered wages earned during this calendar year, and the maximum yearly deduction for Family Leave Insurance is $30.33.

Starting January 1, 2019, each worker contributes 0.08% of the taxable wage base. For 2019, the taxable wage base is the first $34,400 in covered wages earned during this calendar year, and the maximum yearly deduction for Family Leave Insurance is $27.52. The taxable wage base changes each year.

## New York - https://paidfamilyleave.ny.gov/2020 https://paidfamilyleave.ny.gov/

Fully-funded by employees.

New York Paid Family Leave is insurance that may be funded by employees through payroll deductions. In 2020, the contribution is 0.270% of an employee's gross wages each pay period. The maximum annual contribution is $196.72.

Employees earning less than the current Statewide Average Weekly Wage of $1,401.17 will contribute less than the annual cap of $196.72, consistent with their actual wages.

For example:

Employees earning $519 a week ($27,000 a year) will pay about $1.40 per week: $519 x 0.270%.

Employees earning $1,000 a week ($52,000 a year) will pay $2.70 per week: $1,000 x 0.270%.

Employees earning the SAWW of $1,401.17 ($72,860.84 a year) or more will pay 0.270% x their gross wages each pay period until they reach the maximum of $196.72.

## Rhode Island - http://www.dlt.ri.gov/lmi/news/quickref.htm http://www.uitax.ri.gov/

Temporary Disability Insurance Tax:

Employees pay this tax through payroll deduction to fund benefits for workers unable to work due to non work-related injury or illness. Employers are responsible for making the required deductions from their workers' earnings and forwarding all TDI withholdings to the Employer Tax Section each quarter along with all required Employment Security, Job Development Fund and Reemployment Fund taxes.

Taxable Wage Base - $71,000 per employee
Tax Rate – 1.1 percent (.011)

## State of Washington - https://www.paidleave.wa.gov/premiums

Paid Family and Medical Leave is an insurance program funded through premiums paid by employers and workers. The initial premium will be 0.4% and can be adjusted annually after 2020 by the Employment Security Department, according to rules set by the statute. Employers started collecting premiums on Jan. 1, 2019. All employers may either withhold employees' premiums from their paychecks or pay some or all of the premium on their employees' behalf. Employers who choose to withhold premiums from their employees may withhold up to 63.33% of the total premium. The employer is responsible for paying the other 36.67% and remitting total premiums to ESD on a quarterly basis.

Key details

- The premium for 2019 is 0.4% of an employee's gross wages.
- Under the law, employers may split the cost of the program with employees by withholding up to 63.33% of the premium from their paychecks.
- An employer can elect to pay all or some of their employees' share of the premium on their behalf.
- Employers with fewer than 50 employees are not required to pay the employer portion of the premium.
- Premium withholdings are capped at the Social Security cap, $132,900 in 2019.
- Employers operating an approved voluntary plan should refer to the voluntary plan page for details about premium collection specific to voluntary plans.

## Connecticut - https://www.cga.ct.gov/2019/BA/pdf/2019SB-00001-R01-BA.pdf

- The program is funded by employee contributions, with collections beginning in January 2021.
- Starting on January 1, 2021, the bill requires each private-sector employee (except nonpublic elementary or secondary school employees), covered public employees, and the self-employed and sole proprietors who opt in to the program to contribute a percentage of their subject earnings to the FMLI trust fund.
- The Paid Family and Medical Leave Insurance Authority must annually determine the employee contribution rate, which cannot exceed 0.5%. The bill also caps the amount of an employee's earnings subject to contributions at the same amount of earnings subject to Social Security taxes (currently $132,900).

**Oregon** - https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2005

Oregon's Paid Family and Medical Leave (PFML) Insurance Program

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- Allows Oregon Employment Department (OED) either to administer the program or contract with a third party
- Directs OED to set the contribution rate to the program at up to one percent of wages
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Details on Contribution

- Employers contribute 40% of the total rate set by the OED Director; the remaining 60% by employees - the rate is applied to employee wages
- Employers may pay employees' portion as an employer-offered benefit; employers with PFML-equivalent plans do not have to contribute
- Employers with fewer than 25 employees are exempt from paying the employer portion of the contribution - but, if such employers pay into the program, they are eligible for grants to help cover the cost of replacement workers
- Employees of exempt employers are still required to contribute their share and are eligible for PFML benefits
- Self-employed individuals and tribal government employers can opt into the program

Contributions and Benefit Payments

- Contributions to the fund do not begin until January 1, 2022
- Benefit payments will not start until January 1, 2023 allowing the fund balance to grow
- Benefits are capped as specified in the measure but also have floors for minimum payments
- As is the case in the unemployment insurance trust fund management, the contribution rate can fluctuate depending on funding needs and conceivably be set below the one percent rate