

LEGAL UPDATE

DOL Issues Opinion Letter on FMLA and State PFML Programs

In Opinion Letter [FMLA 2025-01-A](#), issued Jan. 14, 2025, the Wage and Hour Division of the U.S. Department of Labor (DOL) advised that state and local paid family and medical leave (PFML) is treated similarly to paid disability plans and workers' compensation under federal Family and Medical Leave Act (FMLA) regulations. This means that PFML for an FMLA purpose must be designated as FMLA leave, but employers and employees may not unilaterally require that employer-provided accrued paid leave run concurrently with PFML.



HIGHLIGHTS

- The DOL has advised that state and municipal PFML will be treated in the same way as workers' compensation and paid disability leave programs under the FMLA substitution of leave regulations.
- PFML for a qualifying FMLA reason must be designated as FMLA leave.
- Employers and employees may not unilaterally require that employer-provided paid leave run concurrently with PFML, although they may agree to this substitution.

Substitution of Paid Leave Under the FMLA

The FMLA provides 12 weeks of unpaid, job-protected leave per year for specified family and medical reasons. While FMLA leave is unpaid, the statute allows the employee to elect, or an employer to require the employee, to substitute accrued employer-provided paid leave (such as paid vacation or paid sick leave) for any part of the unpaid FMLA leave.

Under DOL regulations and guidance, leave taken under a workers' compensation plan or an employer-provided paid disability plan must be designated as FMLA leave if it is taken for an FMLA-qualifying reason; however, neither the employer nor the employee can require substitution under the FMLA of employer-provided accrued paid leave during the workers' compensation or paid disability leave. The employer and the employee may mutually agree, where state law permits, that the employer-provided accrued paid leave will supplement these benefits.

Neither the FMLA statute nor regulations address state or local PFML programs. These programs are a growing trend and have been adopted in 15 states and the District of Columbia to date. Some local governments have also adopted PFML for their municipal government employees.

Opinion Letter FMLA 2025-01-A

The opinion letter states that although the FMLA statute and regulations do not address state or local PFML, **employers must designate PFML as FMLA leave when it is also FMLA-qualifying**. Furthermore, the employer and employee may **agree** to use the employee's accrued paid leave from the employer to supplement the PFML payments, as permitted by state law.

However, the FMLA's substitution provision does not apply. **Neither the employer nor the employee may unilaterally require that employer-provided accrued paid leave run concurrently with PFML**. Other than the substitution provision, all of the protections of the FMLA, including its anti-retaliation provisions, apply during the time the PFML and the FMLA leave run concurrently. Additionally, the substitution provision would apply for any remaining FMLA leave once the state or local paid leave is exhausted.