
Federal and state PFML resource guide

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Introduction

As new PFML programs continue to get introduced, enacted and implemented, you should determine which internal leave programs are impacted by the new state program based on the covered leave reason. You'll want to determine where specific differences exist between your internal program and the state's program. Ultimately, whether you decide to make changes may depend on a number of considerations, including parity and cost.

This ebook provides an easy-to-follow guide to help you review your company's program and integrations with new state PFML programs, including key questions to ask as you compare the programs. For each section, start with the "Key Questions" — these help you address the biggest issues you'll need to investigate and consider. At the end of the guide, there's also a section with links to state-specific resources for four states with upcoming PFML programs — Delaware, Maine, Maryland and Minnesota.



Company program integration: Identify overlapping leave reasons and relationship differences

KEY QUESTIONS:

- 1 Which of your internal programs offer leave for the same reasons?
- 2 Even with overlapping leave reasons, such as employee medical, are the standards the same?
- 3 When the leave reason involves a family member, what are the differences in those relationships?
 - Many states have broader family definitions than FMLA
 - Most states have broader family definitions than a typical employer health plan because they aren't restricted by whether a dependent qualifies under the Internal Revenue Code

Example: Maine PFML – Employee SHC, bonding, caregiver, military exigency, safe leave, organ donation, certain family members' death/SHC while on active duty



Company program integration: Determine employee eligibility

Have you identified gaps between the state's eligibility requirements and your internal program?

- Often an employer's program may carve out part-time or temporary employees or employees subject to a collective bargaining agreement
- States may require coverage for terminated employees for a limited period where your internal programs likely don't
- States may define hours worked different from FMLA

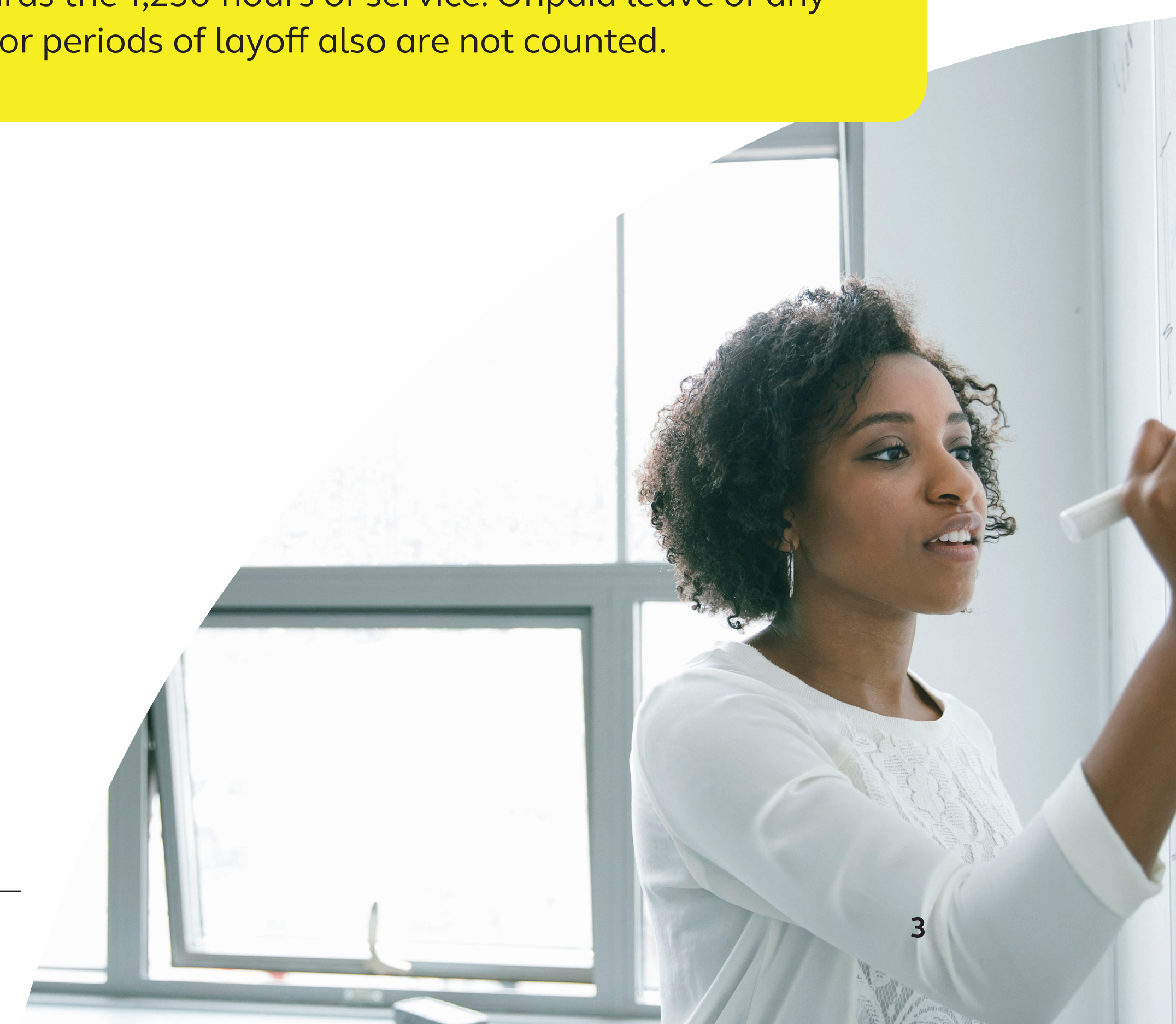
Have you considered whether to update eligibility groups?

- Consider policies that may contain dated concepts such as primary and secondary caregivers, etc.
- Consider parental leave policies and the benefits each parent would receive under the state law
- Consider part-time employees or other excluded groups (assess financially)

DE vs. MD vs. ME example

- DE: 12 months of service and 1,250 hours worked in the prior 12 months
- MD: Worked at least 680 hours in the 12-month period immediately preceding the date leave begins
- ME: Earned at least 6x the State Average Weekly Wage (SAWW) in wages subject to premiums during the base period (for 2023, \$6,622.26)

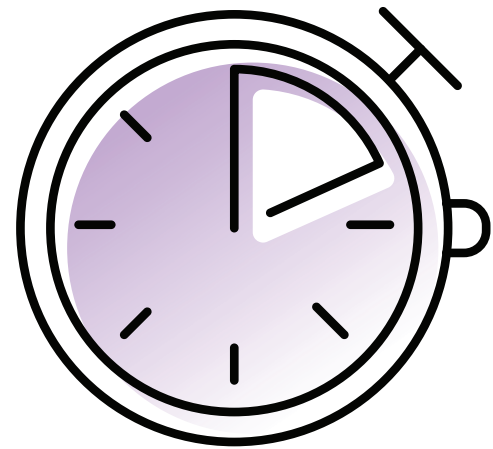
Differences in eligibility may cause stacking opportunities. The state law may define hours worked for eligibility purposes. It may vary from FMLA which determines 1,250 hours based on the time actually worked, including overtime hours worked. Time not actually worked, including vacation, personal leave, sick leave, holidays and any other form of paid time off (PTO) is not counted towards the 1,250 hours of service. Unpaid leave of any kind or periods of layoff also are not counted.



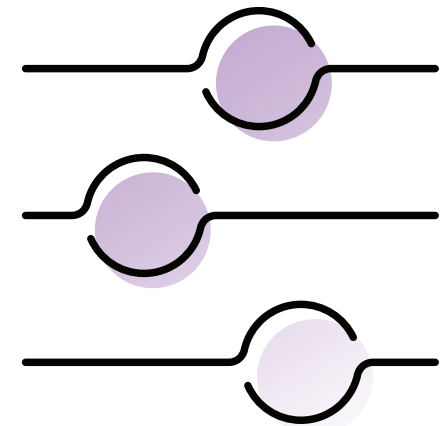
Company program integration:

Review waiting periods, durations and usage

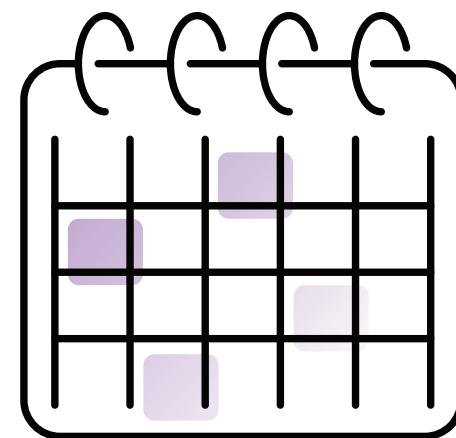
KEY QUESTIONS:



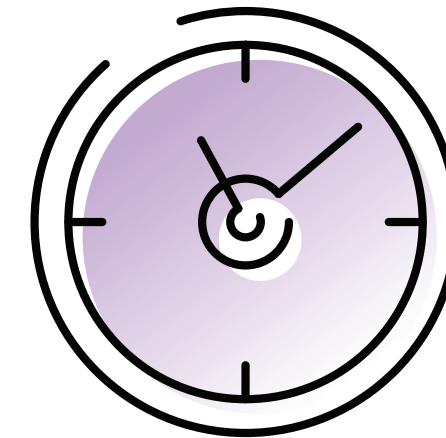
Does either your program or the state's program have a waiting period?



Will your internal program run shorter, longer or the same as the state program? Depending on the state program, durations may vary by leave reason.



Does the state program define its "benefit year" different than your internal program?



Does the state program allow intermittent, reduced hour and/or continuous leave?

- Differences in entitlement methods may create situations for stacking opportunities
- Differences may create situations where the employee exhausts job protection or offsets aren't available
- Differences may exist for baby bonding where the state allows intermittent or reduced hour usage and internal company programs only allow continuous

Waiting periods, durations/entitlements and state benefit year definitions

Waiting period

- Certain programs require claimants to wait a set number of days before they will be paid benefits. Seven (7) days is “normal” duration for waiting period; claimant will receive benefits after the eighth consecutive day of leave
- Waiting periods may vary by leave reason
- Waiting periods may be different for disability vs. family care and sometimes waived under certain circumstances (recovery from pregnancy and continue to bonding)
- May be retroactively payable
- May be limited to one waiting period per benefit/claim year
- May count towards overall weeks of benefit entitlement

Durations & entitlement methods

- States may have a combined cap for DI/medical and other reasons such as family care. One of the more recent trends we see is state programs offering more time for pregnancy complications, etc.
- For example, as of 7/1/2024, OR PFML provides:
 - 12 weeks total for family leave, medical leave and safe leave
 - Two additional weeks of paid leave benefits for limitations related to pregnancy, childbirth or a related medical condition



Waiting periods, durations/entitlements and state benefit year definitions

State benefit year definitions

- OR: 52 consecutive weeks beginning the Sunday before leave begins
- CO: The 12-month period is measured forward from the date the claim is filed. Under this “measured forward” method, an employee would be entitled to leave during the year beginning on the first date a claimant files for paid family and medical leave, and the next 12-month period would begin the first time the claimant files for paid family and medical leave after the completion of the 12-month period. For determining the application year, the date the claim is filed is the benefit start date.
- CT: Under the state plan, leave usage is determined by the rolling 12-month period measured backward from an employee’s first day of leave taken. A private plan may select from:
 - A calendar year or any fixed 12-month period
 - Measured forward from the employee’s first day of leave
 - Rolling back from the date the employee takes leave
- ME: Benefit year means the 12-month period beginning on the first day of the calendar week immediately preceding the first date of approved family or medical leave

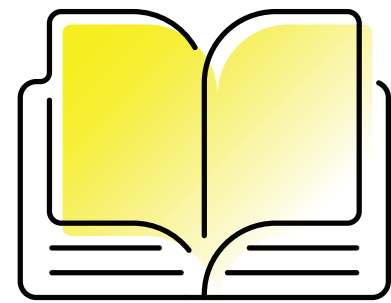
Company program benefit schedules/entitlement

- Disability plans generally have a max benefit schedule of 26 or 52 weeks and often are based on each disability event. They usually allow an employee to go back out for a relapse and/or a different medical condition that’s a separate incident. PFML programs may exhaust in these situations and won’t be available as an offset or for job protection.

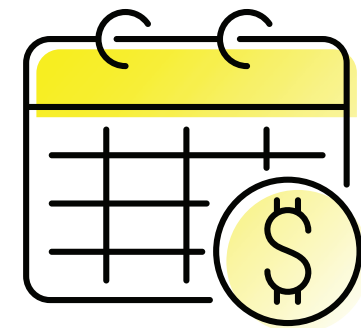


Company program integration: Analyze concurrency

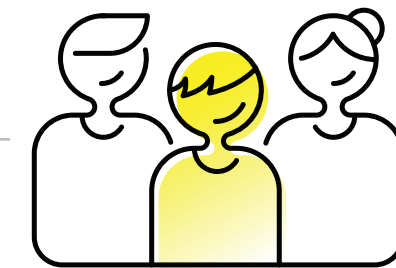
KEY QUESTIONS:



Which federal/state laws run concurrent with the state PFML program?



Does your internal program mandate concurrency when allowed by the state program?



Does the state's program allow the employee to decide when to take PFML (e.g., OR)

Considerations

- FMLA
- ADA/PWFA
- Workers' Compensation and Unemployment Compensation
- State unpaid FML law if applicable
- Other state laws including pregnancy accommodations
- Company leave of absence/disability programs

Concurrency and stacking

Under FMLA, the employer has the obligation to designate FMLA. Generally, PFML laws will run concurrent with FMLA. However, they may not with other laws. Often the PFML program may specify workers' compensation and unemployment benefits do not run concurrent (caution as some states may treat these as exclusions vs. as a concurrency rule). You'll also want to check the state program's rules on other employer-provided leave.

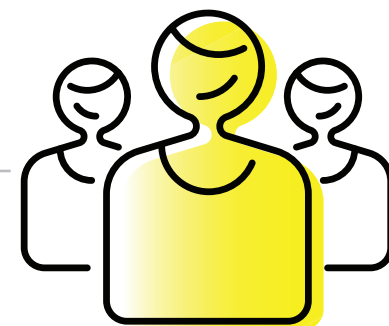
Stacking may happen due to differences between the PFML program and your internal company leave program that may cover the same leave reason but have different rules for duration, etc. Stacking also may happen because the PFML program allows the employee to decide.

Company program integration: Analyze job protection

KEY QUESTIONS:



Does the state's program offer job protection and with what requirements?



Does your internal program offer the same job protection? If not, what is the difference?

What to know about job protection

Typically, internal company disability plans don't provide job protection as they are intended to be wage replacement programs. Paid parental/caregiver plans may or may not offer job protection depending on whether the employer treats their plan as both leave and wage replacement.

Job protection by state



CA SDI/PFL: No job protection. Job protection may be available under the FMLA, CFRA or other state or local law.



CO FAMLI: If employee has been employed with current employer for at least 180 days (doesn't have to be consecutive) prior to commencement of PFML leave, restoration to same or equivalent position; whereas benefit/leave eligibility is based on an earnings threshold of \$2,500 in the base period.



ME PFML: Job protection/restoration rights to the same or equivalent position available if employee is employed for 120+ days.



OR PFML: If the employee has been employed for 90 days or more before leave, they are eligible for reinstatement to the same or equivalent position; whereas eligibility for benefits/leave is based on an earnings threshold.



Upcoming state program resources

Delaware

- State Website/Email & Alert Sign Up: <https://labor.delaware.gov/delaware-paid-leave-is-coming/>
- Law: <https://legis.delaware.gov/BillDetail/79186>
- Regulations: https://laborfiles.delaware.gov/main/pfl/1401_Rules.docx
- Private Plan Checklist: <https://insurance.delaware.gov/wp-content/uploads/sites/15/2024/06/PFML-Checklist-Fillable.pdf>

Maine

- State Website/Email and Alert Sign Up: <https://www.maine.gov/labor/pfml/>
- Law: <https://www.maine.gov/labor/docs/2023/pfml/2023PLc412PFMLExcerpt.pdf>
- Regulations: https://www.maine.gov/labor/docs/2024/rulemaking/12_702PFMLDraftRule.pdf

Maryland

- State Website: <https://paidleave.maryland.gov/Pages/default.aspx>
- Law: <https://legiscan.com/MD/text/SB275/2022>; <https://legiscan.com/MD/bill/HB988/2023>;
 - <https://mgaleg.maryland.gov/2024RS/bills/hb/hb0571T.pdf>;
 - https://mgaleg.maryland.gov/2024RS/Chapters_noln/CH_266_sb0485t.pdf
- Draft Regulations: <https://paidleave.maryland.gov/stakeholders/Documents/FAMLI%20Regs%20Draft.pdf>
- Email/Alert Sign-Up: <https://public.govdelivery.com/accounts/MDDLRL/signup/39552>

Minnesota

- State Website: <https://mn.gov/deed/paidleave/>
- Law: <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0002&ssn=0&y=2023>
- MN Tax Omnibus Bill, which includes MN PFML amendments: <https://www.revisor.mn.gov/bills/bill.php?f=HF5247&b=house&y=2024&ssn=0>
- Topic Guide and Draft Rules: https://mn.gov/deed/assets/topic-guide-all-topics_tcm1045-631407.pdf
- Email/Alert Sign-Up: <https://mn.gov/deed/paidleave/about/information/>