

MAINE PAID FAMILY & MEDICAL LEAVE

Maine Department of Labor (MDOL) Paid Family and Medical Leave (PFML) Frequently Asked Questions (FAQs) for Municipalities

1. Are municipalities exempt from the Maine Paid Family and Medical Leave Program (PFML) requirements?

No, Maine municipalities, and their employees, are covered by the Maine Paid Family Medical Leave law. Any Maine employer with at least one employee is subject to the law's requirements; there is, however, a difference in PFML premium payment requirements depending on whether an employer has 15 employees or more.

2. Which municipal officials and employees are counted for purposes of determining the number of employees for PFML premium payment and employer contribution requirements?

Based on the broad definition of “employee” in the statute, most municipal officials and workers will be considered employees when calculating the 15-employee threshold for determining PFML premium payment requirements. However, there are limited exclusions that apply. Independent contractors, individuals that can be classified as volunteers (see questions 4 and 5 below), and employees that are railroad workers, incarcerated persons, students earning federal work study financial aid, or federal government workers are not considered “covered employees” for purposes of this calculation.

3. Are elected officials receiving stipends counted as employees for purposes of determining premium payments under the PFML law?

Elected officials are generally included in the requirements of the PFML law. There is no distinction between officials who are elected versus officials who are appointed in the PFML Law. However, some individuals providing services to municipalities who receive only a “nominal stipend” as compensation and otherwise qualify as a volunteer (see question 4, below) may be considered volunteers and not considered a covered employee for the purposes of premium payments and benefit coverage. Individuals providing services to municipalities who receive more than a nominal stipend are employees and must be counted as a covered employee for the purposes of premium payments and benefit coverage.

4. What constitutes a “volunteer”?

To be classified as a “volunteer” a person volunteering for an employer or governmental entity must:

- 1) Perform their services for civic, charitable, or humanitarian reasons without the expectation of compensation, although they may receive reimbursements for expenses or nominal fees;
- 2) Offer their services freely, without any pressure or coercion from the municipality; and
- 3) Not be employed by the same municipality to perform similar services to the ones they perform as a volunteer.

5. What is “nominal” compensation for purposes of the volunteer determination?

A municipality may rely on guidance and regulations from the U.S. Department of Labor that interpret whether a stipend is considered "nominal," under the Fair Labor Standards Act (FLSA).

6. Are active members of a separately incorporated Volunteer Fire Department (VFD) considered “employees” of the municipality for purposes of determining premium payments under the PFML law)?

Firefighters who are members of a separately incorporated VFD would be considered employees of the municipality only if they are covered under the municipality’s Employer Identification Number (EIN) for payroll tax purposes. If the VFD employees are covered under a separate EIN maintained by the VFD and included in the VFD payroll, they are considered employees of the VFD, and not employees of the municipality.

7. Are employees that are only on the payroll once or twice a year included in the calculation for PFML premium payment requirements?

To determine the total amount of employees for premium payment requirements, the municipality must also look at its total payroll for each workweek over the 12-month period preceding September 30th of each year to determine if it employed 15 or more covered employees on its established payroll in 20 or more calendar workweeks in that 12-month period. Because employment levels can fluctuate (e.g., election workers, seasonal workers, new hires) the employer’s payroll (i.e., the total number of employees)

may or may not exceed 15 employees in specific workweeks. Depending on how often and when some occasional employees work, the employer may or may not exceed 15 or more employees in 20 or more calendar workweeks.

8. Can the municipality's unemployment determination as to employment status be used as a guide for determining whether some appointed officials are included in the 15-employee threshold?

Not necessarily. Maine unemployment law includes many exemptions of employment type that are not included in the PFML law. If a person is an "independent contractor" under unemployment law, then that person is not an employee for PFML purposes.

9. Which employees are subject to the PFML premium deductions?

Any employee counted for purposes of determining the percentage of employer contribution for PFML premium payments is subject to the applicable premium payment deduction.

10. Is there a difference between an "employee" as defined in the PFML law and a "covered employee" as defined in the rules for purposes of determining which "employee wages" are subject to premium payment deductions?

An "employee" in the PFML law is broadly defined as anyone who provides services for compensation. A "covered employee" in the PFML rule is specifically subject to premium deductions, but excludes five categories, including federal workers, work-study students, incarcerated individuals, railroad workers, and volunteers as specified in questions 4 and 5 above. Only covered employees have wages subject to premium deductions.

11. Should the PFML premium contributions deducted from employee wages be withheld pre-tax or post-tax?

Premiums are calculated on *total subject wages*, before federal income tax, state income tax, and Social Security and Medicare taxes are deducted. Whether PFML premiums are taxable depends on the guidance that states are awaiting from the Internal Revenue Service.

12. If a municipality plans to submit a private plan substitution, is there a requirement to remit contributions starting January 1, 2025?

Yes, the employer still has the obligation to withhold contributions to the PFML fund beginning January 1, 2025, and to remit those contributions starting April 30. Applications for a private plan substitution may be submitted after April 1, 2025. If

approved, the exemption from premium contributions will take effect on the first day of the quarter in which the substitution is approved, provided the application is submitted at least 30 days prior to the end of the quarter. If the application is submitted less than 30 days before the end of the quarter, the exemption will take effect on the first day of the following quarter.

Contributions for at least the first quarter of 2025 must still be remitted and are non-refundable. Additionally, even if the substitution is approved, the municipality is required to continue submitting quarterly wage reports. Failure to comply with this reporting requirement may result in fines or revocation of the substitution approval.

13. How does implementation of PFML requirements apply to public sector collective bargaining agreements?

Public sector employers and employees covered by a collective bargaining agreement (CBA) that was in effect on October 25, 2023, are not required to participate in the PFML program until the CBA expires. Neither party is required to make contributions to the PFML program during the term of the agreement. Employees will not be eligible for PFML benefits until either the expiration of the CBA (the end date set forth in the CBA) or May 2026, whichever comes later.

14. What if both parties in a public sector collective bargaining agreement agree to contributions before the agreement expires?

If both parties agree to begin contributing to the PFML program before the CBA expires, they may do so. Contributions will start on the first pay date after the effective date of the agreement is or on the first pay date in January 2025, whichever is later.

15. How does PFML apply to public employees not subject to a collective bargaining agreement?

The PFML law applies to public employees who were not covered by a CBA on October 25, 2023. These employees are treated in the same way as private sector employees and are subject to the PFML requirements.

16. Are employees exempted from the law because they are covered by a public collective bargaining agreement counted when determining if the employer employs 15 or more employees?

No, they are not defined as a covered employee for purposes of employer count or premium withholdings until the collective bargaining agreement expires for the first time.

17. Are employees exempted from the law due to a public collective bargaining agreement described above listed on wage reports?

Employees exempt from PFML due to being covered by a public sector CBA should not be included in wage reports until the end date of the CBA, unless the parties agree to make contributions before the CBA expires.

18. How does PFML law apply to private sector collective bargaining agreements?

The exemption under section 850-B (10)(D) described above does not apply to private sector collective bargaining agreements. All private sector employees are subject to the PFML law, regardless of whether they are covered by a CBA.