

Welcome!

The webinar will begin shortly...

3:00
minutes
until the webinar starts

While you wait, here are some fast facts about HR outsourcing:

Companies that outsource HR to a professional employer organization (PEO) are **58% less likely** to have permanently closed.



The webinar will begin shortly...

2:00
minutes
until the webinar starts

While you wait, here are some fast facts about HR outsourcing:

Companies that use a professional employer organization (PEO) are **32% less likely** to have seen a negative overall effect on business from the pandemic.



The webinar will begin shortly...

While you wait, here are some fast facts about HR outsourcing:

1:00
minute
until the webinar starts

G&A Partners has an average Net Promoter Score (NPS) that is **35x higher** than that of the HR outsourcing industry.





How to Make State & Federal Leave Laws Work for You

Don't just comply with leave laws—use them to your advantage



Before we begin...

We are recording this webinar. The on-demand recording will be available on our website by the end of the week.

This webinar has been pre-certified by the Human Resources Certification Institute (HRCI) and The Society for Human Resource Management (SHRM) for one hour of recertification credit.

If at any time during the presentation you have a question that you'd like us to answer, please send it to us using the "Questions" tab in the GoToWebinar menu bar.

About G&A Partners

G&A Partners delivers world-class HR solutions that help build thriving businesses and make a difference in the lives of the clients and employees we serve.

G&A Partners has a local presence in the following markets:





How to Make State & Federal Leave Laws Work for You

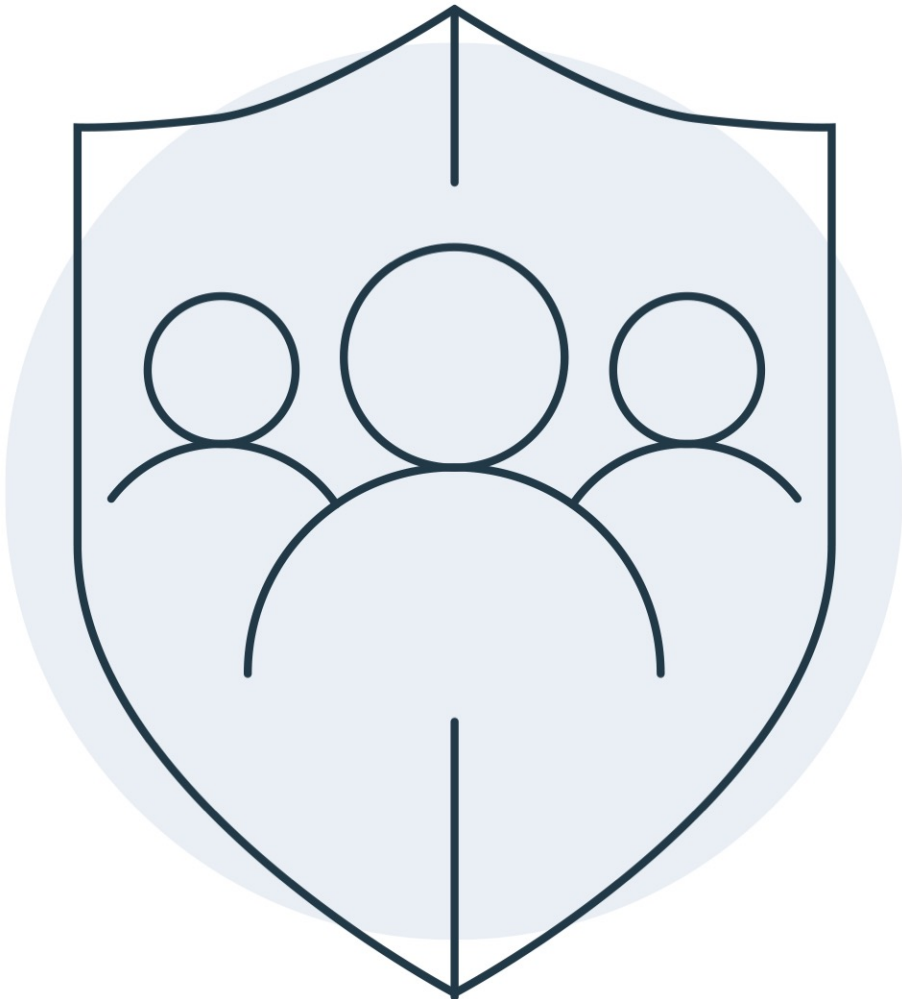
Dave Berndt, J.D.
HR Project & Training Manager, G&A Partners



Agenda

- General overview of leave laws and policies (FMLA, ADA, paid sick leave, PTO, worker's compensation, jury duty, etc.) including geographical trends
- Applicability of various federal, state, and local laws to your business
- Developing trends in leave laws
- Managing federal and state laws when they intersect
- Best practices for employers

Types of Leave



- Family and Medical Leave (federal FMLA)
- Family and Medical Leave (various states)
- Paid Sick Leave (various states)
- Maternity / Paternity Leave (various states)
- Paid Time-Off (PTO)
- COVID-19 – based Leave

Types of Leave



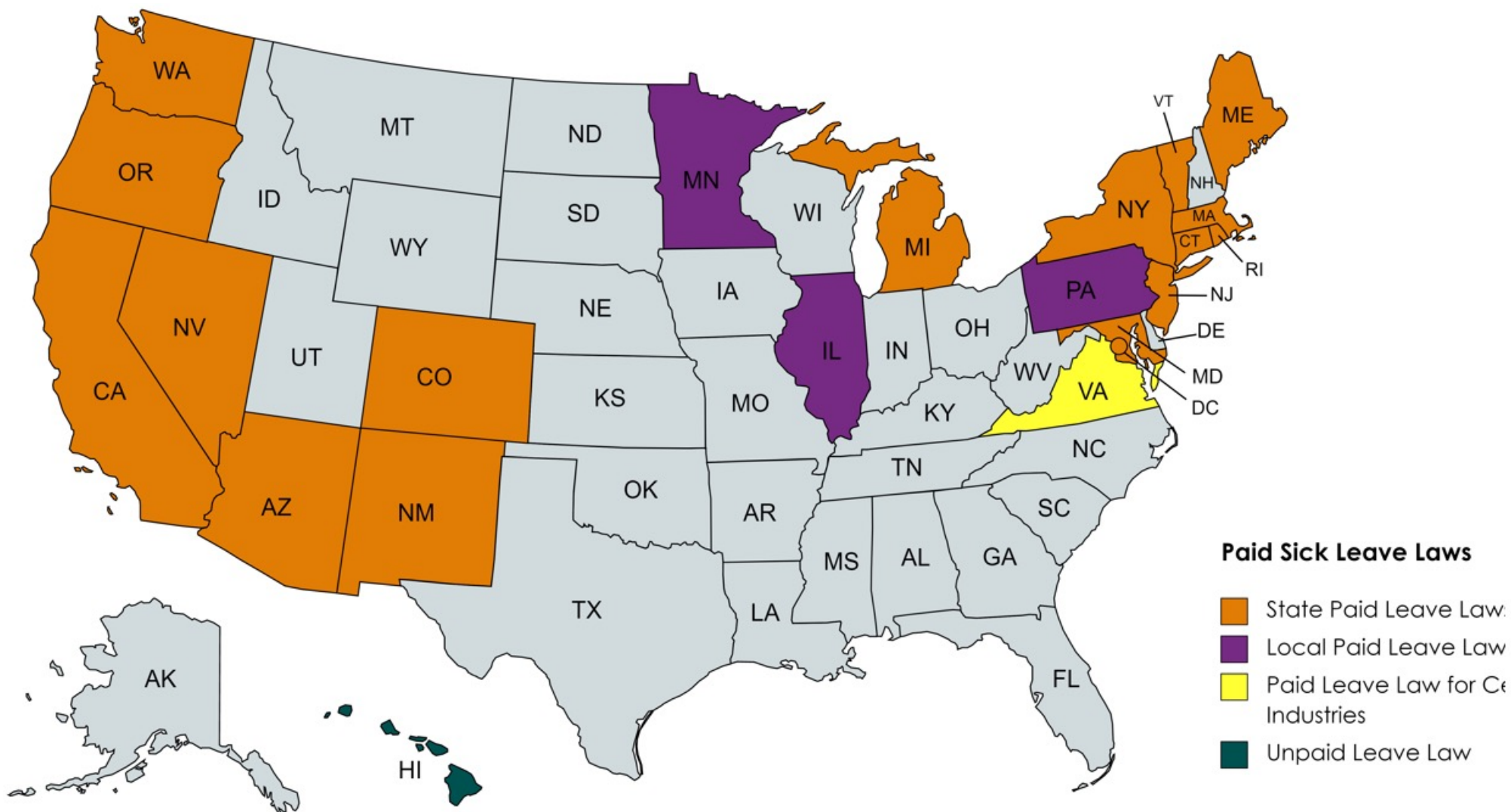
- Workers' Compensation Leave
- Short-term Disability Leave
- Long-term Disability Leave
- Jury Leave
- Bereavement Leave

Family and Medical Leave Act (FMLA)



- Federal Law
- Employer: 50 employees within 75-mile radius
- Employee:
 - Employed for past 12 months with company
 - 1,250 hours worked during prior 12 months
- Unpaid
- Job protection

Paid leave laws per state



Paid sick leave laws

States	Cities	Counties/Districts/ Territories
Arizona California Colorado Connecticut Maine Maryland Massachusetts Michigan New Jersey* New York Oregon Rhode Island Vermont Washington	California: Berkeley, Emeryville, Long Beach, Los Angeles, Oakland, San Diego, San Francisco, Santa Monica Illinois: Chicago and Cook County Minnesota: Duluth, St. Paul, Minneapolis New York: New York City Pennsylvania: Philadelphia Washington: Seattle, Spokane, Tacoma	District of Columbia Puerto Rico Montgomery County (Md.) Cook County (Ill.) (ERs can opt out) Westchester County (N.Y.)
		U.S. Government Federal contractors must provide paid sick leave

*The New Jersey law provides that the state law preempts all local paid sick leave laws. Therefore, effective 10/29/18, paid sick leave laws in the following cities will be preempted: Bloomfield, East Orange, Elizabeth, Irvington, Jersey City, Montclair, Morristown, Newark, New Brunswick, Passaic, Paterson, Plainfield, and Trenton.

What are paid sick leave laws?

- Employers must provide paid sick leave (“EPSL”) for the following reasons:
 - Employee’s own illness
 - To care for a covered family member who is ill (broader than FMLA)
 - Siblings; grandparents; in-laws; anyone who is “like family”
 - To attend routine medical appointments for employee or a family member
 - Sometimes other reasons such as domestic violence
- Employers must fund EPSL out of payroll at full pay
- Leave is job-protected and no retaliation
- Many EPSL laws forbid requesting doctors’ notes until more than three consecutive days of absence
- Can be taken intermittently

Commonsense compliance with “EPSL” laws

- All of the paid sick leave laws have a common provision:
 - If the employer provides PTO that is at least as generous as what the law requires, employer will be deemed in compliance.
 - The PTO does not have to be just for “sick time” — it can be general PTO.
- Employers should review their PTO policy and make sure they are at least as generous as what law requires.
 - Employers can include a provision saying: “If you live or work in a state that has a more generous legal requirement, we will comply with that requirement.”

Paid family and medical leave laws: current and proposed

States	Federal	Proposed legislation
<ul style="list-style-type: none"> California Connecticut (premiums collected 1/1/21 and leaves eff. 1/1/22) Delaware (state employees only/parental leave only eff. 9/1/19) Hawaii (disability only) Massachusetts (premiums collected 7/1/19 and leaves eff. 1/1/21) New Jersey New York Oregon (premiums collected 1/1/23 and leaves eff. 1/1/23) Rhode Island Washington (premiums collected 1/1/19 leaves eff. 1/1/20) 	Cities/Districts/Territories	U.S. Congress <ul style="list-style-type: none"> Language in current trillion-dollar package
	<ul style="list-style-type: none"> Federal Tax Credit for PFML (expires 12/31/19) San Francisco (parental leave only) District of Columbia Puerto Rico (disability only) 	States <ul style="list-style-type: none"> Georgia Minnesota Other states: Bills sponsored earlier in 2021 but many state legislatures are done for the year

Evolution of Paid Family & Medical Leave (PFML)

State	Statutory Disability Insurance	Statutory Paid Family Leave
RI	1942	2014
CA	1946	2004
NJ	1948	2009
NY	1949	2018
HI	1969	Pending



State	“Full” PFML?	Implementation Date
D.C.	Yes	2020
WA	Yes	2020
MA	Yes	2021
CT	Yes	2022
OR	Yes	2023

New trend: Merge job protection & income replacement

Washington state PFML (leaves began 1/1/20)

- 12 weeks of paid leave for employee's own serious health condition
- 12 weeks of paid family leave
- Bond with new child
- Care for family member with serious health condition
- Qualifying military exigency
- Combined total of 16 weeks of paid leave
- Extra two weeks paid leave if the absence is because of pregnancy

Massachusetts PFML (leaves began 1/1/21)

- 20 weeks of paid leave for employee's own serious health condition
- 12 weeks of paid family leave
- Bond with new child
- Care for family member with serious health condition
- Qualifying military exigency
- Combined total of 26 weeks of paid leave

New trend: Merge job protection & income replacement

Connecticut PFML (leaves begin 1/1/22)

- 12 weeks of paid leave for any combination of:
 - Employee's own serious health condition
 - Bond with new child
 - Care for family member with serious health condition
 - To address family violence
 - Qualifying military exigency
 - To serve as organ or bone marrow donor
- Extra two weeks for a serious health condition that causes incapacitation

Oregon PFML (leaves begin 1/1/23)

- 12 weeks of paid leave for any combination of:
 - Employee's own health condition
 - Family leave to bond with new child or care for family with serious health condition
 - Safe leave (addressing issues related to domestic violence)
- Additional two weeks if limitation is related to pregnancy, childbirth, or lactation needs

Paid Family & Medical Leave (“PFML”) Comparisons

State	Amount of Benefit	Max Benefit	Definition of Family Member	Post-Termination Benefit
RI	60% wages	\$852/wk.	Child, Parent, Spouse, Domestic partner, Grandparent	N/A
NJ	66% wages	\$637/wk.	Child, Parent, Parent-in-law, Spouse, Domestic partner, Sibling, Grandparent, Grandchild, <i>Any person related by blood or with whom the employee has close association that is equivalent of family</i>	2 weeks
NY	Medical: 50% wages. Family: 50%–66% (increasing 2018–2021)	PMLI: \$170/wk. PFL: \$746.41/wk.	Child, Parent, Spouse, Domestic partner, Grandparent, Grandchild	4 weeks
CA	60%–70% wages, depending on income	\$1,216/wk.	Child, Parent, Spouse, domestic partner, grandparent, grandchild, sibling, parent-in-law	Yes
DC	90% of AWW up to wages that are equal to 150% of DC minimum wage x 40, an 50% of AWW that exceeds 150% of DC minimum wage X 40	\$1,000/ wk.	Child, Parent, Spouse, Grandparent, and sibling	N/A
WA	90% of wages, up to 50% of the SWAWW, and 50% thereafter	\$1,000/wk.	Child, Parent, Spouse, Domestic partner, Grandparent Sibling	N/A
MA	80% wages, up to SWAWW, and 50% thereafter	\$850/wk.	Child, Parent or parent of a spouse or domestic partner, Spouse, Domestic partner, Grandchild, Grandparent, Sibling	26 weeks
CT (2022)	95% wages up to 40X minimum wage and 60% wages thereafter up to 60X minimum wage	\$900/wk.	Spouse, Sibling, Son or Daughter, Grandparent, Grandchild, Parent, <i>Individual related to the employee by blood or affinity whose close association employee shows to be equivalent of family member</i>	TBD
OR (2023)	100% wages up to 65% of SAWW and then XX thereafter		Spouse, Sibling, Son or Daughter, Grandparent, Grandchild, Parent, <i>Individual related to employee by blood or affinity whose close association employee shows to be equivalent of family member</i>	TBD

Variable factors in PFML laws include:

- Reasons for leave
- Length of leave
- Amount of benefit
- Family members covered
- Intermittent leave (and minimum increment)
- Triggers for eligibility
- Triggers for job protection
- Portability
- Required continuation of health care and other benefits

- All PFML states (except N.Y.) have government agencies that administer the PFML benefits
 - These agencies collect premiums
 - They adjudicate and pay claims
- Some states permit employers to “opt out” of the state program and administer the state benefits by private or “voluntary” plans
 - Private/Voluntary plans permitted: Calif., Conn., Mass., N.J., Oregon, Wash.
 - Private/Voluntary plans not allowed: Washington, D.C., and R.I.
- Unique approach of N.Y.
 - No state agency
 - Insurance companies provide the statutory disability and PFML benefits
 - There is a quasi-public N.Y. State Insurance Fund



**How are PFML laws
different from paid
sick leave laws?**

How are EPSL laws different from PFML laws?

Feature	Paid Sick Leave (EPSL) laws	Paid Family & Medical Leave (PFML) laws
Length of benefit	Days off per year (3-8 days)	Weeks off per year (varies by state)
Amount of benefit	Full pay	Partial pay with income caps
Who pays for benefit	Completely employer funded through payroll	<ul style="list-style-type: none">Historically, employee funded by payroll deductionTrend is toward 50/50 employer/employee
How benefits are administered	Administered only by employer <ul style="list-style-type: none">No government agencyHistorically not administered by third-party leave administrator because PTO benefit	State agency collects premium and adjudicates and administers claims Some states permit voluntary plans—often administered by insurer/third-party
Certification requirements	None permitted typically unless three consecutive days of absence	Basic medical or other certification required

Managing paid leave can be complicated, but don't worry!

Category	Paid Sick Leave Laws*	Paid Medical Leave Laws (stat. disability)	Paid Family Leave Laws	Caps: Combined Medical & Family Leaves Annually
What is it?	Paid time off: For employee's own illness To care for ill family member To attend routine medical appointments for employee or family member	Benefits when employee is out of work due to employee's own health condition	Benefits when employee is out of work: To bond with new child Care for ill family member Military Exigency	
Length of leave/benefit	Days: Varies by jurisdiction: from 3-8 days (or 24-56 hours)	Weeks: Calif.: 52 weeks Hawaii, N.J., N.Y.: 26 weeks R.I.: 30 weeks Wash.: 12 or 14 weeks if for pregnancy Mass.: 20 weeks	Weeks: R.I.: 4 weeks Calif., N.J.: 6 weeks (Calif. increased to 8 weeks on 1/1/20 & N.J. increase to 12 weeks on 1/1/20) N.Y.: 8 weeks 2018 increasing to 12 weeks 2021 Wash.: 12 weeks Mass.: 12 weeks	Weeks Calif. 52 weeks Hawaii: N/A Mass., N.J., N.Y.: 26 weeks Wash.: 16 weeks (or 18 weeks if pregnancy) Conn. & Ore.: 12 weeks total can be used for PML or PFL (no separate allotments of PML & PFL)
Amount of benefit?	Full pay	Partial pay/subject to income cap	Partial pay/subject to income cap	
How typically funded?	Employer Payroll	Employee Payroll deductions –	Employee Payroll Tax	



**What are employers'
questions about PFML?**

Employer Questions

- Employers are questioning the value of short-term disability insurance in states that have PFML laws
 - They need to be educated about “gaps” in coverage under PFML laws
- Employers think that their short-term disability plans will qualify as private or voluntary plans under the new PFML laws
 - They need to be educated about why they don’t
- Employers in states with PFML laws are asking to extend some of those benefits to all of their employees in all states – especially paid parental and/or family leave benefits
 - Many want third-party administration

Short-term disability vs. PFML

Benefit	Statutory PFML	Private Short-Term Disability	Why It Matters
Eligibility	Usually available to all employees who meet certain basic (low) thresholds based on hours worked or income earned for any employer in the state. Also, in Mass., terminated employees can file claims for up to 26 weeks after termination	Typically, employees must work a minimum number of hours per week to be eligible for benefits (20–30)	Many more employees are covered under statutory PFML
Standard of incapacity	Leave for an employee who has a serious health condition (in Mass. there may be no requirement of incapacity)	Totally or partially disabled	More employee claims will be eligible for benefits with lower standard of incapacity
Period of leave	Intermittent leave	Continuous	Employees can use the statutory PML allotment in hourly or daily increments. Not so for short-term disability
Amount of benefit	Tiered; lower-wage earners receive 80–95% of actual historical earnings and there are benefit caps (\$850/\$900/\$1,000 per week for Mass./Conn./Wash.)	Usually, 60% with a much higher cap	<ul style="list-style-type: none"> • Under statutory plan, lower-paid employees may be eligible for higher benefit • Under statutory plan, higher-paid employees may not have enough coverage
Waiting period	There is a 7-day waiting period but not if leave for birth or placement of child (and not at all in Conn.)	Short-term disability does not forgo 7-day waiting period	
Extent of documentation required	Very limited; in Mass. a voluntary PFML plan must state that all presumptions will be made in favor of eligibility and payment of benefits	<ul style="list-style-type: none"> • No “presumptions” • Can get complete medical records • Can do independent medical review 	<ul style="list-style-type: none"> • More claims will be payable with a lower proof requirement

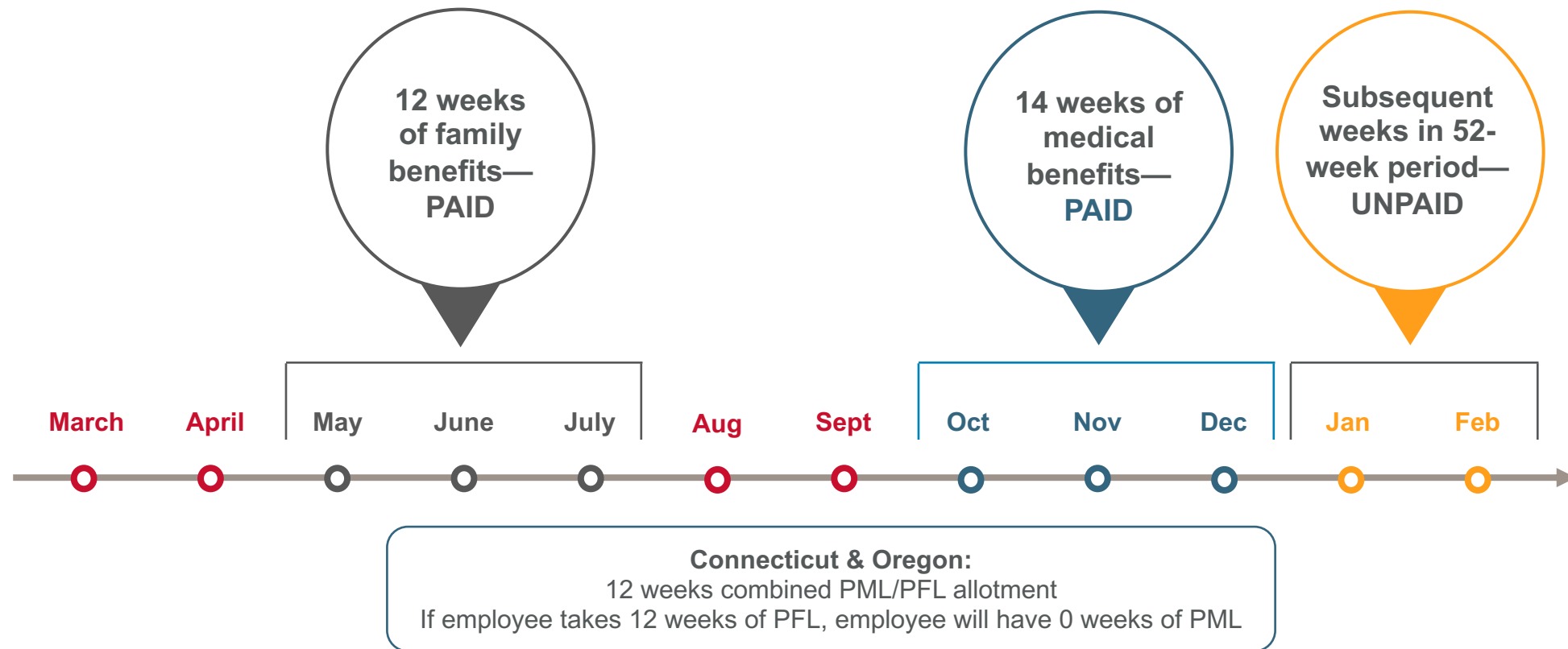
Why employers still need short-term disability: for the gaps!

Canceling short-term disability may leave employees without sufficient protection if they become disabled.

Evaluation issue	Consideration		
There is a benefit cap of \$850/\$900/\$1,000 per week under Mass./Conn./Wash. PFML (roughly \$60,000–\$70,000)	Higher-income employees will not be adequately protected without short-term disability.		
The allotments of paid family leave and paid medical leave under the statutory laws are interdependent	• Conn./Ore.: If employee takes 12 weeks of PFL, no weeks of PML available	• Wash.: If employee takes 12 weeks of PFL, only 4 weeks of PML available	• Mass.: If employee takes 12 weeks of PML, only 14 weeks of PML available
Statutory PFML is available intermittently and Short Term Disability is not	Because PFML can be taken intermittently, an employee could exhaust a substantial portion of available statutory paid leave benefits and not have enough medical leave available to cover the LTD elimination period.		

Consequences of interdependency of FMLA, family and medical leave allotments: Washington state

FMLA (unpaid)



More and more employers are offering Voluntary Paid Parental and/or Paid Family Leave

The U.S. is (almost) the only OECD country that does not provide paid parental leave benefits

- Political support for Paid Family Leave

Benefits to employers?

- Talent attraction
- Employee retention
- Improved employee engagement, morale, and productivity
- Enhanced brand
- Demographics of millennials:
 - Millennials are having children and caring for aging baby boomer parents

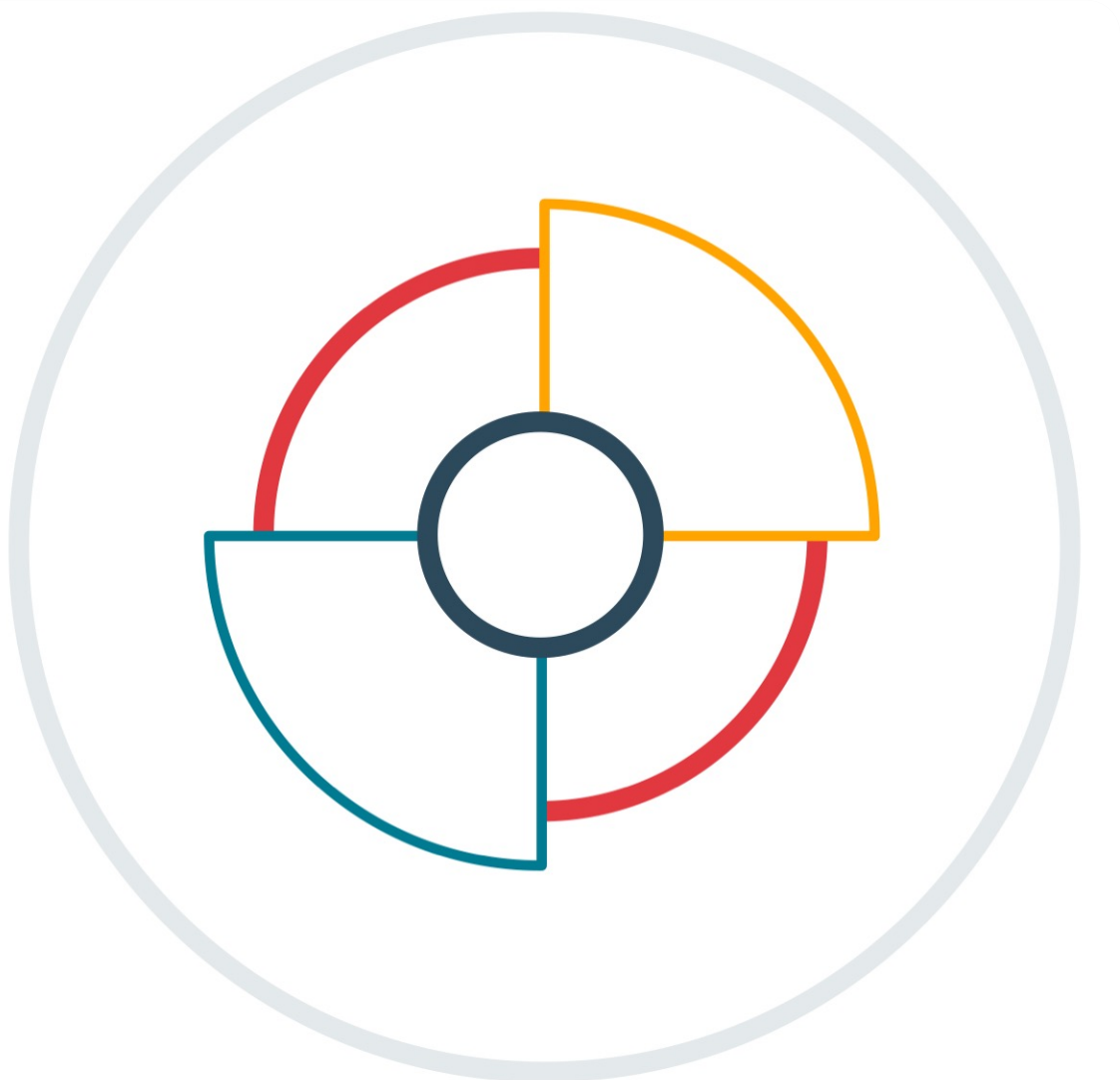
Employer options?

- Paid parental leave to bond with new child (born, adopted, foster)
- Paid leave to care for an ill family member
- Beware of “maternity leave” policies available only to women: gender discrimination
- “Primary caregiver” or “birth mother”



**What may happen to
employee benefits
because of PFML?**

What are potential solutions?



- Employers should consider providing the equivalent of statutory benefits to all their employees if they have multi-state operations.
- Develop absence platforms that not only track leaves but also can pay benefits.
- Provide Day-One Absence solutions (employee calls one TPA/insurer for all leave/PTO).

What does the future hold?

- The requirement of “disability” may disappear and be replaced by “serious health condition”
- A comprehensive insurer paid leave solution for medical, family, and other reasons – rather than income protection benefits for disabling conditions (i.e., short-term disability replaced by PFML)
- Comprehensive solutions to all absence, leave and accommodation issues by third-parties, including:
 - Administration of all PTO
 - Tracking of leave
 - Payment of benefits
 - Offering accommodations and benefits to help reduce leave

What other leave benefits may emerge?

- Employers are increasingly offering benefits to employees that may help reduce the need for leave and/or shorten leave durations
 - Emergency childcare/elder-care services
 - Onsite childcare services
 - Subsidies of childcare and elder-care services
 - Telecommuting/Remote Work Arrangements
 - Flex time
 - Pay to transport breast milk for nursing mothers

Maine and Nevada PTO laws: A new trend?

- On May 30, 2019, Gov. Janet Mills of Maine signed the Earned Employee Leave Act – effective January 1, 2021
- On June 13, 2019, Gov. Steve Sisolak of Nevada signed Senate Bill 312 – effective January 1, 2020
- They are “PTO” laws:
 - Paid leave can be used for any reason
 - Job is protected
- Maine: Requires ERs with 10 or more employees to provide employees with one hour of paid leave for every 40 hours worked, up to 40 hours per year.
- Nevada: Requires ERs with 50 or more employees to provide employees with .01923 hours of paid leave for each hour worked, up to 40 hours per year.

Other state/local leave-law trends

- Paid bereavement leave
 - Seattle, Wash., adopted a law that expanded its paid sick leave law to include time off for the death of child or of partner from pregnancy-related issues.
- Paid leave for domestic violence
 - Connecticut & Oregon require this in their PFML law.
- Paid leave for bone marrow or organ donation
 - Connecticut requires it in its PFML law.
 - Colorado offers a tax credit to employers who offer paid leave for this reason.
- Leave for veterans' activities
 - Massachusetts requires leave for veterans on Veterans' Day to attend veterans' activities (not required to be paid).

Potential National PFML



- National government program that provides and administers the benefits
- Tiered replacement ratios, with lower incomes receiving higher replacement ratios (90%+) with weekly caps of approx. \$1,000/mo.
- At least 12 weeks of total PFML benefits
- Expansion of the definition of a family member for PFL



**What about the
Americans with
Disabilities Act?**



ADA vs. EPSL/PFML

ADA

- Employer: 15 or more employees
- Based on the employee's disability
- Relation to “essential elements” of job
- May be much longer (but not “indefinite”)

EPSL/PFML

- Employer: number of employees varies
- Based on multiple potential needs
- Not necessarily related to job
- Defined length of leave



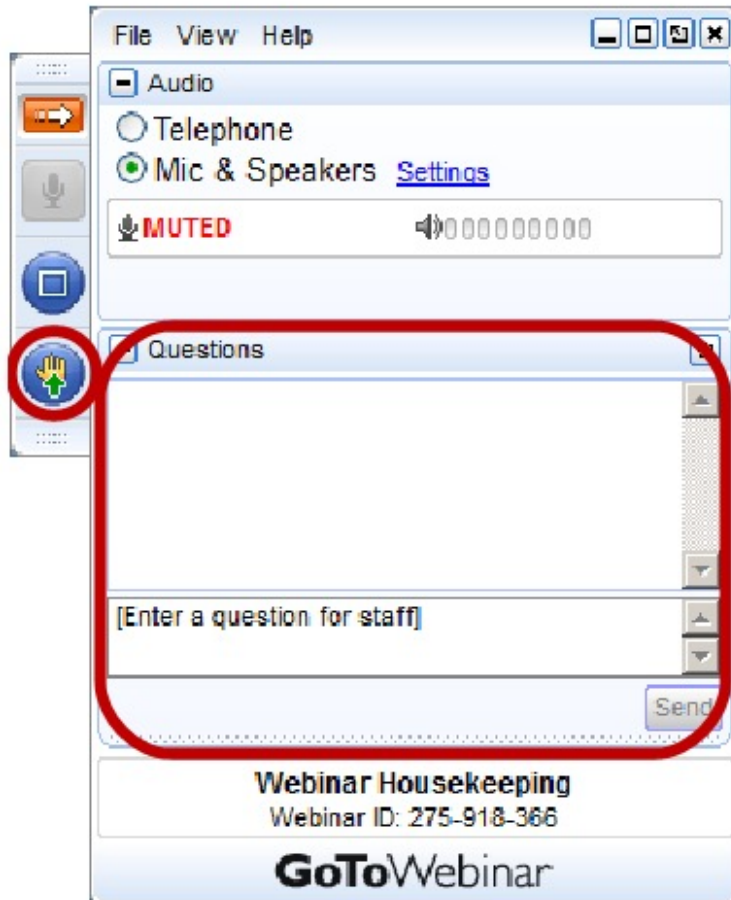
Best Practices for Employers



Best practices and considerations

- Identify every state and city where your employees work (or travel to).
- Align the applicable federal, state, and local leave laws to your locations.
- Work with G&A Partners or your HR team to develop and implement the appropriate policies and benefits.
- Coordinate paid family leave and other benefits:
 - FMLA
 - State FML laws
 - Short-term disability
- Consider implementing other employer policies (i.e., parental leave, caregiver leave, etc.):
 - Written policies and plans
 - PFL “Plan” vs. PFL “Policy”
 - Private plans

Questions



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