


## GUEST COLUMN: Compliance FYI: DOL Clarifies PFML & FMLA Paid Leave Rules

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 On Jan. 14, 2025, the Department of Labor (DOL) Wage and Hour Division (WHD) issued an [opinion letter](#) regarding the interaction between state paid family and medical leave (PFML) programs and employer provided paid leave while on leave under the federal Family and Medical Leave Act (FMLA).

The FMLA provides eligible employees with unpaid, job protected leave. While FMLA leave is unpaid, employees may choose, or employers may require, the use of any available employer provided paid leave, such as paid time off (PTO), while the employee is out on FMLA leave. This is known as "substitution."

While substitution normally can be selected by the employee or required by the employer, there is a situation where both the employer and employee must agree to any substitution. If an employee is receiving disability or workers' compensation benefits and is on FMLA leave, the employer and employee may mutually agree for the employee to use some employer-provided paid leave to supplement the disability or workers' compensation benefits that do not provide a full salary replacement. Neither party can unilaterally use or require the use of paid leave.



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State PFML programs operate by providing income replacement benefits to eligible individuals who are absent from work due to specific family and medical reasons. The benefits are often based on a certain percentage of an employee's wages.

### Substitution of paid leave while receiving PFML benefits

The opinion letter states that an employee receiving PFML benefits while also on FMLA leave cannot unilaterally choose, and their employer cannot require, the substitution of employer-provided paid leave. PFML benefits are like the benefits provided by a disability or workers' compensation plan and, as result, both the employee and the employer must agree to any use employer-provided paid leave to supplement any PFML benefits. Note this only applies if the PFML benefits replace only a portion of the employee's income and the employer provided paid leave is being used to supplement the PFML benefits so that an employee can receive all their normal pay.

If PFML benefits end before FMLA leave does, the standard substitution rules apply for the period of FMLA leave that is the employee is not receiving PFML benefits. This means the employee could unilaterally choose, or the employer could require the use of employer-provided paid leave for the remaining duration of FMLA leave that the employee is not receiving PFML benefits.

The opinion letter also clarifies that time spent on leave under a PFML program that does not qualify under the FMLA is not counted against an employee's FMLA entitlement.

The chart below summarizes the interaction between employer-provided paid leave, state PFML programs, and the FMLA:

Joint PFML and FMLA Coverage	PFML Coverage Only	FMLA Coverage Only
Both the employer and employee must both agree to allow the use of employer provided paid leave to supplement PFML benefits	Use of employer provided paid leave to supplement PFML benefits is controlled by the relevant state law	Employer may require, or employee may decide to use employer provided paid leave without consent of the other party

**Key Takeaways:**

Employers with employees in states with PFML programs should review their procedures regarding allowing employees to use their employer provided paid leave to supplement any PFML benefits. Employers may need to update their policies to comply with opinion letter’s guidance.

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