

Paid Family & Medical Leave Laws: The Value of Private Plan Options and Insurer/TPA Involvement

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Summary of Benefits of Private Plan Options

- ❑ Private plan options in state PFML programs benefit employees, the state agency, and employers.

Benefits to employees:

- 1 Encouraging employers to exceed minimum statutory requirements
- 2 Providing excellent customer service and convenient options (e.g. mobile app)
- 3 Ensuring employer compliance
- 4 Providing an excellent employee experience
 - ▶ Employees need to make only one call for an absence. They receive holistic, timely, and accessible information regarding their benefits and job-protected leave under state and federal laws and company policies
 - ▶ Otherwise, employees may have to call their STD provider, FMLA administrator, and state PFML division separately and complete three claims forms to receive all benefits to which they are entitled
 - ▶ Employees risk receiving 3 different decisions at different times that may be inconsistent and confusing

Summary of Benefits of Private Plan Options

Benefits to government agencies and employers:

- 1 Shouldering the work, lowering the costs, and providing expertise
- 2 Helping to spread the word: Conduct training through consultant and employer webinars to promote awareness of the laws within the jurisdiction and support implementation
- 3 Providing oversight to ensure that employers actually comply with the laws
- 4 Enabling employers to provide a consistent experience and equitable benefits across their employee population regardless of work state
- 5 Providing a holistic absence experience and making employees aware of all their absence related benefits, entitlements, and rights

If legislatures do not allow private plans, employers may drop more generous benefits of insured private plans.

Employer compliance can be assured through requirement of a performance bond on terms set by the state.

PFML Laws: Private Insurer and TPA Involvement

- ▶ Several states permit employers to "opt out" of state program if they provide same benefits through "voluntary" or "private" plan
 - ▶ Must have at least same benefits as state program (including job protection) and cannot charge employees more than what is authorized under state program
- ▶ Massachusetts originally only had state-run option – Sun Life met with MA legislators to educate them about value of insurer involvement – added a private plan option

States that permit private insurer involvement and/or private plans:

- California
- Hawaii
- New Jersey
- New York
- Massachusetts
- Washington

Jurisdictions that do not permit private insurer involvement:

- Rhode Island
- District of Columbia

What Insurers and TPAs Bring to the Table

1. **Leave Management Experience**
 - ▶ Insurers and TPAs currently provide "absence management" services to Employers, ensuring compliance with hundreds of laws including the federal FMLA and various state leave laws
2. **State PFML Experience**
 - ▶ Insurers and TPAs have built compliant NY PFML policies and currently administer approx. 90% of all New York's PFML policies totaling \$272.7 million of earned premium thru Q3 2018
 - ▶ TPAs have offered private plans in CA since inception of paid disability & family leave benefits
 - ▶ TPAs and Insurers are building compliant PFML programs & policies for MA and WA
3. **Claims Expertise & Staffing**
 - ▶ Insurers and TPAs have extensive actuarial, IT, claims, and customer service staffing investments that are devoted to operating a complex process for adjudicating claims for leave benefits
4. **Short-Term Disability (STD) Claim Management Experience**
 - ▶ 86% of short term disability claims are approved upon first review compared with 25% of SSDI claims approved upon initial review
5. **Integration of all benefits**
 - ▶ Insurers and TPAs can integrate administration of all employee benefits: STD, Leave Management, Administration of Company-sponsored leaves, statutory PFML, and ADA Accommodations. The result is a single call intake, integrated correspondence, and robust reporting capabilities

38% of working Americans are covered by a private Short Term Disability policy which incorporates aspects of Paid Family Leave and Paid Medical Leave
– 2017 Bureau of Labor Statistics

Employers are offering Voluntary Paid Parental and/or Paid Family Leave

- ▶ Benefits to Employers
 - ▶ Talent attraction
 - ▶ Employee retention
 - ▶ Improved employee engagement, morale & productivity
 - ▶ Enhanced brand
- ▶ Demographics of Millennials:
 - ▶ Millennials are having children and caring for aging parents
- ▶ Employer-sponsored plans are often **full pay** – more generous than statutory programs

- Many employers want to adopt PFML programs that benefit all employees in all states and exceed statutory minimums.
- Allowing Voluntary Plans under PFML laws helps encourage employers to do so.

Officials in CA and NJ see no adverse consequence of allowing Voluntary/Private Plans

- Both CA and NJ have allowed Voluntary/Private plans for years.
- Officials in both states said they see no adverse consequence to the state as result of Voluntary/Private plan options.
- Most employers choose the state plan; therefore, there is no adverse risk selection associated with Voluntary/Private plan option.
- Both states see benefits to employees of Voluntary /Private plan option because employers can choose to offer more generous benefits
 - In CA, employers can provide the benefit in a less costly manner and use the amount saved to fund other employee benefits (one employer recently used savings to build a gym for employees).

Thank you.

EXCERPT FROM MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE LAW

Chapter 175M

Full statute available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2018/Chapter121>

PRIVATE PLANS

Section 11. (a)(1) Employers may apply to the department of family and medical leave for approval to meet their obligations under this chapter through a private plan. In order to be approved as meeting an employer's obligations under this chapter, a private plan must confer all of the same rights, protections and benefits provided to employees under this chapter, including but not limited to: (i) providing family leave to a covered individual for the reasons set forth in paragraph (1) of subsection (a) and subsection (b) of section 2 for the maximum number of weeks required in paragraph (1) of subsection (c) of section 2, in a benefit year; (ii) providing medical leave to a covered individual for the reasons defined in paragraph (2) of subsection (a) of section 2 for the maximum number of weeks required in paragraph (1) of subsection (c) of section 2, in a benefit year; (iii) allowing covered individuals to take, in the aggregate, the maximum number of weeks of family and medical leave in a benefit year as required by paragraph (1) of subsection (c) of section 2; (iv) allowing family leave to be taken for all purposes specified in paragraph (1) of subsection (a) and subsection (b) of section 2; (v) allowing family leave under paragraph (1) of subsection (a) of section 2 to be taken to care for any family member; (vi) allowing medical leave to be taken by a covered individual with any serious health condition; (vii) providing a wage replacement rate during all family and medical leave of at least the amount required by paragraph (1) of subsection (b) of section 3; (viii) providing a maximum weekly benefit during all family and medical leave of at least the amount specified in paragraph (2) of subsection (b) of section 3; (ix) allowing family or medical leave to be taken intermittently or on a reduced schedule as authorized by paragraph (A) of paragraph (2) of subsection (c) of section 2; (x) imposing no additional conditions or restriction on the use of family or medical leave beyond those explicitly authorized by this chapter or regulations issued pursuant to this chapter; (xi) allowing any employee covered under the private plan who is eligible to take family or medical leave under this chapter to take family or medical leave under the private plan; and (xii) providing that the cost to employees covered by a private plan shall not be greater than the cost charged to employees under the state program.

(2) In order to be approved as meeting an employer's obligations under this chapter, a private plan must also comply with the following provisions: (i) if the private plan is in the form of self-insurance, the employer must furnish a bond running to the commonwealth, with some surety company authorized to transact business in the commonwealth as surety, in such form as may be approved by the department and in such amount as may be required by the department; (ii) the plan must provide for all eligible employees throughout their period of employment; and (iii) if the plan provides for insurance, the forms of the policy must be issued by an approved insurer.

(b) An employer may provide both family and medical leave coverage through an approved private plan or may provide medical leave coverage using an approved private plan and provide family leave coverage using the public plan or vice versa.

(c) The department may withdraw approval for a private plan granted under subsection (a) when terms or conditions of the plan have been violated. Causes for plan termination shall include, but not be limited to the following: (i) failure to pay benefits; (ii) failure to pay benefits timely and in a manner consistent with the public plan; (iii) failure to maintain an adequate security deposit; (iv) misuse of private plan trust funds; (v) failure to submit reports as required by regulations promulgated by the department; or (vi) failure to comply with this chapter or the regulations promulgated hereunder or both.

(d) An employee covered by a private plan approved under this section shall retain all applicable rights under subsections (e) and (f) of section 2 and under section 9.

(e) A denial of family or medical leave benefits by a private plan shall be subject to appeal before the department and district court as provided by subsection (d) of section 8.