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COMMENTARY PAPER

Understanding paid family and medical leave

The pros and cons of private PFML plans

Introduction

The statutory leave landscape is expanding quickly, creating new challenges for employers trying to understand, administer and align benefits across the U.S.

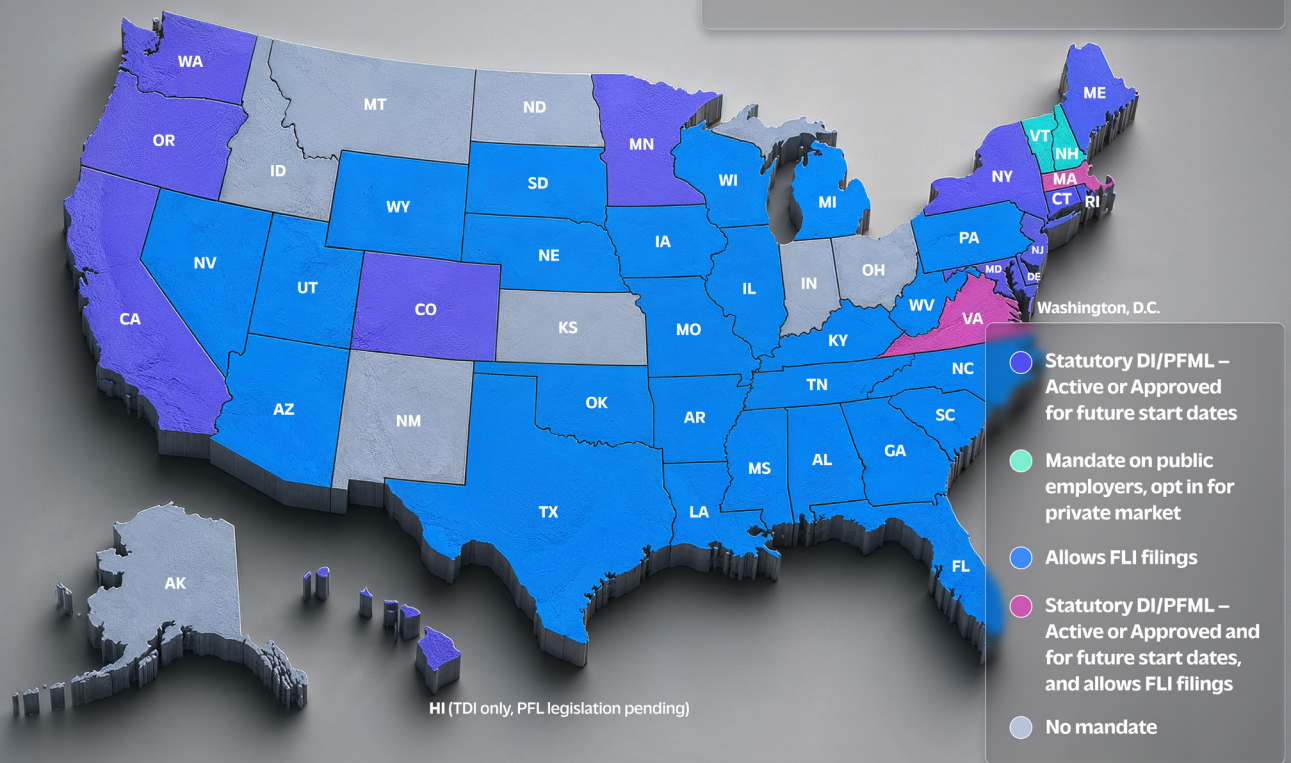
Starting in 2028,16 states and the District of Columbia will have jurisdictionally provisioned paid family and medical leave (PFML) programs. Additionally, eight states currently allow for insured paid family leave (PFL) riders to existing disability plans offered by insurance carriers. That means **almost 50% of the United States will soon have mandatory or voluntary options for PFML and PFL.**

For multistate employers, this adds to an already complex maze of benefits: the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), short- and long-term disability (STD/LTD) programs, company-sponsored leave and benefit programs, over 250 state-specific leave laws and at least 28 municipal-paid sick time laws. Additional state and local leave requirements continue to emerge.

Paid leave landscape

Inclusive of Statutory Disability, PFML and Family Leave Insurance (FLI)

FLI coverage is optional with covered employees defined by policy. Statutory coverage is mandatory with covered employees determined by statute, typically based on work state.



As employers try to navigate this confusing paid leave landscape, many are asking: Is it better to go through state PFML programs or to get a private plan?

The question is certainly valid but also a complicated and nuanced one. There's a variety of factors employers need to consider, and they vary by state. This commentary paper offers a high-level summary of the kinds of questions employers should ask when weighing their private plan options.

Not all states are equal

For multistate employers, the conversation must start with an understanding that no two states are alike.

In the original five PFML states (New York, New Jersey, California, Rhode Island and Hawaii), programs separated statutory disability and later added PFL. As states started adding PFML programs, they integrated the benefits so time off could be used for a variety of reasons. Benefit amounts, eligibility criteria and job/benefit protections vary by jurisdiction.

Employers thinking about a private plan should recognize that no one plan will work in every state.

The administrative burden could be significant, depending on their approach to benefits and the number of states in which they operate.

Why consider private?

Employers evaluate private plans for a variety of reasons:

- **Process improvement**
- **Integration with existing benefits**
- **Administrative preferences**
- **Organizational flexibility**

However, whether those advantages outweigh the additional costs and responsibilities depends on an employer's unique circumstances.

Many employers are looking to provide employees with a **better claim experience.** Oftentimes, employees have to contact two or more agencies when taking leave from work. Each has their own documentation and process requirements, adding more frustration to an already challenging time. Further, having multiple touchpoints also makes things harder for employers to manage effectively.

Simplifying processes for employees is a good thing, **but having a private plan doesn't exempt you from state requirements;** it simply means you have one central point of contact for employees.

Another factor to consider is how a private plan will interact with other company-offered benefits. Programs like short-term disability and parental leave, which employers are not legally required to provide, are often viewed as core benefits within a broader health and wellness package. Employers typically design these programs to streamline the claims process and minimize disruption for employees who qualify for benefits. However, state-administered programs may not move as quickly as company-administered benefits. When employees wait weeks or longer for a state benefit decision or payment, the delay can create hardships and frustration, especially if the employer's benefit plans offset payments based on anticipated state-provided benefits.

Organizations must carefully examine whether these programs will need to be updated or modified, depending on the employees they have in statutory versus non-statutory states.

Offsets, time frames, elimination periods, decision timeliness, payments and benefit amounts all come into play.

Cost factors

The bottom line is another consideration. For many organizations, **state programs are typically the most economical,** as they're funded by both the employer and employee. Usually, employers are responsible only for the employee medical portion of the program, and the total amount is capped in every state. **Switching to a private plan shifts the cost burden** — along with other unanticipated costs — to the employer. Choosing a private plan means, in essence, that the employer agrees to fund the benefit program the state provides.





Consider this example

If funding for a state-managed plan is 0.88% of an employee's annual pay, the employee pays 0.44% of their pay. For an employer with 250 in-state employees who earn an average of $65,000 per year, the employer can collect only $286 from each employee annually. That equals just $71,500 to fund the program for the year. If the state program allows for up to 12 weeks of benefits and the average benefit is $875 per week, **the employer will not be able to fund the program with employee contributions alone.**

The states usually have thousands, if not millions, of people — plus employers — contributing to their plans. Additionally, the benefits paid out tend to be less than what's collected. States can increase annual contributions to compensate for higher benefits paid, as needed. Employers do not have that option.

- It's also important to note that private plans are not approved in every jurisdiction. Rhode Island and D.C., for example, do not allow private plans at all. And states that do allow private plans impose limits on how much employers can ask their employees to contribute toward private plan costs.

Employers who elect a private plan have **two options**, each of which has pros and cons:

Work with an insurance carrier to **fully insure** the program	**Self-insure** the program

COMPARING PRIVATE PLAN APPROACHES

Fully insured	Self-funded
Carrier assumes financial risk	Employer assumes financial risk
Predictable premium costs	Costs vary based on claim activity
Less flexibility	Greater flexibility
Limited access to claims data	More access to claims data
Fixed pricing	Greater financial exposure and potential cost variability

Both approaches can provide a centralized experience for employees, but they differ significantly in risk, cost structure and administrative control.

THE FULLY INSURED OPTION

Insuring the program means outsourcing the risk to a carrier for a fixed premium price that can be adjusted annually. This is usually based on a percentage of employee payroll costs per employee per month (PEPM). In this model, the costs are fixed. Employers know what they'll pay each month, regardless of how many benefits are paid out. Even if an employer pays out more claims than anticipated, costs won't increase. However, costs also won't decrease if fewer claims than anticipated are paid out.

Keep in mind that not all states allow for insured plans. The states of California and Washington only allow self-funded plans. If an employer is looking to outsource all private plans, they may wind up with both insured and self-funded plans.

Buying a filed policy also means you cannot alter or adjust the policy based on your organizational culture, because you've given the carrier the right to make those decisions. You also relinquish access to the underlying documentation that goes along with managing a private plan.

While employers enjoy the fixed costs associated with being fully insured, many struggle with policy limitations and the inability to see information they've had in the past.

States don't usually provide this either, but expectations tend to be different when it comes to carriers.

THE SELF-INSURED OPTION

With a self-funded plan, the employer assumes the financial risk of the program. (States often require bonds or some other security to ensure the program is solvent to pay out claims.) Unlike in an insured program, costs vary from year to year; one bad claim year can have a devastating impact on the bottom line.

Additionally, employers who self-insure may have to pay a third-party administrator (TPA) to administer the program on their behalf. The cost generally includes services like medical management (where and when allowed), managing the appropriate paperwork, compliance, and quarterly and annual reporting.

Employers who self-fund have greater freedom to tailor the program, as long as it meets the minimum standards of a state-administered program. This can allow employers to offer richer employee benefits that better align with other programs they offer.

The flexibility of self-insuring provides opportunities to more seamlessly and consistently align employee benefits across statutory and non-statutory programs.



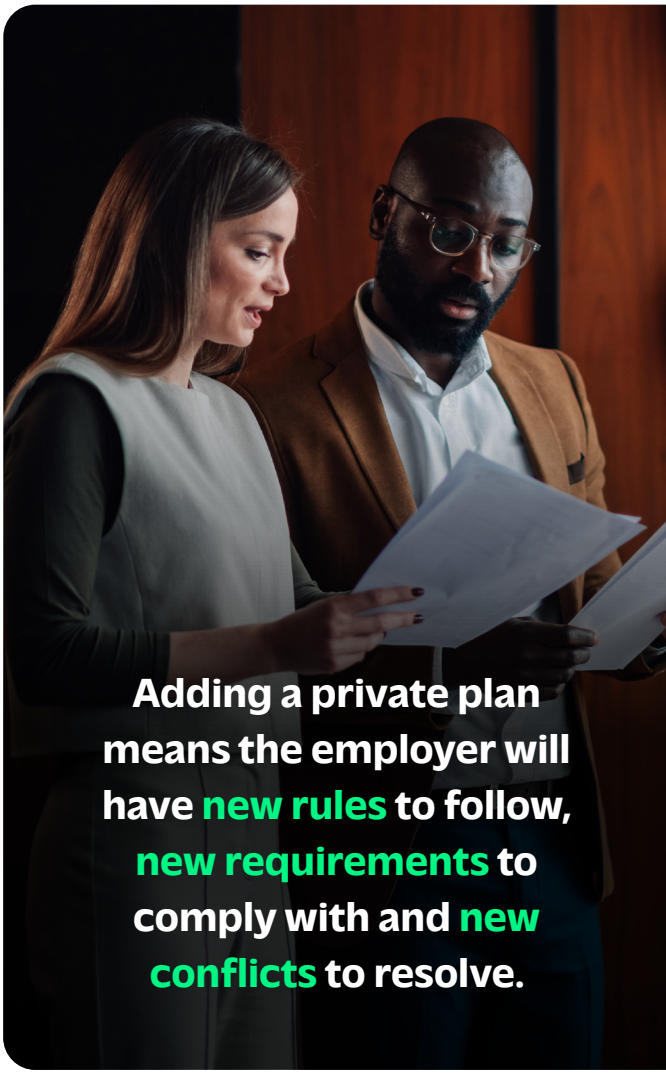
Legal requirements

Another key factor in determining PFML plans is the web of legal requirements associated with multiple overlapping programs. (If you outsource your programs, these requirements are often handled by the carrier or TPA.)

Each benefit type has different rules enforced by different oversight agencies:

- Most STD plans are governed under the Employee Retirement Income Security Act of 1974 (ERISA), which preempts states from exercising jurisdiction over such plans
- Benefits under the FMLA and ADA are managed by the Department of Labor (DOL) and Equal Employment Opportunity Commission (EEOC), respectively
- PFML programs are managed by state agencies

Employers may be used to dealing with FMLA and STD plans, but adding a private plan means they'll have new rules to follow, new requirements to comply with and new conflicts to resolve. For example, some states require the use of certain forms for PFML that cannot be included in the standard combined packet used by carriers or TPAs for disability and leave programs. Consolidating the management of these programs with a single vendor doesn't eliminate the need for various forms, but it does give employees a single place to submit them.





Return to work

Management of return to work (RTW) also plays an important role in private plan decisions. RTW coordination can differ between state-administered PFML programs and employer-sponsored disability programs. **While STD and LTD programs often include structured RTW processes, state PFML programs generally focus on administering leave benefits.** Organizations considering private plans may wish to evaluate how leave, disability and RTW strategies can be coordinated to support both employees and business objectives.

Final considerations

Managing PFML has become increasingly complex as state requirements continue to evolve. While private plans can help streamline administration and create a more centralized employee experience, they also introduce additional financial, compliance and operational considerations.

Organizations should carefully evaluate their options to determine which approach best aligns with their workforce, risk tolerance and business objectives.



How Sedgwick can help

We understand that employers face increasingly complex decisions about leave administration, compliance and employee experience. Whether organizations participate in state-administered programs or explore private plan options, navigating multiple regulations, benefit programs and reporting requirements can be challenging.

We help employers coordinate absence, disability and leave programs through integrated solutions designed to simplify administration, ease compliance demands and create a more seamless employee experience. Our experts guide organizations in navigating evolving requirements, aligning leave strategies with broader operational goals and understanding the advantages, limitations and administrative requirements of the approaches discussed here.

Explore our absence management solutions

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