

September 29, 2021 Rulemaking Advisory Committee Meeting and During the Public Comment Period Ending December 20, 2021

Questions & Answers

During the Sept. 29, 2021 Rulemaking Advisory Committee (RAC) meeting and during the public comment period that ended Dec. 20, 2021, the program received several comments, statements, and questions. The program is taking all feedback received into consideration. Below are questions and answers from those sessions:

General Questions about PFMLI

Q1: Which employees are covered by PFMLI?

A1: All employees are covered whether they are salaried, hourly, full-time, part-time, seasonal, nonprofit, and domestic employees. Elected officials will be included as long as they are considered an employee and not federal employees or employees of a tribal government that has not elected coverage.

Q2: Which employees are excluded from coverage under PFMLI?

A2: Federal employees, self-employed individuals, independent contractors, and employees of tribal governments are excluded. However, self-employed individuals, and independent contractors can elect to be covered under PFMLI. If a tribal government employer elects into the program, their employees are automatically covered by the state PFMLI program.

Q3: Can employees opt out of PMLI?

A3: No, employees cannot opt out of PFMLI.

Q4: Which employers are excluded from PFMLI?

A4: Federal employers are excluded from PFMLI. Tribal government employers are excluded but can elect to participate in the program.

Q5: Can employers opt out of the state PFMLI program?

A5: Yes, employers can opt out of the state PFMLI program by applying for an equivalent plan that provides benefits that are equal to or greater than those provided by the state PFMLI program.

Q6: Are there rules around whether an employee is covered by PFMLI based on where they live or work?

A6: Employees working in Oregon will contribute to the Oregon PFMLI program. Administrative rules will be drafted in future batch rules.

Q7: How are part-time employees with multiple employers included in PFMLI? For example, substitute teachers work in multiple districts with concurrent employment but have separate employers.

A7: Each employer will collect PFMLI contributions on wages earned by the employee for that employer and report it on the combined payroll report.

Q8: What are the employer's written notice requirements advising employees of their PFMLI rights through the state PFMLI program?

A8: The employer must provide written notice to each employee of the right to claim and receive PFMLI benefits, the procedure for filing a PFMLI claim, the requirement for an employee to provide notice to their employer before PFMLI leave, the employee's rights with respect to job protections, appeal rights, discriminatory and retaliatory personnel actions regarding PFMLI, the right of an employee to bring a civil action or file a complaint for violation of job protections and other rights, and health information is confidential. The written notice may be a poster, a flyer, or an email, but it must be provided in the language the employer typically uses to communicate with the employee. The PFMLI program will provide a model notice to the employers on the PFMLI website when available.

Q9: Will PFMLI allow an employee to apply for unemployment insurance at the same time as PFMLI?

A9: No, an employee must be employed to apply for PFMLI benefits and cannot receive unemployment benefits and PFMLI benefits at the same time.

Q10: Can an employee apply for OFLA and/or FMLA at the same time as PFMLI?

A10: Yes, OFLA and FMLA must be used concurrently with PFMLI, if applicable.

Q11: What PFMLI information must be included on the combined payroll report?

A11: The combined payroll report will include the employee's name, social security number, PFMLI subject wages, the PFMLI contribution amount for all employees listed, and the PFMLI contribution amount for the employer (if applicable).

Q12: Do wages need to be reported if an employee did not work any hours?

A12: Yes, PFMLI subject wages need to be reported and PFMLI contributions paid even if the employee did not work any hours.

Q13: What happens if the employer mistakenly does not withhold the correct amount of PFMLI contributions (or doesn't withhold anything at all) from the employee's wages? Can the employer make prior payroll deductions at a later date?

A13: The PFMLI staff is researching and information will be provided in the future regarding this question.

General Questions about PFMLI Contributions

Q14: What contribution rate do employers and employees pay for PFMLI? A14: Employers pay 40% of the total contribution rate of employee's wages for PFMLI and employees pay 60% of the total contribution rate. However, the employer can choose to pay part or all of the employee portion of the contributions. The total contribution rate determined by the department will be no more than 1% of employee's wages.

Q15: Can employers pay more than the 40% PFMLI contribution rate?

A15: Yes, employers can choose to cover part or all of the employee contribution amount of 60%.

Q16: Are the PFMLI contribution deductions for employees pre-tax or post-tax?

A16: The PFMLI staff is researching and information will be provided in the future regarding this question.

Q17: If the employer pays the employee's portion of contributions, is it considered imputed income and taxable?

A17: Imputed income are benefits employees receive that are not part of their salary or wages and are taxed as part of their income. The employee may not have to pay for the benefits, but are responsible for paying the tax on the value of them. The department is waiting for further guidance from the Internal Revenue Service if the portion of the employee contribution paid by the employer is considered imputed income.

Q18: Which types of wages are subject to PFMLI contributions and which types of wages are exempt?

A18: Wages have the same definition as UI, there are some differences in who is covered, but the types of payments that are considered wages are the same. [See the Batch 1 rule on wages for a list of some of the payments considered wages.](#)

Q19: Do all of the employees working for the same employer (same BIN or EIN) have to contribute the same amount toward the employee's PFMLI contribution? In other words, can an employer cover 100% of some and 50% of other employee's PFMLI employee contributions?

A19: We are still working on this, but we know that many companies have tiered benefits.

Q20: Which employers have to pay the employer PFMLI contribution amount?

A20: All employers have to pay the employer PFMLI contribution amount. However, small employers, average employee count of less than 25, are not required to pay the employer portion of the contributions. If a small employer elects to pay the employer portion of the contributions, they will be eligible for employer assistance grants.

Q21: Will PFMLI contributions be withdrawn from the employee's paycheck and be reported on the combined payroll report?

A21: Yes, we are currently working with our agency partners to prepare a new combined payroll report form that includes PFMLI reporting.

Q22: What happens if an employer remits the PFMLI employer contribution when they didn't need to, as they were a small employer?

A22: Employers can amend their combined payroll report to correct the employee size and PFMLI employer contribution amount if they were filed incorrectly.

Q23: How will the maximum wage amount be calculated and when will the first annual adjustment of the maximum wage amount (currently \$132,900) begin?

A23: Once an employee has earned the annual maximum wage amount per employer, the employer and employee will stop paying PFMLI contributions for that employee for the remainder of the calendar year. The first adjustment of the maximum wage amount will be for calendar year 2024, then it will be adjusted annually based on the percentage increase, if any, in the August Consumer Price Index.

Q24: How will the department announce the updated PFMLI contribution rate and maximum wage amount?

A24: The contribution rate and maximum wage amount will be announced every year in a number of ways, including but not limited to: letters, emails, instructions, and media announcements.

Q25: If an individual is both an employee and a self-employed individual and elects to pay contributions on their self-employment income, how will they prevent overpayment of contributions?

A25: Contributions are calculated on wages earned up to the maximum wage amount for each employer. In this situation, self-employment income will be treated as another source of employment. This means contributions will also be paid on Oregon net income from self-employment, up to the maximum amount (the same as the maximum wage amount per employer).

Questions on Employer Size for the PFMLI Program

Q26: How will employers count employees if the business has multiple locations reporting under a single employer identification number?

A26: The employee count will be based on the total number of employees reported under the single business identification number. Employer size is determined based on a head count of the number of employees with Oregon PFMLI wages (regardless of hours worked) for that business identification number, plus the number of out-of-state employees employed under the business identification number. Employees hired temporarily to replace an eligible employee who is out on PFMLI leave does NOT count towards the employer size. [Learn more about the rule on employer size.](#)

Q27: In counting employees are they only full time, or include part time and hourly employees? Are volunteers included who may receive a stipend for volunteering but are not on payroll?

A27: All employees are counted to calculate the employer size using a head count of the number of employees (regardless of hours worked). Depending on the nature of the stipend, it may count as PFMLI wages.

An employee is an individual performing work or service(s) for an employer in exchange for pay under any contract of hire, written or oral, express or implied, or a home care worker. An employee does not include an independent contractor, volunteer, participant in a work-training program administered under a state or federal assistance program, a participant in a work-study program, or a railroad worker exempted under the federal Railroad Unemployment Insurance Act.

Q28: Why can't the department use the current unemployment filings to determine employer size?

A28: Employer size includes out-of-state employees, which is not currently captured by unemployment insurance.

Q29: Will employee count consider fluctuating employee head counts – (i.e. seasonal businesses)?

A29: Yes, the employer size is determined based on an average.

Q30: How will employee count affect staff that live out-of-state, but work for an Oregon company?

A30: Employee count includes employees working in Oregon and also out-of-state employees.

General Questions about PFMLI Benefit Payments

We received several questions related to PFMLI benefit payments that we have not included in the below list as the department is still working on administrative rules related to benefits.

Q31: What is the maximum weekly PFMLI benefit payment?

A31: The weekly benefit payments vary based on an employee's average weekly wage and the State's average weekly wage. However, the maximum weekly benefit amount is 120% of the State's average weekly wage (\$1,375.26 for 2021-2022 fiscal year) and the minimum benefit amount is 5% of the State's average weekly wage (\$57.30 for 2021-2022 fiscal year).

Q32: What is the anticipated delay between submission of a PFMLI benefit claim and payment?

A32: The statute requires the department (and employers if it is an equivalent plan) to make every effort to pay benefits within two weeks of receiving a completed claim.

Q33: Will home healthcare workers hired by Medicaid or Oregon Project Independence be paid through PFMLI?

A33: No, the PFMLI program doesn't pay for care provided by healthcare workers. The PFMLI program provides benefits to workers so that the employee may take leave from work for family, medical, or safe leave.

General Questions about the Batch 1 rules process

Q34: Where can I access the Batch 1 rules discussed at the Sept. 29, 2021 RAC meeting?

A34: The Batch 1 *draft* administrative rules (as of Sept. 10, 2021) discussed at the RAC meeting can be found on [the PFMLI website](#) under the 'Rulemaking Advisory Committee' section and then under 'Meeting Agendas and Materials.'

Q35: Where can I access the recording of the Sept. 29, 2021 RAC meeting?

A35: The recording can be found on [the PFMLI website](#) under the 'Rulemaking Advisory Committee' section and then under 'Meeting Agendas and Materials.'

Q36: Where can I access the PowerPoint slides for the Sept. 29, 2021 RAC meeting?

A36: The PowerPoint slides can be found on [the PFMLI website](#) under the 'Rulemaking Advisory Committee' section and then under 'Meeting Agendas and Materials.'

Q37: What is the deadline for questions and comments to be submitted by the public to the department to ensure consideration?

A37: The Deadline for public comments on Batch 1 rules administrative rules has passed. The deadline was Dec. 20, 2021.

Questions about Statements of Need for the Batch 1 rules

Q38: When the department is analyzing the racial equity impact section of the Statement of Need and Fiscal Impact, will the department look at the impact on the employees, their co-workers, providers and employers?

A38: Yes, the racial equity impact section of the Statement of Need and Fiscal Impact considers all individuals impacted by the administrative rules adopted by the department for that filing.

Questions about Equivalent Plans for PFMLI

Q39: What is an Equivalent Plan?

A39: An equivalent plan is a plan an employer offers that is equal to or greater than the state PFMLI program. The employer must apply and be approved by the department to participate in an equivalent plan instead of the state plan. Employers may provide an employer administered equivalent plan or a fully insured equivalent plan. An employer administered equivalent plan is a plan where the employer assumes all financial risk associated with the benefits and administration of the equivalent plan, whether it is administered by the employer or a third-party administrator. A fully insured equivalent plan is a plan in which the employer purchases an insurance policy from an insurance company and the benefits related to the plan are administered through the insurance policy.

Q40: If the PFMLI program allows employers to establish “Equivalent Plans,” won’t most companies choose to provide an equivalent plan?

A40: It depends on the employers and what type of administration and risk they would like to assume.

Q41: What happens when an employee transitions to a new employer that has an equivalent plan and needs leave but has not been with the new employer for 30 days?

A41: There are two scenarios: 1) If their previous employer had an equivalent plan, the new equivalent plan employer covers the new employee from day one, 2) If their previous employer had the state PFMLI plan, the new employee is covered by the state PFMLI plan until they qualify for the new employer’s equivalent plan.

Q42: When can employers withdraw their Equivalent Plans?

A42: Employers can withdraw their approved equivalent plan after it has been in effect for at least one year at the end of a quarter.

Q43: What happens if an employer with a fully insured equivalent plan fails to pay their insurance carrier?

A43: PFMLI staff are researching this specific question.

Q44: Can employers choose to have Family Leave as an equivalent plan and Medical Leave with the state plan and vice versa?

A44: No, when an employer applies for an equivalent plan, it must cover family, medical, and safe leave in a single plan for all employees.

Q45: How will current paid leave plans work with PFMLI?

A45: All employers will have the option to apply to use their equivalent plan instead of the state plan as long as the benefits are equal to or greater than those provided by the state PFMLI program.

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