Conflicting Leave Years:
An Exploration of the Complexities

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When it comes to leaves of absence, some of the most critical elements for both employees and employers are the amount of leave available and the employee's access to and amount of pay benefits during their absence. While many factors can influence these elements, one in particular can create surprising impact: the calculation of an employee's leave year. The calculation of a leave year varies among leave laws, and their impact, or lack thereof, on payments can have unanticipated outcomes.

What is a Leave Year?

Under the federal Family and Medical Leave Act (FMLA), employees are entitled to 12 weeks of leave per 12-month period or "leave year." The FMLA allows employers to choose any of the following calculations to establish a leave year:

- A calendar year (i.e. January 1 – December 31)
- Any fixed 12-month period such as, a year starting on the employee's anniversary date, a fiscal year, or a 12-month period required by state law
- A "rolling" 12-month period measured forward from the first date an employee takes FMLA leave, known as "Rolling Forward"
- A "rolling" 12-month period measured backward from the date an employee takes FMLA leave, known as "Rolling Backward"

Most employers select the Rolling Backward calculation method for their FMLA administration because it eliminates the possibility of stacking, the term for using two years' worth of leave entitlement in one consecutive period.

Leave Years and Paid Family and Medical Leave (PFML)

In recent years, Paid Family and Medical Leave (PFML) programs are trending more than any other leave type in the absence and disability industry. Unlike FMLA, because many are modeled on existing unemployment insurance programs, PFML programs have predominantly adopted a variation on the Rolling Forward method, with the leave year beginning on the Sunday of the first week of leave ("Rolling Forward Sunday"). With few exceptions noted below, most state PFML programs do not permit an employer to choose a calculation method.

State PFML	Calculation Method
California	Rolling Forward
Colorado	Rolling Forward
Connecticut	State plan: Rolling Backward Private plans: Employer choice
Delaware	Employer choice
Maine	Rolling Forward Sunday
Maryland	Rolling Forward Sunday
Massachusetts	Rolling Forward Sunday
Minnesota	State plan: Rolling Forward Private plans: Employer Choice
New Hampshire	State plan: Rolling Backward Private plans: Employer Choice
New Jersey	Rolling Forward
New York	Rolling Backward
Oregon	Rolling Forward Sunday
Rhode Island	Rolling Forward Sunday
Washington	Rolling Forward Sunday

Many states with PFML programs also have other state unpaid leave entitlements that provide concurrent job protection such as Colorado Family Care Act, Massachusetts Parental Leave, New Jersey Family Leave Act, and Connecticut Family Medical Leave Act. Almost all state unpaid leave programs allow an employer to choose any of the leave year methods permitted by the FMLA. Three exceptions are:

- Wisconsin Family and Medical Leave Act requires employers to use a calendar year method.
- As of July 1, 2024, Oregon Family Leave Act requires employers to use the Rolling Forward method, starting on the Sunday preceding the first day of leave.
- Rhode Island Parental and Family Medical Leave Act uses a two calendar-year period.

How do I manage a single absence with more than one leave year calculation method?

With most employers using a Rolling Backward method for FMLA administration, and many PFML programs mandating a Rolling Forward method, this can create complications for employers. Whether an employer has opted for a private plan or a state-administered plan, the difference in leave year method can have implications for an employee's leave allotment. Since most PFML programs also provide job protection, employers may wonder how much leave an employee will be entitled to when there are multiple programs using different leave year methods.

State PFML	Job Protected
California	No
Colorado	Yes
Connecticut	No
Delaware	Yes
Maine	Yes
Maryland	Yes
Massachusetts	Yes
Minnesota	Yes
New Hampshire	Yes
New Jersey	No
New York	Yes
Oregon	Yes
Rhode Island	Yes
Washington	Yes

When an employee requests a leave that is covered by multiple leave programs, the applicable method for each program must be followed. Each leave entitlement must be analyzed individually under its own leave year method. This may mean that an employee who has multiple leave requests in a single year may have portions of those requests that are covered by none, one, or more than one applicable leave program, depending on the manner and order of the absences. It is possible, for example, that an employee's first absence could be covered by both FMLA and the state PFML program, the second absence could be covered by only the state PFML program, and the third absence could be covered only by the FMLA. Because of this, an employee's available time can be extended due to the non-concurrent leave usage.

Eligibility Reminder

Keep in mind that an employee must still meet the eligibility requirements for each leave. An employee who takes multiple leaves in a year may fall below the eligibility threshold for required hours of service. Under the FMLA, time while on a leave of absence does not count towards an employee's 1250-hour eligibility requirement. But if the recurring leaves are for the same leave reason, the employer can only check the employee's eligibility once per 12-month period.

Should we align our FMLA leave year calculation method to the calculation method in the state PFML program?

An employer in a state with a job protected PFML mandate may wish to align their FMLA leave year calculation method to match the required method in the state's PFML law. While this may, in some cases, help to cut down on confusion, employers should not assume that this will lead to tidy concurrency among FMLA, PFML, and state FMLA programs. Overall, state PFML programs cover far more absences than FMLA and state unpaid leave programs due to expanded coverage, including:

Employee Eligibility
With few exceptions, more employees are eligible, and are eligible sooner, for state PFML programs than FMLA due to low thresholds of financial eligibility and reduced or non-existent length and hours of service requirements.

Duration of leave
PFML programs often provide extended durations beyond the FMLA's 12 weeks of leave.

Leave Reasons
State PFML programs tend to cover more leave reasons than the FMLA, including being a victim of domestic violence, sexual assault, or stalking.

Covered Relationships
On the whole, state PFML programs allow an employee to take leave for a broader spectrum of family relationships than the FMLA, including aunts and uncles, grandparents and grandchildren, siblings, and individuals who have the equivalent to a family relationship, a sweeping category.

Since state PFML programs, FMLA, and state unpaid programs differ in many significant respects, there are many instances in which the programs will become out of sync. As a result, aligning the leave years between the programs may not achieve the overall consistency an employer desires.

Can we apply FMLA coverage to an absence even if FMLA doesn't apply?

When an employee is entitled to job-protected coverage (under a state PFML or unpaid program), employers may wish to apply FMLA coverage to the leave, even if the employee isn't technically eligible. For example, an employer may wish to do this if the employee has not met the FMLA's 12 months and 1250 hours eligibility requirement or if the employee is taking leave for a family member not covered by the FMLA (but covered under the PFML program, such as a sibling).

An employer cannot opt to expand FMLA coverage to provide leave when an employee is not eligible, when the employee has exhausted leave, or when the absence is not for an FMLA-qualifying reason or relationship. An employee must allow an employee 12 weeks of leave when they are eligible under FMLA rules, and for FMLA-qualifying reasons. An employer cannot designate non-FMLA qualifying absences as FMLA-qualifying if it works to the detriment of the employee's future FMLA allotment. In a situation with various leave programs potentially applying, the employer should apply and designate only the leave programs for which the employee is covered to avoid potential future problems.

How do we change our leave year?

If an employer does wish to change its leave year method for FMLA administration, it must give employees notice of the change at least 60 days in advance. During the transition period, the employer must ensure that employees continue to receive the benefit of their leave entitlement under whichever calculation method provides the greatest benefit to the employee.

While an employer must use the same leave year calculation method for FMLA administration for all employees, an exception to this rule is where a multistate employer operates in a state with a law that provides a specific method for determining the leave year. In that case, the employer can opt to use the alternate method within that state and use a different 12-month period for employees in other states.

Leave years can impact payments, too

Not only can a PFML program's designated leave year impact the amount of leave an employee can take, but it can also impact calculation of weekly benefit payments. Annually, each state's PFML benefit calculation changes due to the state's Average Weekly Wage (SAWW), the state's minimum wage, or the federal Social Security wage cap. Depending on the state, this number will impact the calculation in several ways including the minimum benefit, maximum benefit, and the breakpoint in two-tier benefit models.

The new rates, whether driven by SAWW, minimum wage, or Social Security wage cap, go into effect on January 1 of each year, but there are several variations for how each state applies the new (usually increased) benefit amount to time-off requests. For employers who have a policy of topping up their employees' state payments with other benefits, it is key to track not only the new benefit rate, but also the timing of when it will apply.

Within the states, several methods have emerged to dictate timing of the adjustment:

Benefit Rate dictated by Leave Year

In some states (MA, WA, OR), the leave year has a significant impact on benefit calculations. In these states, the benefit rate (which factors in the SAWW) in effect as of the first day of the leave year applies to all absences during that leave year, even after the SAWW has increased. In these states, if an employee establishes a new leave year on December 30, 2024, their weekly benefit amount in effect on that date will apply to all absences through the end of the leave year, even though the rate will have increased on January 1, 2025.

Benefit Rate not dictated by Leave Year

In other states (NY, CT), the benefit rate in effect as of the first day of the leave request applies to the claim, regardless of the leave year. In still others (thus far, just CO), each day of the request must be evaluated against the SAWW in effect on that date, so an employee may receive different payments for different days within a single week of leave, if the SAWW adjusts mid-leave.

The defined leave year for an absence program, whether FMLA, state PFML, or state unpaid leave, can have a significant impact on the timing and amount of leave an employee will have available. Combining multiple programs with different leave years can present a challenge to employers and may extend an employee's overall leave entitlement. While aligning the FMLA leave year calculation method to the state PFML program may achieve some consistency, the overall variations among the programs may prevent that solution from yielding the desired result. Employers should also be aware of how the leave year calculation method can impact an employee's benefit amount and adjust top-up processes accordingly.

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