DMEC
2026 ANNUAL CONFERENCE

Come on Down!
Rewriting FMLA Strategies for a New Era



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CLIFF HANGERS

Rules

- Each contestant is asked 5 questions.
- For each wrong question, the climber advances up the mountain.
- If the contestant makes it through the questions without going over the cliff, they win a prize!



Round 1 – Unpaid Leave - Contestant 1

1. Under the federal FMLA, how many weeks can you take in a leave year for your own serious health condition?
2. How many days does an employee typically have to return a medical certification after the employer requests it?
3. Under the "key employee" exception, an employee is considered "key" if they are among the highest-paid what percent of employees within 75 miles?
4. For ongoing conditions, after how many months may an employer generally request recertification?
5. If an employee voluntarily accepts a light-duty assignment, how many weeks of FMLA leave are used during that period?



Round 1 – Unpaid Leave - Contestant 2

1. How many days in advance should an employee give notice for foreseeable FMLA leave?
2. Under the "rolling backward" method, how many months of prior leave must an employer review to calculate remaining FMLA entitlement?
3. How many business days does an employer have to notify an employee of FMLA eligibility after receiving a leave request?
4. An employee is found to be on a vacation in Hawaii during their approved FMLA leave. How long does the employer have after discovering this before they can terminate them?
5. If a medical certification is incomplete or insufficient, how many days must the employer give the employee to cure the deficiencies?



Facts and Figures!

Topic	Rule / Number	What It Means
FMLA Leave Amount	12 weeks	Standard unpaid job-protected leave available per 12-month period.
Notice Requirement	30 days	Employee must give advance notice for foreseeable leave.
Medical Certification Deadline	15 days	Employee must return the medical certification within 15 days of employer request [but remember diligent effort exception!].
Employer Eligibility Notice	5 business days	Employer must notify the employee of FMLA eligibility after a leave request.
Recertification Interval	6 months	Employer may generally request recertification no more often than every 6 months.
Key Employee Threshold	Top 10%	Applies to employees among the highest-paid 10% within 75 miles.
Rolling Backward Method	12-month lookback	Employer subtracts any FMLA leave taken in the prior 12 months to determine remaining entitlement.
Curing an Incomplete Certification	7 days	Employee must fix deficiencies in an incomplete or insufficient certification within 7 days.



Round 2 – PFML - Contestant 1

1. For the vast majority of PFML states, eligibility for leave is transferrable between employers. Meaning, if you have met the earnings threshold at one employer and you switch employers, you can take leave immediately and still be eligible.
2. For CA PFL, you are required to have at least $3,000 in prior earnings to qualify for benefits.
3. For CT PFML, you can take leave to care for your elderly neighbor with a serious health condition.
4. If an employee took unpaid FMLA leave before Maine PFML was effective, that cannot count against an employee's Maine PFML entitlement.
5. Maine is one of the only PFML states with no waiting period.



Round 2 – PFML - Contestant 2

1. If you work remotely from Washington for a Texas employer, the employer owes no Washington PFML contributions.
2. California has the highest PFML weekly benefit in the country—over $2,000 per week.
3. Delaware has the lowest PFML weekly benefit in the country—$900 per week.
4. WA PFML offers the most amount of PFML leave in the country, coming in at 32 weeks if you include pregnancy disability leave.
5. If an employee takes 12 weeks of leave to care for a sibling under CT PFML, at the end of those 12 weeks, they will still have all 12 weeks of FMLA available for an FMLA-qualifying



PFML Eligibility

State	Eligibility Requirement
CA	Must have earned **at least $300** in wages subject to SDI contributions during the base period.
CO	Must have earned **at least $2,500** in Colorado wages during the base period.
CT	Must have earned **$2,325** in the highest-earning quarter of the base period.
DE	Must have been employed **12 months** and worked **1,250 hours**.
ME	Must have earned **at least six times the state average weekly wage** ($7,494.72).
MD	Must have worked **at least 680 hours** in the 4 calendar quarters before filing a claim or leave start.
MA	Must have earned **at least $6,300** in the base period and at least **30× the weekly benefit amount**.
MN	Must have earned **at least 5.3% of the state's average annual wage** (≈ $3,900).
NJ	Must have worked 20 weeks earning **at least $310 weekly**, or earned **$15,500** in the base year.
NY	Eligibility based on length of service (20+ hrs/week → min 26 weeks; <20 hrs/week → min 175 days worked).
OR	Must have earned **at least $1,000** in the base year.
WA	Must have worked **820 hours** in the qualifying period (typically last 4–5 quarters).



PFML Family Relationships

State	Equivalent-Family Allowed?
CA, DE, DC, MD, MA, NY, RI - No	
CO	Yes —an individual with whom the employee has a "significant personal bond that is like a family relationship."
CT	Yes —an individual "whose close association with the employee is the equivalent of a family member."
ME	Yes —an individual who the employee has a "significant personal bond that is or is like a family relationship."
MN	Yes —an individual with whom the employee has a "personal relationship with the applicant that creates an expectation and reliance that the applicant care for the individual without compensation."
NJ	Yes —individuals related "related by blood…and any other individual [who has] a close association with the employee which is the equivalent of a family relationship."
OR	Yes —an individual related by "blood or affinity whose close association with a covered individual is the equivalent of a family relationship."
WA	Yes — an individual "who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care"



ME PFML & FMLA

Will my available Maine Paid Family Medical Leave (PFML) time be reduced if I take leave under other laws?

Yes. Maine PFML, the federal Family and Medical Leave Act (FMLA), and Maine FMLA will run at the same time when they all apply. They're not designed to be used separately: if you're covered by all three, you can't choose to take 12 weeks of federal FMLA and then a separate 12 weeks of Maine PFML. Any leave you take under the federal FMLA or Maine FMLA in the 12 months before your Maine PFML benefit starts will count against your available 12 weeks of Maine PFML. June 2026

For example: If you took 4 weeks of federal FMLA or Maine FMLA in December of 2025, you would only have 8 weeks of PFML available in 2026 when your benefits start in May of 2026.

https://www.maine.gov/paidleave/docs/2026/employees/faq/employeeFAQenglish.pdf



Waiting Periods

State	Waiting Period	How often is it served?	Exceptions	Does it Deduct from Available time?
MA	7 calendar days	Every leave	Does not apply when bonding immediately follows birth disability	Yes
ME	7 calendar days	Once per Benefit Year	Only applies for own medical condition	Yes
WA	7 calendar days	Once per Claim year	Does not apply to birth disability, bonding, military exigency	No



PFML Localization Rule

For most states, the **Unemployment Insurance (UI) localization test** determines **which state** an employee's work is assigned to when they work in more than one state. It follows a hierarchy:

1. **Where the work is localized** (physically performed).
2. If work occurs in multiple states:
   - **Base of operations**
   - **Place of direction and control**
   - **Employee's residence** (only if the first two don't decide it)



PFML Benefit Maximums

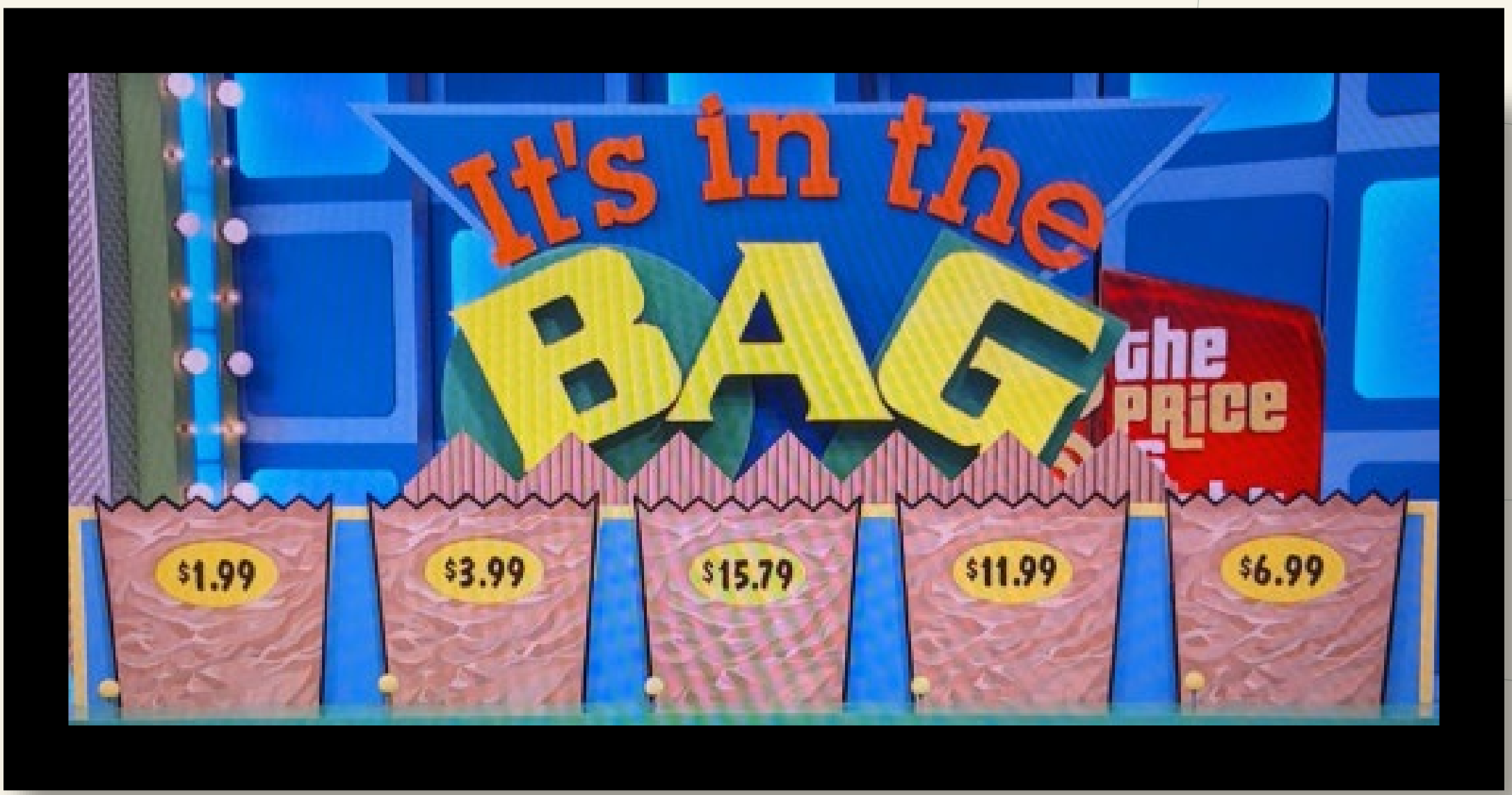
State	Maximum Weekly Benefit (2026)
California	$1,765
Colorado	$1,381.45
Connecticut	$1,016.40
District of Columbia	$1,190
Delaware	$900
Massachusetts	$1,230.39
Maine	$1,249.12
Maryland	$1000
Minnesota	$1,423
New Jersey	$1,119
New York	$1,228.53 ($1287.91 as of 1/1/2027)
Oregon	$1,637
Rhode Island	$1,103
Washington	$1,647



PFML Maximum Length of leave

State	Max Paid Weeks Per Benefit Year
CA	8 weeks
CO	28 weeks (12 weeks PFML + 4 week for pregnancy complications + 12 weeks for NICU)
CT	14 weeks (12 weeks PFML + 2 pregnancy incapacity)
DC	14 weeks (12 weeks PFML + 2 prenatal)
DE	12 weeks per year total: 12 weeks bonding per year, 6 weeks to care for a family member, own serious health condition, military exigency, every 24 months
ME	12 weeks
MD	24 weeks (if employee's own medical and bonding in the same year)
MA	26 weeks (20 weeks own medical + 12 weeks family,+ 26 weeks military caregiver)
MN	20 weeks (12 medical + 12 family, capped at 20 combined)
NJ	12 weeks (+ 26 weeks TDI)
NY	12 weeks (+ 26 weeks DBL)
OR	14 weeks (12 PFML + 2 pregnancy complications)
RI	6 weeks (+ 30 weeks TDI)
WA	16 weeks (12 weeks family, 12 weeks medical, max combined 16 weeks + 2 pregnancy complications)




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$6.99

Rules

- Match the law to the concept that exists only under that law.
- In this round, there are 6 laws and five concepts. Each concept corresponds to one of the leave laws. One law will be orphaned (meaning it will be left behind when the contestant has made his/her guesses for the concepts.
- One by one, the contestant must choose the state leave law that matches the concept.
- If the state matches the concept - they win.
    - They may then keep the "prize" or go on to the next bag, essentially making a double-or-nothing bet that they have chosen the next item correctly.

Round 1



FMLA: Eligibility

To be eligible, employees MUST meet all 3 conditions:

1. **Employed for at least 12 months** at the start of the leave
2. **Worked for at least 1,250 hours** during the 12-month period immediately preceding the start of the leave
3. **Employed at a worksite where 50** or more employees are employed by the employer within 75 miles of that worksite at the time the employee requests leave
   - For telecommuters or remote employees who work from home or have no fixed office, their FMLA work location is the office they report to.



ADA:

Employers do not need to relieve an Employee form performing an essential job function – rather they must provide reasonable accommodation so that the employee can perform the essential function



PWFA: Predictable Assessments

For certain "predictable assessments", EEOC advises that in most cases for these accommodations:

- No documentation should be required
- These accommodations should be approved quickly (to avoid a finding of unnecessary delay)
- ER will have a hard time showing undue hardship.

What are the predictable assessments under EEOC regulations?

- Allowing an EE to carry or keep water near and drink, as needed
- Allowing an EE to take additional restroom breaks, as needed
- Allowing an EE whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- Allowing an EE to take breaks to eat and drink, as needed



CFRA: Intermittent bonding

- Employees do not need Employer's agreement to take intermittent bonding leave.

- An employee may be required to use intermittent bonding in 2-week increments, provided that the employee has right to use shorter than 2 week increments on at least 2 occasions.



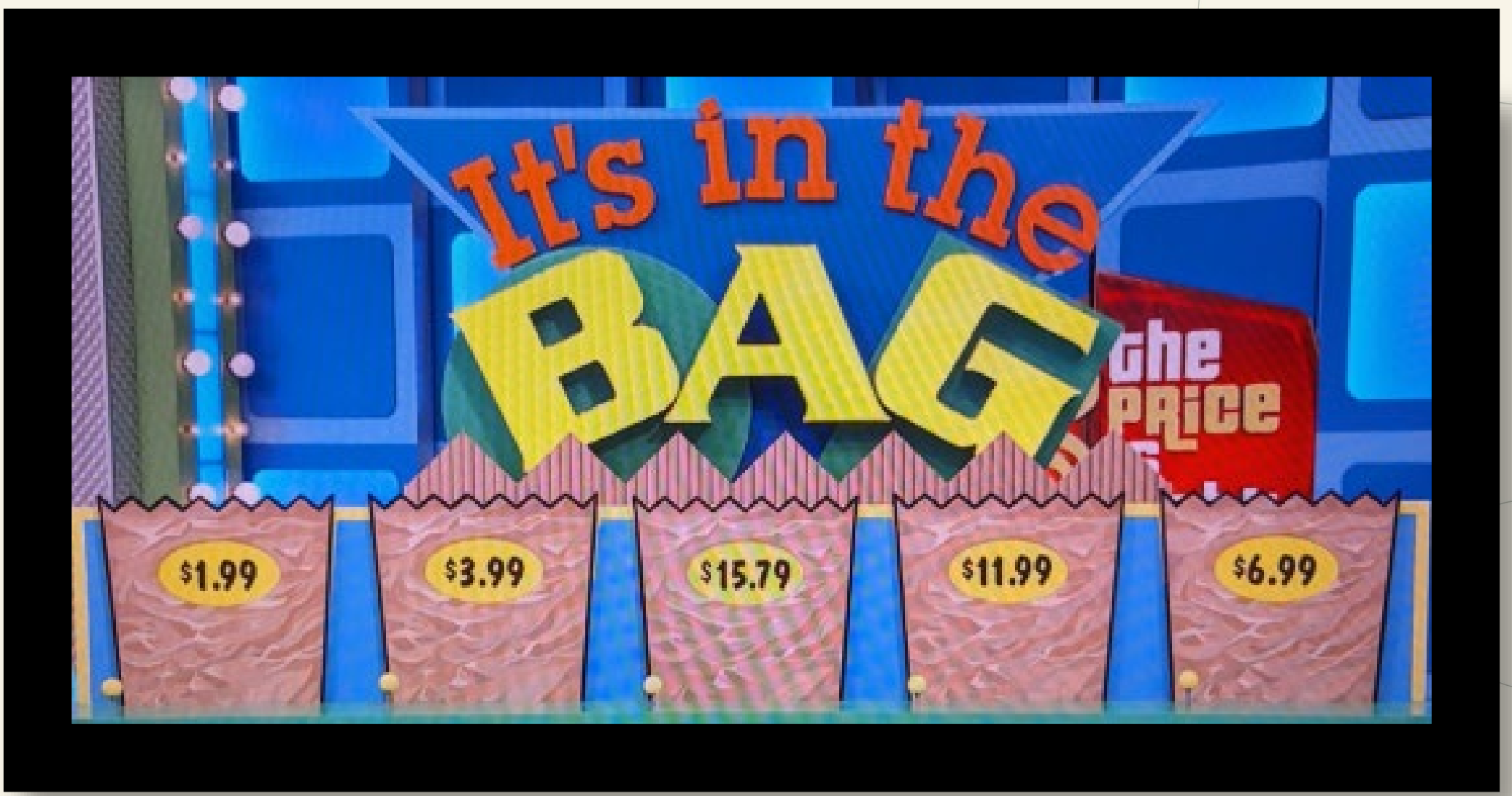
Tennessee Leave for adoption, pregnancy, childbirth and nursing an infant

The Employee who provides at least 3 months advance notice to their Employer of need for leave, including the length of leave and their intention to return to full-time employment after leave, will have a right to restoration provided that the EE did not:

- Look for a job while on leave,
- Work for another ER while on leave, or
- Hold a position so unique that the ER cannot temporarily fill it.

Where advance notice is not possible due to medical emergency or adoption placement, the advance notice requirement is waived.




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- If the state matches the concept - they win.
    - They may then keep the "prize" or go on to the next bag, essentially making a double-or-nothing bet that they have chosen the next item correctly.

Round 2



CO PFML NICU Leave

- An additional 12 weeks of leave is available under Colorado's PFML program when the employee's child is inpatient in the NICU.

- This time can only be used while the child is in the NICU and is in addition to the other types of PFML leaves.



DE PFML: Leave Reasons

- Employers with 10 to 24 employees working in Delaware must provide only paid parental leave.
- Employers with 25 or more employees working in Delaware must provide medical and family caregiving leaves in addition to paid parental leaves.



MN PFML Benefit Calculation

MN PFML uses a three-tiered benefit schedule. EEs are entitled to receive benefits equal to:

- 90% of wages that do not exceed 50% of the state's average weekly wage; plus
- 66% of wages that exceed 50% of the state's average weekly wage but not 100%; plus
- 55% of wages that exceed 100% of the state's average weekly wage.

The max weekly benefits equates to 100% of state’s average weekly wage (SAWW) calculated on or before June 30 of each year.



OR PFML Pregnancy Extender

An additional 2 weeks paid leave for Employees due to limitations related to pregnancy, childbirth, or related medical condition including lactation



Maine: Undue Hardship

An undue hardship means a significant impact on the operation of the business or significant expenses that cannot be overcome with the amount of notice given by the employee. It is evaluated based on the employers' financial resource, workforce size and industry type.

Undue hardship is a factor employers may consider when coordinating timing of the employee's leave.

An employer may raise an undue hardship only after receiving notice of an employee's application for PFML. The employer then has 10 business days to:

- Provide a written explanation to the employee and Administrator describing the specific impact of the requested leave on the business
- Include any proposed alternative leave schedule
- Provide documentation if it believes the leave schedule will cause undue hardship.




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Round 1: The Intersection of FMLA, ADA, and PWFA



Cheat Sheet

	Eligibility	Documentation	Potential Reasons to Deny
FMLA	12 months, 1250 hours	Yes	Not eligible, Insufficient documentation, ran out of time, not a serious health condition
ADA	No service requirements	Yes	Insufficient documentation, not a disability, undue hardship, direct threat, removes an essential function
PWFA	No service requirements	Yes, except for certain reasons – keep water, restroom breaks, sitting/standing, eating/drinking	Insufficient documentation (depending on reason), undue hardship



Leave and Accommodations Showdown

You are a large employer with 500+ employees. Sarah has worked full time (40 hours per week) in your TX based warehouse for 11 months when tells you she is pregnant and she needs bathroom breaks more often during her shift.

- Name the law(s) that applies to Sarah's request for more bathroom breaks and what you can ask for when reviewing her request for more bathroom breaks?
- For each law, name any reason(s) why an employer could argue that they do not have to provide this?



Leave and Accommodations Showdown

You are a large employer with 500+ employees. Sarah has worked full time (40 hours per week) in your TX based warehouse for 11.5 months when tells you that her provider put her on bedrest. Sarah gives birth a month after being put on bedrest.

- Name the law(s) that protects Sarah when she goes on bedrest and when she gives birth?
- For each law, what can the employer request from the employee when reviewing her request for bedrest and subsequent leave?
- For each law, name any reason(s) why an employer could argue that they do not have to provide this?



Leave and Accommodations Showdown

The week before she is set to return to work, Sarah slips and hurts her back. Her provider advises her that she can not lift more than 20 pounds while she recovers and will need physical therapy 2x per week.

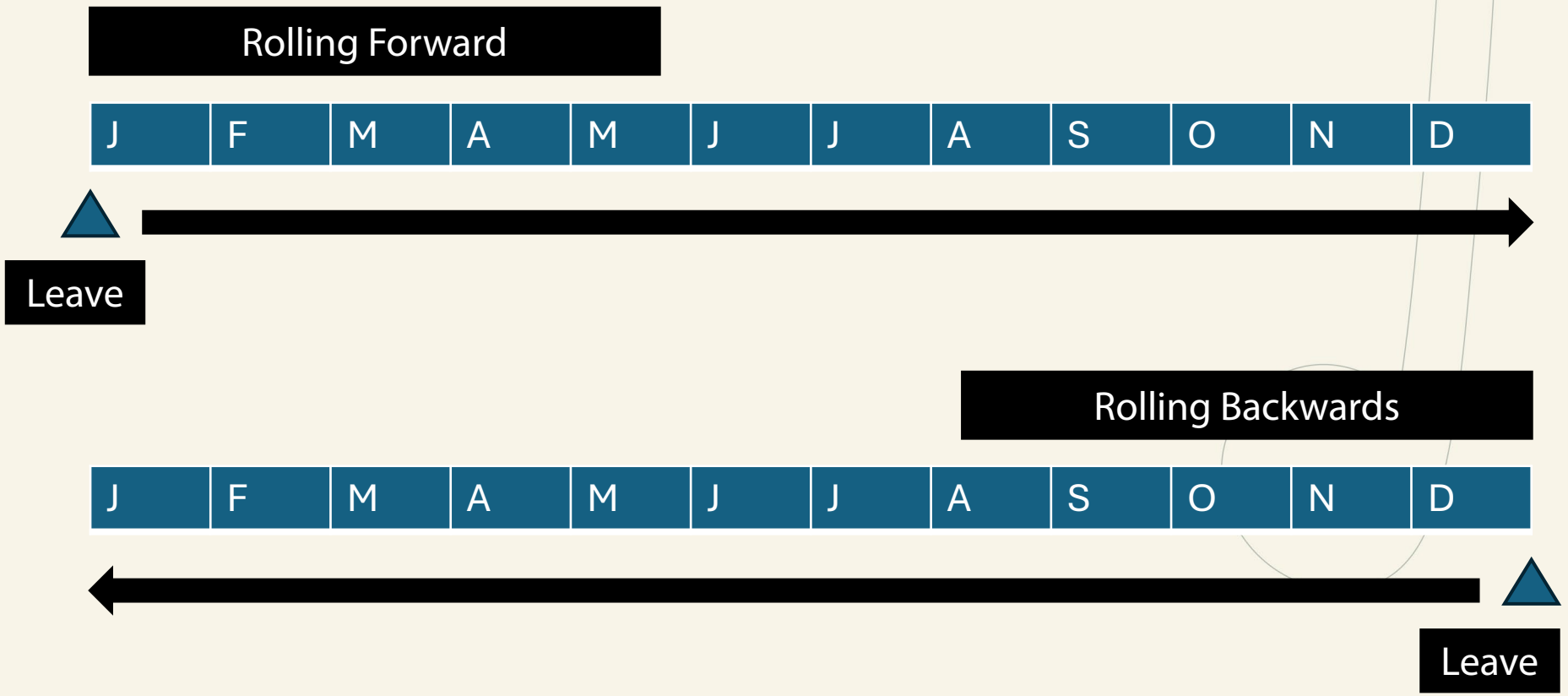
- Name the law(s) that applies to Sarah's request for accommodation and what you will ask for when reviewing her request for leave?
- For each law(s), name any defense(s) to providing accommodation that you may raise as an employer?



Round 2: PFML Year Calculation Methods



Rolling Forward v. Rolling Backwards



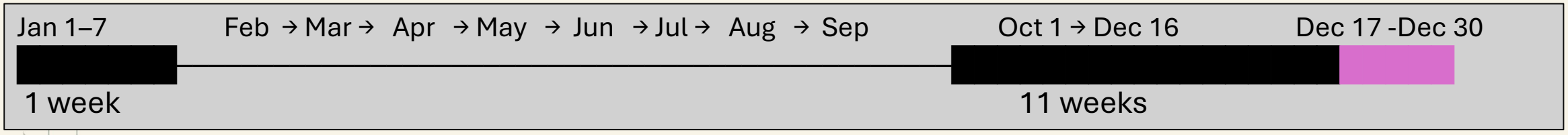
PFML Showdown

An employee has worked for your organization for 3 years, averaging 1500 hours/yr and earning $80,000/yr. Your organization uses the rolling backward method for FMLA, but they live in Massachusetts, where MA PFML uses a rolling forward benefit year.

They use:

- 1 week of leave to care for their sibling beginning on January 1, 2026.
- 11 weeks of leave to care for their child (October 1 2026 – December 16, 2026)

1. The employee requests 2 additional weeks of leave (December 17, 2026-December 30, 2026) to care for their parent.
   - Is the employee eligible for MA PFML?
   - Is the employee eligible for Federal FMLA?



PFML Showdown

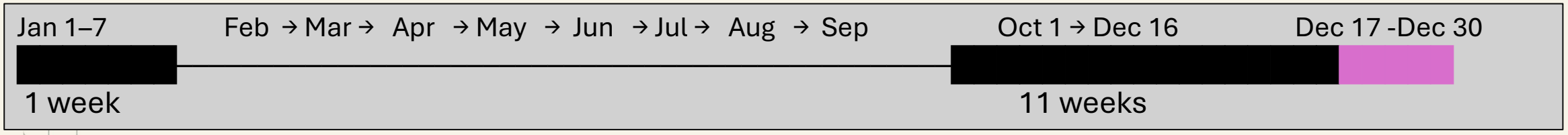
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They use:

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- 11 weeks of leave to care for their child (October 1 2026 – December 16, 2026)

2. The employee requests 2 additional weeks of leave (December 17, 2026-December 30, 2026) to care for their parent.

- Do they have Federal FMLA available for that leave? If so, how much of the leave is covered by Federal FMLA?
- Do they have MA PFML available for that leave? If so, how much of the leave is covered by MA PFML?



PFML Showdown

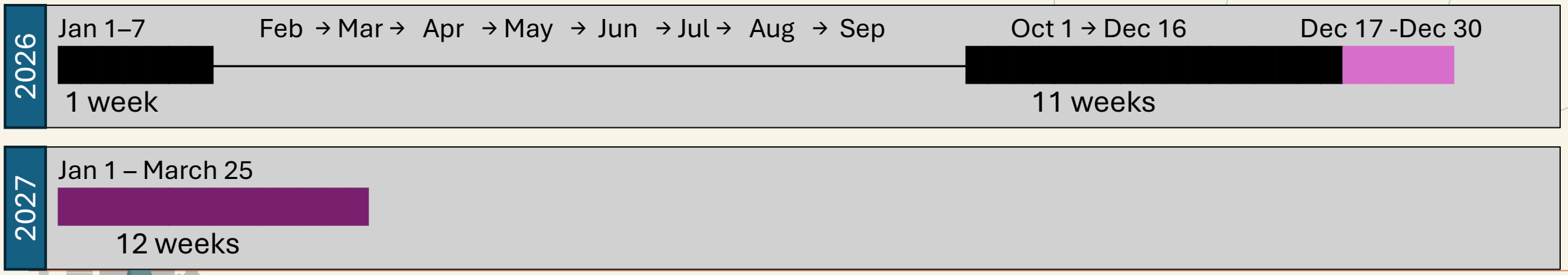
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They use:

- 1 week of leave to care for their child beginning on January 1, 2026.
- 11 weeks of leave to care for their sibling (October 1 2026 – December 16, 2026)

3. The employee requests 12 weeks of leave (January 1, 2027 – March 25, 2027).

- Do they have Federal FMLA available for that leave? If so, how much of the leave is covered by Federal FMLA?
- Do they have MA PFML available for that leave? If so, how much of the leave is covered by MA PFML?



PFML Showdown

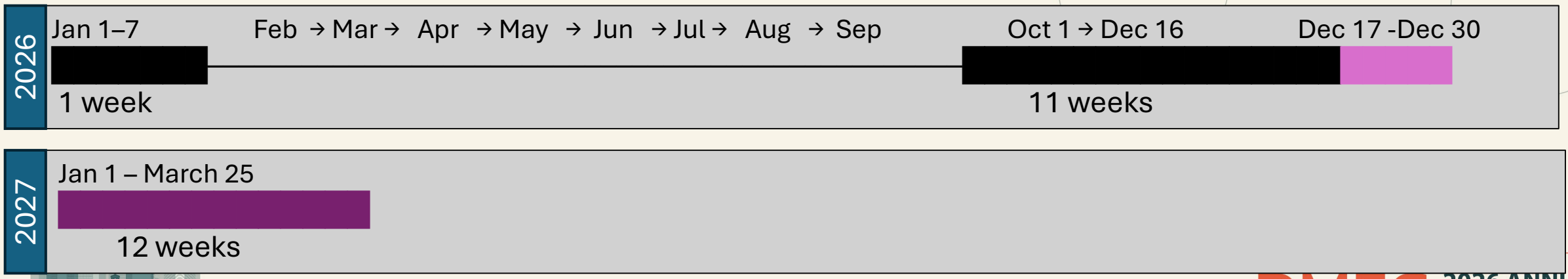
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- 1 week of leave to care for their child beginning on January 1, 2026.
- 11 weeks of leave to care for their sibling (October 1 2026 – December 16, 2026)

4. Extra Credit:

- Does MA PFML have a waiting period?
- If so, which of the employee's absences would be affected by a waiting period?
- January 2026, October 2026, December 2026, January 2027?



Questions?



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THANK YOU!



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