How Are Your Policies and Corporate Culture Holding Up In the Face of the PFML Programs?

August 4, 2026





Ellen Donovan McCann

Of Counsel

Littler – Boston Office



Daris Freeman

Assistant Vice President & Lead Managing Counsel

Unum Law Department

Agenda

- Overview
- Compliance Issues
- Goals
  - Reducing multistate complexity
  - Reduce stacking
  - Pay coordination
  - Employee experience



What is at Play?



Legal Entitlements to Leave and Pay

- Federal Family and Medical Leave Act (FMLA)
- Federal Accommodation Laws (ADA, PWFA)
- State Unpaid Leave Laws: Mini FMLA; Parental; Domestic Violence; Family Military; Pregnancy/Disability Accommodation ("State Unpaid Leave")
- State or Local Paid Family and Medical Leave and/or Wage Replacement Laws ("State PFML")
- State or Local Paid Sick Leave or Mandatory Paid Leave Laws ("Paid Sick Leave/Mandatory PTO")
- State Accrued Paid Leave (a/k/a Kin Care)



Employer-Provided Leave and Pay Benefits

- Employer-Provided Accrued Paid Time Off
  - *E.g.*, Vacation, PTO
- Employer-Provided Pay Benefits
  - Paid Corporate Leave – *e.g.*, Parental Leave, Family Caregiver Leave, Bereavement Leave
  - Employer-Sponsored Wage Replacement Benefits – *e.g.*, Short-Term Disability, Long-Term Disability, Salary Continuation



PFML Programs

- Mandatory programs-passed in 15 states and DC
- Funded by employer and/or employee contributions
- Provide income replacement benefits for covered reasons.
- All provide partial income replacement, with a maximum benefit amount.
- Many also provide job restoration rights and require maintenance of group health benefits.
- All cover employee medical leave.
- All but HI cover family leave but reasons may vary (*e.g.*, bonding, care of a family member, family military, domestic violence, bereavement).

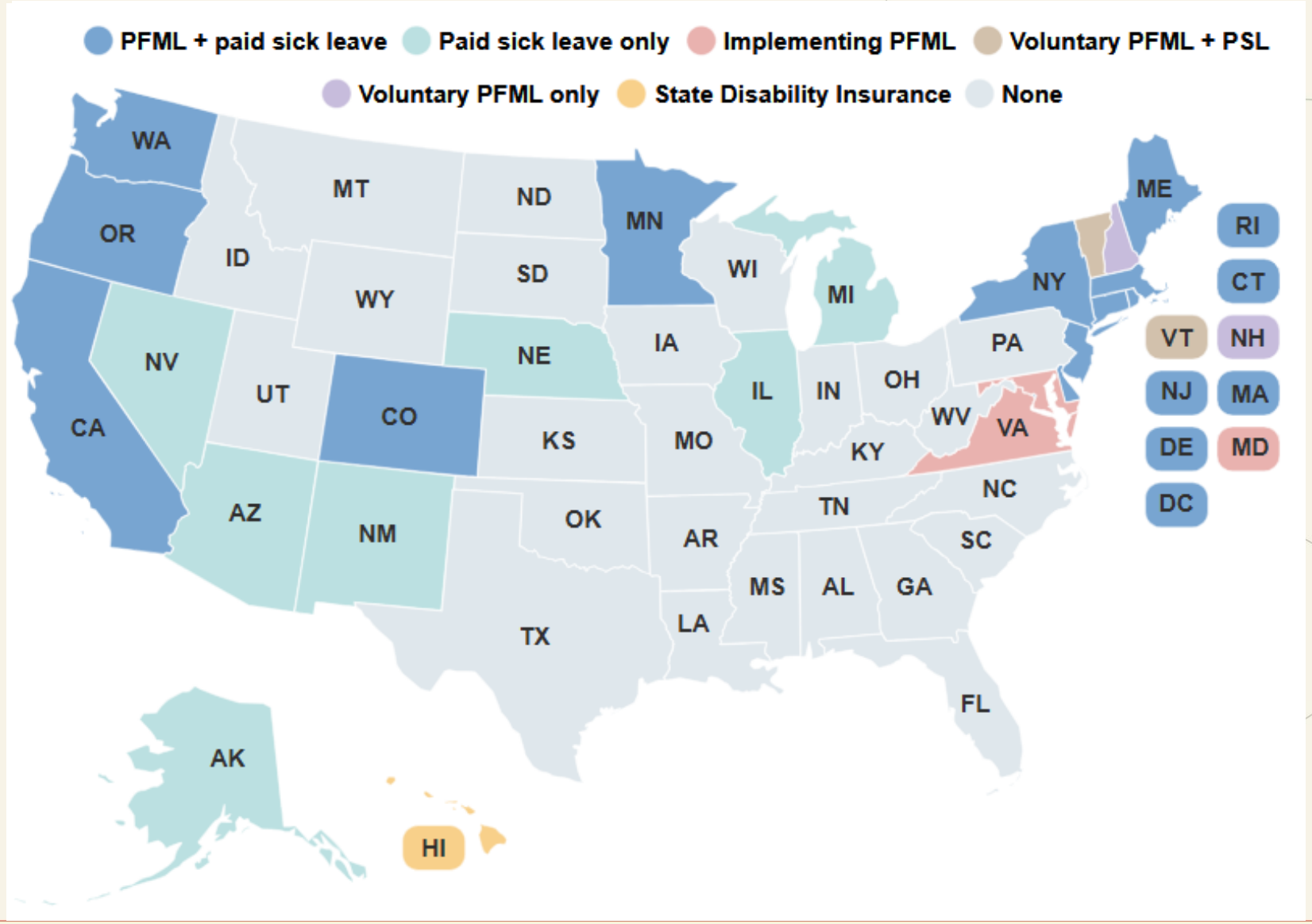


Differences in PFML Programs

- Wage replacement benefit or paid leave entitlement?
- Are there separate entitlements for medical vs. family leave or a single combined entitlement?
- Administered by state, employer, or insurance carrier?
- How long do benefits last?
- Unpaid waiting period?
- What are the rules for pay coordination with employer policies and/or benefits?



PFML map


PFML + paid sick leave
Paid sick leave only
Implementing PFML
Voluntary PFML + PSL
Voluntary PFML only
State Disability Insurance
None
WA
OR
CA
ID
NV
MT
WY
UT
AZ
CO
NM
ND
SD
NE
KS
OK
TX
MN
IA
MO
AR
LA
WI
IL
MI
IN
OH
KY
TN
MS
AL
GA
FL
SC
NC
VA
WV
PA
NY
ME
RI
CT
VT
NH
NJ
MA
DE
MD
DC
AK
HI

Possible Impact of PFML On Your Policies

- Compliance
- Goals
- Design



Compliance Concerns



PFML and FMLA/State Unpaid Leave Laws

- Employer coverage
- Employee eligibility
- Leave reasons
- Increments of use
- Entitlement
- Certification
- Recert/2nd 3rd Opinions
- Substitution of accrued paid leave
- Forced use
- Maintenance of Benefits
- Key employees
- Reinstatement



PFML and ADA/PWFA

Covered reasons

Documentation

Entitlement

Undue hardship

Reinstatement



PFML and Paid Sick Leave/Mandatory PTO

Reasons for use

Accrual

Employee choice

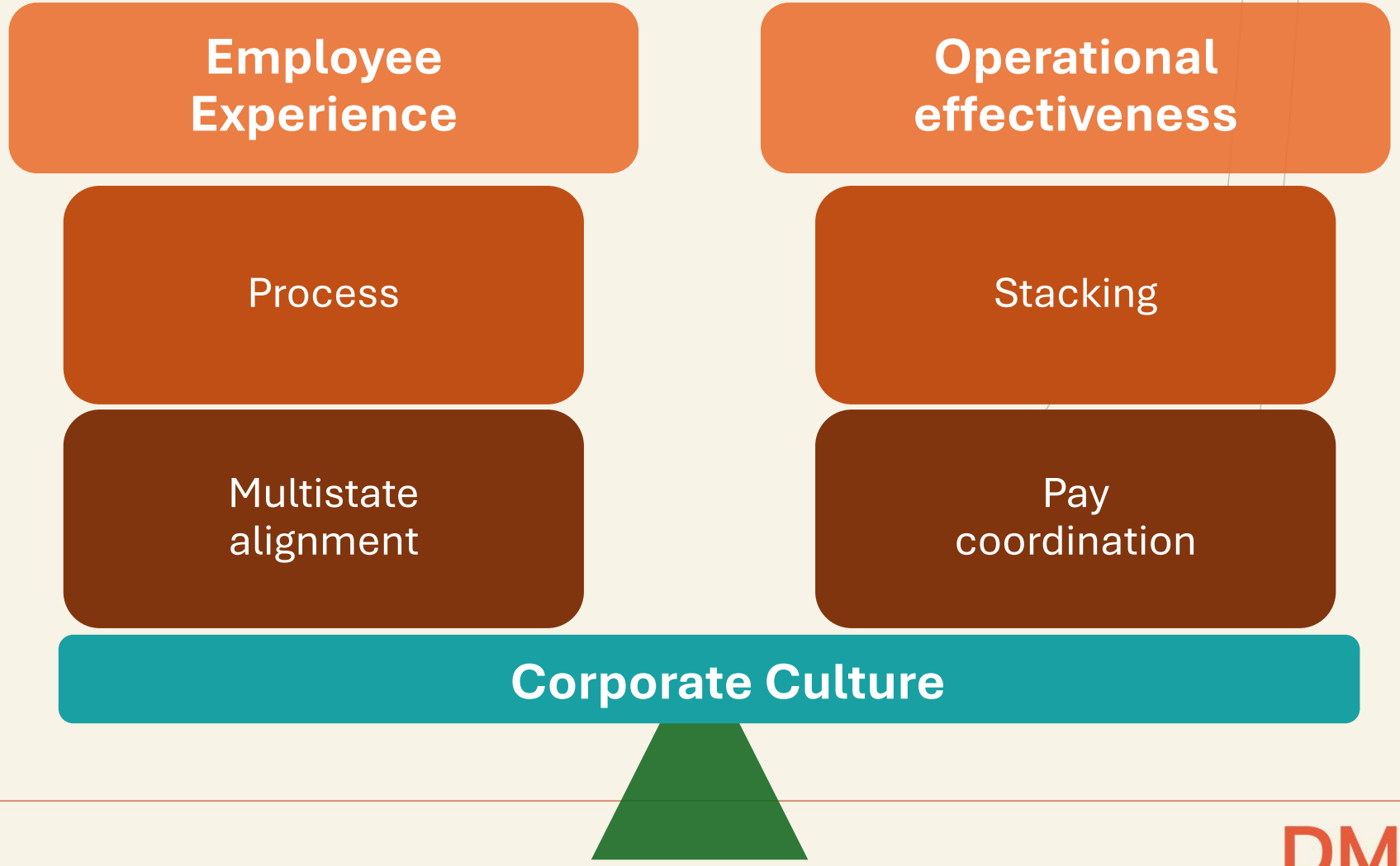
Employer policy

Forced use

Employer Goals



What Are Your Goals?





1

Goal 1: Reducing Multistate Complexity

Reduce Multistate Complexity

- **FMLA**
  - Federal baseline for leave
  - Consider corporate leave policy to bridge gaps
- **STD**
  - Covered employees
- **Paid Parental / Caregiver**
  - Influence how PFML programs are utilized
- **PTO**
  - Identify state/local requirements re: top up,
    pay out, required use, etc.
  - Align with most generous or retain state exceptions





2

Goal 2: Reducing Stacking

Reduce Stacking – FMLA

Before PFML	After PFML
May require spouses to share FMLA bonding time	Remove sharing provision – PFML programs provide full entitlements to each parent
Prohibit or limit intermittent bonding	Retain policy – consider waiving if PFML allows without limitation
Calculation method: rolling backward, fixed year (*e.g.* calendar year), measured forward	Most PFML states use some form of measured forward – evaluate if alignment makes sense



Reduce Stacking - STD



- Eligibility for STD benefits
  - Require PFML filing? No, but…
- Offset
  - Apply offset for PFML benefits employee receives or is eligible to receive
- Medical management
  - PFML approval ≠ STD disability
- Family-specific benefits during STD
  - CO FAMLI NICU
  - Washington DC post-partum

Reduce Stacking – Paid Parental/Caregiver

Eligibility

- Require PFML filing
  - Consider waiving tenure requirements if PFML eligible

Increments

- Require specific increments based on business needs
  - Employee must take PFML in same increments for full pay

Definitions

- PFML – expansive definition of family member
  - Consider alignment

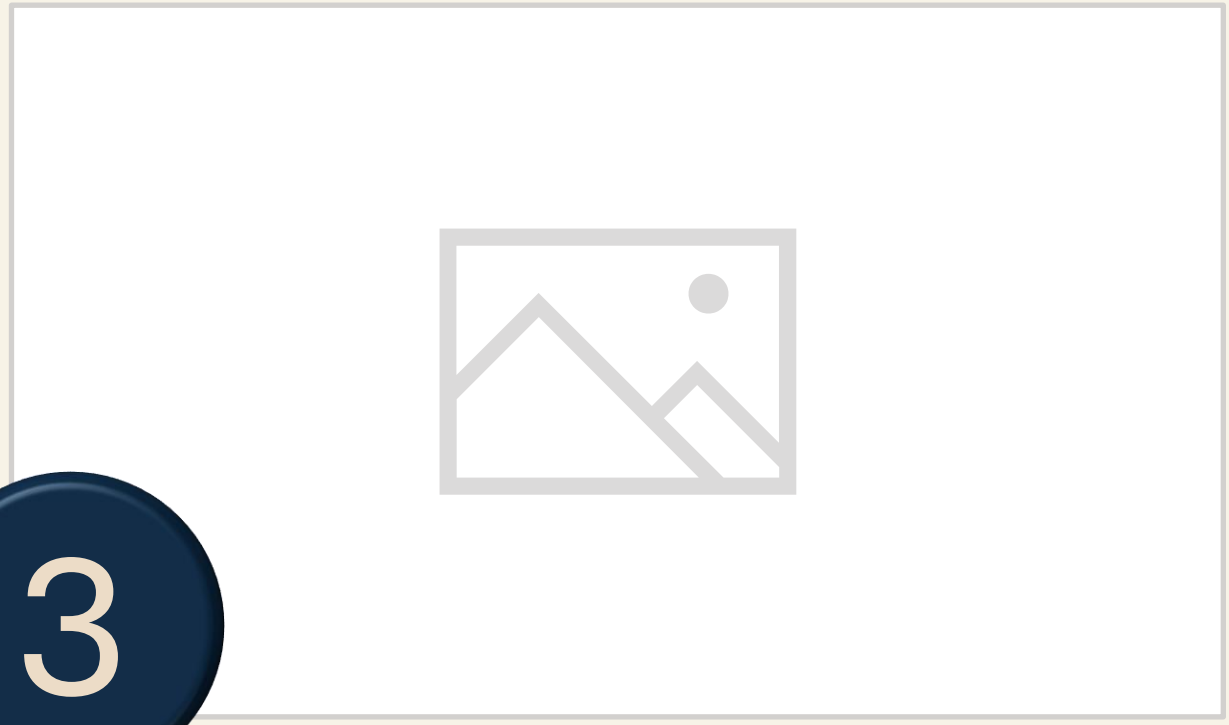
Entitlement

- Foster Care to Adoption
- Multiple Births
- 12-month period

Reduce Stacking - PTO

- PTO before PFML?
  - Most states prohibit
  - But must allow employee to choose
  - Elimination periods
- Top up?
  - Pro: uses up PTO bank
  - Con: disincentivizes return to work
- PTO after PFML?
  - Can require employee to be actively at work to use PTO
  - What if Paid Sick Leave is in PTO?





3

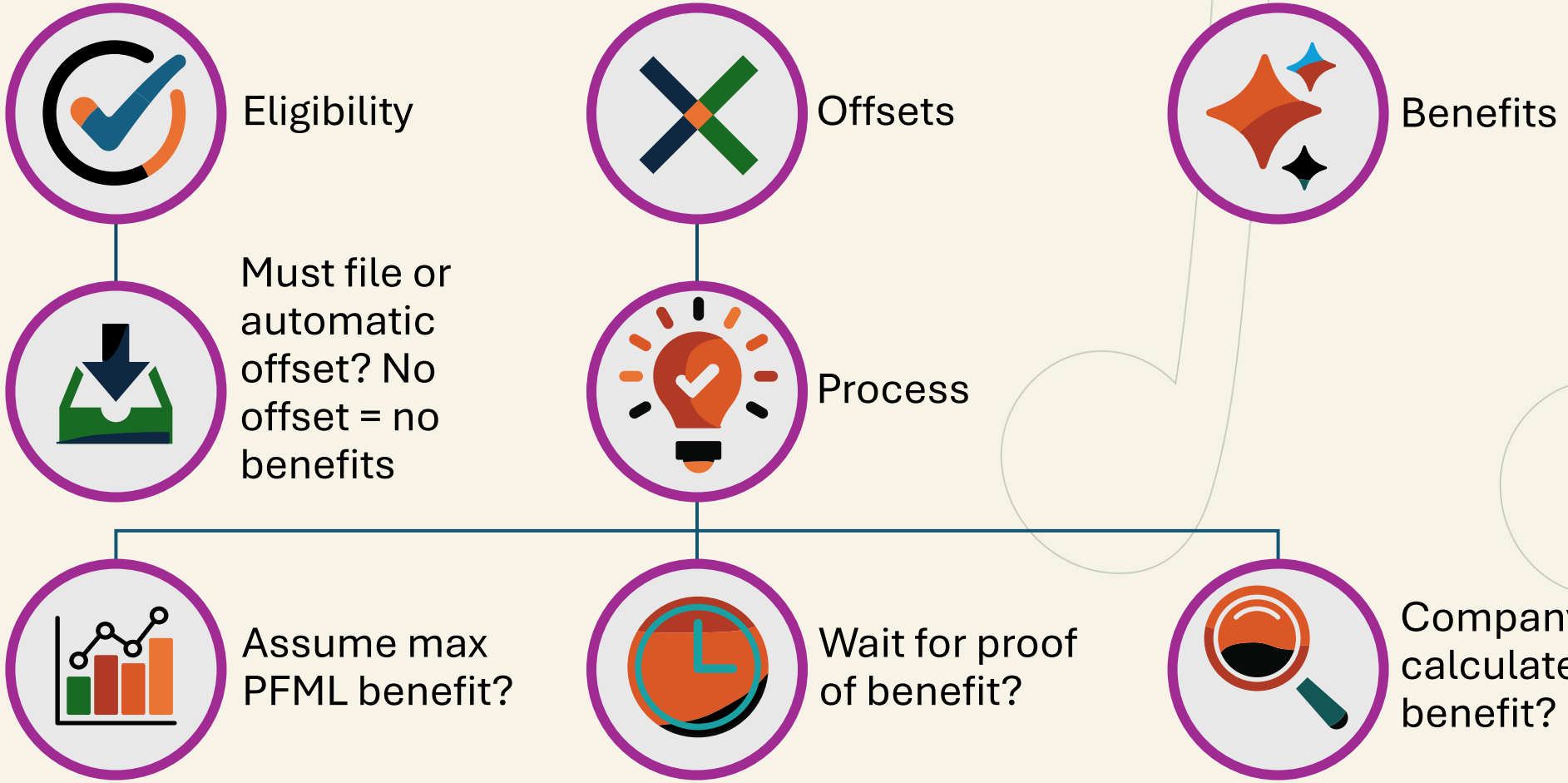
Goal 3: Pay Coordination

Pay Coordination-PFML and STD

Must file to be eligible vs. automatic offset	• Paid Leave OR-FI STD issues
Offsets	• Received or entitled to receive? • DC FI STD? not allowed • Have you identified benefits as supplemental? (WA, MN)
Benefit Calculation	• PFML-defined by law • STD-defined by contract
Cap at 100% with coordination	• 100% of what? • AWW vs. current salary
Family leave in general	• What does your plan say? • Same issues that impact stacking will impact pay



Pay Coordination-PFML and Paid Parental/Caregiver



Pay Coordination-PFML and Accrued Paid Leave

Top up required by law?

- FMLA
- PFML program requirements
- PSL requirements
- Unpaid leave law requirements

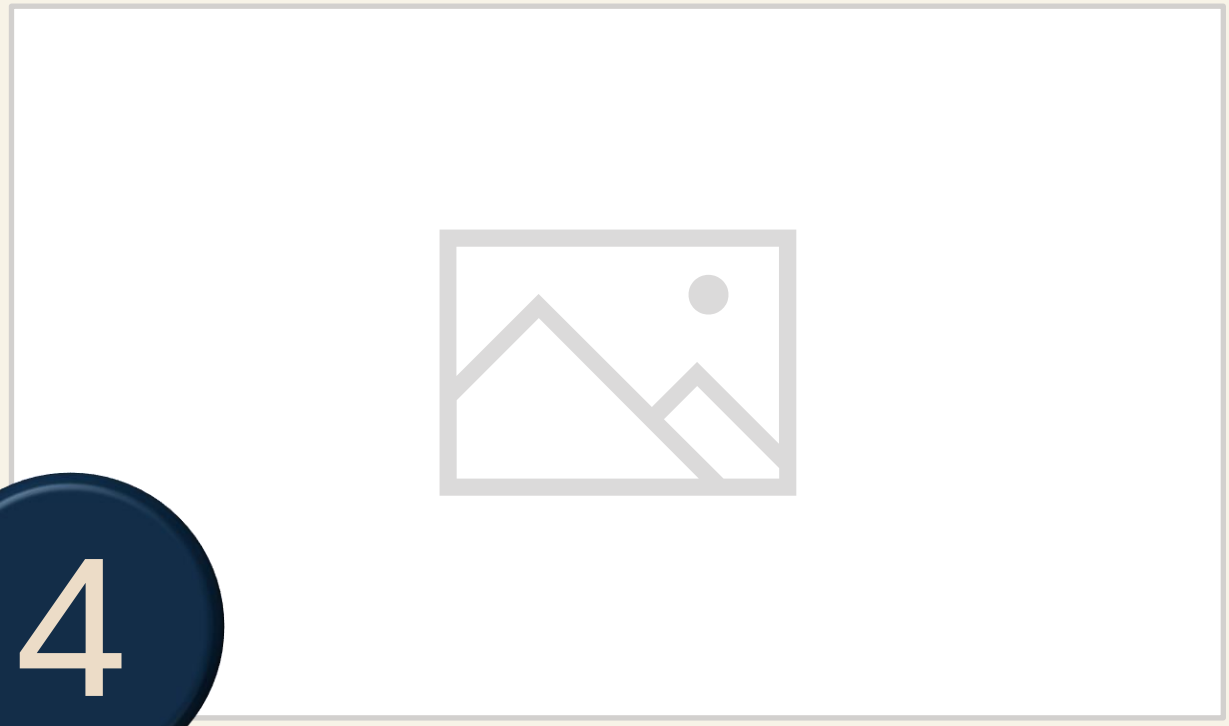
Allow if not required by law?

Mandate if not required by law?

- FMLA
- CT PFML

- **100% caps**
- **100% of what?**
  - **Few examples**
    - MA AWW
    - WA-employer choice
    - MN-usual salary
- **What happens if you get it wrong?**
  - Overpayment
  - State enforcement
  - Wage/hour issues



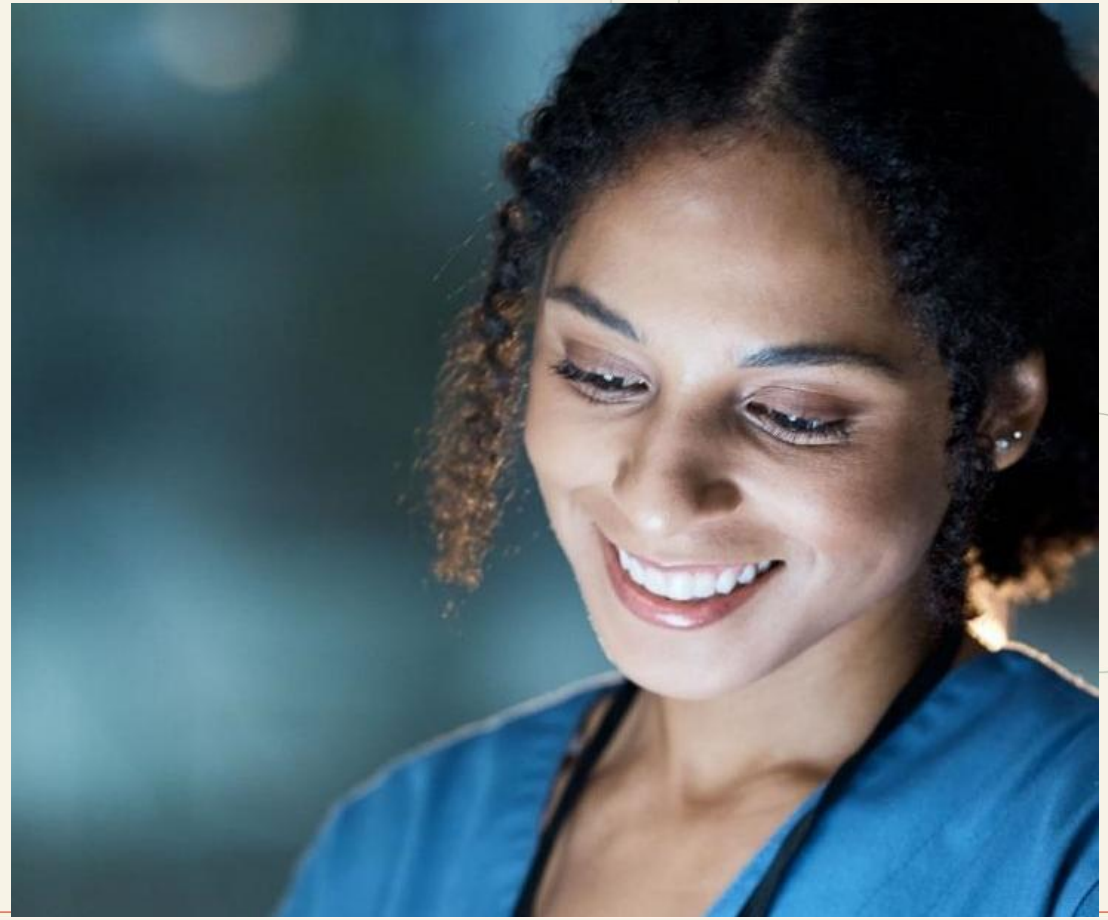


4

Goal 4: Employee Experience

Employee Experience

- Process
  - Requesting leave
  - Providing updates
  - Leverage PFML decision / documentation
  - Coordination of return to work
- Accuracy of pay coordination
  - Offsets
  - Top up
- Policy enforcement
  - Leave schedules, increments



Thank You!

