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

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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).

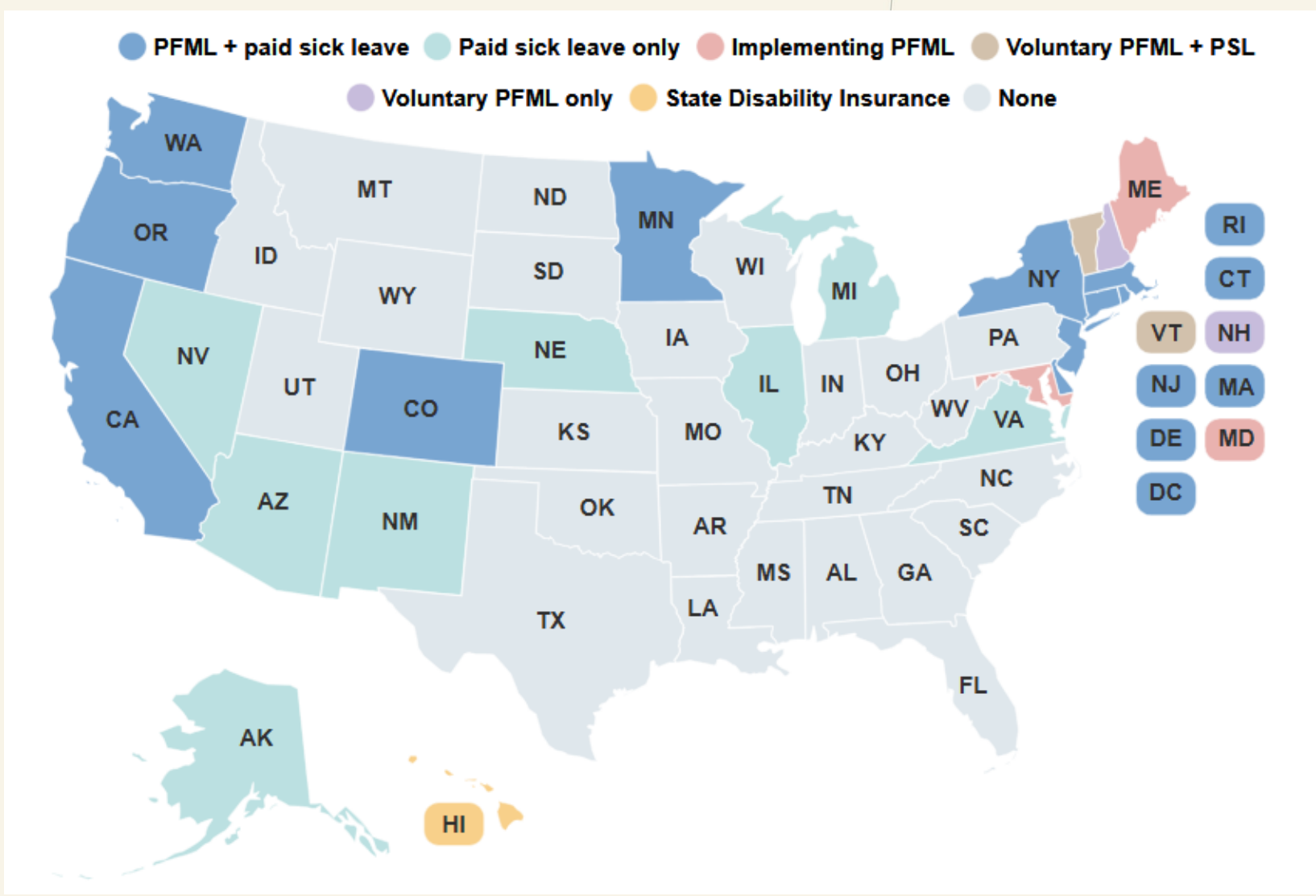


Differences in PFML Programs

- 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
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AK
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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

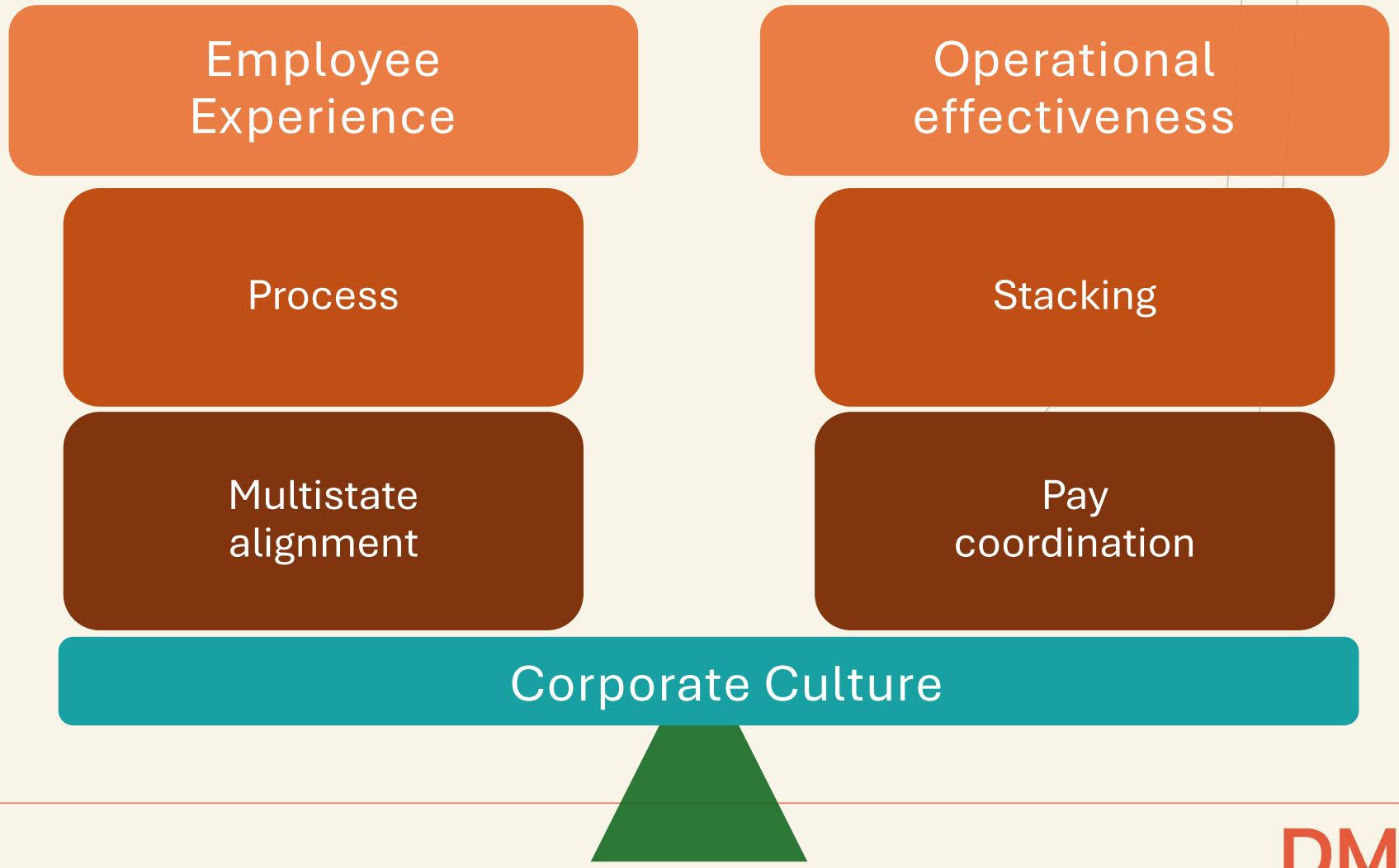
Forced use



Employer Goals



What Are Your Goals?





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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





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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

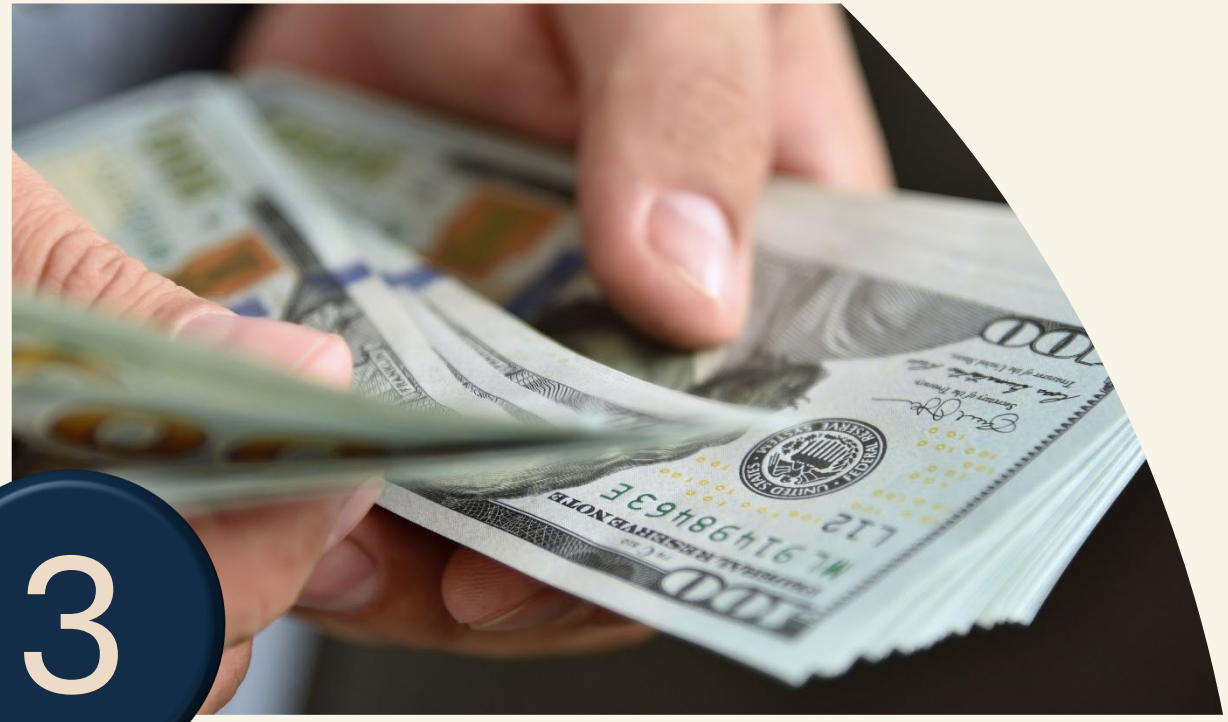
- Foster Care to Adoption
- Multiple Births
- 12-month period



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?





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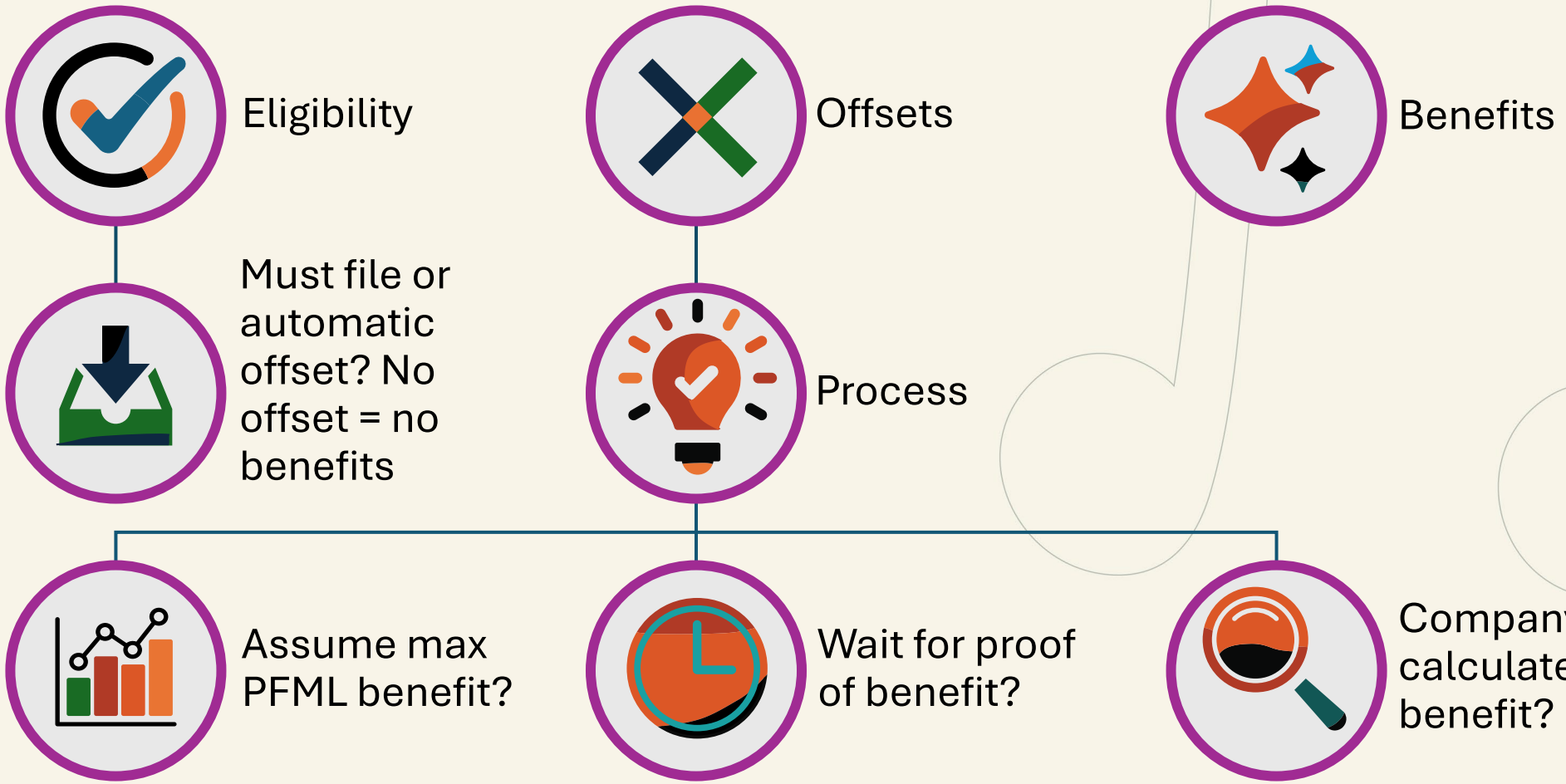
Goal 3: Pay Coordination

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





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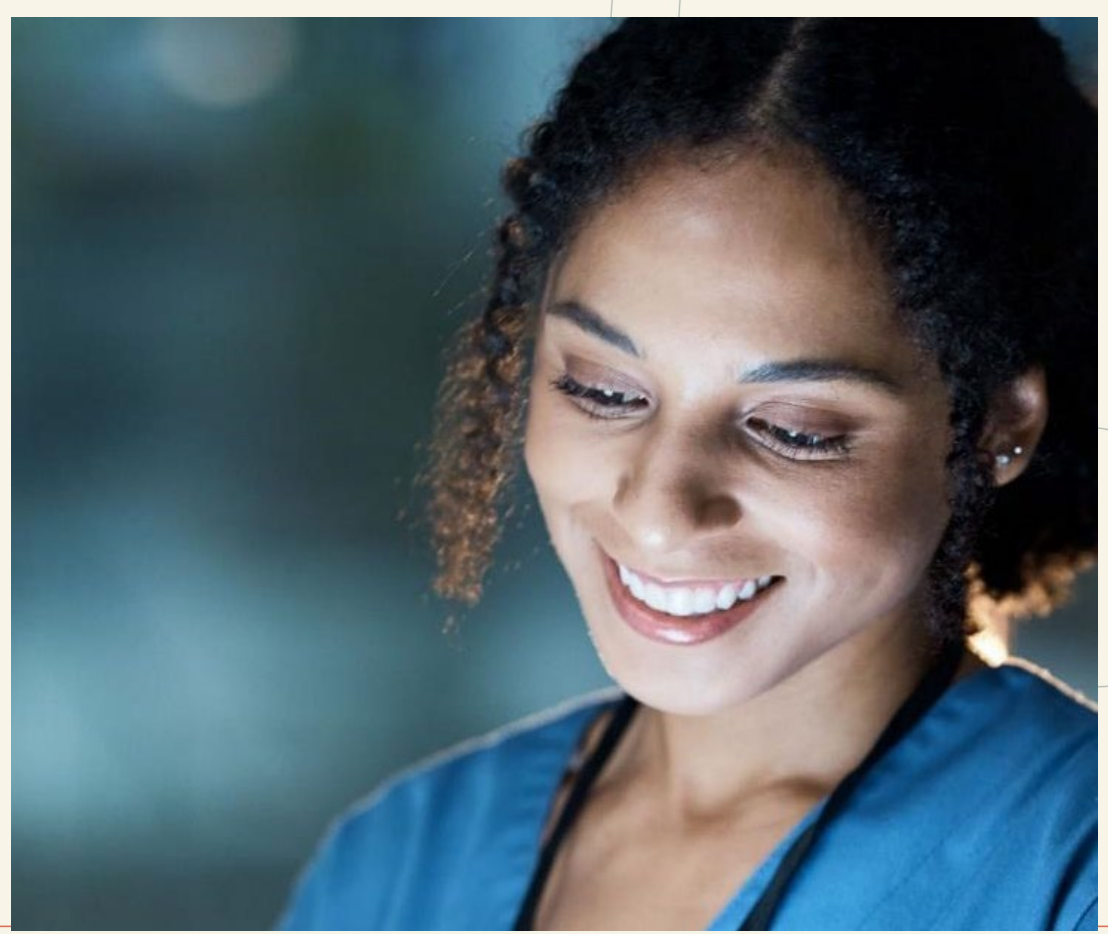
Goal 4: Employee Experience

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!

