

Solving the Puzzle: How PFML, Benefits and Accruals Fit Together

Presented By



ELLEN DONOVAN MCCANN

Senior Counsel
Boston
Littler Mendelson, P.C.
emmccann@littler.com



STEPHANIE MILLS-GALLAN

Shareholder
Chicago/Milwaukee
Littler Mendelson, P.C.
smillsgallan@littler.com

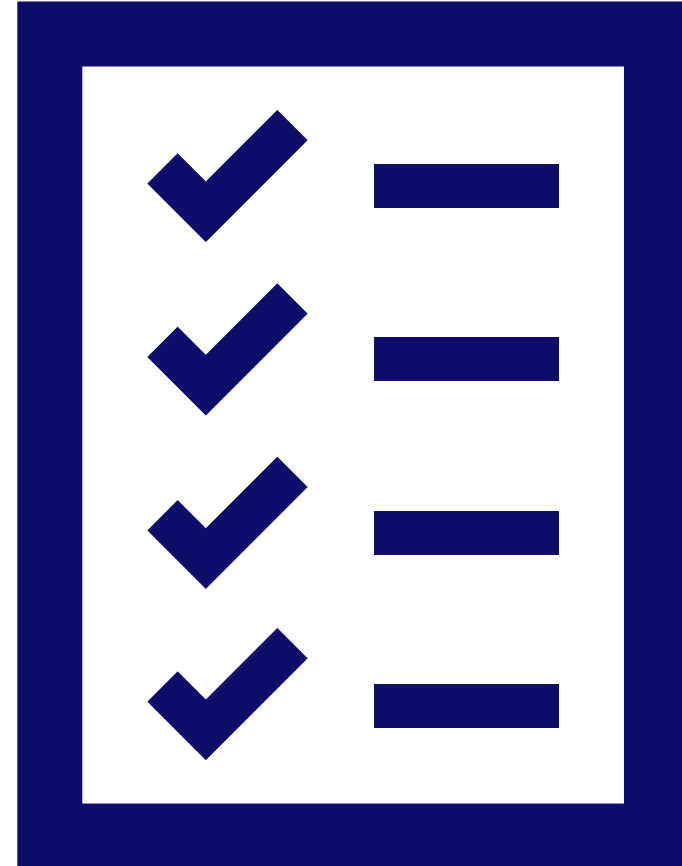


DARIS FREEMAN

Assistant Vice President, Legal Counsel
Law Department
Unum
dfreeman3@unum.com

Agenda

- Sorting the Puzzle Pieces
- Putting the Pieces Together
- Puzzle Me This: Practice Scenarios
 - Family Care Leave
 - Employee's Own Serious Health Condition
 - Birth Parent Leave



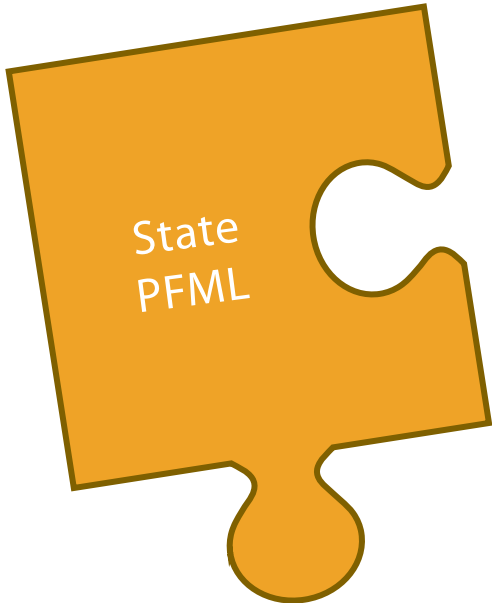
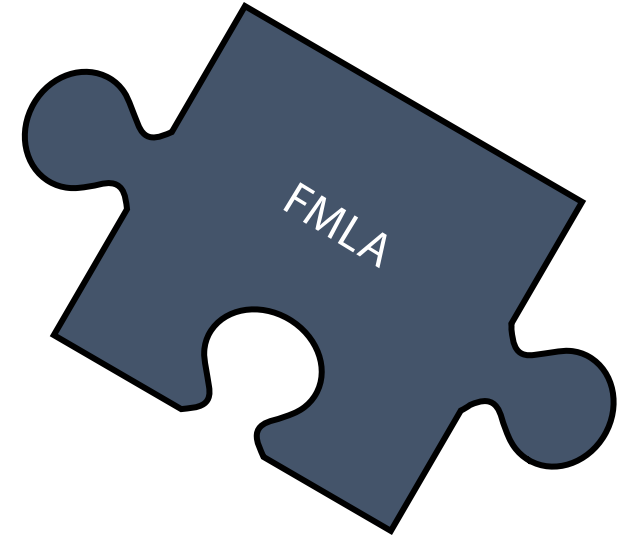
Sorting the Puzzle Pieces

Legal Entitlements to Leave and Pay

- Federal Family and Medical Leave Act (FMLA)
- Federal Pregnancy/Disability Accommodation (ADA or 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 Benefit

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



Putting the Pieces Together

State Determines Puzzle Pieces at Play

1. States with No State Legal Entitlements to Leave or Pay
2. States with a Legal Entitlement to Leave (but NOT pay through a PFML program)
 - *E.g.*, Mini FMLA with extended leave protection, a paid sick leave/mandatory PTO law
3. States with a PFML Program – which may be coupled with the existence of other state legal entitlements to leave or pay

Differences in PFML Programs

- Wage replacement benefit or paid leave entitlement?
- Unpaid waiting period?
- Administered by state, employer, or insurance carrier?
- What are the rules around integrating employer-sponsored accrued paid leave with PFML benefits?
 - Can you require employee to integrate accrued paid leave?
 - Is the employee entitled to integrate accrued paid leave for top-off?

Information Gathering

Where does the employee work?

What is the employee's tenure?

How many hours has the employee worked?

Does the employee report into an office or telecommute?

How many other employees work near the employee?

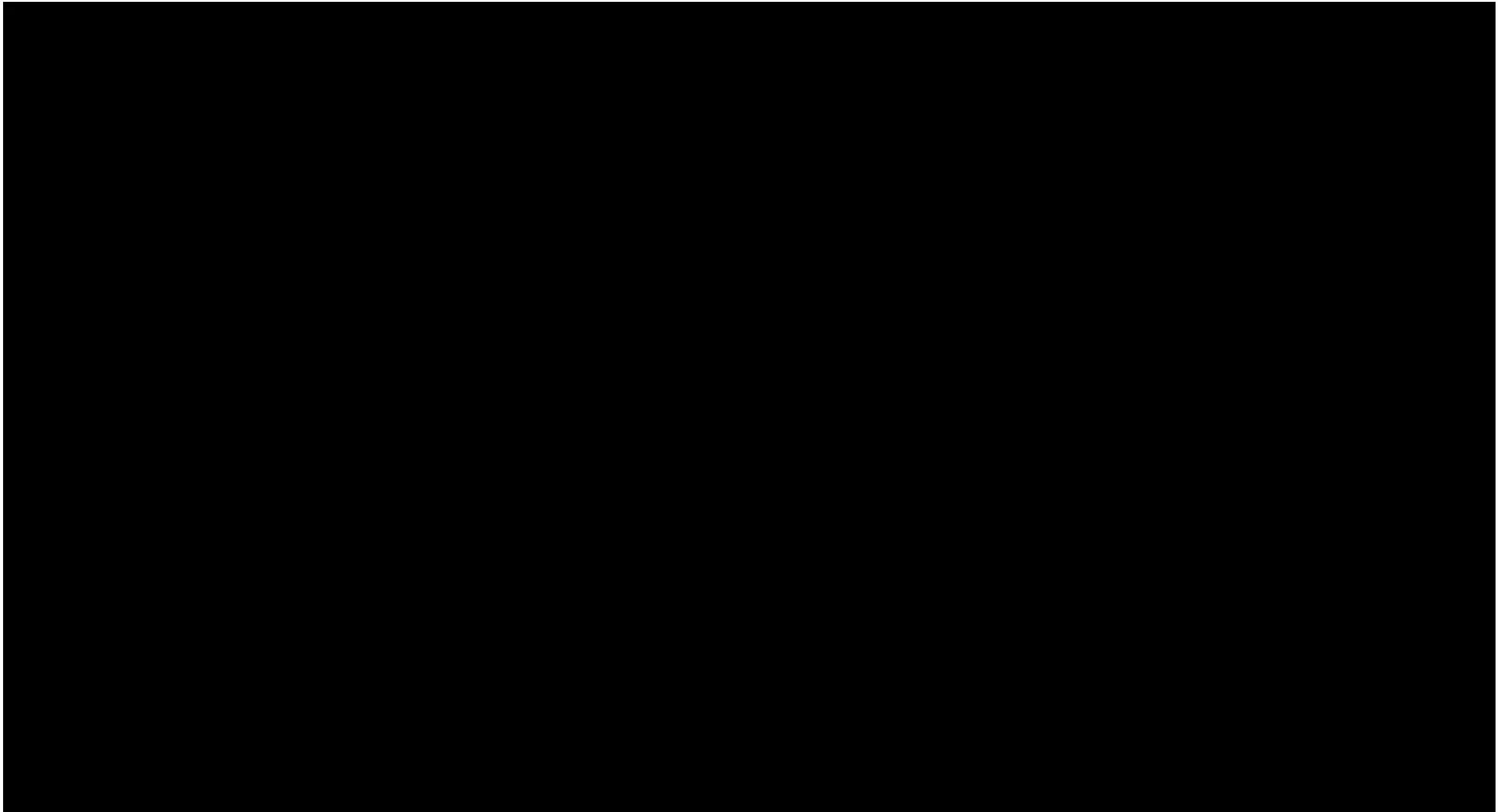
What is the reason for the leave?

What is the family member relationship (if applicable)?

Is leave requested continuously or intermittently?

Puzzle Me This!

Laila's Leave: Family Care Leave



Laila's Leave: The Facts

- Laila works for Innovative Tech in Boregon. She has been employed since 2017 as a full-time employee.
- Laila's partner Taylor falls off a ladder when taking down their holiday decorations and now has a broken pelvis. Taylor will be hospitalized for 2 weeks and then off work recovering at home for another 4-6 weeks with in-home physical therapy.
- Laila is asking for 8 weeks of leave to be with her partner in the hospital, and then to provide care and support at home.

Boregon Leave and Pay Entitlements

Benefit Name	Applicable Entitlement Type(s)	Duration	Pay
Paid Family and Medical Leave (PFML)	Care for a family member with a serious health condition	12 weeks	<p>100% if AWW is \leq 65% of SAWW</p> <p>If AWW is > 65% of SAWW: 65% of SAWW + 50% of AWW that is > 65% AWW</p> <p>MAX=120% SAWW Max Weekly Benefit=\$1,569</p>
Earned Sick Leave	Family member's illness, injury, health condition, or preventive care; any reason under the Boregon Family Leave Law or Boregon PFML	40 hours	Paid
Family Leave Law?	Care for a family member with a serious health condition?	12 weeks	Unpaid

AWW=average weekly wage
SAWW=state average weekly wage

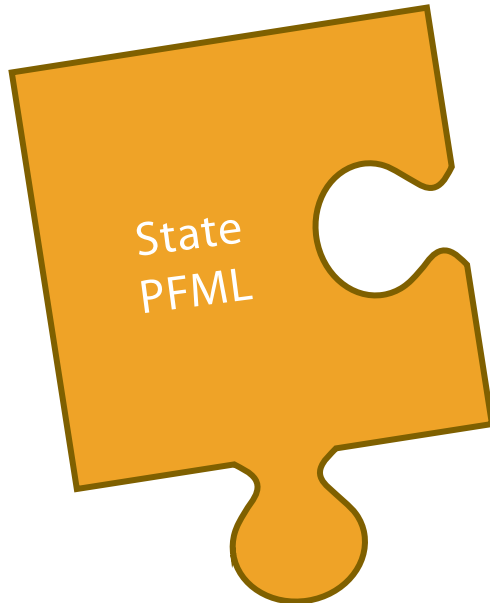
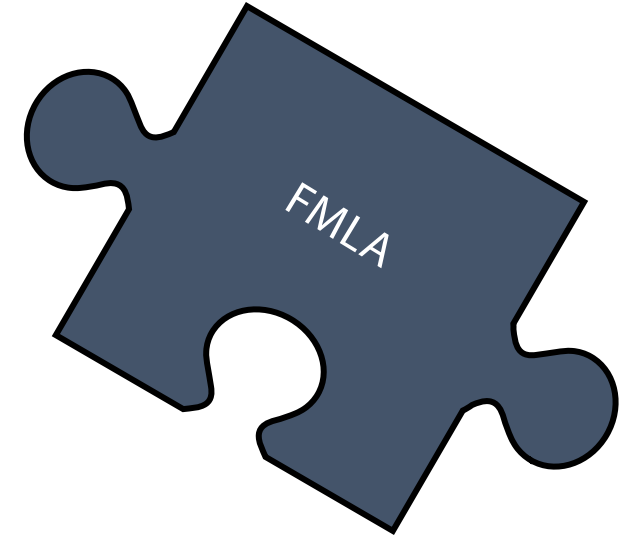
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AWW=average weekly wage
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Innovative Tech's Policies

Benefit Name	Leave Type	Duration	Pay	Available to "Top Off" STD or State Benefits?
Family Caregiver Leave	Family	2 weeks	100%	Yes, employees are required to integrate
Vacation	Vacation or similar pre-planned personal reasons	120 hours (3 weeks)	100%	Only where required by law
Sick Leave	Tracks Boregon Earned Sick Leave Law	40 hours (1 week)	100%	Only where required by law



Is Laila entitled to Boregon PFML?

**“Care for a
family member
with a serious health condition”**

Care for a **Family Member**

- The spouse of a covered individual;
- A child of a covered individual or the child's spouse or domestic partner;
- A parent of a covered individual or the parent's spouse or domestic partner;
- A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner;
- A grandparent of a covered individual or the grandparent's spouse or domestic partner;
- A grandchild of a covered individual or the grandchild's spouse or domestic partner;
- **The domestic partner of a covered individual; or**
- Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

Care for a **Family Member**

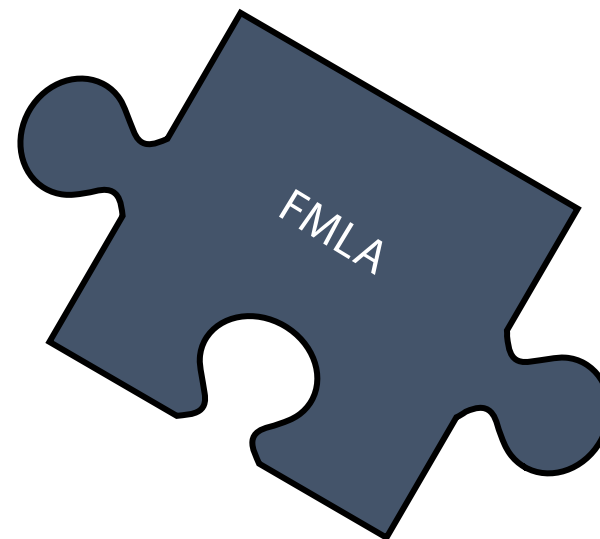
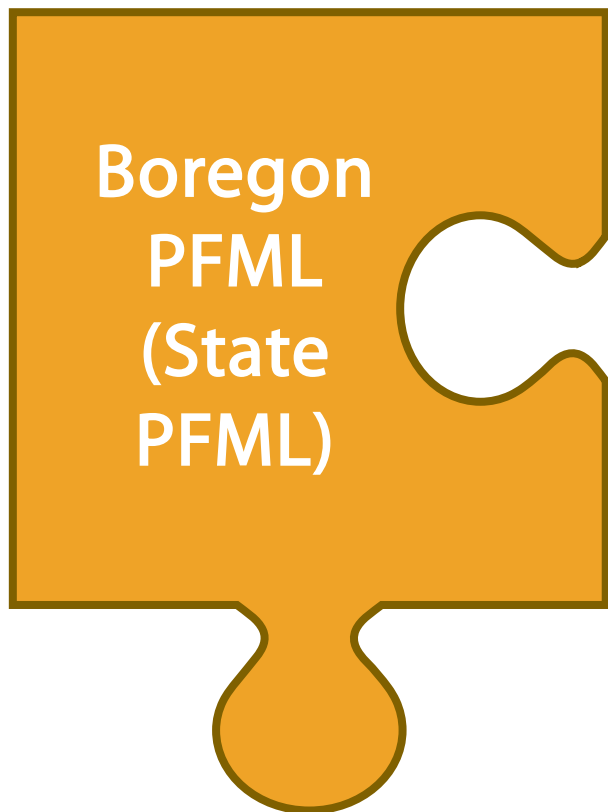
- The spouse of a covered individual;
- A child of a covered individual or the child's spouse or domestic partner;
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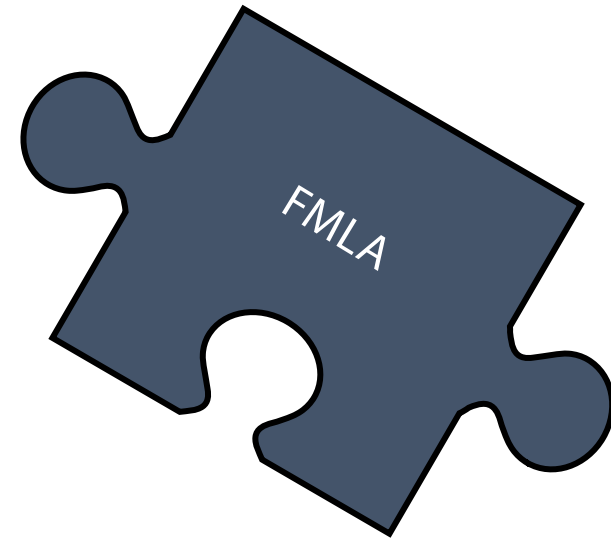
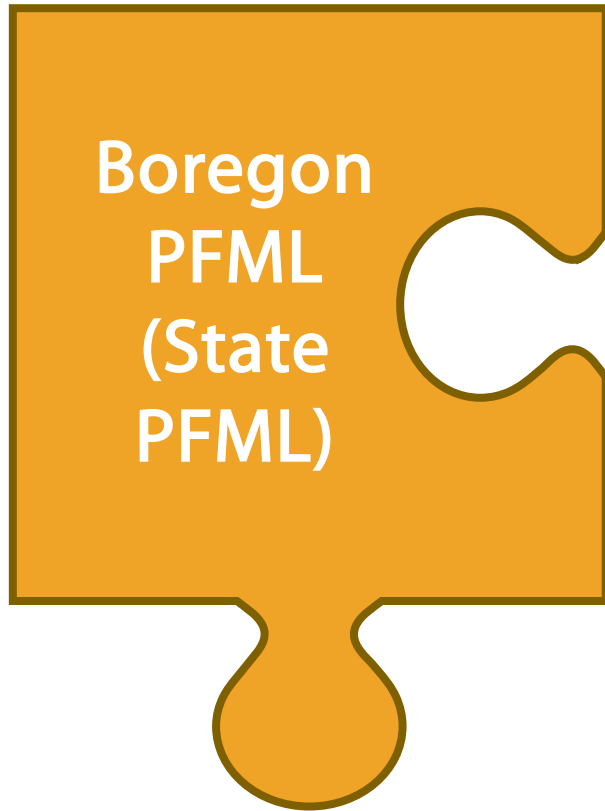
Care for a Family Member

“Affinity” means a relationship that meets the following requirements:

- There is a significant personal bond that, when examined under the totality of the circumstances, demonstrates the existence of a family-like relationship, or
- The bond is determined by:
 - Shared personal or personal care responsibilities;
 - Emergent care needs, or vice versa;
 - The expectation of care;
 - Cohabitation;
 - Geographical proximity; and
 - Other factors that demonstrates the existence of a family-like relationship.

ADDITIONAL TYPE OF LEAVE QUESTIONS
Answer questions that are related to the type of leave you selected in the section above. Not all types of leave have additional questions.
Family-Care leave
Which family member are you taking leave to care for? <input type="checkbox"/> Child <input type="checkbox"/> Grandchild <input type="checkbox"/> Grandparent
<input type="checkbox"/> Parent <input type="checkbox"/> Sibling <input type="checkbox"/> Spouse or Domestic Partner <input type="checkbox"/> Other
If “Other” – Please explain the relationship that is the same as a family member.
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How Do State and Company Benefits Integrate?

How Much Paid Leave is Laila Receiving from Boregon?

- Laila makes a salary of \$85,000 annually. She is eligible for a discretionary annual bonus but no other guaranteed compensation. Her AWW = \$1,635

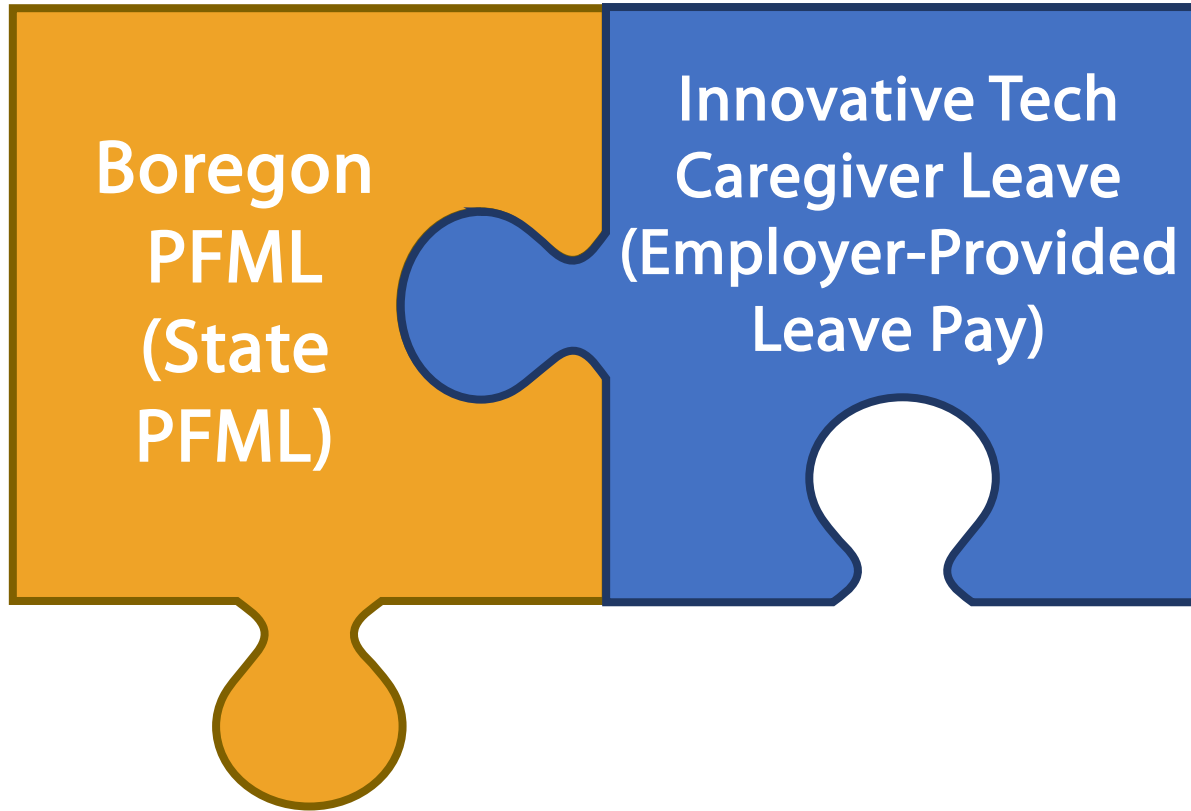
	Boregon PFML (Weeks 1-8)
Weekly Pay	\$1,014
Percentage of Wage Replacement	62%

How Does Innovative Tech. Integrate Its Family Caregiver Leave?

Three Options:

- (1) Estimate;
- (2) Assume Max Benefit and Top-Off After Employee Provides Proof of Wage Loss; or
- (3) Delay Company Payment Until State Payment Confirmed

	Weeks 1-2	Weeks 3-8
Boregon PFML	\$1,014	\$1,014
Innovative Tech.'s Family Caregiver Leave (2 weeks)	\$621	-
Total Weekly Pay	\$1,635	\$1,014
Percentage of Wage Replacement	100%	62%



Is Laila Entitled to Use Her Accrued Paid Leave?

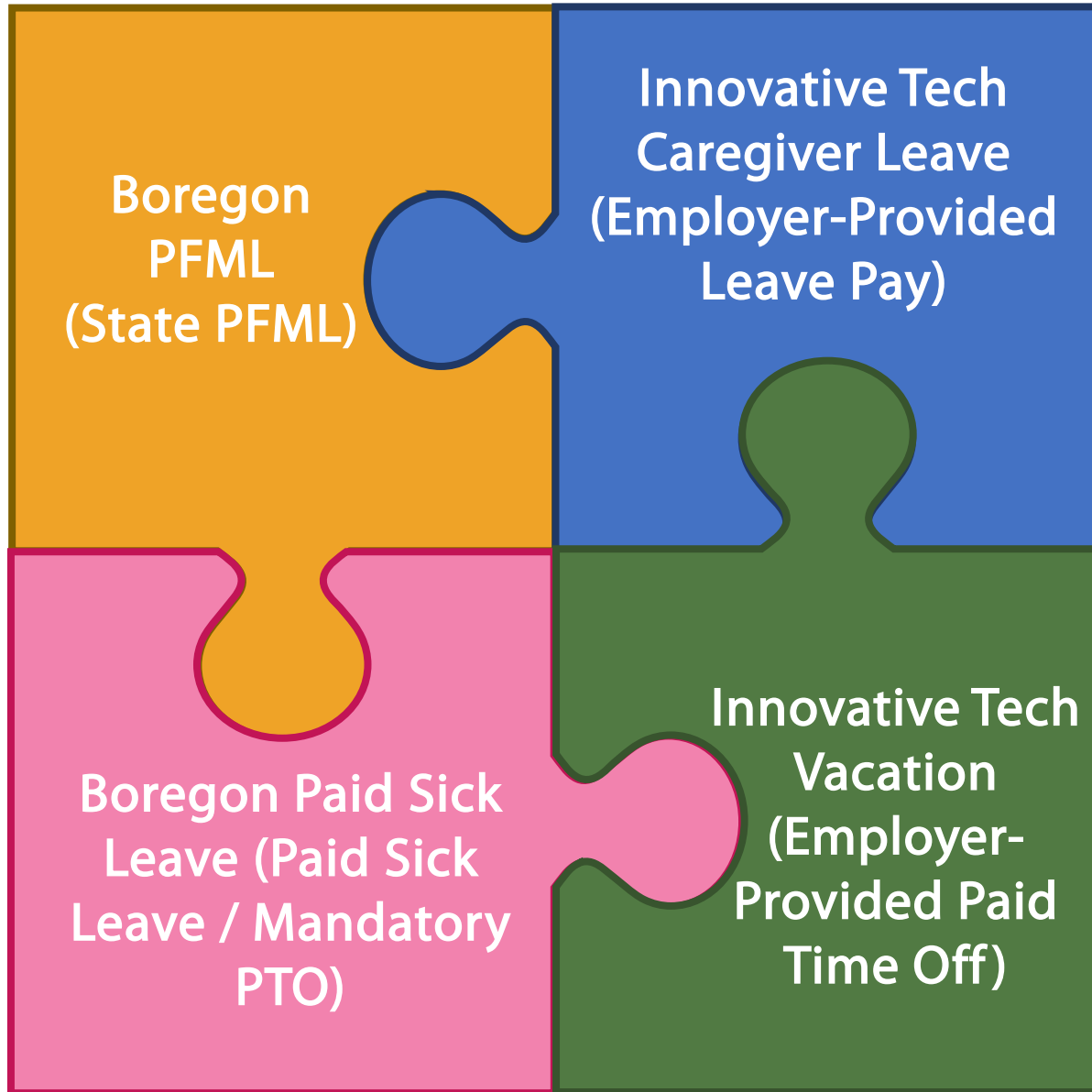
- **FMLA Rule (if applicable)**
 - 29 C.F.R. § 825.207: Because leave pursuant to a disability benefit plan is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the employer may require the substitution of paid leave.
 - DOL Opinion Letter FMLA2025-01-A: If the employee is receiving compensation through state or local paid family or medical leave that does not fully compensate the employee for their FMLA covered leave, and the employee also has available employer-provided paid leave, the employer and the employee may agree, where state law permits, to use the employee's employer-provided accrued paid leave to supplement the payments under a state or local leave program.
- **Boregon Earned Sick Leave?**
- **Boregon PFML**
 - An employee is entitled to use any accrued paid sick leave, accrued paid vacation leave or any other paid leave that is offered by the employer in addition to receiving PFML benefits.... to the extent that the total combined amount does not exceed 100% of the employee's average weekly wage.

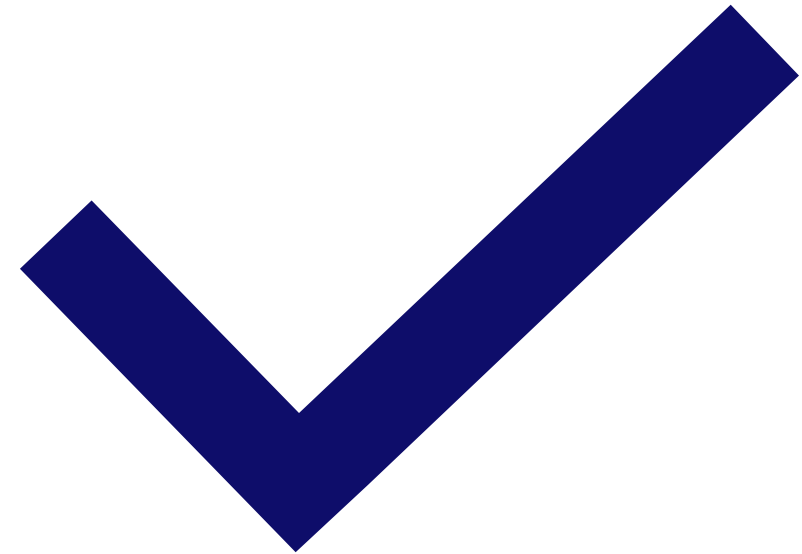
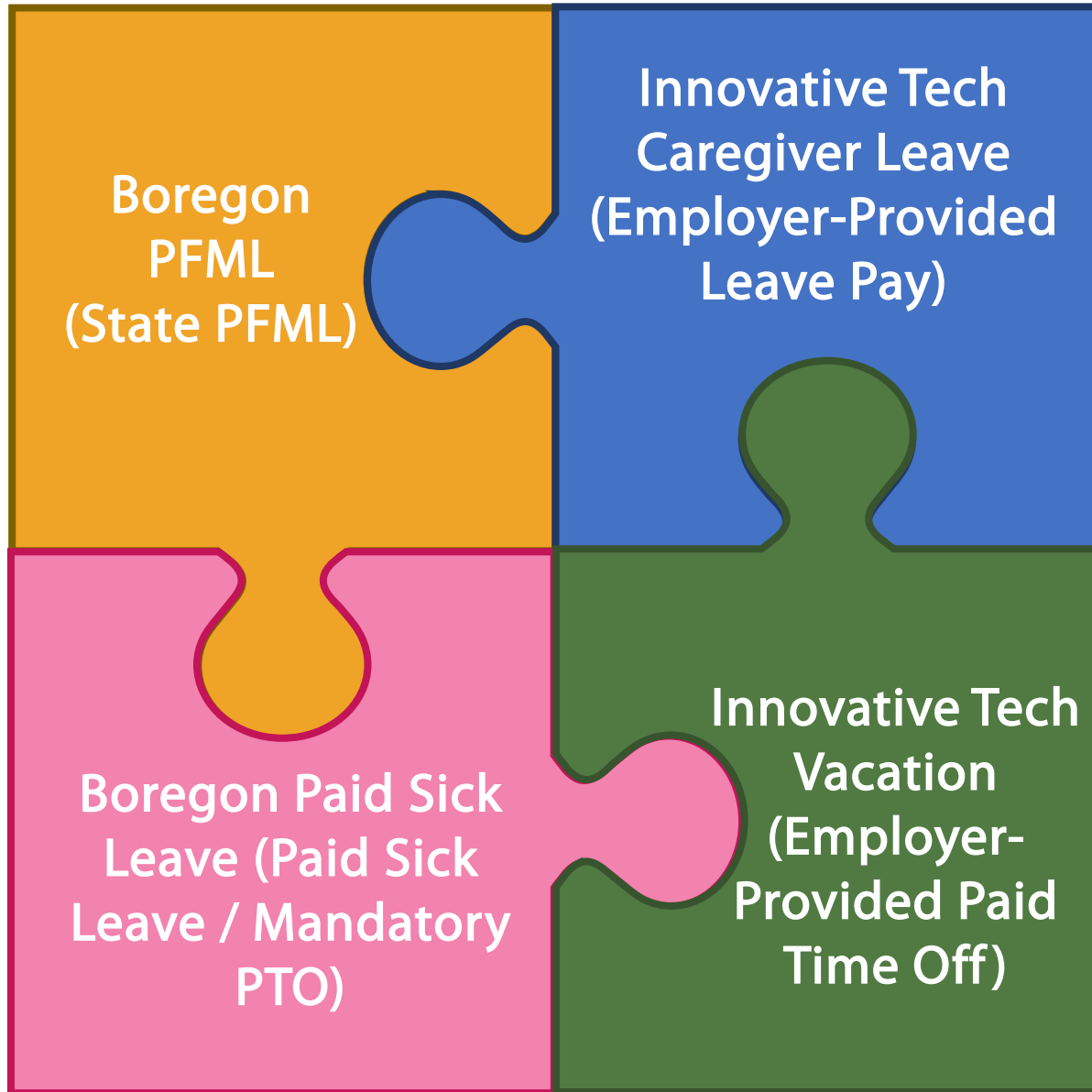
How Much Pay Can Laila Receive?

- Innovative Tech. allows Laila to supplement her partial PFML wages (as it must!)
- Company policy does not specify whether vacation or sick leave must be used first
- However, Innovative Tech. caps weekly pay at 100% of an employee's AWW

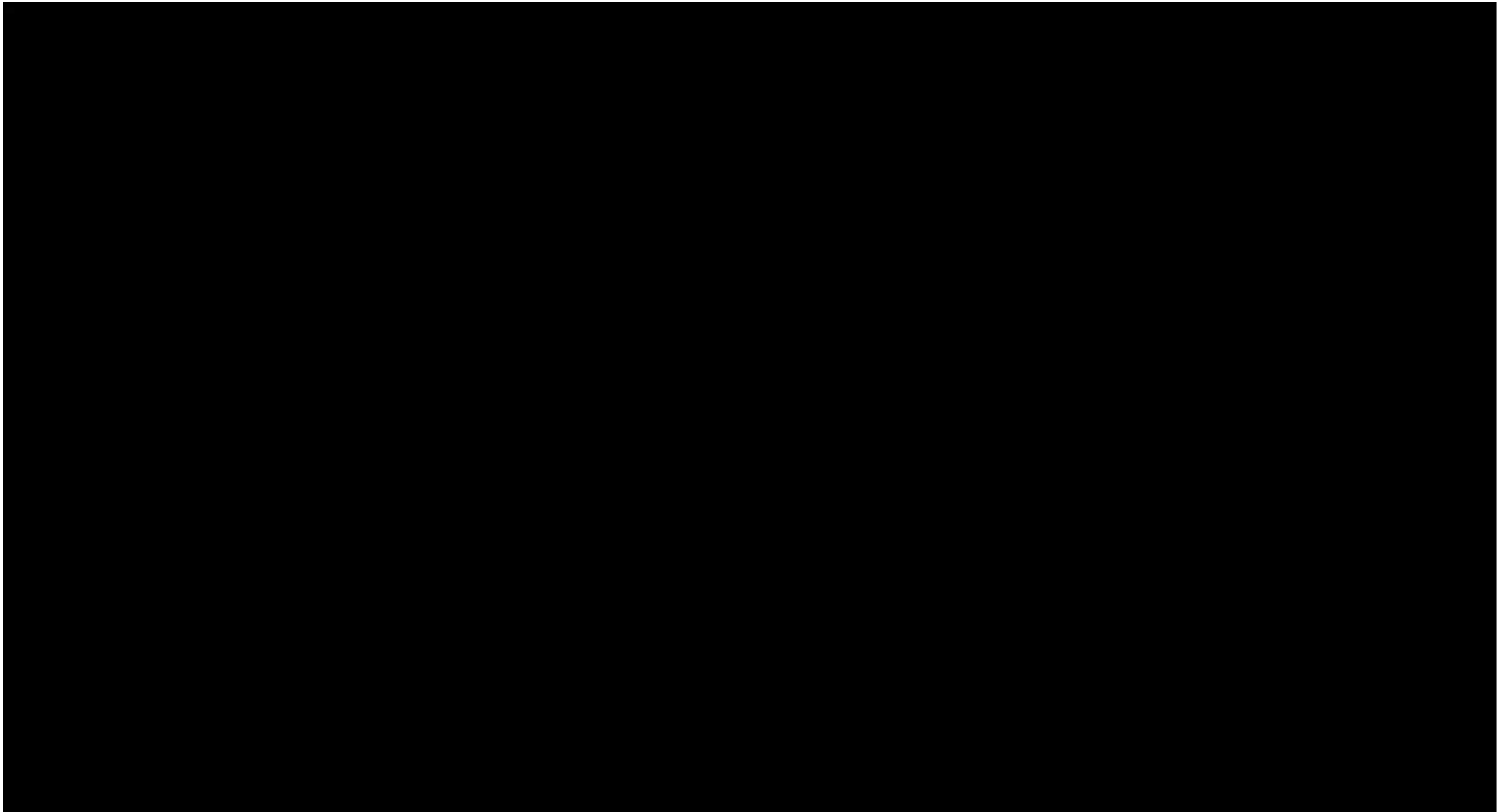
	Weeks 1-2	Weeks 3-8	Week 5	Weeks 6-8
Boregon PFML	\$1,014	\$1,014	\$1,014	\$1,014
Innovative Tech.'s Family Caregiver Leave (2 weeks)	\$621	-	-	-
Sick Leave (30 hours)	-	\$1,014	-	-
Vacation (15 hours)	-	-	\$621 (15 hours)	-
Totally Weekly Pay	\$1,635	\$1,635	\$1,635	\$1,635
Percentage of Wage Replacement	100%	100%	100%	62%

Note: We've used some generous rounding for easier math!





Pauly's Predicament: Employee's Own Serious Health Condition



Pauly's Predicament: The Facts

- Pauly works for GTL, Inc. in Old Jersey. He has been employed since 2013 as a full-time employee.
- Pauly has experienced ab dislocation and plans to take two weeks off for surgery and recovery.
- He has been approved for 85% wage replacement through the State of Old Jersey.
- He wants “leave as an accommodation” but doesn’t want to use FMLA or PTO.

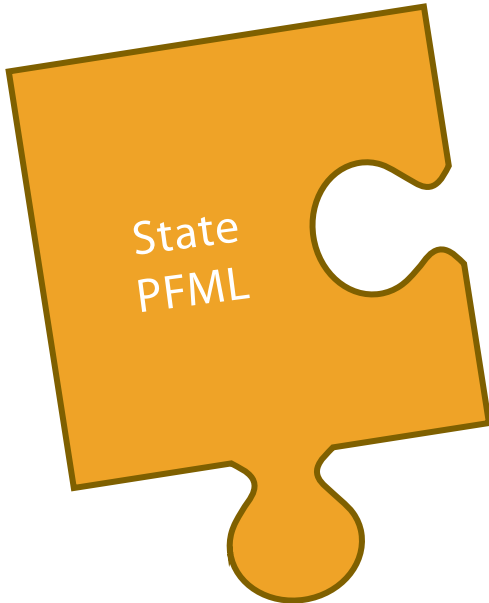
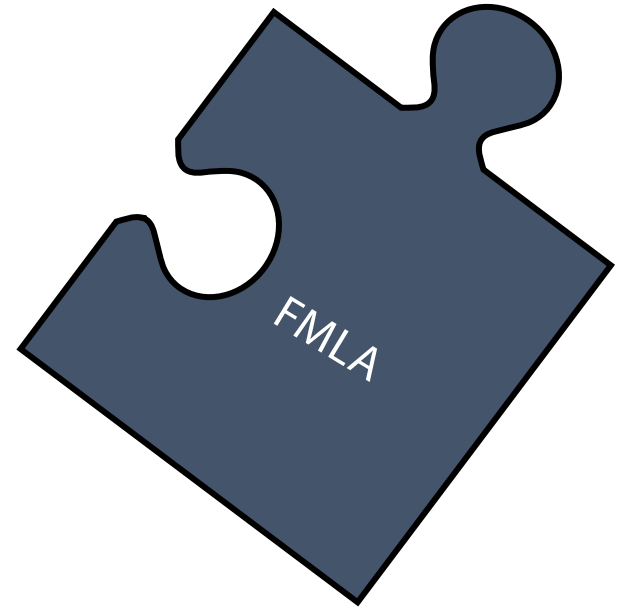
Old Jersey Leave and Pay Entitlements

Benefit Name	Entitlement Type	Duration	Pay
Temporary Disability Insurance	Disability Insurance	26 weeks	85% AWW up to 70% SAWW Max Weekly Benefit = \$1,081
Law Against Discrimination	Disability Leave	Reasonable	Unpaid
Earned Sick Leave	Leave for employee/family illness, routine care, or quarantine; domestic violence; certain school meetings; school/business closures	40 hours	Paid

AWW=average weekly wage
SAWW=state average weekly wage

GTL's Policies

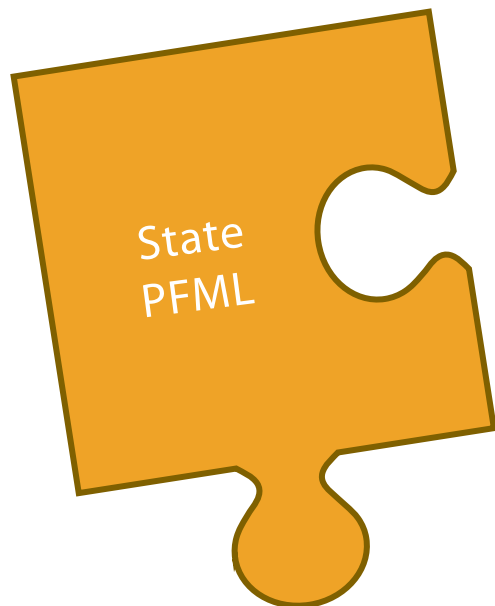
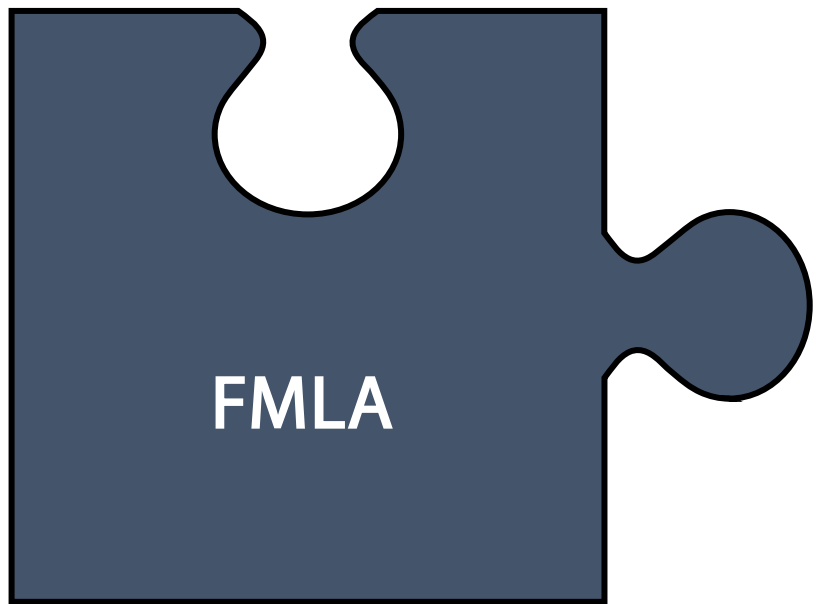
Benefit Name	Leave Type	Duration	Pay	Available to "Top Off" STD or State Benefits?
Short-Term Disability	Medical	26 weeks	90%	Yes (plan takes an offset for Old Jersey's Temporary Disability Insurance)
Paid Time Off	Any reason	5 weeks	100%	Yes

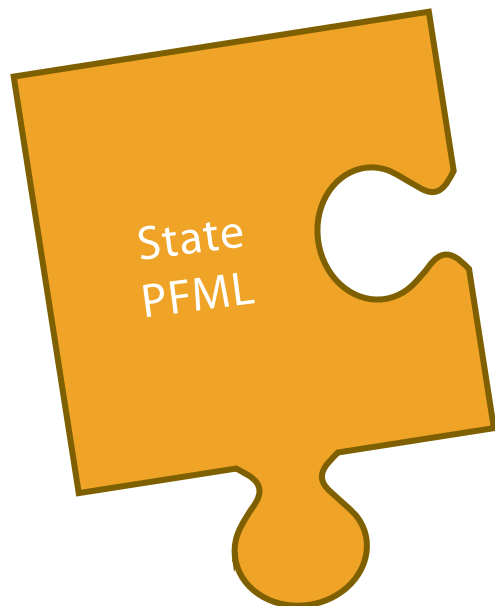
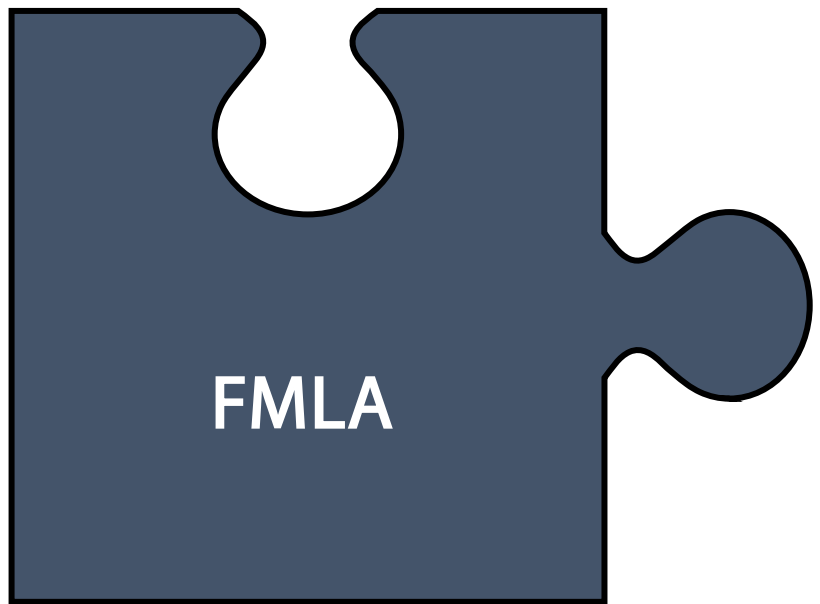


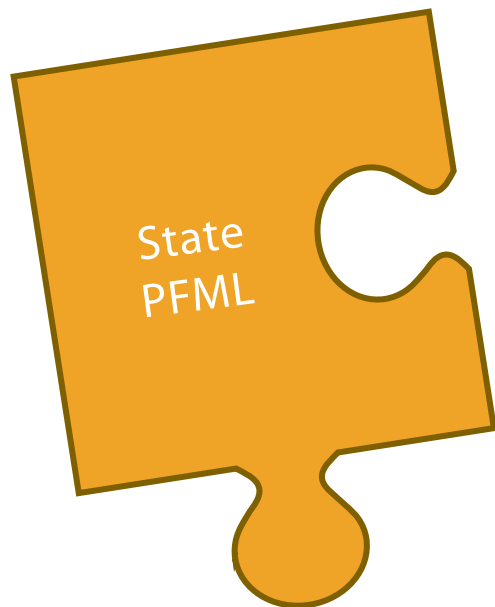
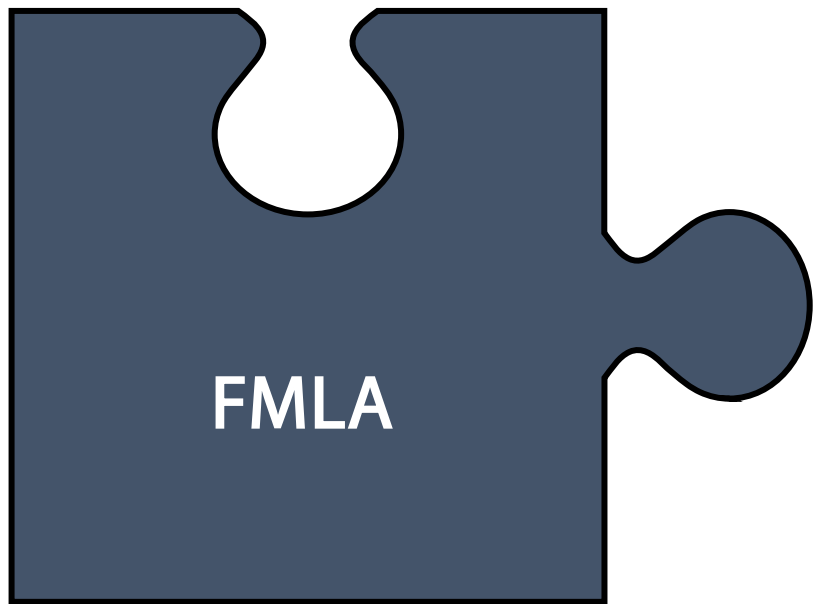
Can Pauly Be Required to Use FMLA?

Obligation to Designate FMLA

- 29 C.F.R. §§ 825.220(3), 825.300(d)
- DOL Opinion Letter FMLA 2019-1-A (3/14/2019)
 - “An employer is prohibited from delaying the designation of FMLA-qualifying leave as FMLA leave. Once an eligible employee communicates the need to take leave for an FMLA-qualifying reason, **neither the employee nor the employer may decline FMLA protection for that leave.**”
 - “Accordingly, when an employer determines that leave is for an FMLA-qualifying reason, the qualifying leave is FMLA-protected”
- DOL Opinion Letter FMLA 2019-3-A (9/10/2019)
- **But...** *Escriba v. Foster Poultry Farms* (9th Cir. 2014)
 - “We thus conclude that an employee can affirmatively decline to use FMLA leave, even if the underlying reason for seeking the leave would have invoked FMLA protection.”



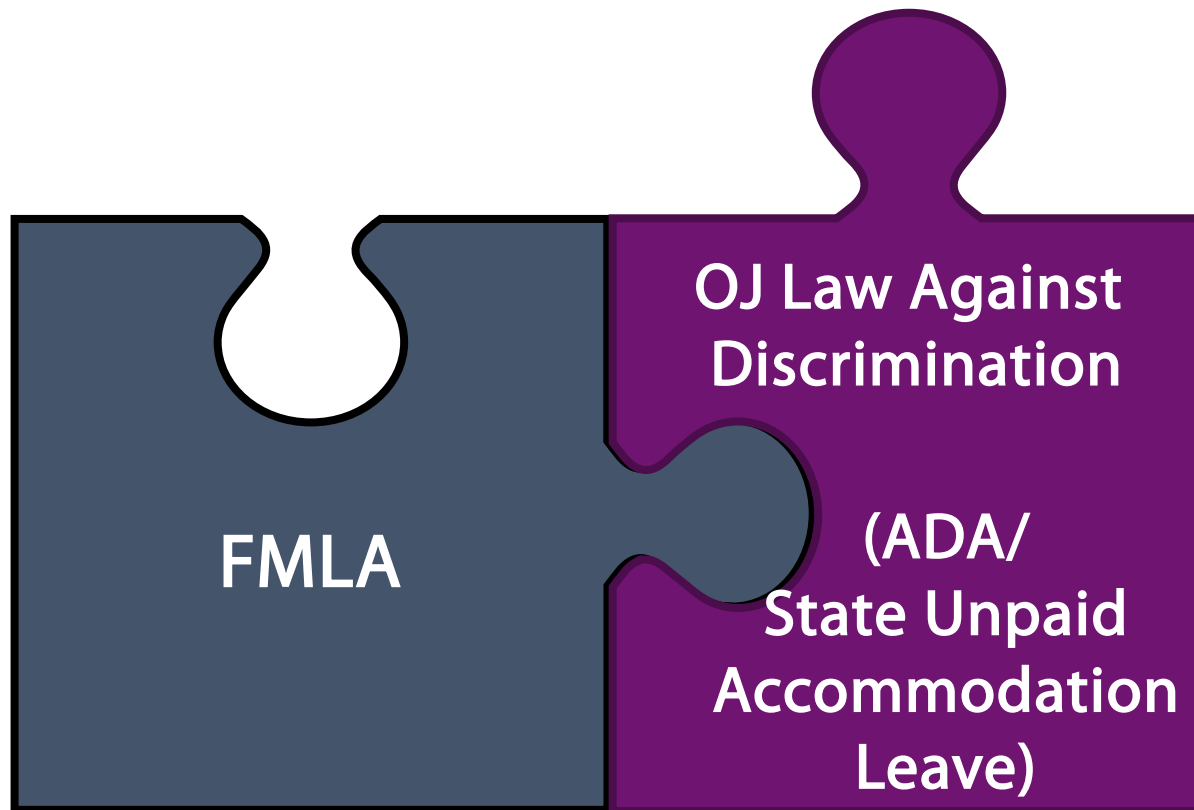


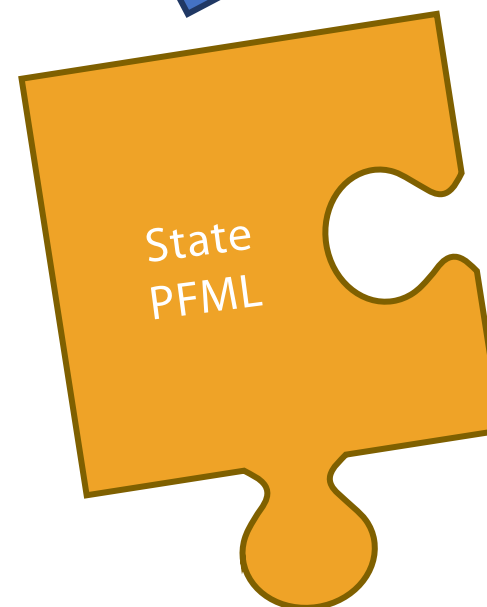
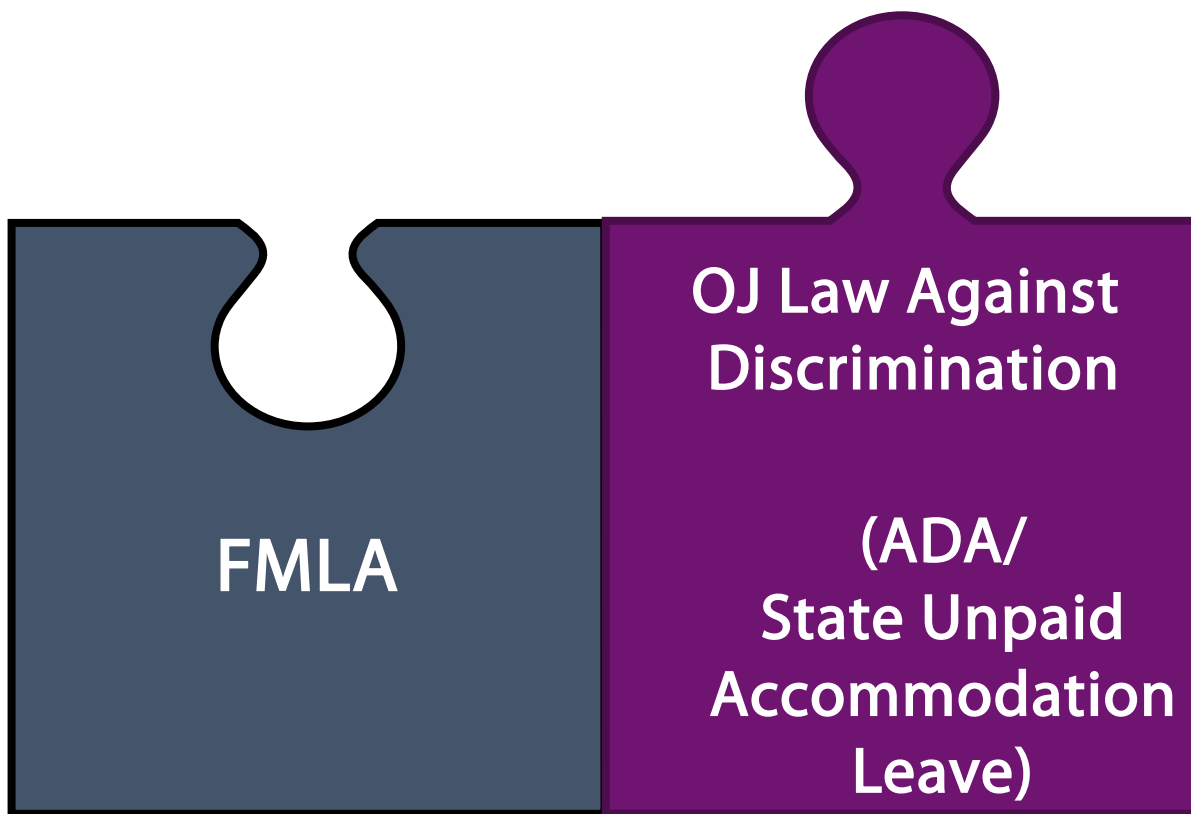


Is Pauly Entitled to Leave as a Disability Accommodation?

EEOC Guidance

When an employee requests leave, or additional leave, for a medical condition, the employer must treat the request as one for a reasonable accommodation under the ADA. However, if the request for leave can be addressed by an employer's leave program, the FMLA (or a similar state or local law), or the workers' compensation program, the employer may provide leave under those programs. But, if the leave cannot be granted under any other program, then an employer should promptly engage in an **"interactive process"** with the employee -- a process designed to enable the employer to obtain relevant information to determine the feasibility of providing the leave as a reasonable accommodation without causing an undue hardship.





Can Pauly Be Required to Use His PTO?

What does OJ law say about requiring Pauly to use his PTO?

Vacation	✓
Paid Sick Leave	X
Paid Time Off (PTO)	?

Takeaway: Even though Pauly is only entitled to 40 hours of OJ Earned Sick Leave, GTL **cannot** require him to use **any** of his 200 hours of PTO

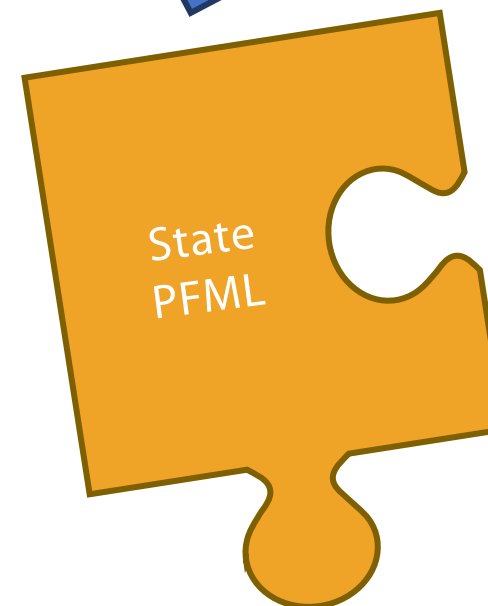
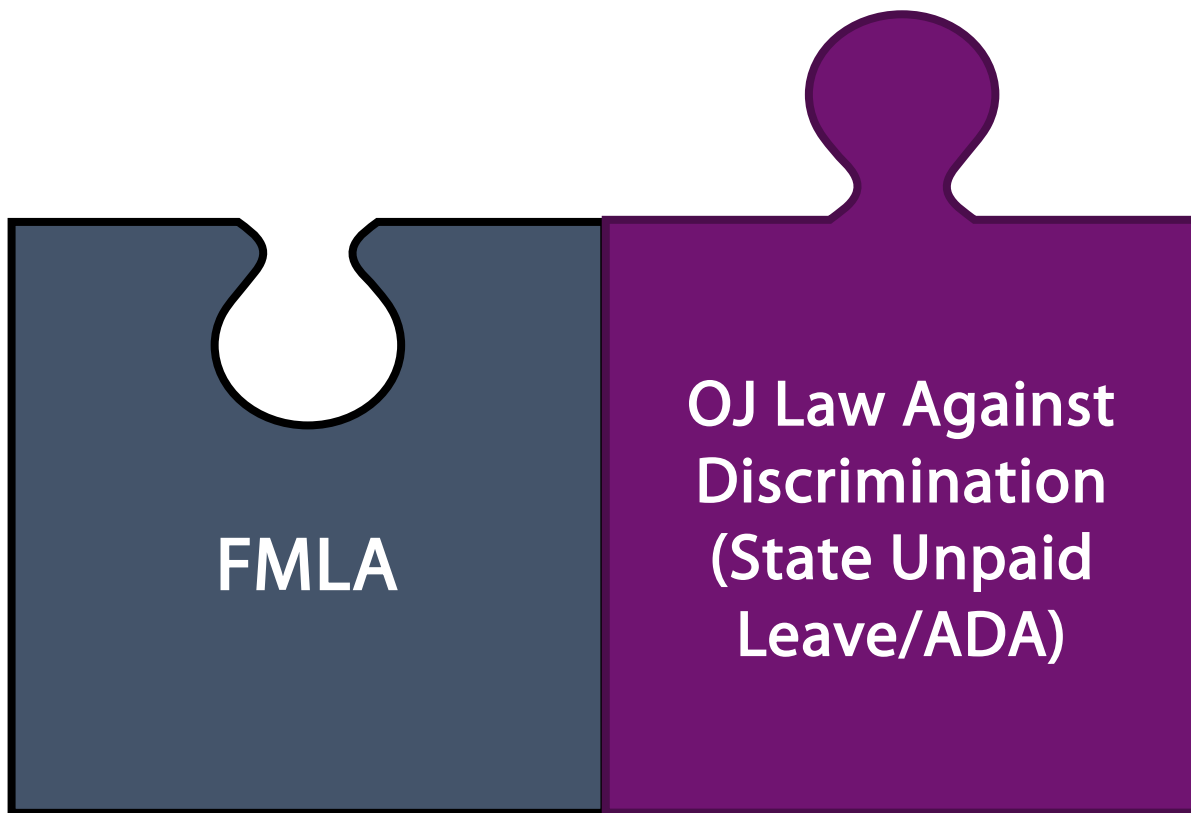
Does it matter if Pauly's leave is designated as FMLA leave?

- FMLA permits employers to require employees to substitute accrued paid leave for unpaid FMLA leave
 - If the FMLA leave is not unpaid, mutual agreement to substitute is required.
29 C.F.R. § 825.207(d)
- Leave during which employees receive short-term disability or workers' compensation benefits is not "unpaid" for purposes of FMLA substitution rule
- What about Pauly's receipt of OJ TDI?

DOL Opinion Letter FMLA 2025-01-A

(1/14/2025)

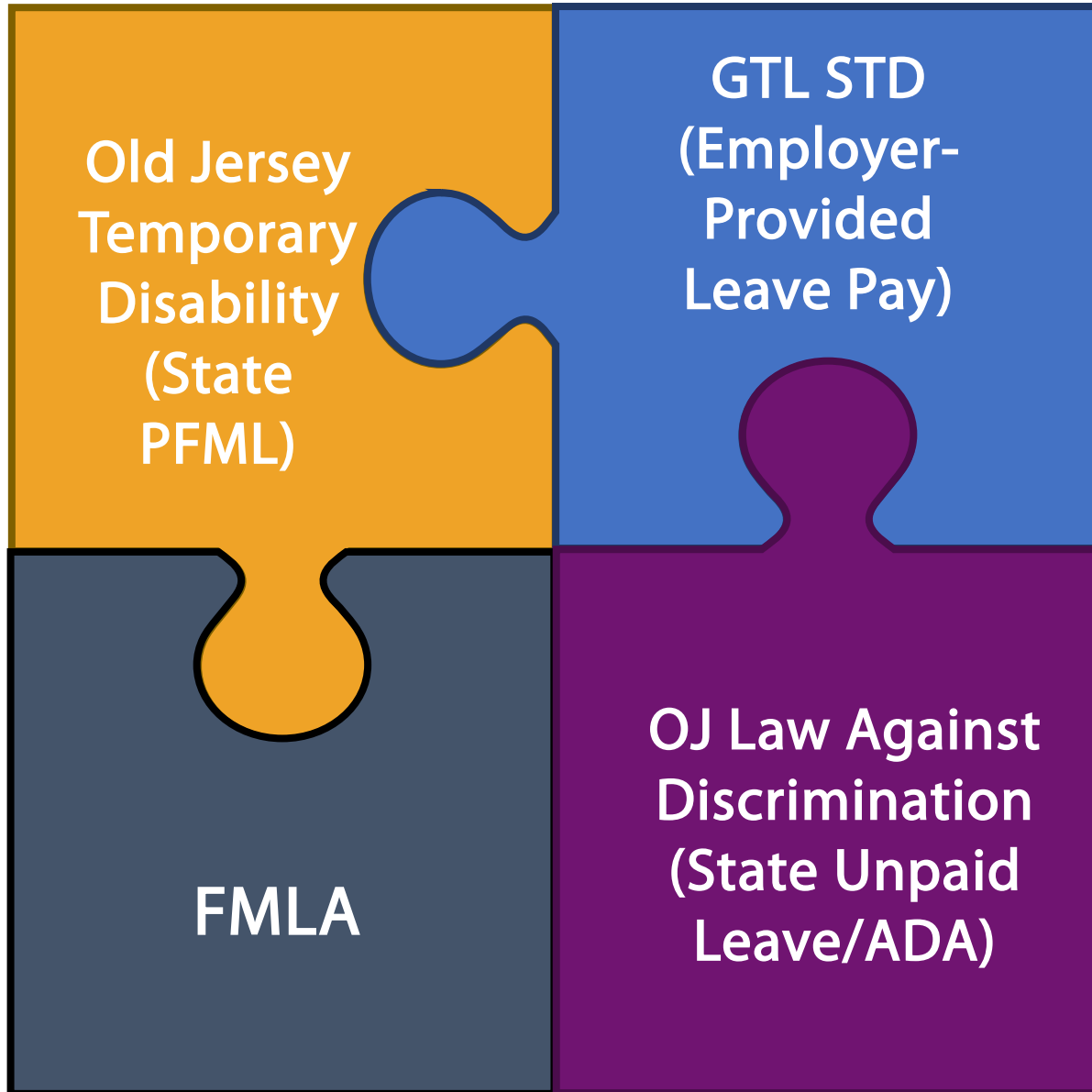
- Confirms that the same substitution principles apply to employees receiving wage replacement through state or local paid family or medical leave programs.
- Pauly's leave would not qualify as "unpaid" under the FMLA

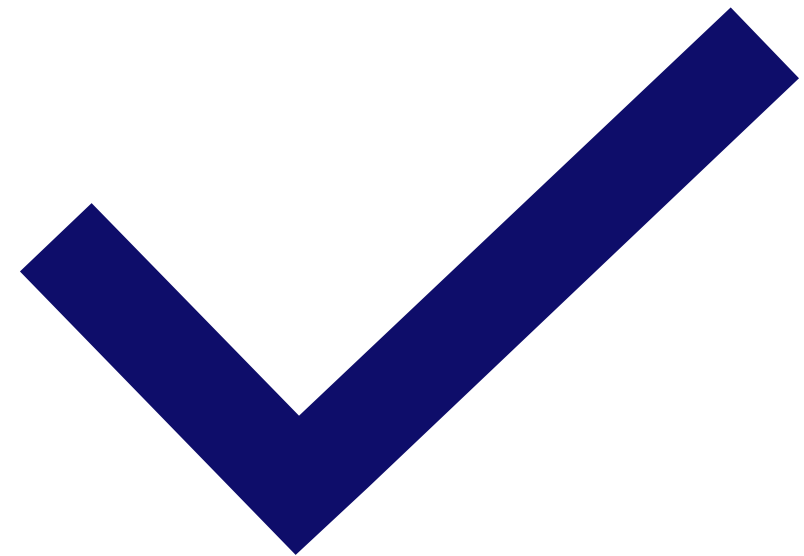
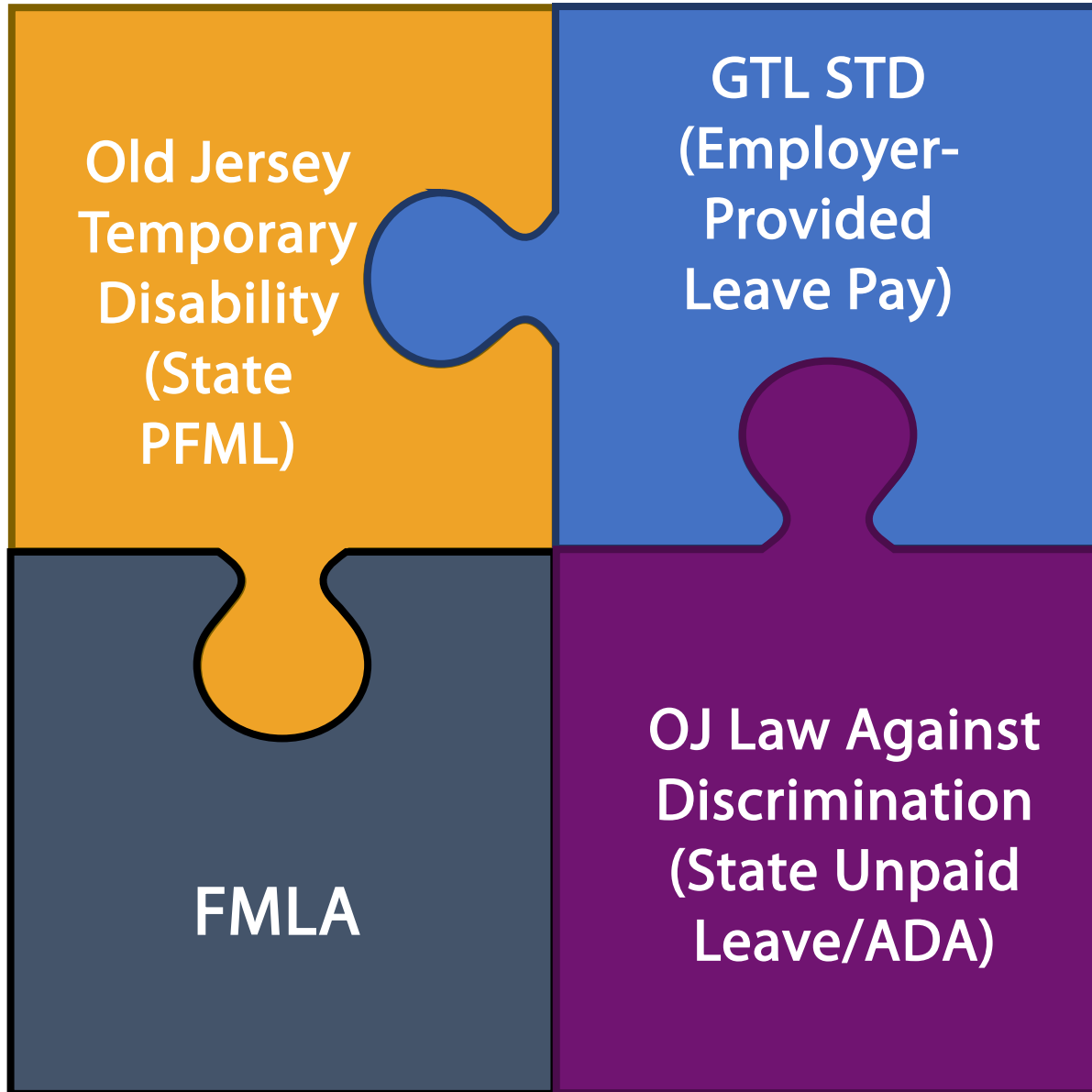


Can Pauly Receive OJ TDI and STD Benefits Simultaneously?

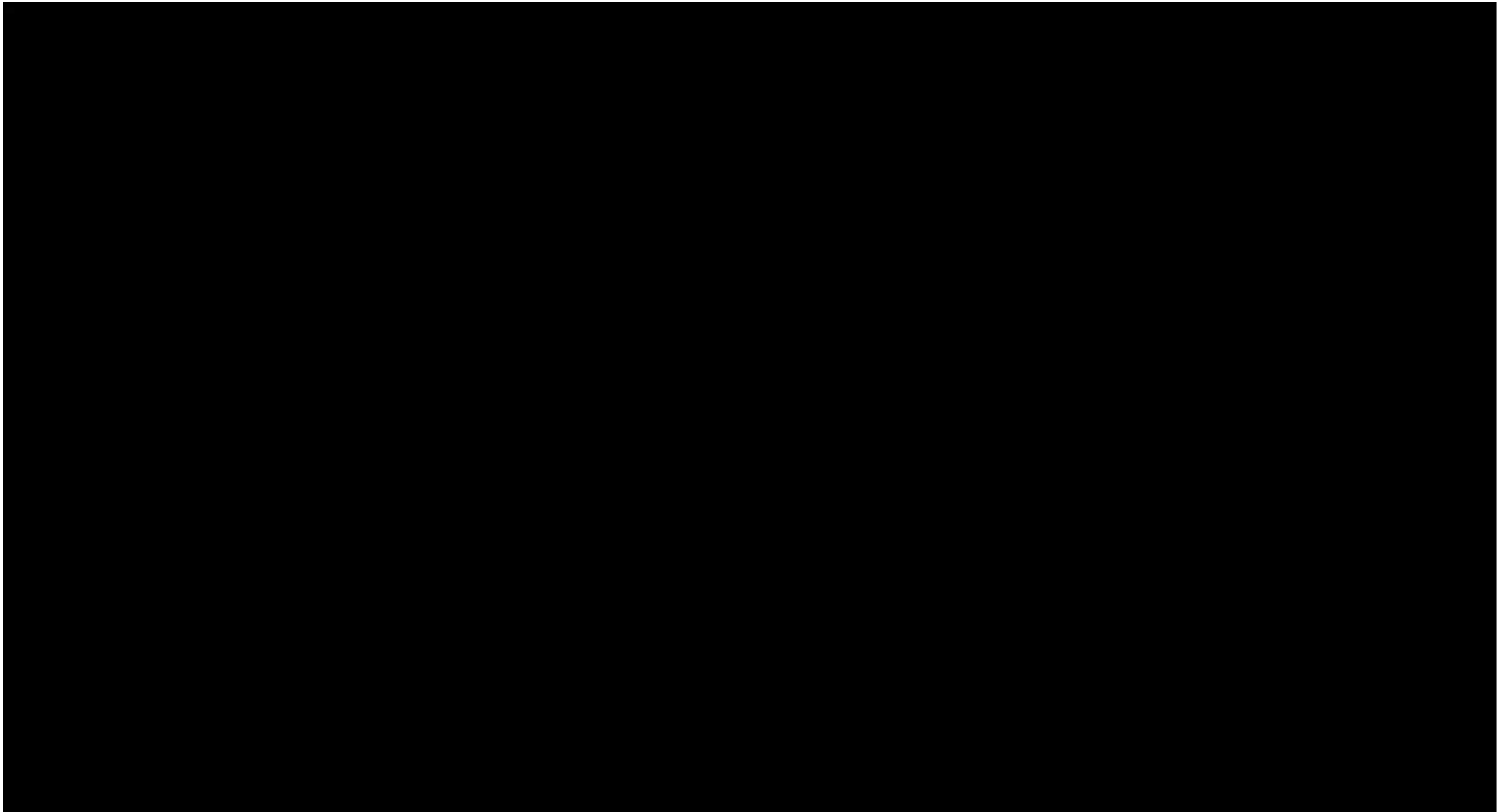
What do OJ TDI and STD say about integration?

- OJ TDI permits employees to supplement state benefits so long as they do not receive more than their regular weekly pay.
- Similar to most plans, GTL's STD plan offsets any other wage replacement, including OJ TDI, so Pauly's STD benefit will be 5%.





Taxachusetts Triplets: Birth Parent Leave



Taxachusetts Triplets: The Facts

- Ally is pregnant with triplets and works in Taxachusetts.
- She has been employed for 3 years as a full-time employee.
- Ally told her manager that she plans to take 24 weeks of paid leave and another 12 weeks of unpaid leave.

Taxachusetts Leave and Pay Entitlements

Benefit Name	Entitlement Type	Duration	Pay
Paid Family and Medical Leave	See next slide	Up to 26 weeks	80% AWW up to 50% SAWW+50% above MAX=64% SAWW Max Weekly Benefit=\$1,171
Earned Sick Leave	Employee/family illness or routine care, reproductive loss, domestic violence	40 hours	Paid
Parental Leave Law	Prepare for and participate in birth and/or Bonding	8 weeks per birth/placement	Unpaid

AWW=average weekly wage

SAWW=state average weekly wage

Taxachusetts Leave and Pay Entitlements

	Entitlement Type	Duration
Paid Family Leave	Bonding	12 weeks
	Qualifying Military Exigency	12 weeks
	Care for a Family Member with a Serious Health Condition	12 weeks
	Care for a Covered Family Service Member	26 weeks
Paid Medical Leave	Employee's Own Serious Health Condition	20 weeks
Total Leave	Maximum Leave Combined	26 weeks

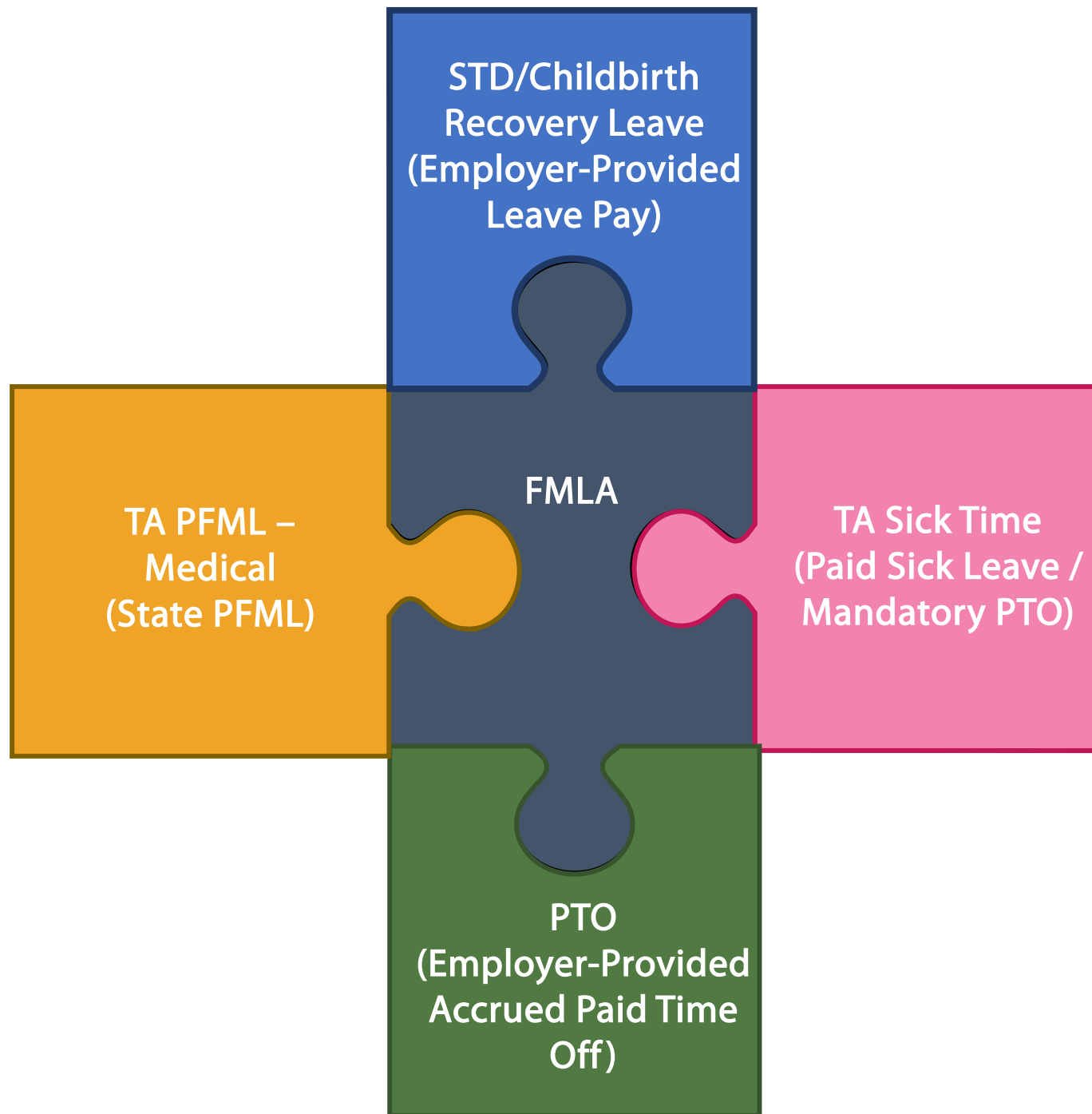
AWW=average weekly wage

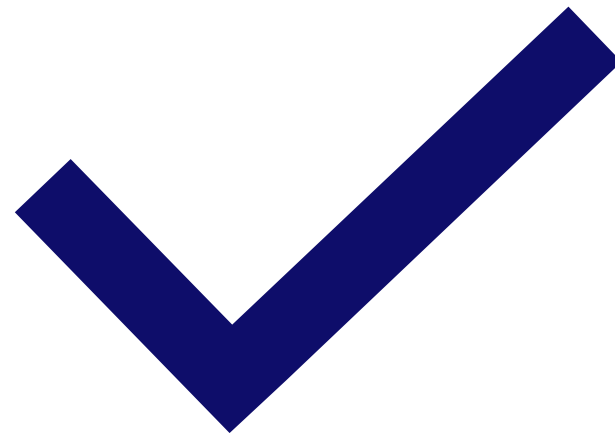
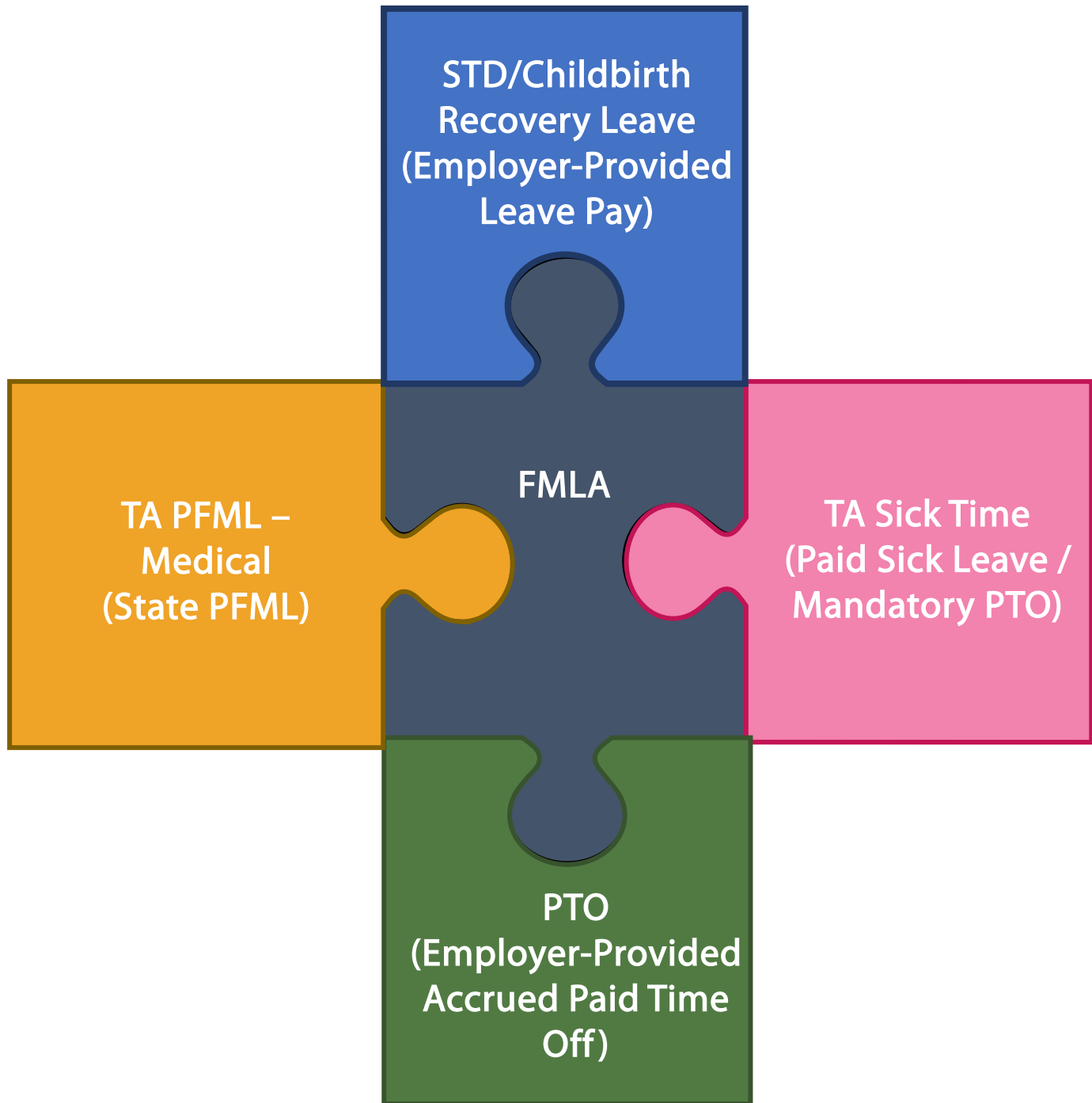
SAWW=state average weekly wage

Employer's Policies

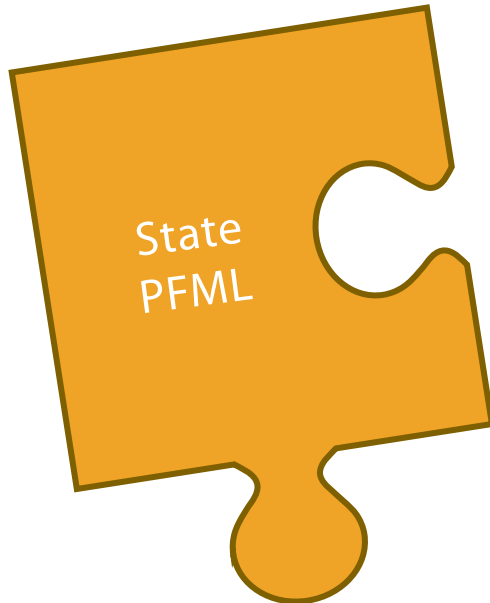
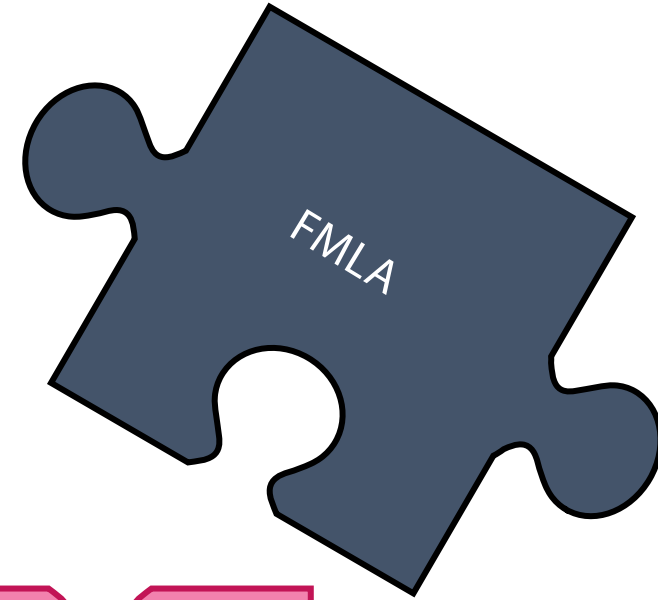
Leave Name	Leave Type	Duration	Pay	Available to "Top Off" STD or State Benefits?
Short-term Disability	Medical (inc. pregnancy)	26 weeks	70%	Yes
Childbirth Recovery	Recovery from childbirth	6 weeks	100%	Yes
Paid Parental Leave	Bonding	6 weeks	100%	Yes
Paid Time Off	Any reason	5 weeks	100%	Yes

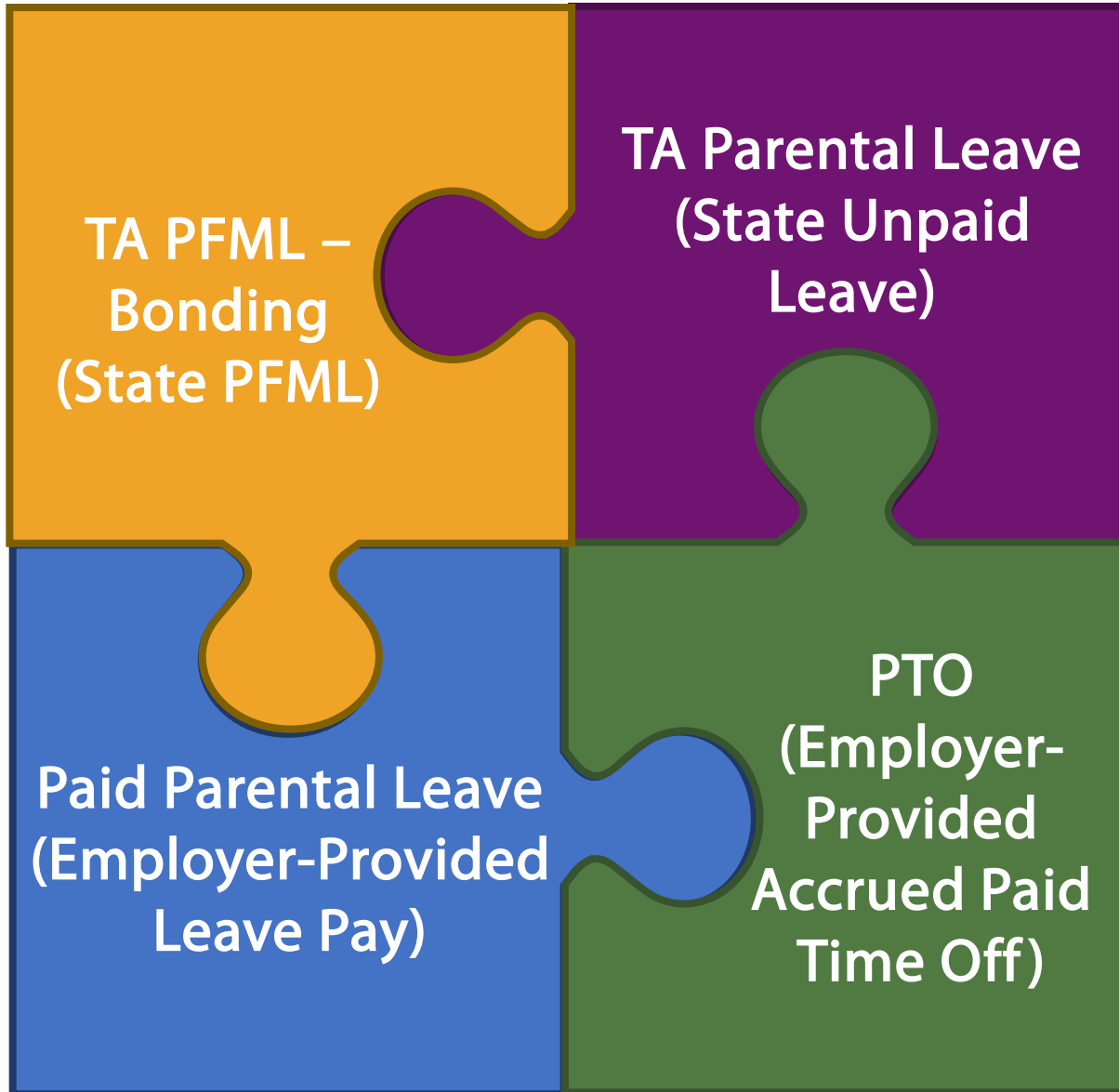
What Job-Protected Leave Laws and Sources of Income Apply to Ally's Pregnancy Leave?

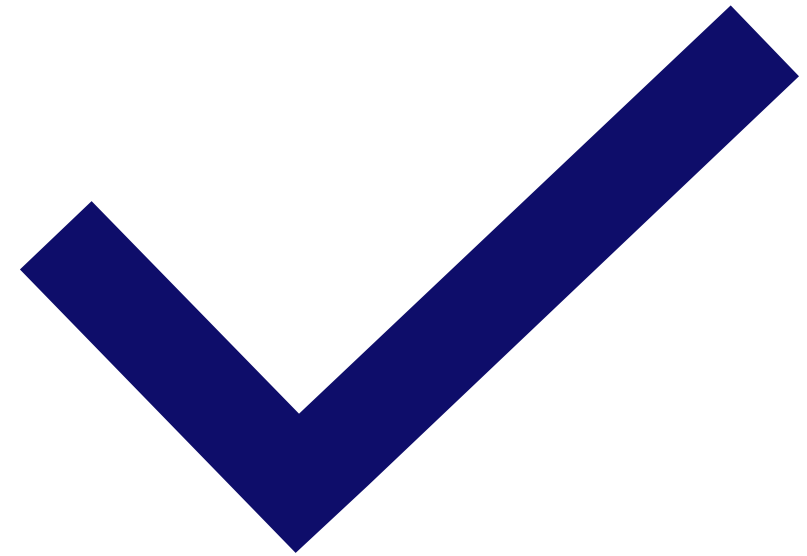
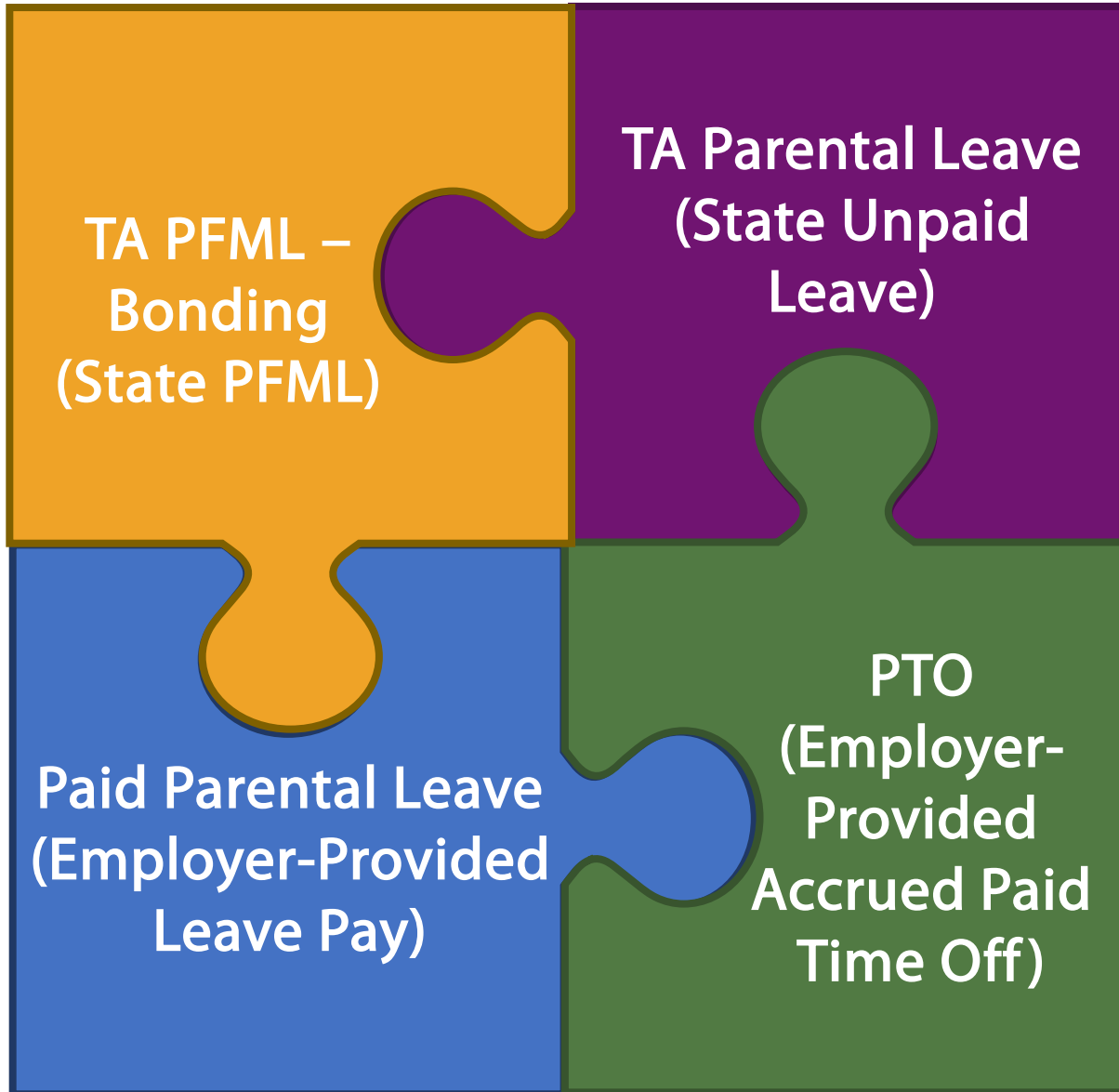




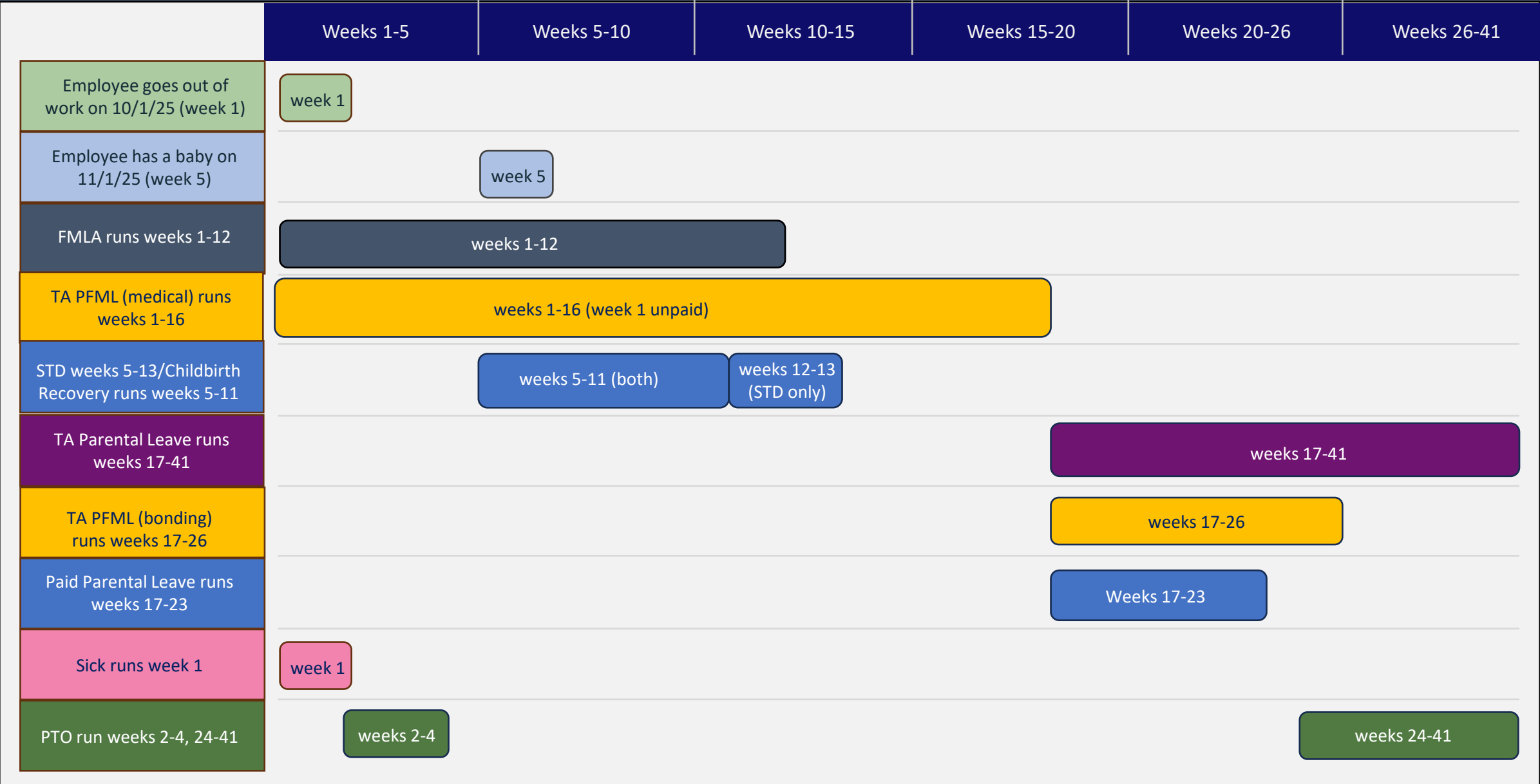
What Job-Protected Leave Laws and Sources of Income Apply to Ally's Bonding Leave?







Birth Parent Leave: Putting It All Together



Questions?



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Thank You!



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