



MAINE PAID FAMILY & MEDICAL LEAVE



GUIDE FOR SUBSTANTIALLY EQUIVALENT PRIVATE PLAN SUBSTITUTION

FULLY INSURED PLAN SUBSTITUTION

OVERVIEW

Under Maine’s Paid Family and Medical Leave Program, employers may choose between participating in the State Plan administered by the Maine Department of Labor or offering an approved private plan to their employees. One type of private plan employers can offer is a fully insured plan. With a fully insured plan (the “Plan”), the employer purchases a PFML insurance policy (the “PFML Policy”) that provides employees with rights, protections, and benefits substantially equivalent to those provided under the State Plan. After purchasing a PFML policy that has been certified as substantially equivalent, the employer applies to the Maine Department of Labor Paid Family and Medical Leave Program for approval of a private plan substitution.

IMPORTANT: An employer cannot offer a fully insured private plan unless the employer has filed an online application AND has obtained approval from the Department. For approval, certain minimum requirements must be met:

- The plan must be substantially equivalent to the State plan including in terms of benefits offered.
 - *A short-term or long-term disability plan will **not** qualify*
 - *A plan that consists of leave benefits that need to be accrued (such as sick, vacation, or paid time off) that does not provide full coverage of benefits will **not** qualify*
 - *A plan that consists of leave benefits provided under an employer’s personnel policies that can be changed at the employer’s discretion will **not** qualify*
- It cannot cost employees more than the State plan would cost them.
- The plan must allow family and medical leave to be taken for all of the reasons contained in the law.
- It must provide for family leave for any type of family member that is listed in the law.

- It must allow for at least 10 weeks of aggregate leave per benefit year as long as the total monetary benefit allowing for the maximum amount of leave is equal to or greater than the maximum benefit provided by the State plan.
- It must allow an employee to take intermittent or reduced schedule leave.

Any plan which does not meet the minimum criteria above will not be certified as substantially equivalent and will not be eligible for substitution.

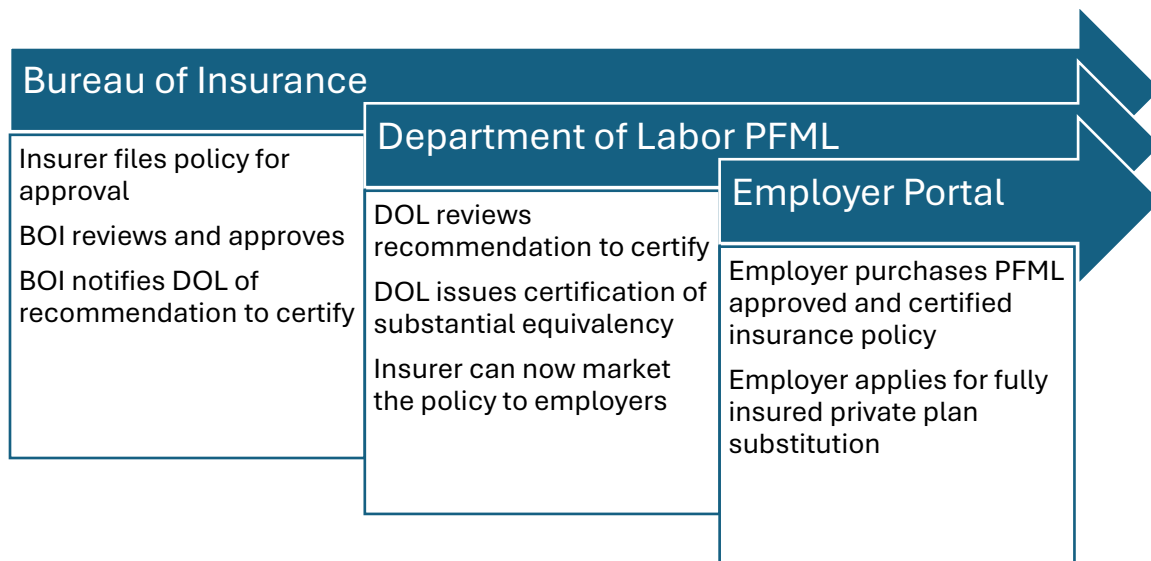
INSURANCE CARRIER PROCESS

Before an insurance carrier can offer a PFML Policy for sale, the carrier must get approval from the Superintendent of Insurance and the Department of Labor. The PFML Policy must meet the minimum requirements as well as additional criteria for substantial equivalency and must:

- Be approved by the Superintendent of the Maine Bureau of Insurance
- Certified as substantially equivalent by the Maine Department of Labor
- Be offered by an insurer licensed to do business in Maine

To be approved by the Superintendent and certified by the Department as substantially equivalent, the insurance policy must meet the criteria set forth in and contain provisions consistent with the Maine DOL Paid Family Medical Leave Program checklist which can be found on the Maine Bureau of Insurance website: [maine-dol-pfml-program.docx](#).

The process for obtaining a **certificate of eligibility** from the Department as a substantially equivalent plan is as follows:



PROCESS FOR EMPLOYER'S APPLICATION FOR A SUBSTITUTION USING A FULLY INSURED PLAN

Purchasing an insurance plan is just one part of the process for approval of an employer's fully-insured private plan substitution. The employer must submit an application for approval of their private plan substitution and pay all applicable fees.

The process for application is:

1. If you have not already done so, register in the Maine Paid Leave Contributions Portal (<https://pfml.maine.gov/contributions/>)
2. Log in to your account
3. You will be brought to the Summary page
4. Click on the **More...** tab of the logon
5. In the Private Plan panel click the **Request Substitution of a Private Plan** hyperlink
6. Read the information in the introduction portion, which includes information that you will need to apply. You will be asked to provide the employer's name, EIN, physical address, mailing address, name and title of the person completing the application including their mailing address, email address and phone number. You will also be required to attest to certain statements that confirm your plan will be administered consistent with the law and rule.
7. Click the **Next** button.
8. On the Plan Type step, select **fully-insured plan** then click the **Next** button.
9. Select and Insurance Carrier, the Plan number associated with the carrier, and enter the benefits begin date. Remember the insurance policy must have been approved and certified or it will not appear in the pick list. If the purchased policy is not shown or you select Other as the insurance carrier, you will need to manually enter the required information.
10. Click the **Add** Attachment button to provide the proof of purchase.
11. Click the **Choose File** button to search for your file that includes the proof of purchase. You will upload a file that contains the first one or two pages of the insurance policy making sure it includes the type of coverage, name and address of the insurance carrier, the policyholder's name, the term of the policy coverage (effective date and renewal date), a form number or other identifier that indicates the policy version filed with and approved by the Maine Bureau of Insurance, a unique policy number for the employer, and the signature of at least one officer of the carrier.
12. Click the **OK** button then the **Next** button.
13. Review the information, then click the **Next** button.
14. Enter payment information to pay the application fee of \$250, then click the **Next** button.
15. Enter the password to confirm the submission, then click the **Submit** button.

The employer will receive notification of the Department's action on their application through the Paid Leave Portal. If the employer's application is approved:

- The employer will be notified of the approval including the date that the exemption from premium obligations to the State fund begins.
- The employer will be notified of the effective date of the exemption and the end date of the exemption. Private plan substitutions are effective for a period of 3 years from the effective date of the exemption from the obligation to pay premium contributions.
- An additional administrative reimbursement fee will be assessed to cover the Department's costs of administering their private plan substitution.

PLEASE NOTE: The employer must purchase an insurance policy that has been approved by the Superintendent of Insurance and certified by the Department of Labor. If the policy the employer purchased does not meet both criteria, their application will be denied.

As a reminder, the employer must continue to comply with all of their premium contribution and reporting obligations to the State Fund while their application is pending.

ONGOING OBLIGATIONS IF PLAN IS APPROVED

Approval of a substantially equivalent private plan substitution only exempts an employer from paying contributions to the State PFML Fund. The employer must still comply with other requirements of the Law and Rule including:

- **Wage Reports:** Submitting wage reports on a quarterly basis to the Department no later than the deadlines specified by the Department.
- **Data Reports:** Collecting and submitting to the Department all data required under 26 M.R.S. § 850-E (6). The deadline for submission is July 31st of each year.
- **Job Protection:** Providing job protection as specified in the Law and Rule.
- **Reconsideration Process:** Ensuring that the plan provides for reconsideration by the private plan administrator of a claim denial.
- **Appeal Rights:** Ensuring that a claim denial after reconsideration includes notice of the covered individual's right to appeal to the Department within 15 business days of issuance of the decision.
- **Return to Work:** Ensuring compliance with all requirements of 26 M.R.S. § 850-J for returning an employee to a prior or equivalent position and the prohibition against retaliation.
- **Audits:** Remaining subject to on-going audits to ensure the substantial equivalence of the private plan is maintained and the plan, in operation, complies with the law and rule.

If a fully insured private plan substitution is approved, the private plan substitution is effective for 3 years and cannot be cancelled sooner without prior approval of the Department. Further, an employer cannot make material changes to the approved plan without prior approval of the Department.

Additionally, if the employer gets a notice that the insurer is going to cancel or nonrenew the policy they purchased, the employer must notify the Department at least 10 days in advance. Revocation or nonrenewal of the insurance policy will result in withdrawal of the Department's approval of the private plan.

DENIAL OF AN APPLICATION

Not every application for a private plan substitution will be approved. If the application is denied, the employer will be given the reasons for the denial and notification of their right to appeal the decision. An appeal of the decision of denial must be made within 15 business days from the date the notice denying the application was issued.

DEPARTMENT'S RIGHT TO REVOKE APPROVAL

The Department has the authority to revoke approval of a private plan when terms or conditions of the plan have been violated. Sometimes revocation will be referred to as a withdrawal of approval of the private plan substitution. Some reasons why approval may be revoked or withdrawn include, but are not limited to:

- Failure to pay family leave benefits or medical benefits;
- Failure to pay family leave benefits or medical leave benefits timely and in a manner that is consistent with the Law;
- Misuse of private plan money;
- Failure to submit reports or comply with other requirements as required by rule;
- Failure to comply with the Law or the rules adopted pursuant to the Law; or
- Failure to pay insurance premiums resulting in the cancellation of the policy supporting the fully insured plan.

Just like the denial of an application, if an approval of the private plan is revoked or withdrawn, the employer will be given the reasons and the right to appeal the decision. An appeal of the decision of denial must be made within 15 business days from the date the notice revoking or withdrawing the application was issued. The employer's premium obligations start again **immediately** upon the revocation or withdrawal of approval.

APPEALS

Since employer contribution activity with the Department is through the Maine Paid Leave Contributions Portal, employers use the portal to file any appeal of either the denial of an application or revocation or withdrawal of an approved plan. The steps for appealing a determination by the Department are:

1. Login to your employer account on the Maine Paid Leave Contributions Portal at <https://pfml.maine.gov/contributions/>.
2. Click on the **View Employer Details** hyperlink in the **Employer Details** panel.
3. Next click the Appealable Decisions Tab and you will see all decisions that you can currently appeal. For example, if your application for a private plan substitution was denied, you will see information about the denial and a hyperlink for the letter notifying you of the denial.
4. To appeal the decision, click the **File an Appeal** hyperlink at the top right of the Employer Details springboard. Then follow the process for filing the appeal.
5. After filing the appeal, you will receive a hearing notice and information about preparing for the hearing through the portal.
6. You will also be able to click the **Appeals** tab from the Employer Details springboard to review information about the pending appeal or past appeals.

It is important for an employer to remember that they must continue to comply with all of their premium contribution and reporting obligations to the State Fund under the Law and Rule while their appeal is pending.

CONTACT INFORMATION

There are several ways for an employer to get more information about the Maine Paid Family & Medical Leave Program.

The first step would be to visit the Maine Paid Leave website at www.maine.gov/paidleave. The website contains employer resources including information on registration, wage and data reporting obligations, contributions, private plan substitutions, benefits, and appeals.

Employers can also sign up to get important updates and notifications. Signing up for notifications is done by going to the “Get Notified” box on the website, entering an email address, and clicking “Go.” There are two categories of topics that someone can sign up for: one for employees and one for employers. Anyone can sign up for either one or both.

Employers with questions about the program or the Maine Paid Leave Portal can also either send the Department a message through the Maine Paid Leave Contributions Portal or they can call the Department’s call center at (207) 621-5024, 8 a.m. to 5 p.m. Monday through Friday.