

COMPLIANCE CHRONICLE

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Navigating the ever-evolving landscape of compliance can be challenging and time-consuming. Warner Pacific is happy to share monthly updates to help your organization stay informed about new requirements and minimize compliance risks. Let us handle the complexities, so you can focus on what matters most – your business.

Coordinating Leave Under FMLA and State PFML Programs

The U.S. Department of Labor (DOL) recently issued Opinion Letter [FMLA 2025-01-A](#), which addresses the interaction between state and local Paid Family and Medical Leave (PFML) and leave taken under the federal Family and Medical Leave Act (FMLA). It also addresses the substitution of employer-provided paid leave.

As background, the FMLA provides 12 weeks of unpaid, job-protected leave per year for specified family and medical reasons. While FMLA leave is unpaid, the law allows the employee to elect, or an employer to require the employee, to substitute accrued employer-provided paid leave (such as paid vacation or PTO) for any part of the FMLA leave.

The DOL’s opinion letter states that although the FMLA statute and regulations do not address state or local PFML, employers must designate PFML as FMLA leave when it is also FMLA-qualifying. The employee must be given notice of this designation, which should include the amount of leave to be counted against the employee’s FMLA leave entitlement. Furthermore, the employer and employee may agree to use the employee’s accrued paid leave from the employer to supplement the PFML payments, as permitted by state law. This may occur, for example, where a PFML program provides replacement income for only part of an employee’s salary.

However, the FMLA’s substitution provision does not



apply to any portion of the leave that is compensated by a PFML program. Neither the employer nor the employee may unilaterally require that employer-provided accrued paid leave run concurrently with PFML taken for an FMLA purpose. Other than the substitution provision, all of the protections of the FMLA, including its anti-retaliation provisions, apply during the time the PFML and the FMLA leave run concurrently. The substitution provision would apply to any remaining FMLA leave once the state or local paid leave is exhausted.

Additionally, if an employee uses a state or local PFML program under circumstances that do not qualify as FMLA leave, the employer may not count the leave against the employee’s FMLA leave entitlement.

For example, if a state PFML program allows paid leave to care for a family member with a medical condition that is not an FMLA-qualifying serious health condition or serious injury or illness, leave taken under such circumstances does not count against the employee’s FMLA leave entitlement.

Federal Action on In Vitro Fertilization

During his 2024 presidential campaign, President Trump stated that his administration would mandate coverage of IVF costs for all Americans.

Following up on that promise, President Trump signed a short [executive order](#) that broadly directs his administration to expand IVF coverage and lower out-of-pocket costs. Specifically, the order directs the Domestic Policy Advisor to develop a list of policy recommendations to protect IVF access and aggressively reduce out-of-pocket and health plan costs for IVF treatment. This list of recommendations – which will include both statutory and regulatory proposals – is due to President Trump within 90 days.



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These broad directives notwithstanding, neither the executive order or accompanying [fact sheet](#) include details regarding the mechanisms or programs that the Trump administration intends to target to meet these goals. For instance, will the Trump administration try to mandate that private health insurers or state Medicaid programs expand IVF coverage? Or will he leave it to the states to determine, following his pattern on other issues?

Stay tuned for more information on this very important issue.

**If you have any questions,
please reach out to your Sales Executive.**