



MAINE PAID FAMILY & MEDICAL LEAVE



GUIDE FOR SUBSTANTIALLY EQUIVALENT PRIVATE PLAN SUBSTITUTION **SELF-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 self-insured plan. With a self-insured plan (the “Plan”), the employer commits to providing employees with rights, protections, and benefits substantially equivalent to those provided under the State Plan.

To seek approval for a self-insured private plan, the employer will be required to upload a copy of the plan document that explains in detail the terms of the plan including the process for claims submission and benefit decisions. All aspects of the plan must meet the requirements of 26 M.R.S. § 850-H(1) and applicable rules and policies developed by the Maine Paid Family and Medical Leave Program (the “PFML Program”). More information about the legal requirements can be found on the PFML Program’s website: www.maine.gov/paidleave.

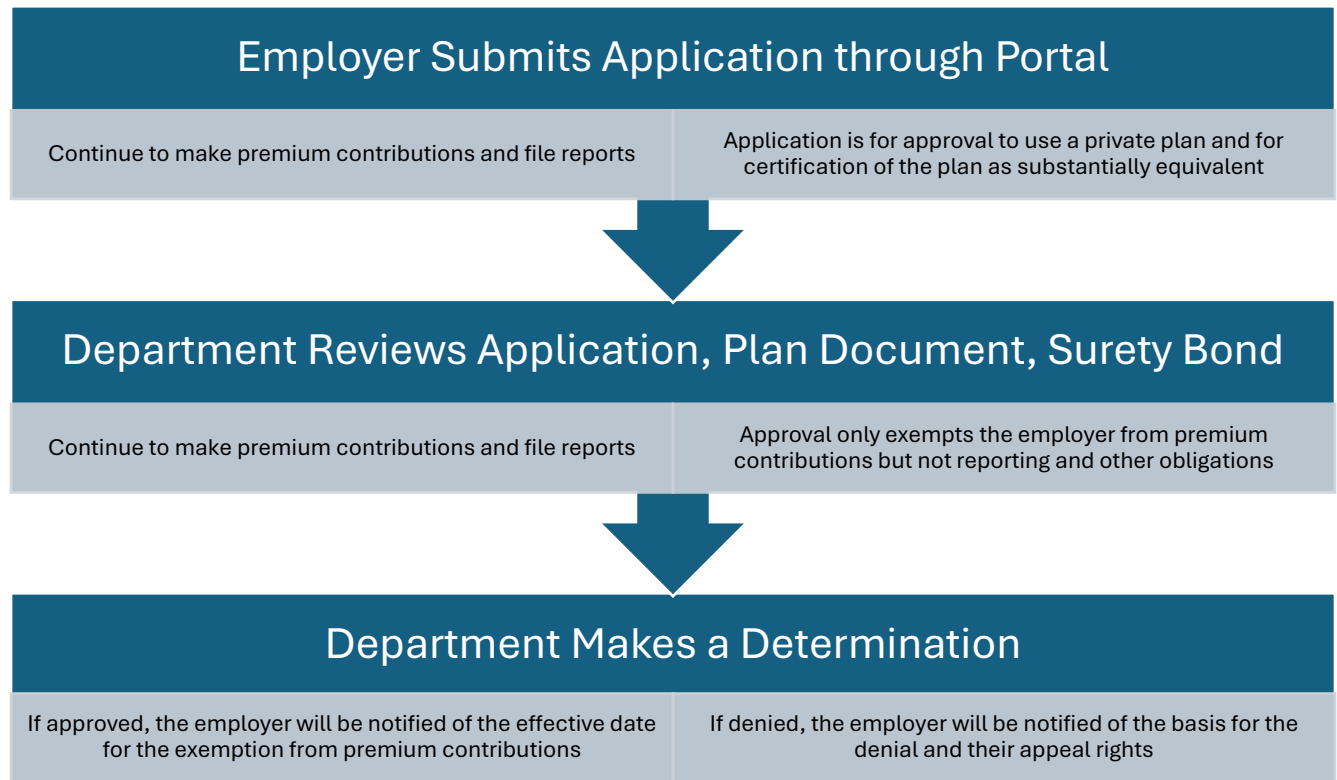
If there are conflicts between the Plan and the Act or Rule, the Act or Rule takes precedent. The only exception is, if the Plan provisions are more beneficial to employees, the more beneficial provisions will prevail.

In addition to the plan document, the employer must have a surety bond in a form and amount set by the Department. Also, the employer must have the ability to administer contributions, claim requests, and benefit payments. The plan can be self-administered by the employer or the employer can contract with a third party to administer the plan. However, even if a third-party administrator is used, it is the employer who remains responsible for meeting all of the requirements in the law and rule.

IMPORTANT: An employer cannot offer a self-insured private plan unless the employer has filed an online application with the Department AND has obtained approval from the Department. To be approved, the Plan, as laid out in the plan document, must meet certain minimum requirements and criteria for substantial equivalency.

SUMMARY OF THE APPLICATION PROCESS

There are several steps an employer must take before it can seek approval of a self-insured private plan substitution. The process and the requirements that need to be met for approval by the Department are detailed below and in Appendix A. At a high level, the employer will need to submit their application online through the employer portal; upload their plan document; upload the surety bond; and pay the application fee. A summary of the process follows:



MINIMUM REQUIREMENTS

Before applying for approval to use a self-insured private plan, the employer must create a private plan document that is substantially equivalent to the State plan and can be certified as such by the Department. The private plan document must meet the criteria and include language set forth in the Self-Insured Plan Checklist for Substantial Equivalency which can be found on the website (www.maine.gov/paidleave). The document is called “Self-Insured Plan Checklist for Substantial Equivalency.”

A template for a plan document which should be used in creating the employer’s self-insured private plan substitution document is also on the website and is called “Plan Document Template.” The Maine PFML self-insured private plan substitution document is what will govern the paid family and medical leave program offered by the employer to its employees including administration of claims and benefit payments among other requirements.

To be approved, certain minimum requirements and criteria for substantial equivalency must be met. The minimum requirements are:

- 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 that does not meet the minimum criteria above will not be certified as substantially equivalent and will not be eligible for substitution.

If the minimum requirements are met, the Plan must still meet criteria for substantial equivalency. Those criteria are discussed in the next section.

SUBSTANTIALLY EQUIVALENT PLANS

A plan that meets the minimum requirements will be considered for certification as an eligible plan if it meets the criteria and includes language set forth in the Self-Insured Plan Checklist for Substantial Equivalency which can be found on the website (maine.gov/paidleave). The far righthand column on the checklist must be completed by the employer. The column, titled “Attestation and Location,” is where the employer indicates the specific pages and paragraphs in the self-insured plan document that contain language satisfying the legal requirements. By citing the location of the language, the employer is attesting to its belief that the language satisfied the requirements of the law and rule such that the plan can be certified as substantially equivalent. The completed checklist will constitute the cover sheet for the self-insured plan document when the employer uploads it to the Maine Paid Leave Contributions Portal (<https://pfml.maine.gov/contributions/>) as part of the application process.

Importantly, as part of its review, the Department will determine whether the plan provides the same or greater aggregate monetary benefit to employees. If it does not, the plan will not be approved. This determination will be made by comparing the plan’s wage replacement amount multiplied by the maximum number of weeks to the maximum Weekly Benefit Amount under the Act times 12 weeks. If the former calculation is equal to or greater than the second calculation, the plan may be considered substantially equivalent and eligible for substitution.

SUBSTANTIALLY EQUIVALENT BUT NOT IDENTICAL

A plan does not have to be identical to all the provisions of the Maine Paid Family and Medical Leave law and Department rule to be certified as substantially equivalent. PFML Rule ch. 1 provides that if the minimum requirements are met, a plan can be considered substantially equivalent but not identical if it includes these provisions:

- A plan that provides the amount of leave set forth in 26 M.R.S. § 850-B(4) during a 12-month period even if that 12-month period is not calculated in a manner identical to a “benefit year” as defined in 26 M.R.S. § 850-A(5).
- A plan that provides for intermittent or reduced schedule leave but requires that such leave may only be taken in minimum increments of four (4) hours.
- A plan that calculates an employee’s benefit using a different lookback period or based upon the employee’s actual wages at the time that leave begins if the requirements of Section XII(D)(3) of the Rule, are met.

REQUIREMENT FOR SURETY BOND

In addition to producing the plan document and establishing a process for administration that meet the requirements set forth above, a self-insured plan must include a surety bond. The

employer and surety company must use the surety bond form that is on the website (www.maine.gov/paidleave) and called PFML Surety Bond. The form will be completed by the surety company, not the employer, and the surety bond must be signed by the surety company, not an insurance producer or broker. The surety company must be properly licensed to sell surety bonds in the State of Maine. If an employer is not sure if the company is licensed, they can search the name of the surety company on the Maine Bureau of Insurance website: www.maine.gov/pfr/insurance/licensee-search

The bond must be for the benefit of the Maine Department of Labor. That means only the MDOL can file claims against the bond. The **amount of the bond** must be equal to one year's worth of premium contributions the employer would have paid to the State fund based on the employer's contribution rate and total wages for the four most recent quarters.

Bear in mind:

- The purpose of the bond is to cover premium contributions if the self-insured plan is terminated.
- The bond is **not** used to fund benefits to employees that are paid out under the self-insured plan.
- The bond runs to the benefit of the State. The employer cannot make claims against the bond.

PROCESS FOR EMPLOYER'S APPLICATION FOR A SUBSTITUTION USING A SELF-INSURED PLAN

Once the employer develops a self-insured private plan document with the checklist as the cover sheets and they have purchased an appropriate surety bond, they can apply for certification of the plan as substantially equivalent and for approval to use the private plan substitution.

The process for application is:

1. If you have not already done so, register in the Maine Paid Leave Contributions Portal at <https://pfml.maine.gov/contributions/>
2. Login 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 self-insured plan.
9. Click the **Next** button.
10. Select **Yes** or **No** for whether the plan will be self-administered or administered by a third party, then click the **Next** button.
11. If you answered Yes: enter the Surety Bond Company and bond amount. Then click the **Next** button.
12. If you answered No: enter the Plan Administrator, the Surety Bond Company, and bond amount. Then click the **Next** button.
13. Click the **Add Attachment** button to upload the plan document, checklist with references to pages in the plan document, and the surety bond signed by you and the surety company.
14. Click the **Next** button.
15. Review the information, then click the **Next** button.
16. Enter payment information to pay the \$250 application fee, then click the **Next** button.
17. Enter your password to confirm the submission, then click the **Submit** button.

After the employer submits the application and attachments, the Department will review the application and self-insured private plan document to make sure that the minimum requirements have been met and the plan is substantially equivalent to the State plan.

If the minimum requirements have been met, the Department will determine whether the plan provides the same or greater aggregate monetary benefits to employees and will review the plan document to determine if the plan is otherwise substantially equivalent using the criteria in the Self-Insured Plan Checklist for Substantial Equivalency that the employer completed and included as the cover sheet to the plan document.

If approved, the Department will certify the plan as eligible.

The employer will receive notification of the Department's action on their application through the Maine Paid Leave Contributions Portal. If their 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 exemption will start on the first day of the quarter in which the substitution is approved unless the application was filed less than 30 days prior to the end of a quarter. Then it will be effective the first day of the quarter after the application was submitted.
- 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 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 your private plan substitution.

PLEASE NOTE: The employer's self-insurance private plan document must be certified by the Department as substantially equivalent, and the employer must meet the minimum requirements including having a valid surety bond for the self-insured private plan substitution to be approved. Failure to meet all requirements may result in the application being 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 Act 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 Act 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 self-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.

DENIAL OF AN APPLICATION

Not every application for a private plan substitution will be approved. If an employer's 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 Act;
- Misuse of private plan money;
- Failure to submit reports or comply with other requirements as required by rule; or
- Failure to comply with the Act or the rules adopted pursuant to the Act.

As with 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 approval was issued.

NOTE: If a self-insured private plan substitution is terminated, claims may be made by the Department against the surety bond to cover retroactive premiums for the time period from the substitution start date to the date of the substitution termination. An employer's obligation to make premium contributions to the State PFML Fund starts 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 Act 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.

Appendix A

MAINE PAID FAMILY AND MEDICAL LEAVE

**APPLICATION INFORMATION FOR SUBSTANTIALLY EQUIVALENT PRIVATE
PLAN SUBSTITUTION**

SELF-INSURED

This is the information that you will be asked to provide through the Maine Paid Family Leave Portal. The Application for a Private Plan Substitution is submitted through the <https://pfml.maine.gov/contributions>.

1. Employer Name
2. EIN Number
3. Physical Address
4. Mailing address
5. Person Completing the Application including their name and title
6. Mailing address, email address and phone number for the person completing the application
7. Third-party Administrator, if any
8. Mailing address and phone number for the third-party administrator
9. Surety Bond amount and Surety Company
10. Surety Bond) to be uploaded as an attachment

Additionally, the plan document you upload as an attachment must include the following information along with the information required in the self-insured plan substantial equivalency checklist.

1. The total number of employees employed
2. The number of full-time, part-time, temporary and contracted employees and those performing work as self-employed individuals
3. The number of employees that are eligible for coverage under the employer's private plan
4. The date when the employer's private plan takes effect and ends for employees covered under the private plan
5. Maximum number of weeks an employee is eligible to take paid family and medical leave
6. Maximum benefit amount an employee can earn while on leave under self-insured plan
7. Whether the plan allows for both family and medical leave
8. If the plan does not allow for both family and medical leave, a description of the type of leave allowed
9. Whether the plan allows for intermittent and scheduled leave
10. Whether the plan allows for an employee to return to their position or a position that is equivalent to their role upon returning from leave