



PFML Q/A with Maine Department of Labor

As of December 11, 2024

Q: If our 1/3/25 payroll covers the weeks of 11/25/24-12/6/24, do we have to start the PFML?

A: Per the [final rule](#), the payroll deductions will begin on the first pay date in January 2025 although that payroll may be based on wages earned in 2024 if the pay period ends in December but is paid in the following month.

Q: Is the amount we are deducting from employees to be withheld as a tax or a withholding?

A: In the [FAQ](#) document, it is stated that premiums are calculated on total subject wages, before federal income tax, state income tax, and Social Security and Medicare taxes are deducted.

Q: Are PFML premiums a pre-tax or post-tax deduction?

A: Premiums are calculated on total subject wages, before federal income tax, state income tax, and Social Security and Medicare taxes are deducted. The question of whether PFML premiums are taxable is reliant on the guidance and processes of the Federal Internal Revenue Service. Employers should work closely with their tax professionals on this question.

Q: In one section of the FAQ sheet, it states wages are defined under IRS rules; I interpret this to mean section 125 and 403(b) amounts are safe and will not be included in the calculations. However, this document is now saying wages are calculated as workers comp wages. Workers' comp is only paid by the employer, not the employee, so section 125 and 403(b) reductions do not come into play.

A: Please see the [Employers Guide](#) regarding what are considered wages. Also, review [IRS publication 15 \(Tax Circular E\)](#) on other types of wages that may or may not be excluded; more information can be found on page 44 of this document which addresses 125 and 403(b) plans. Also of note, the National Payroll Consortium (members are national payroll processors and tax professionals) has reviewed the wage definition as enacted for PFML and has not cited issues with the definition in this context.

Q: We are self-insured for Unemployment Insurance. We were told to use the Unemployment amount for calculating how much to withhold from employees. What is the calculation that we should use?

A: The wage definition is complex, which is why MDOL would advise companies that are not currently subject to SUI taxes consult with a tax professional when setting up deductions for the first time.

If a consult is not feasible, the MDOL formal definition of wages is:

28. "Wages" means all remuneration for personal services, including tips and gratuities, severance and terminal pay, commissions, and bonuses, but does not include remuneration for services performed by an independent contractor as defined by 26 M.R.S. § 1043 (11) (E). "Wages" are calculated in the same manner as Maine unemployment wages in 26 M.R.S. § 1043(19) (B-E) except that employees subject to wages include all employees with the exception of Section II (B) of these rules, and excludes wages above the base limit established annually by the federal Social Security Administration for purposes of the federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. § 430. Wages include remuneration for services performed in the State or wages which are otherwise subject to Maine unemployment tax pursuant to 26 M.R.S. § 1043 (11) (A) and (D).

While this is close to "Gross Wages", there are certain types of payments that are not included in wages, and are referred to as "subject wages". SUI wage definition provides some context of payments that are not included:

19. Wages. "Wages" means all remuneration for personal services, including commissions, bonuses, severance or terminal pay, gratuities and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash must be estimated and determined in accordance with rules prescribed by the commissioner, except that:

B. For purposes of section 1191, subsection 2, section 1192, subsection 5 and section 1221, the term "wages" does not include:

(1) The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer that makes provision for the employer's employees generally, or for the employer's employees generally and their dependents, or for a class or classes of the employer's employees, or for a class or classes of the employer's employees and their dependents, on account of:

(a) Sickness or accident disability, but in the case of payments made to an employee or any of the employee's dependents, this subparagraph excludes from the term "wages" only payments that are received under a workers' compensation law;

(b) Medical or hospitalization expenses in connection with sickness or accident disability;
or

(c) Death;

(1-A) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an

employer or a 3rd party to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for that employer;

(2) The payment by an employing unit, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Federal Insurance Contributions Act, as amended, with respect to service performed after July 26, 1940, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(3) The amount of any payment, other than vacation or sick pay, to an individual after the month in which the individual attains the age of 62, if the individual did not perform services for the employing unit in the period for which such payment is made and is not expected to perform service in the future for the payment; or

(4) The amount of any nominal fee or stipend to a volunteer whose service is excluded from the definition of employment pursuant to subsection 11, paragraph F, subparagraph (35); [PL 2017, c. 117, §3 (AMD).]

C. With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work includes wages paid for previously uncovered services. For the purposes of this paragraph, the term "previously uncovered services" means services:

(1) That were not employment as defined in subsection 11, and were not services covered pursuant to section 1222, at any time during the one-year period ending December 31, 1975; and

(2) That:

(a) Are agricultural labor, as defined in subsection 11, paragraph A-2 or domestic service as defined in subsection 11, paragraph A-3; or

(b) Are services performed by an employee of this State or a political subdivision thereof, or any of their instrumentalities as provided in subsection 11, paragraph A-1, subparagraph (1), or by an employee of a nonprofit educational institution that is not an institution of higher education, as provided in subsection 11, paragraph F, subparagraph (17), division (I); except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services; [PL 2011, c. 691, Pt. A, §28 (AMD).]

D. Nothing in this subsection may be construed to include as wages any payment that is not included as wages under the Federal Unemployment Tax Act, 26 United States Code, Section 3306(b)(5) and (r), as amended, as of January 1, 1985; and [PL 2017, c. 117, §3 (AMD).]

E. Nothing in this subsection may be construed to exclude from wages any remuneration that is:

(1) Taxable under any federal law that imposes a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) Required to be covered under this chapter as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act. [PL 2017, c. 117, §3 (AMD).]

[PL 2021, c. 456, §3 (AMD).]

Note that subsection 19(D) and (E) reference subject wages in Federal Unemployment Tax Act (FUTA); this is where IRS Publication 15 comes in handy. The best resource is the table that starts on Page 44 paying attention to the FUTA column about whether the payment is included in wages or exempt, looking at special payment types and ignoring special employment types (PFML does not have employment exemptions that SUI/FUTA have).