

PINNACLE WORKFORCE CONSULTING

Workforce systems that survive scrutiny.



MARYLAND PUBLIC SECTOR

FMLA & Wage/Hour

Compliance Crosswalk + Decision Tree



2026 Edition

Current as of May 2026

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About the Author



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Tabitha brings twenty-five years inside public HR. Fifteen years in Maryland local government. Ten years in Maryland state government, most recently as Executive Director of Strategic Support Operations for one of the state's largest agencies, with central scope across HR operations, compliance, classification and compensation, audits, HRIS integrity, and executive reporting.

She has served as Acting Deputy CHRO with oversight across Recruitment and Background Investigations. She has testified as an expert witness in promotional grievance hearings. She has defended classification and compensation decisions in front of hearing officers, auditors, and legislative reviewers.

The work has centered on the places where workforce systems break under pressure: classification documentation that cannot survive a grievance hearing, compensation decisions that will not hold up in audit, HRIS data leadership cannot trust, recruitment pipelines that stall when vacancies spike. She has rebuilt those systems from inside the scrutiny, not from a consulting deck.

This packet reflects that operational lens. It is structured the way she would brief a CHRO walking into a Monday meeting: tight, defensible, decision-ready.

Why this resource exists

FMLA and wage/hour intersections are where most public sector grievances and audit findings originate. The same questions hit HR leaders across every Maryland agency, and the determinations rarely fail because the leave was earned or unearned. They fail because the documentation could not survive cross-examination. This packet exists to close that gap.

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1. How to Use This Packet

This is a working reference, not a policy substitute. It is built for the moment a leave question hits your desk, and you need to make a defensible decision quickly.

Who this is for

- HR Directors, CHROs, and Deputy CHROs in Maryland public sector agencies
- Operations leaders who own staffing risk in 24/7 environments
- Labor and employee relations professionals supporting unionized workforces
- Internal auditors and compliance officers preparing for legislative or IG review

How to deploy it

- **HR staff:** bookmark or print the eligibility crosswalk and decision tree. Use them at intake.
- **Front-line managers:** use the decision tree and operational impact memo when a request hits their unit.
- **Leadership:** run the audit preparedness checklist before any external review or oversight cycle.
- **Labor relations:** reference the union guidance section before issuing intermittent denials or undue hardship determinations.

What it does not do

- Replace your CBA review or Office of Attorney General consultation
- Substitute for case-specific legal counsel
- Account for agency-specific policies that may impose stricter standards than federal floor

Treat this as a structured starting point. Your final determinations still require contextual judgment.

2. Purpose & Scope

This packet provides a practical, audit-ready reference for Maryland public sector HR leaders managing FMLA and wage and hour intersections in unionized, 24/7, and high-scrutiny environments such as corrections, public safety, transportation, and health services.

Content is grounded in operational experience inside a 9,000-plus-employee Maryland state agency operating under legislative oversight, inspector general review, and grievance hearing testimony. The structure is built so leaders can move from question to defensible answer without rebuilding the framework each time.

Current as of May 2026. Confirm material updates against the U.S. Department of Labor and the Maryland Department of Labor before publishing internal guidance.

What is included

- Federal-to-Maryland eligibility crosswalk with risk indicators
- Forms quick-reference for the standard FMLA notice and certification suite
- Decision logic for high-risk leave categories
- Forward guidance for the Maryland FAMLI rollout
- Union and grievance handling considerations
- Wage and hour intersection points
- Documentation standards and audit-ready templates
- Glossary of acronyms and key regulatory references

Reference frame

- 29 CFR Part 825 (FMLA implementing regulations)
- Fair Labor Standards Act (FLSA) and 29 CFR Part 778
- Maryland Family and Medical Leave Insurance Act (FAMLI), Md. Code, Lab. & Empl. § 8.3-101 et seq.
- Applicable Maryland public sector collective bargaining agreements

3. Quick Eligibility Crosswalk

Use this table at intake to confirm coverage, eligibility, and risk posture. Risk ratings reflect grievance and audit exposure observed in Maryland public sector environments.

Risk legend: **Low** standard, low audit exposure • **Medium** documentation rigor required • **High** precedent-setting, frequent grievance trigger

Requirement	FMLA (Federal)	Maryland Public Sector Notes	Risk
Employer Coverage	All public agencies	Automatic coverage. State and local agencies covered without size threshold.	Low
Employee Eligibility	12 months of service + 1,250 hours in prior 12 months	Track hours carefully in shift work, overtime, and 24/7 operations. Public safety and corrections schedules complicate the 1,250-hour calculation.	High
Intermittent Leave	Protected when medically necessary	Strong operational impact documentation required. Track in 15-minute increments or smallest increment used for other leave types.	High
Reduced Schedule	Protected when medically necessary	Must justify impact on essential functions. Higher scrutiny for safety-sensitive and post-bid positions.	High
Notice to Employee	Eligibility notice within 5 business days. Designation notice within 5 business days of having sufficient information.	Document the date the agency had sufficient information. Calendar control prevents most timeline failures at audit.	High
Medical Certification	WH-380-E or WH-380-F. Employee has 15 calendar days to return.	Use second and third opinion process for incomplete or insufficient certifications. Do not retaliate or assume bad faith.	Medium
Job Restoration	Same or equivalent position	Equivalent means pay, benefits, shift, location, and substantially similar duties. CBA seniority rights still apply.	High
Concurrent Leave	Employer may run paid leave concurrently with FMLA	Designate at the start. Confirm against CBA for paid leave ordering. FAMILI will run concurrently when active.	Medium

4. Quick Forms Reference

The standard FMLA notice and certification suite, with timing rules. Keep this open during intake and designation.

Form	Purpose	Issued / Returned By	Timing Rule
WH-381	Notice of Eligibility and Rights & Responsibilities	Issued by employer to employee	Within 5 business days of leave request or employer knowledge of qualifying reason.
WH-382	Designation Notice	Issued by employer to employee	Within 5 business days of having sufficient information to determine FMLA-qualifying reason.
WH-380-E	Certification of Health Care Provider for Employee's Serious Health Condition	Completed by employee's health care provider	Employee has 15 calendar days to return after request unless extension granted.
WH-380-F	Certification of Health Care Provider for Family Member's Serious Health Condition	Completed by family member's health care provider	Employee has 15 calendar days to return after request unless extension granted.
WH-384	Certification of Qualifying Exigency for Military Family Leave	Completed by employee	Employee has 15 calendar days to return after request.
WH-385	Certification for Serious Injury or Illness of Covered Servicemember	Completed by health care provider	Employee has 15 calendar days to return after request.

All forms are available from the U.S. Department of Labor at dol.gov/whd/forms. Agencies may use functionally equivalent internal forms provided all required content is captured.

5. High-Risk FMLA Decision Tree

Run every leave request through these six steps. Document each step in the employee file. Skipping any step is the single most common audit finding.

Step 1. Is the employee eligible?

- 12 months of service with the agency (need not be consecutive)
- 1,250 hours of service in the prior 12-month period
- Action: issue eligibility notice (WH-381) within 5 business days

Step 2. Is the reason qualifying?

- Serious health condition of employee or covered family member
- Birth, adoption, or foster placement
- Qualifying exigency or military caregiver leave
- Action: request medical certification (WH-380-E or WH-380-F) when applicable

Step 3. Is intermittent or reduced schedule requested?

- If yes, complete an Operational Impact Assessment (template in Section 11)
- Document staffing levels, safety posture, overtime cost, and essential functions
- Confirm whether the agency can accommodate without undue hardship

Step 4. Are there wage and hour implications?

- Confirm FLSA exempt status is preserved when leave is partial-day
- Track intermittent leave in 15-minute increments (or the smallest increment used for other leave)
- Verify overtime exclusions for FMLA hours under 29 CFR 778

Step 5. Has the CBA and FAMLI position been reviewed?

- Identify any CBA provisions that exceed federal FMLA floor
- Confirm paid leave ordering required under the CBA
- Note FAMLI concurrent treatment when program is active (2028)

Step 6. Final decision and documentation

- Issue designation notice (WH-382) within 5 business days of having sufficient information
- Document the decision basis in the employee file
- Calendar all return-to-work and recertification dates
- Notify payroll, scheduling, and the supervisor of record

6. Maryland-Specific Considerations (FAMLI)

The Maryland Family and Medical Leave Insurance (FAMLI) program will reshape how public sector agencies administer leave. Plan now. The build-out is operational, not just policy.

Current rollout schedule

- Contributions begin: January 2027
- Benefits begin: January 2028
- Employer registration window opens: Fall 2026
- Maximum weekly benefit at launch: \$1,000
- Total contribution rate: 0.9 percent of wages up to the Social Security cap, split between employer and employee

Note: FAMLI implementation has been delayed multiple times since enactment. Confirm the current schedule with the Maryland Department of Labor before publishing internal guidance.

Operational implications for public agencies

- FMLA will run concurrently with FAMLI where both apply
- Dual tracking systems required: FMLA hours, FAMLI weeks, paid leave drawdown
- Notice obligations expand: candidates and employees must receive FAMLI program information
- Payroll deduction setup needed before January 2027 contribution start
- CBA negotiation impact: contribution share and concurrent leave ordering may require bargaining

Recommended 2026 readiness actions

- Identify the FAMLI program owner inside the agency (HR, payroll, or shared)
- Map current paid leave inventory and concurrent application logic
- Audit HRIS and timekeeping for dual-tracking capability
- Brief labor relations on probable bargaining items
- Build the employee notification template before the registration window opens

7. Unionized Environment Guidance

Most FMLA grievances in Maryland public sector environments are not about whether leave was earned. They are about how the determination was documented and whether the same standard was applied across the bargaining unit. Build the file before the grievance, not after.

Before the determination

- Pull the applicable CBA section. Identify any provisions that exceed federal FMLA
- Confirm seniority and bid rights implications for any reassignment
- Identify comparable past determinations to ensure consistency

Documenting undue hardship for intermittent denials

- Quantify staffing levels at the time of the request
- Document overtime cost, post coverage gaps, and safety impact
- Show the alternatives considered and why each failed
- Reference the essential functions of the position

Communication discipline

- Every union communication is in writing or memorialized in writing within 24 hours
- Same-day notification of denial with reasoning, not just the outcome
- No reactive language. No personal opinion. Decision basis only

Consistency across the unit

- Maintain a quarterly log of intermittent leave determinations by class title
- Spot-check for differential treatment by shift, post, or supervisor
- Pre-arbitration: pull the comparator log before the grievance hearing, not during preparation

8. Wage & Hour Intersections

FMLA and FLSA collide most often on intermittent leave, exempt status, and overtime calculation. The penalties run separately. A clean FMLA designation does not protect a misclassification finding.

Intermittent leave tracking

- Track in 15-minute increments or the smallest increment used for other leave types
- Distinguish between hours worked, hours on FMLA, and hours on paid leave running concurrently
- Maintain timekeeping records for at least 3 years (FLSA) and the duration of the leave plus 3 years (FMLA)

Exempt status preservation

- Partial-day FMLA absences may be deducted from exempt pay without violating the salary basis test (29 CFR 541.602(b)(7))
- Document the deduction explicitly tied to FMLA designation
- Avoid combining FMLA partial-day deductions with non-FMLA partial-day reductions in the same week

Overtime calculation

- Hours not worked due to FMLA do not count toward the 40-hour overtime threshold
- Confirm collective bargaining language on overtime distribution does not require offering OT to employees on FMLA
- Holiday and shift differential treatment must follow the CBA, not informal practice

Recordkeeping requirements (FMLA, 29 CFR 825.500)

- Basic payroll data and employee identification
- Dates of FMLA leave taken (or hours, for intermittent)
- Copies of all FMLA notices given to and received from employees
- Documents describing employee benefits and policies regarding paid and unpaid leave
- Records of any disputes regarding the designation of leave as FMLA-qualifying

9. Common Compliance Red Flags

These are the patterns that surface in audits, grievances, and OAG inquiries. None are unfixable. All are preventable.

Documentation gaps

- Eligibility notice issued late or not at all
- Designation notice issued without documenting when sufficient information was received
- Medical certifications missing or incomplete in the file
- Operational Impact Assessments referenced but not actually completed

Inconsistent application

- Different intermittent leave outcomes for similar fact patterns
- Variable enforcement of recertification timing across supervisors
- CBA paid leave ordering applied differently across bargaining units

Wage and hour exposure

- Intermittent leave tracked in hour or half-hour blocks rather than 15-minute increments
- Exempt employees treated as hourly during partial-day FMLA absences
- Overtime offered to employees on FMLA without documenting the offer and decline

Retaliation signals

- Performance documentation that begins immediately after a leave request
- Schedule or post changes after return that are not consistent with pre-leave practice
- Discipline for attendance occurrences that should have been protected

Process drift

- FMLA administration handled informally by individual supervisors
- No central tracking of certifications, recertifications, and exhaustion dates
- Return-to-work clearances accepted without medical review

10. Audit-Ready Documentation Standards

Every FMLA file should contain these elements before the next audit cycle. Build the file structure once, then enforce it.

Required documents per leave instance

- Standardized FMLA request form with intake date
- Eligibility notice (WH-381) with delivery date
- Medical certification (WH-380-E or WH-380-F) when applicable, with received date
- Designation notice (WH-382) with delivery date
- Operational Impact Assessment for intermittent or reduced-schedule leave
- Weekly leave usage log signed or initialed by the supervisor
- Recertification requests and responses, where applicable
- Return-to-work clearance and fitness-for-duty certification, where applicable

File structure

- Separate medical-information sub-file with restricted access
- Chronological organization within each leave instance
- Date-stamped index sheet at the front of the file
- Cross-reference to HRIS leave records and payroll

Retention

- FMLA records: 3 years from creation (29 CFR 825.500(b))
- Medical records: maintained separately, retained per state and agency policy, often 3 years post-separation
- Pay and timekeeping records: 3 years (FLSA, 29 CFR 516.5)

11. Sample Memos & Templates

Adapt these to your agency letterhead, classification structure, and CBA references. Do not use as-is without legal review.

FMLA Approval Letter

[Agency or Consultant Letterhead]

Date: [Date]

[Employee Name]

[Position Title]

[Class Code]

Subject: Approval of FMLA Leave Request

Dear [Employee Name],

Your request for leave under the Family and Medical Leave Act has been approved based on the medical certification and supporting documentation received on [date].

Details of the approved leave:

- Type of leave: [Continuous / Intermittent / Reduced Schedule]
- Qualifying reason: [Specify category]
- Approved period: [Start Date] through [End Date]
- Hours or days designated: [Specify]
- Concurrent paid leave applied: [Specify CBA-required ordering]
- Recertification required by: [Date, if applicable]

Your job, pay, and benefits are protected during this leave period in accordance with FMLA. You will be restored to your same or an equivalent position upon return.

Please contact the HR office with any questions or to update us on changes to your circumstances.

Sincerely,

[Your Name]

[Your Title]

[Agency / Pinnacle Workforce Consulting]

[email] | [phone]

Operational Impact Assessment Memo

Use this for intermittent leave requests in safety-sensitive, post-bid, or 24/7 operations. Complete before the designation decision, not after.

MEMORANDUM

To: [Department Head]

From: [HR Director or Designee]

Date: [Date]

Re: Operational Impact Assessment, FMLA Intermittent Leave Request

Position: [Class Title and Code]

Unit: [Operating Unit]

Request type: [Intermittent / Reduced Schedule]

Frequency requested: [As certified by health care provider]

1. Essential Functions Impact

[Describe the position's essential functions and the specific impact of intermittent absence on those functions.]

2. Staffing and Coverage Analysis

[Current staffing level, post coverage requirements, projected coverage gap, and overtime cost estimate.]

3. Safety and Mission Impact

[Specific safety, security, or mission-critical impact, with reference to the position's role in agency operations.]

4. Alternatives Considered

[Reassignment, schedule modification, additional staffing, mutual aid; document why each is or is not viable.]

5. Recommendation

[Approve / Approve with conditions / Deny based on undue hardship under 29 CFR 825.203, with specific factual basis.]

Prepared by: [Name, Title, Date]

Denial Letter (Undue Hardship Basis)

[Agency or Consultant Letterhead]

Date: [Date]

[Employee Name]

Subject: FMLA Intermittent Leave Request, Determination

Dear [Employee Name],

We have completed our review of your request for intermittent leave under the Family and Medical Leave Act, including the medical certification and the operational impact assessment for your position.

Based on this review, the agency is unable to approve intermittent leave at the frequency requested. The basis for this determination is documented in the operational impact assessment and includes:

- [Essential functions impact, specific factual reference]
- [Staffing or post coverage analysis, specific factual reference]
- [Safety or mission impact, specific factual reference]

We have considered the following alternatives:

- [Alternative 1, with reason it is or is not viable]
- [Alternative 2, with reason it is or is not viable]

We are prepared to approve [continuous leave / a reduced schedule with the following parameters / temporary reassignment to: ____]. Please advise within 5 business days if you wish to proceed under this alternative.

You retain the right to grieve this determination under your applicable collective bargaining agreement.

Sincerely,

[Your Name, Title, Agency]

Before Sending Checklist

Confirm all four before the denial leaves your desk.

- Operational Impact Assessment is complete and signed by the operating department head
- Specific factual references replace each placeholder; no unfilled brackets remain
- At least two viable alternatives have been considered and documented in writing
- Counsel review completed (OAG, agency counsel, or labor relations) and date-stamped in the file

12. Audit Preparedness Checklist

Run through this list before any internal audit, external IG review, or legislative inquiry. Build the documentation continuously, not at audit time.

Notice and timing

- All FMLA requests logged with intake date and method of receipt
- Eligibility notices (WH-381) issued within 5 business days of request or knowledge
- Designation notices (WH-382) issued within 5 business days of having sufficient information
- Medical certifications received within 15 calendar days or extension documented

Documentation completeness

- Operational Impact Assessments completed for all intermittent and reduced-schedule requests
- Union notifications and CBA review documented for unit-affected determinations
- Return-to-work clearances on file for all leave durations exceeding agency thresholds
- Recertification cycles tracked and documented

Consistency review

- Comparator log maintained for similar leave determinations across bargaining units
- Quarterly review of intermittent leave outcomes by class title and shift
- Discipline for attendance verified against FMLA-protected absences before issuance

System hygiene

- HRIS leave records reconciled with paper file and payroll on a documented schedule
- Medical sub-files segregated with restricted access
- Retention schedule audited annually

13. When to Engage Pinnacle

This packet is the framework. The harder work is operationalizing it inside an agency that is already running, already understaffed, and already under scrutiny.

Engage Pinnacle when

- You need an FMLA and leave administration audit that survives external review
- You are preparing for a legislative or inspector general inquiry
- A pattern of grievances suggests inconsistent determinations across the unit
- You are standing up FAMLI readiness and need the operational build, not just the policy
- Documentation has drifted and the next audit cycle is on the calendar
- Expert witness or hearing support is needed for a promotional or leave-related grievance

How engagements run

- Founder-led delivery. The principal does the work, not a junior consultant
- Fixed scope and fixed timeline before the first interview
- Executive briefing format. Findings, decisions, owners, dates
- Deliverables built to survive audit, hearing, and the next administration

Next step

Email advisory@pinnacleworkforceconsulting.com or call (443) 291-9776. Initial conversations are confidential and scoped within one business day.

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14. Glossary

Acronyms and key terms used throughout this packet, with regulatory citations where applicable.

Term	Definition
CBA	Collective Bargaining Agreement. The contract between an employer and a labor union covering wages, hours, and working conditions.
CHRO	Chief Human Resources Officer. The senior executive responsible for an organization's HR strategy and operations.
FAMLI	Maryland Family and Medical Leave Insurance. Maryland's state-administered paid family and medical leave program. Contributions begin January 2027; benefits begin January 2028.
FLSA	Fair Labor Standards Act. Federal law governing minimum wage, overtime, recordkeeping, and child labor. 29 U.S.C. § 201 et seq.
FMLA	Family and Medical Leave Act. Federal law providing eligible employees with up to 12 weeks of unpaid, job-protected leave per year. 29 U.S.C. § 2601 et seq.
IG	Inspector General. State or agency-level oversight office authorized to investigate operations, including HR practices.
MSPB	Merit System Protection Board. Body that hears appeals of certain personnel actions in merit system jurisdictions.
OAG	Office of the Attorney General. The Maryland OAG provides legal counsel to state agencies, including on personnel matters.
OHR	Office of Human Resources. The agency or jurisdiction-level HR function.
Undue Hardship	A standard under FMLA and ADA permitting an employer to deny intermittent or reduced-schedule leave when the request causes significant difficulty or expense to operations.
WH-380-E	DOL form for medical certification of an employee's own serious health condition.
WH-380-F	DOL form for medical certification of a family member's serious health condition.
WH-381	DOL form for the Notice of Eligibility and Rights & Responsibilities. Issued by the employer.
WH-382	DOL form for the Designation Notice confirming whether leave is FMLA-qualifying. Issued by the employer.
29 CFR Part 825	Federal regulations implementing the FMLA. The operational rulebook for employer notice, certification, and recordkeeping obligations.