

MA Paid Family and Medical Leave

The newly created Massachusetts Department of Family and Medical Leave released updated draft regulations on March 29th for the new Paid Family and Medical Leave law. The Department will hold several listening sessions in May throughout the state before issuing final regulations sometime before July, 2019. Below is an outline of the draft regulations with pertinent information for employers concerning their obligations under the law.

Provision	Description
Key Dates	<ul style="list-style-type: none"> July 1, 2019, final regulations due and quarterly reporting instructions due; July 1, 2019, employers must begin employee payroll deductions; July 1, 2019, new hire notice distribution begins; July 1, 2019, informational posters must be displayed on or before this date; October 31, 2019, contributions (employer and employee) for July through September due; January 1, 2021, most leave available; July 1, 2021, all leave available; January 1, 2023, Retaliation against an employee for exercising rights under the PFML will be prohibited.
Governing Agency	The Department of Family and Medical Leave (DFML) within the Executive Office of Labor and Workforce Development.
Benefit Administrator	The Department of Family and Medical Leave (DFML) within the Executive Office of Labor and Workforce Development. Except for employee notification, quarterly reporting, collecting and remitting contributions, employers are not involved in the benefit determination or payment of benefits. However, note that the DFML may contact the employer for information on an employee that applies for benefits. When this happens, employers will have 5 business days to respond to DFML.
Covered Employers	All employers (one or more employees) who are required to contribute to the Massachusetts Unemployment Insurance program (UI) must submit contributions on behalf of their employees to cover the portion of PFML contribution due from employees, as well as make their required employer contribution to the medical leave portion. Employers with fewer than 25 employees must submit contributions on behalf of their employees, however they are not required to pay the <i>employer</i> portion of the contributions for medical leave. Cities and towns are exempt but can opt in to the program; employers not covered by UI can also opt in to the program.
Eligible Employees	<p>All employees who meet the monetary eligibility requirements of the state's UI program (i.e. the employee must have earned 30 times the weekly unemployment benefit that the employee would be eligible to receive and must have earned at least \$4,700 during the last four calendar quarters). No minimum hour requirement.</p> <p>Additionally employees whose employer they contract with issues 1099-MISC to more than 50% of its workforce are covered employees.</p>

Provision	Description
Leaves Covered	<p>Paid Family Leave (PFL) to bond with a new child arriving by birth, adoption, foster care, or guardianship; to care for a family member with a serious health condition; or to address a military exigency arising from a family member's new military assignment or orders.</p> <p>Paid Medical Leave (PML) for the worker's own non-work related serious health condition.</p>
Length of Leave Allowed	<ul style="list-style-type: none"> • Up to 12 weeks of PFL to bond with a new child or to care for a family member with a serious health condition; • Up to 26 weeks of PFL to care for a family member whose serious health condition resulted from active duty military service; • Up to 20 weeks of PML for the employee's own serious health condition; • Combined – A maximum of 26 weeks combined family and medical leave.
Intermittent Leave	<p>Bonding leave can be taken intermittently or on a reduced leave schedule with the employer's agreement. Leave to care for an injured service member or for an employee's own medical needs can be taken intermittently or on a reduced leave schedule when medically necessary. Leave for a qualifying exigency may be taken intermittently or on a reduced leave schedule.</p>
Benefit Year	<p>The paid family and medical leave benefit year is measured as the 52-consecutive week period beginning on the Sunday preceding the first day the protected leave begins.</p>
Family Members Covered	<p>The spouse, domestic partner, child, parent, parent of spouse or domestic partner of the employee; a person who was like a parent to the employee when the employee was a minor; a grandchild, or sibling of the employee. A child is defined as under age 18 (unless disabled) and a biological, adopted, foster child, stepchild or legal ward, a child to whom the employee is like a parent, or a person to whom the employee stood in place of a parent when the person was a minor.</p>
Job Protection Status	<p>An employee who has taken family or medical leave must be restored to the employee's previous position, or to an equivalent position, with the same status, pay, employment benefits, length of service credit and seniority as of the date of leave. An employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, and length of service credit or other employment benefits, plans or programs cannot be reduced by the taking of MA PFML leave.</p>

Provision	Description
Continuation of Benefits	During the duration of an employee's family or medical leave, the employer must continue to provide for and contribute to the employee's employment-related health insurance benefits, at the level and under the conditions coverage would have been provided if the employee had worked continuously for the duration of such leave.
Waiting Period For Use of Leave	Employees are not paid for the first seven days of leave, except in the case of an employee whose PFL absence immediately follows a PML leave, such as the birth of a child.
Benefit Amount	<p>Provides partial wage replacement on a graduated basis. It is based on a wage calculation involving the state's average weekly wage (AWW) and the employee's average weekly wage, calculated by the DFML at time of claim. The portion of an employee's average weekly wage (AWW) that is equal to or less than 50% of the state's AWW average weekly wage is paid at 80%. The portion of an employee's AWW that is more than 50% of the state AWW is paid at 50%.</p> <p>The maximum weekly benefit amount is capped at \$850; this amount will be adjusted annually to be 64% of the state AWW.</p> <p>The weekly benefit will be reduced by the amount of wages or wage replacement that a covered individual receives for the same period of leave under worker's compensation (unless for a permanent partial disability incurred prior to the family or medical leave claim), other state or federal temporary or permanent disability benefits law, or an employer's permanent disability policy or program.</p>
Commencement of Benefits	<p>The starting dates for paid leave benefit claims are as follows:</p> <ul style="list-style-type: none"> • On January 1, 2021, covered employees and covered contractors can begin claiming benefits for bonding with a child or newborn; service-member related events; and dealing with the employee's own serious health condition; and • On July 1, 2021, covered employees and covered contractors can begin claiming benefits to care for a family member with a serious health condition.
Contribution Rate	The contribution rate is 0.63% of the maximum taxable earnings as established by the Social Security Administration (currently \$132,900). The contribution is split between the paid family leave (PFL) and the paid medical leave (PML) as follows: 0.11% toward PFL and 0.52% toward PML.

Provision	Description
Employee and Employer Contributions	<p><i>Paid Medical Leave</i> – an employer may deduct up to a maximum of 40% of the contribution required for that employee. The employer is responsible for the remaining 60%. Employers may, if they choose, contribute more toward PML but can never allow employees to contribution more than 40%.</p> <p><i>Paid Family Leave</i> – an employer may deduct up to 100% of the contribution required for that employee. Employers may, if they choose, contribute more toward PFL. See illustrative chart below.</p> <p>Employers with less than 25 average total workforce are exempt from making any contributions toward the program.</p> <p>While payroll deductions from workers will commence July 1, 2019 employers will not remit the quarterly contributions to the Trust Fund for the July-September quarter until October 31st. Quarterly contributions will be submitted through the Massachusetts Department of Revenue's MassTaxConnect system.</p> <p>DFML has established a calculator to help employers determine contribution amounts. You can find that here.</p>
Employer's Existing Programs - Exemption	<p>Exemptions for private programs are available for one year for medical leave, family leave or both. The exemption will excuse the employer from collecting, remitting PMFL contributions but does not excuse the employer from reporting requirements. To claim an exemption (rolling basis starting April 29, 2019), employers must apply electronically through MassTaxConnect where you will be asked a series of questions. Deadline for a 1st quarter exemption is September 20, 2019. The private plan must currently comply with the PFML requirements to be approved for an exemption.</p> <p>If approved the employer must submit a copy of their current plan. However, the current plan must provide at a minimum the same number of benefit the state plan does. Click here for a listing of those provisions. The same job protections and benefit continuation provisions must be included in the private plan. Additionally the employee's cost to participate in the employer's private plan cannot exceed the cost to participate in the state's plan (as of 2019: \$3.20/\$1,000 of wages).*</p>
Substitution of Employer Paid Leave	<p>Employees needing leave for a qualifying reason may choose to use accrued paid leave provided by their employer rather than apply for PFML. When an employee chooses to use accrued leave:</p> <ol style="list-style-type: none"> 1. Employers must inform employees that the use of employer-provided accrued leave will run concurrently with PFML leave period (no stacking); 2. Employees cannot be paid PFML benefits and employer provided accrued leave at the same time.

Provision	Description
<p>Notification Requirements:</p> <p>Poster</p> <p>Letter</p>	<p>Beginning July 1, 2019, employers must display, in a prominent place, a workplace poster describing the MA Paid Family and Medical Leave Law. The poster must be available in English and each language which is the primary language of 5 or more individuals in the workforce (if such translations are made available from the DFML). A copy of the poster in English can be found here.</p> <p>Additionally, employers are required to provide notice to an employee of the MA PFML law via a written notice, issued no more than 30 days from the beginning date of the employee's employment. In addition to issuing the notice, employers must collect a signed acknowledgement of receipt for the written notice from each new hire within 30 days of their start date or a signed statement that s/he refuses to sign the acknowledgement. First notices must go out no later than June 30, 2019.</p> <p>The notice must include:</p> <ul style="list-style-type: none"> • An explanation of the program; • The employee's contribution amount and obligations; • The employer's contribution and obligations; • The employer's name and mailing address; • The employer identification number assigned by the DFML; • Instructions on how to file a claim for benefits; • The mailing address, email address, and telephone number of DFML; • Sample notice found here. <p>A similar written notice must be issued to each Massachusetts 1099-MISC contractor who provides services to the company.</p>
<p>Reporting</p>	<p>All employers will be required to file quarterly reports (including wages paid or other payments for services) through MassTaxConnect beginning in October 2019. Reporting and documentation guidelines will be announced prior to July 1, 2019.</p>
<p>Employer To Do List:</p>	<ol style="list-style-type: none"> 1. If not already, register with MassTaxConnect here; 2. Decide what portion of the .0052 payroll for medical leave to contribute and what portion to pass on to employees; 3. Contact your payroll vendor to ensure that they are on the same page and have an understanding of this new program; 4. Get prepared to begin payroll deductions by July 1, 2019. These deductions plus employer contributions for July, 2019-September, 2019 must be remitted via MassTaxConnect beginning October 31, 2019. 5. Put procedures in place to distribute new hire notices and track/collect them. Must be implemented by July 1, 2019; 6. Download and print workplace posters to display by July 1, 2019; 7. Consider current leave policies and possible changes due to the new PFML, including changes to employer handbook and plan document.

*Private Plan Exemptions:

DFML Exemption Questionnaire at MassTaxConnect:

Questions	Available Responses (required fields)
All Applicants	
Contact Name, Phone Number, and Email	
Was the average size of your Massachusetts workforce in the last calendar year comprised of 25 or more workers (W-2 employees and 1099-MISC contractors)?	Y/N
Is more than half of your Massachusetts workforce paid through 1099-MISC forms?	Y/N
What kind of paid leave plan will you offer?	Family/Medical/Family and Medical
Are you purchasing a plan or will you be self-insuring?	Purchase Private Plan/Self-Insured
<p>If self-insuring is selected, the following questions are displayed:</p> <p>1. What is the average size of your workforce? Have you obtained a bond per the self-insurance requirements? Message displayed based on values set for the workforce count entered: "If your private plan is in the form of self-insurance, you must furnish a bond running to the commonwealth with a surety company authorized to transact business in the commonwealth. Based on your workforce size, your required bond is \$XXX of which \$XXX is for family coverage and \$XXX is for medical coverage." 2. Have you obtained a bond per the self-insurance requirements?</p>	<p>1. Numeric field 2. Y/N</p>
<p>If purchase private plan is selected, the following questions are displayed: Medical Private Plan Details and Family Private Plan Details fields are displayed (required fields correspond to selected response for kind of paid plan offered)</p>	<p>Details requested are separated by type of plan: *Medical (Family) Private Plan Provider *Medical (Family) Private Plan Number *Date Medical (Family) Policy Coverage Begins *Date Medical (Family) Policy Coverage Ends</p>

Family Plan	
Are all of your employees, including full-time, part-time, permanent or seasonal employees, be eligible for benefits under your plan?	Y/N
If the question regarding over half of workforce paid through 1099-MISC is answered yes, the following question is displayed: Are Massachusetts 1099-MISC contractors paid by you eligible for benefits under your plan?	Y/N
Does your plan ensure that employees are eligible for up to 26 weeks, in the aggregate, of paid family and medical leave?	Y/N
Definition: The Statute defines family member as "the spouse, domestic partner, child, parent, or parent of a spouse or domestic partner of the covered individual; a person who stood in loco parentis to the covered individual when the covered individual was a minor child; or a grandchild, grandparent or sibling of the covered individual.	
Definition: A child is considered a family member whether they are biological, adopted, foster, step, or a child of whom the employee had legal guardianship regardless of age or dependency status.	
Does your plan provide employees at least 12 weeks of paid leave to provide care to a family member, as defined above, with a serious health condition?	Y/N
Does your plan allow employees at least 12 weeks of paid leave to care for a child with a serious health condition?	Y/N
Does your plan provide employees at least 12 weeks of paid leave to bond with a child during the first 12 months after the child's birth, adoption, or foster care placement?	Y/N
If a qualifying exigency arises out of the fact that an employee's spouse, child, or parent is a current member of the Armed Forces is the employee eligible for at least 12 weeks of paid family leave under your plan?	Y/N
Do you provide a minimum of 26 paid weeks in a benefit year to care for a family member who is or was a covered service member of the Armed Forces and who requires medical care as a result of an illness or injury related to the family member's active service?	Y/N
Does your plan pay benefits that are greater than or equal to the state's plan?	Y/N
Do you withhold premiums or contributions from your employees' wages?	Y/N
Required question if the above question is answered Yes: Is the amount withheld less than or equal to the amount required for employee contributions under the state plan?	*Y/N
Does your workplace policy ensure that employees are granted the job protections to which they are entitled under the Paid Family and Medical Leave law in the event they take qualified leave?	Y/N
Does your workplace policy ensure the continuance of employees' existing rights, if any, to vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits, plans or programs upon their return to employment?	Y/N
Does your workplace policy continue to contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave?	Y/N

Does your plan allow for leave to be taken intermittently or on a reduced leave schedule, if medically necessary, with the weekly benefit amount being prorated: *To care for a family member's serious health condition; *To care for a family member who is a covered service member, and *For the employee's own serious health condition?	Y/N
Does your plan allow for leave to be taken intermittently or on a reduced leave schedule, if the employer and employee agree to it, for leave to bond with a child during the first twelve months after the child's birth, adoption, or foster care placement?	Y/N
Does your plan allow for leave to be taken intermittently or on a reduced leave schedule due to a qualifying exigency arising out of a family member's active duty or impending call to active duty in the Armed Forces?	Y/N
Does your plan cover unemployed former employees who apply for benefits for family leave for up to 26 weeks after separation from employment, or until they obtain other employment, whichever is sooner?	Y/N
Does your plan specifically state that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits?	Y/N
Medical Plan	
Are all of your employees, including full-time, part-time, permanent or seasonal employees, and eligible for benefits under your plan?	Y/N
If the question regarding over half of workforce paid through 1099-MISC is answered yes, the following question is displayed: Are Massachusetts 1099-MISC contractors paid by you eligible for benefits under your plan?	Y/N
Does your plan ensure that employees are eligible for up to 26 weeks, in the aggregate, of paid family and medical leave?	Y/N
Does your plan provide employees up to 20 weeks of paid leave if they are unable to work due to a serious health condition?	Y/N
Does your plan pay benefits that are greater than or equal to the state's plan?	Y/N
Do you withhold premiums or contributions from your employees' wages?	Y/N
Required question if the above question is answered Yes: Is the amount withheld less than or equal to the amount required for employee contributions under the state plan?	*Y/N
Does your workplace policy ensure that employees are granted the job protections to which they are entitled under the Paid Family and Medical Leave law in the event they take qualified leave?	Y/N
Does your workplace policy ensure the continuance of employees' existing rights, if any, to vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits, plans or programs upon their return to employment?	Y/N
Does your workplace policy continue to contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave?	Y/N

Does your plan allow for leave for an employee's own serious health condition to be taken intermittently or on a reduced leave schedule, if medically necessary, with the benefit amount being prorated?	Y/N
Does your plan cover unemployed former employees who apply for benefits for medical leave for up to 26 weeks after separation from employment, or until they obtain other employment, whichever is sooner?	Y/N
Does your plan specifically state that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits?	Y/N
Family and Medical Plan	
Are all of your employees, including full-time, part-time, permanent or seasonal employees, and eligible for benefits under your plan?	Y/N
If the question regarding over half of workforce paid through 1099-MISC is answered yes, the following question is displayed: Are Massachusetts 1099-MISC contractors paid by you eligible for benefits under your plan?	Y/N
Does your plan ensure that employees are eligible for up to 26 weeks, in the aggregate, of paid family and medical leave?	Y/N
Does your plan provide employees up to 20 weeks of paid leave if they are unable to work due to a serious health condition?	Y/N
Definition: The Statute defines family member as "the spouse, domestic partner, child, parent, or parent of a spouse or domestic partner of the covered individual; a person who stood in loco parentis to the covered individual when the covered individual was a minor child; or a grandchild, grandparent or sibling of the covered individual.	
Definition: A child is considered a family member whether they are biological, adopted, foster, step, or a child of whom the employee had legal guardianship regardless of age or dependency status.	
Does your plan provide employees at least 12 weeks of paid leave to provide care to a family member, as defined above, with a serious health condition?	Y/N
Does your plan allow employees at least 12 weeks of paid leave to care for a child with a serious health condition?	Y/N
Does your plan provide employees at least 12 weeks of paid leave to bond with a child during the first 12 months after the child's birth, adoption, or foster care placement?	Y/N
If a qualifying exigency arises out of the fact that an employee's spouse, child, or parent is a current member of the Armed Forces is the employee eligible for at least 12 weeks of paid family leave under your plan?	Y/N
Does your plan provided a minimum of 26 paid weeks in a benefit year to care for a family member who is or was a member of the Armed Forces and who requires medical care as a result of an illness or injury related to the family member's active service?	Y/N
Does your plan pay benefits that are greater than or equal to the state's plan?	Y/N
Do you withhold premiums or contributions from your employees' wages?	Y/N
Required question if the above question is answered Yes: Is the amount withheld less than or equal to the amount required for employee contributions under the state plan?	*Y/N

Does your workplace policy ensure that employees are granted the job protections to which they are entitled under the Paid Family and Medical Leave law in the event they take qualified leave?	Y/N
Does your workplace policy ensure the continuance of employees' existing rights, if any, to vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits, plans or programs upon their return to employment?	Y/N
Does your workplace policy continue to contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave?	Y/N
Does your plan allow for leave to be taken intermittently or on a reduced leave schedule, if medically necessary, with the weekly benefit amount being prorated: <ul style="list-style-type: none"> *To care for a family member's serious health condition; *To care for a family member who is a covered service member, and *For the employee's own serious health condition? 	Y/N
Does your plan allow for leave to be taken intermittently or on a reduced leave schedule, if the employer and employee agree to it, for leave to bond with a child during the first twelve months after the child's birth, adoption, or foster care placement?	Y/N
Does your plan allow for leave to be taken intermittently or on a reduced leave schedule due to a qualifying exigency arising out of a family member's active duty or impending call to active duty in the Armed Forces?	Y/N
Does your plan allow for leave for an employee's own serious health condition to be taken intermittently or on a reduced leave schedule, if medically necessary, with the benefit amount being prorated?	Y/N
Does your plan cover unemployed former employees who apply for benefits for family or medical leave for up to 26 weeks after separation from employment, or until they obtain other employment, whichever is sooner?	Y/N
Does your plan specifically state that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits?	Y/N

Bond Requirements

Self-insured plans must include the following surety bond amounts to be eligible for exemptions:

For every 25 employees covered by a business, DFML requires a bond value of:

- \$19,000 for qualifying family leave plans
- \$51,000 for qualifying medical leave plans
- \$70,000 for qualifying plans for both family and medical

The employer's private plan must be equal to or greater than the benefits provided by the PFML to be granted an exemption. Please click [here](#) for a listing of the requirement benefits for an exemption from family leave and/or medical leave.

