

Draft Proposed Rules for Massachusetts Paid Family and Medical Leave

Beginning **July 1, 2019**, employers with employees working in Massachusetts will begin to collect payroll taxes from employees to fund the statewide Paid Family and Medical Leave (“PFML”) benefits that will begin **January 1, 2021**. The MA Executive Office of Labor and Workforce Development released an early draft of proposed rules to help employers prepare to implement the paid leave benefit. A new [website](#) provides useful information and will help employers and employees track the roll out of the PFML program. Employers may sign up to receive the state’s PFML [newsletter](#), as well. The following summarizes the PFML law, draft regulations and information posted to the PFML website.

Which Employers Will Be Required to Provide Paid Family and Medical Leave?

Any business that has one or more employees working in the Commonwealth will be subject to PFML although local government entities are exempt. Employers may opt-out of the state program and apply for exemption from medical leave, family leave or both however; an employer must offer a private plan with the same rights and benefits as the state program. Exemptions from the Massachusetts program may be renewed annually.

Which Employees Are Eligible For PFML?

Any employee (part-time, full-time, seasonal, etc.) is eligible for PFML benefits who satisfies the financial requirements to qualify for unemployment insurance, currently about 15 weeks or more of earnings and have earned at least \$4,700 in the 12-month period before the leave begins.

What Benefits Are Available Under PFML?

Following a 7-day waiting period, employees will be able to take paid medical leave for an employee’s own serious health condition. Paid family leave benefits will be available for the following:

- Bond with the employee’s child during the first 12 months after the child’s birth or when a child is placed for adoption or foster care,
- Care for a family member’s serious health condition,
- Care for a family member who is a covered servicemember with an injury or illness incurred or aggravated in the line of duty, or
- Qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces.

How Will the Program Be Funded?

PFML will be a state-run program funded by employee and employer contributions paid to the Family and Employment Security Trust Fund. Employers will begin collecting employee contributions **July 1, 2019**. Employers will be required to file quarterly employee wage reports through the Department of Revenue’s MassTax Connect system to enable the Department to calculate the PFML payment that will be due within 30 days following notification.

The initial contribution will be **.63% of total wages** earned not greater than the \$128,400¹. Up to **40%** of the medical leave portion of the contribution can be deducted from employee wages; up to **100%** percent of the family leave portion of the contribution can be deducted from employee wages. The annual contribution rate will be set on or before October 1 for the upcoming calendar year.

As shown on the PFML website, **.52%** of the payroll deduction will be allocated toward the cost of medical leave benefits with the remaining **.11%** being used to fund family leave benefits for employers with 25 or more employees in MA. Employers with less than 25 employees in MA will not be required to remit the employer portion of the required contribution. Employers with more than 50% of the workforce receiving form 1099-MISC earnings statements are also included in the reports, considered a covered individual eligible for PFML for whom the employer is responsible to collect and remit employee contributions.

Example: Employee weekly wage is \$800

1. Total weekly contribution: .63% x \$800:	\$5.04
2. Medical leave allocation: .52% x \$800:	\$4.16
a) Employee contribution: 40% x \$4.16:	\$1.66
b) Employer contribution: 60% x \$4.16:	\$2.50
3. Family leave allocation: .11% x \$800:	\$0.88
a) Employee contribution: 100% x \$0.88:	\$0.88
4. Total employee contribution: \$1.66+\$0.88:	\$2.54
5. Total employer contribution:	<u>\$2.50</u>
6. Total Weekly Contribution:	\$5.04

How Are Benefits Determined?

The weekly benefit, based on an employee’s Average Weekly Wages (“AWW”) and the statewide AWW, is as follows:

- 80% of the employee’s AWW not greater than 50% of the statewide AWW, plus
- 50% of the employee’s AWW greater than 50% of the statewide AWW.
- Initial maximum weekly benefit will be \$850. Thereafter, the maximum weekly benefit will be set at 64% of the state AWW.

Average weekly wages are generally the average of an individual’s wages over the highest two quarters in the year prior to when leave will begin.

Weekly benefits are as follows:

Reason for Leave	Effective Date	Leave Duration
Employee’s medical leave for series medical condition	January 1, 2021	20 weeks
Child Bonding	January 1, 2021	12 weeks
Qualifying exigency	January 1, 2021	12 weeks
Service member care	January 1, 2021	26 weeks
Family member’s serious health condition	July 1, 2021	12 weeks
Total aggregate leave	26 weeks in 52-week benefit year that begins on the Sunday preceding PFML	

Benefits may be taken continuously, intermittently or on a reduced schedule basis however; time off to bond with a child may only be taken continuously unless agreed to by the employer and employee. Employees will file a claim for benefits with the Department of Family and Medical Leave who will review the application, coordinate with the employer and pay (or deny) the claim. The draft proposed rules list documentation necessary when filing a claim.

How Does PFML Interact with Other Employer and Government Leave Programs?

Employees have the **option** to use accrued sick, vacation or personal paid time off benefits while on leave, are entitled to continue to earn employment benefits while on PFML and continue to be eligible for employer-sponsored health benefits.

The draft proposed rules state that PFML will run concurrently with the federal Family Medical Leave Act (“FMLA”) and the unpaid MA Parental Leave Law when the leave also qualifies under these laws. There is also a statement that says employees who take leave under MA PFML while **ineligible for leave** under the federal FMLA or MA Parental Leave may thereafter take leave under the federal FMLA, or MA Parental Leave Act in the same benefit year *only to the extent they remain eligible for concurrent leaves under MA PFML*. It seems that this draft provision could potentially interfere with an employee’s right to FMLA and hopefully, this will be clarified in later and final rules.

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The weekly benefit amount will be reduced by the amount of wages or wage replacement paid under:

- Any government program or law, including but not limited to workers' compensation, other than for permanent partial disability incurred prior to the family or medical leave claim, or under other state or federal temporary or permanent disability benefits law,
- A permanent disability policy or program of an employer.

Who Is Considered a Family Member?

A family member is the spouse, domestic partner, child, parent, parent-in-law, parent of a domestic partner, grandchild, grandparent, sibling or a person who stood in loco parentis to the employee while the employee was a minor child.

What Else Do Employers Need to Know?

Employees out on PFML will be entitled to return to the same or similar position upon return from leave and will be protected from employer retaliation. Employers should be aware that "any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of (a) an employee which occurs any time during a leave taken by an employee under PFML, or during the six month period following an employee's leave or restoration to a position, or (b) an employee who has participated in proceedings or inquiries within six months of the termination of proceedings **shall be presumed to be retaliation.**" Civil actions may also be brought against an employer within three years after a violation occurs.

Employers with employees in Massachusetts (or employ more than 50% independent contractors) should prepare to collect the appropriate contributions beginning July 1, 2019, sign up to receive the newsletter from the state with updates about the progress and implementation of the new law, and prepare to update employee communication materials and handbooks to incorporate the new law. A PFML notice must be placed in a conspicuous place effective July 1, 2019 and employees will be required to receive a PFML notice within 30 days of hire.

The statute states that "Contributions to the trust fund under this section shall not be required for employees' wages above the contribution and benefit 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." The limit currently being shown in the determination of benefits is \$128,400 which is the taxable wage base limit for 2018. We wonder if this is for illustrative purposes only and that the 2021 taxable wage base will be utilized when benefits begin in 2021.

ADDITIONAL INFORMATION

For specific questions concerning information contained in this UPDATE, please contact your CohnReznick Benefits consultant. Information contained in this UPDATE is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. CohnReznick Benefits Consultants provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, and compensation and human resources. For additional information about our services, please contact us at 516.683.6100 or mail@CohnReznickBenefits.com