

GREATER BOSTON LEGAL SERVICES



MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE LAW

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What is Paid Family and Medical Leave?

- ▶ Similar to the leave provided by the Federal Family and Medical Leave Act, but paid, more generous and accessible to more workers
- ▶ Provides:
 - ▶ Partial Wage Replacement,
 - ▶ Job Protection, and
 - ▶ Continuation of benefits, so workers can
 - ▶ take care of their own serious health condition,
 - ▶ care for a family member with a serious health condition,
 - ▶ bond with a new child, and
 - ▶ address needs arising from the military deployment of a family member

Who is Eligible?

- ▶ Covered Individuals who
 - ▶ Meet the PFML financial eligibility test, and
 - ▶ Have a qualifying event

Who is a Covered Individual?

- ▶ Covered Individuals include workers who are:
 - ▶ Paid wages by a Massachusetts employer (a business, certain non-profits or the state)
 - ▶ Residents of Massachusetts who are paid for contract services by a Massachusetts entity that must report the payment for services on IRS Form 1099-MISC for more than 50% of its workforce
 - ▶ Self-employed, reside in Massachusetts and choose to participate in the PFML program voluntarily, or
 - ▶ Certain former employees who have been separated from employment for less than 26 weeks

What is the financial eligibility test?

- ▶ The same test used to determine monetary eligibility for Massachusetts Unemployment Insurance (UI) benefits
 - ▶ This test is applied to all covered individuals
 - ▶ The test is reviewed and adjusted every year based on changes in the state's average weekly wage (SAWW)
 - ▶ In general, if you have earned at least \$4,700 in the past 12 months, and have approximately 15 weeks of earnings, you pass the test (2019 calculation)

What is a Qualifying Event?

- ▶ The worker's own serious illness or injury that prevents the worker from performing the functions of the worker's job
- ▶ The need to care for a family member with a serious illness or injury
- ▶ The arrival of a new child by birth, adoption, guardianship or foster care placement
- ▶ The need to address issues that arise from the military deployment of a family member

How much time are workers permitted to take for each kind of leave?

- ▶ Up to 20 weeks for the worker's own serious health condition
- ▶ Up to 12 weeks to care for a family member with a serious health condition
- ▶ 12 weeks to bond with a new child, within the first 12 months of arrival
- ▶ Up to 26 weeks to care for a family member whose serious health condition arose from active military duty service
- ▶ Annual cap of 26 weeks for all PFM leaves combined
- ▶ Benefit year is the 12 month period that begins with the Sunday immediately preceding the leave
 - ▶ PFML can be taken intermittently when medically necessary, otherwise, subject to negotiation between employer and worker. Remaining leave available is reduced by intermittent leave actually taken.

Who is a family member for purposes of PFML?

- ▶ Spouse
- ▶ Domestic partner
- ▶ Child
- ▶ Parent
- ▶ Parent of spouse or domestic partner
- ▶ Person who stood in the place of a parent for the worker when the worker was a child (*in loco parentis*)
- ▶ Grandparent
- ▶ Grandchild
- ▶ Sibling

How much do workers receive in wage replacement while out on leave?

- ▶ Workers will receive partial wage replacement on a graduated basis
 - ▶ 80% of the worker's own average weekly wages, up to an amount equal to 50% of the statewide average weekly wage (SAWW) (\$692) plus
 - ▶ 50% of the worker's own average weekly wages that is above 50% of the SAWW (\$692)
 - ▶ Capped at \$850 per week
 - ▶ First week is unpaid, but still job protected (workers may use other PTO concurrent with the first unpaid week of PFML leave)
- ▶ **Additional Notes**
 - ▶ the SAWW, now at \$1,383.41, is adjusted annually October 1st
 - ▶ The PFML cap will be adjusted every January 1st to an amount equal to 64% of the SAWW
 - ▶ As of 10/1/18: 64% of \$1,383.41 = \$885

Wage replacement examples for 3 full time workers (40 hrs/week)

- ▶ Average weekly wages for three different workers:
 - ▶ Minimum wage worker: \$480/week
 - ▶ Worker earning SAWW: \$1,383.41/week
 - ▶ Worker earning 2019 Social Security wage base: \$2,555.77/week
- ▶ SAWW= \$1,383.41, and 50% of SAWW = \$691.71
- ▶ Wage replacement provided while on PFML:
 - ▶ Minimum wage worker: $\$480 < \691.71 , therefore (80% of \$480) = \$384 /week
 - ▶ Worker earning SAWW: (80% of \$691.71) \$553.36 + (50% of \$691.71) \$345.86 = \$899.22 (capped at \$850/week)
 - ▶ Worker earning SSWB: (80% of \$691.71) \$553.36 + (50% of \$1,864.06) \$932.03 = \$1,485.39 (capped at \$850/week)

Effective wage replacement rate for 3 full time (40 hrs/week) workers

- ▶ Minimum wage worker: 80%
 - ▶ Worker earning the SAWW: 61.44%
 - ▶ Workers earning the SS wage base: 33.26%
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- ▶ Note: The wage replacement rate is a floor, not a ceiling. Employers can provide more generous wage replacement rates
 - ▶ Workers can top off with other PTO (paid sick, personal and vacation time)

Who pays for the PFML benefits?

- ▶ Employers and workers share the cost, roughly 50/50, though employers are free to pay 100% of the cost of all leaves
- ▶ Total percentage contribution for PFML benefits is .75% or .0075 of wages up to the Social Security Wage Base
- ▶ Employers with fewer than 25 workers do not have to pay the employer's share of the contribution (provided fewer than 50% of the workforce is comprised of 1099 workers)
- ▶ The rest of the contributors (all other employers and all workers) carry that cost in their contributions
- ▶ Employers are permitted to deduct from earnings 100% of the contribution for family leave benefits, and 40% of the contribution for medical leave benefits. All employers (except those with fewer than 25 workers) must carry 60% of the cost of medical leave benefits

What do these percentages look like in practice?

- ▶ The total contribution rate for all leaves is .75% or .0075, but only up to the Social Security Wage Base of \$132,912
- ▶ The medical leave portion is .62% or .0062 of wages (60%/40% split ER/EE)
- ▶ The family leave portion is .13% or .0013 of wages (100% EE)
- ▶ However, employers are permitted to carry 100% of the cost of all leaves
- ▶ Contributions that may be deducted from a worker's wages are as follows:
 - ▶ .248% or .00248 for medical leave benefits (40% of total contribution for medical leave)
 - ▶ .13% or .0013 for family leave benefits (100% of total contribution for family leave)
 - ▶ Total deduction from wages = .378% or .00378

What do these *deductions* from pay look like for our 3 full time workers?

- ▶ Minimum wage worker (\$24,960): \$94.34/year or \$1.81/week
- ▶ SAWW worker (\$71,937.32): \$271.92/year or \$5.23/week
- ▶ SSWB worker (\$132,912): \$502.41/year or \$9.66/week

- ▶ (Multiply annual wages by .00378)

What is the *employer's required contribution* for each of these workers? 60% of .52% (.0052) or .312% (.00312)

- ▶ Minimum wage worker (\$24,960): \$92.85/year or \$1.79/week
- ▶ SAWW worker (\$71,916): \$267.61/year or \$5.15/week
- ▶ SSWB worker (\$132,912): \$494.43/year or \$9.50/week

What kind of job protections are provided to workers on leave?

- ▶ Tracks the FMLA job protections
 - ▶ Worker must be restored to previous or equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of the leave
 - ▶ Employer is not required to restore a worker to the worker's previous position where if other workers of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave
 - ▶ Worker retains preferential consideration for another position to which the worker was entitled as of the date of the leave

Taking PFML does not affect a worker's right to accrue. . .

- ▶ Vacation time
- ▶ Sick leave
- ▶ Bonuses
- ▶ Advancement
- ▶ Seniority
- ▶ Length-of-service credit, or
- ▶ Other employment benefits, plans or programs

What about health insurance benefits?

- ▶ During PFML time, the employer shall continue to provide for and contribute to the worker's employment-related health insurance benefits,
- ▶ IF ANY
- ▶ And at the level and under the conditions coverage would have been provided if the worker had continued working continuously for the duration of the PFML

PFML and CBAs

- ▶ The PFML law shall not affect an employer's obligation to comply with any company policy, law or CBA that provides for greater or additional rights to leave than those provided by the PFML law
- ▶ The PFML law shall not in any way curtail the rights, privileges or remedies of any employee under a CBA or employment contract
- ▶ The PFML law shall not be construed to allow an employer to compel a worker to exhaust rights to any sick, vacation or personal time prior to or while taking PFML covered by the law

Anti-retaliation provisions under the PFML

- ▶ Unlawful for employers to retaliate against workers by discharging, firing, suspending, expelling, disciplining (through the use of attendance policies or otherwise), or in any other way discriminating against a worker for exercising rights under the PFML
- ▶ Unlawful for employers to threaten to retaliate against workers in any of the ways described above
- ▶ Unlawful for employers to do any of the above, or threaten to do so, against a worker who has filed a complaint or brought an action under the PFML, or has testified or plans to testify in any inquiry or proceeding related to the anti-retaliation provisions.
- ▶ Presumption of retaliation if any such acts are taken against a worker during a leave or six months after returning to the worker's position, or against a worker who has participated in proceedings or six months after such participation

Coordinating pay due under the PFML law with pay due under a CBA or employer policy for the same reasons

- ▶ Employers can require that PFML payments due under the PFML law be made currently or coordinated with payments the employer is obligated to make for disability or family leave under a CBA or employer policy such that the worker will receive the greater of the various benefits that are available for the covered reason.
- ▶ Any leave provided under a CBA or employer policy that is used by the worker for a covered reason, and paid at the same or higher rate than PFML under the law, shall count against the allotment of leave available under the PFML law.

How does PFML time affect the worker's rights to leave under the MA Parental Leave Act and the FMLA?

- ▶ PFML runs concurrently with leave under the MA Parental Leave Act and the FMLA, *but only to the extent that the worker is eligible for those leaves at the time that the PFML is taken*
- ▶ With the FMLA, many workers will be eligible for PFML but not FMLA due to limits of FMLA
 - ▶ FMLA applies only to employers with 50 or more workers in a 70 mile radius of the workplace
 - ▶ The worker must have worked at least 1,200 hours in the 12 months immediately preceding the leave
 - ▶ The definition of family member under the FMLA is much more narrow than under the MA PFML law

How does PFML time affect the worker's rights to leave under the MA Parental Leave Act and the FMLA?

- ▶ PFML runs concurrently with leave under the MA Parental Leave Act (MPLA) and the FMLA, but only to the extent that the worker is eligible for those leaves at the time that the PFML is taken
 - ▶ The MPLA provides leave to bond with a new child up to the age of 18, unless the child is mentally or physically disabled, in which case, up to the age of 22
 - ▶ The MPLA applies only to employers with at least 6 employees
 - ▶ A worker could become eligible for leave under the MPLA before becoming eligible for leave under the PFML (maximum 3 month probation period under the MPLA v. earnings test for PFML of roughly \$4,700 over 15 weeks in the prior 12 months)

Do all employers have to choose the state plan to provide PFML benefits?

- ▶ No. All employers are permitted to apply to the Commonwealth, by 10/1/19, for approval of a proposed private plan that offers medical leave benefits, family leave benefits or both
- ▶ If the private plan is not approved on or before 10/1/19, the employer will be obligated to participate in the Commonwealth's PFML program and commence making the required remittances to the Department of Revenue effective 10/1/19, to meet its obligations under the PFML law.

Important Dates for the PFML roll-out

- ▶ 1/1/19: PFML law effective date
- ▶ 6/28/19: Final PFML regulations expected from the Secretary of State's Office
- ▶ 7/1/19: Final PFML regulations due
- ▶ 9/30/19: Employers are required to give notice of PFML to their employees
- ▶ 10/1/19: Deadline for private plan approvals; approvals, thereafter, provided on a rolling basis
- ▶ 10/1/19: Contributions commence for employers meeting their obligations through the state program
- ▶ 1/1/21: Medical leave, bonding leave and military related leave benefits available
- ▶ 7/1/21: All other family care giving leave benefits available

References and Resources

- ▶ Chapter 121 of the Acts of 2018, SECTION 29, signed by Governor Baker on June 28, 2018
- ▶ Created new chapter: Massachusetts General Laws, chapter 175M
- ▶ Created new department within the Executive Office of Labor and Workforce Development: Department of Family and Medical Leave
- ▶ Website for DFML: <https://www.mass.gov/orgs/departments-of-family-and-medical-leave>
- ▶ Sign up for DFML newsletter: <https://mass.us18.list-manage.com/subscribe?u=0757f7959581770082e8f2fd9&id=c088ecb18f>

Department of Family and Medical Leave

- ▶ Charged with implementing and administering the law
- ▶ Must follow the mandates of the Commonwealth's Administrative Procedure Act, MGL c. 30A, and 801 CMR section 1 *et seq.* in handling applicants' appeals of denials
- ▶ Charged with promulgating final regulations at 458 CMR 2.00 by 7/1/19 (expected 6/28/19)
- ▶ Reviews applications for employers' private plans, and applications for participation by self-employed individuals
- ▶ Charged with conducting public education campaign about the law, providing notices, forms, applications and guidance on the law
- ▶ Maintains trust account and sets contribution rate annually to ensure solvency of the fund (which must be 140% of benefits paid in prior year)

Department of Revenue (DOR) and the Executive Office of Technology Systems and Security (EOTSS)

- ▶ 10/1/19: Mass DOR begins collecting contributions from employers and self-employed individuals, via its *MassTaxConnect* System, on a quarterly basis
- ▶ DOR technology staff are responsible for building the contribution side of the PFML program
- ▶ DOR will hire staff to handle calls from participating entities and individuals
- ▶ 5/2/19: EOTSS issued Request for Information (RFI) on 5/2/19 for claims and benefits management system on behalf of DFML

Questions?

- ▶ DPFML website: <https://www.mass.gov/orgs/departments-of-family-and-medical-leave>
- ▶ Contact Greater Boston Legal Services, Elizabeth Whiteway, ewhiteway@gbls.org

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