

MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE ACT: INFORMATION FOR EMPLOYERS

KEY DATES FOR EMPLOYERS

- **April 29, 2019:** Employers may begin submitting applications for a private plan exemption.
- **September 30, 2019:** Employers must provide written notification regarding the Massachusetts Paid Family and Medical Leave Act (MA PFML) to their employees and 1099-MISC individuals. The notice must also be provided to all new employees within 30 days of hire. Employers must obtain a signed employee acknowledgement and place it in their personnel file. The notice must be delivered electronically or in writing. The notice is available on the Massachusetts Department of Family and Medical Leave (DFML) website, here: <https://www.mass.gov/lists/paid-family-and-medical-leave-downloads-for-massachusetts-employers>
- **September 30, 2019:** Employers must display the state-mandated poster (See mass.gov resources such as “Informing your workforce about paid family and medical leave”). It must be in English and each language primary to five or more individuals in the company. See the Department of Family and Medical Leave website for posters in a variety of languages.
- **October 1, 2019:** Employers must start deducting MA PFML premium contributions from employees’ payroll and start paying for their portion of the MA PFML program costs.
- **December 20, 2019:** A private plan exemption application must be approved by this date to ensure that you can keep the first quarter premium for use with a private plan (rather than have to remit to the Commonwealth); thereafter, exemption applications will be accepted on a rolling basis.
- **January 31, 2019:** Employers must remit first employee and employer premium payments to the Commonwealth.
- **January, 2021:** Employees may begin to take PFML-related leaves.

All private employers employing one or more individuals in Massachusetts are subject to MA PFML. This includes out-of-state employers with one or more employee in Massachusetts.

TO DO BEFORE OCTOBER 1, 2019

- Prepare for payroll.
- Continue to manage your current short term disability plan.
- Make posters available for employees.
- Distribute employee notification and obtain a signed employee acknowledgment of receipt.

TO DO AFTER OCTOBER 1, 2019

- Apply for exemption (if desired) at least five days before December 20, 2019, the date on which the approval must be given.
- Coordinate with your current short-term disability plan.
- Determine how your leave of absence policies interact.

- Make first remittance and filing by January 31, 2020.
- Update job descriptions to comply with the fitness for duty program.
- Provide ongoing employee communications (notice to new hires within 30 days and to independent contractors upon entering into the contract).

KEY FACTS

WHICH EMPLOYERS MUST COMPLY?

- All private employers employing one or more individuals in Massachusetts are subject to MA PFML. This includes out-of-state employers with one or more employee in Massachusetts.
- Self-employed individuals may opt into the state plan.
- Municipalities, districts, and political subdivisions are exempt from MA PFML.

HOW IS IT FUNDED?

Generally, MA PFML will be funded through payroll deductions in the amount of 0.63% (adjusted annually), beginning on October 1, 2019. Originally, that contribution start date was July 1, 2019, but Massachusetts delayed it by three months. To offset the shorter period for collections that will result from the three-month delay, the total contribution rate has been adjusted from 0.63% to 0.75%. There are some specific requirements surrounding the required employer contribution amount (employer versus employee contribution amount, maximum salary subject to the payroll tax, and independent contractor involvement). Also, employers with 25 or fewer employees do not have to pay the employer portion of the MA PFML premium, but they still must deduct the employee portion of the MA PFML premium (and must permit eligible employees to take PFML leave). Your payroll provider can assist in starting employee premium deductions beginning on October 1, 2019.

WHAT ARE THE FILING AND REMITTANCE REQUIREMENTS?

At the end of each calendar quarter, the employer must file a report through MassTaxConnect system, with the first payment due on January 31, 2020 (for the October 1, 2019, through December 31, 2019, time frame, which is the first applicable quarter for contributions), unless the employer's private plan has been approved. The filing requires the following information: employees' names, covered contract workers' names, Social Security numbers, earnings paid, payments for 1099-MISC individuals, the employer's FEION and withholding ID number.

WHICH INDIVIDUALS ARE ELIGIBLE FOR LEAVE?

Eligibility is not measured by the number of hours worked for the employer or by whether the employee works part- or full- time. Rather, employees are eligible for PFML if they meet the eligibility requirements of the Massachusetts' unemployment compensation law, which is based on the amount of compensation that the employee has earned while working for any employer in Massachusetts during the last four completed quarters, not the specific employer. The individual must have 15 weeks or more of earnings and have earned at least \$4,700 in the 12-month period before applying for leave. Full- and part-time employees, seasonal employees, and independent contractors are all eligible for MA PFML benefits — there is no "minimum hours worked" requirement.

Importantly, "family member" has a broader definition under MA PFML than under federal FMLA. The PFML definition includes a spouse, domestic partner, child, parent, parent of spouse or domestic partner, grandchild, grandparent, or sibling of the covered employee. Employers will also have to determine how they will have employees certify "family member" status; an employee attestation is generally sufficient. Employers can require more documentation (but should consider the administrative challenges associated with additional documents).

WHAT TYPES OF LEAVE QUALIFY AND WHEN?

Type of Paid Leave	Max Per Benefit Year*
Family leave to bond with a child or to care for a family member with a serious health condition	12 Weeks
Family leave to care for a covered service member	26 Weeks
Medical leave for an employee's own serious health condition	20 Weeks
Any combination of paid family and medical leave	26 Weeks

*This leave allotment may vary if the employee is part time or variable hour.

Note that unlike the FMLA, which permits employers to choose leave periods between four methods (fixed date, rolling forward, rolling backwards, or calendar year), MA PFML defines the benefit year as 52 consecutive weeks beginning on the Sunday immediately preceding the first day of job protected leave.

Medical and family leave benefits both begin in 2021, but on slightly different dates. The following reasons qualify an employee for medical leave benefits, which begin on January 1, 2021:

- Serious health condition of the employee that incapacitates them from work
- Birth, adoption, or foster care placement of a child
- Qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the armed forces
- Care for a family member who is a covered service member

Family leave benefits begin on July 1, 2021, and relate to the care of a family member with a serious health condition.

To begin the benefits claims process, employees generally must file a claim for benefits with the MA DFML. Employees must also provide employers with at least 30 days' notice of the anticipated leave start date, the anticipated length of leave, the type of leave, and the anticipated return date. The DFML is required to notify the employer within five business days of receiving an employee's claim, and must provide relevant information regarding the claim (if the employee consents). Employees will have to provide certification supporting their leave request and claim, and will be notified by the department within 14 days of their leave request whether the leave is approved and benefits will be paid.

CAN EMPLOYEES TAKE LEAVE INTERMITTENTLY?

Intermittent leave is available on a prorated benefit and leave allotment, with one hour or more increments. If the intermittent schedule is medically necessary for medical leave, for family leave to care for a family member with a serious health condition, or to care for an injured service member then the employee must try to work out a schedule that meets the employee's needs without disrupting the employer's operations (subject to approval of the health care provider). If the intermittent leave relates to bonding with a new child, then it may be taken intermittently only if the employer agrees.

WHAT IS A PRIVATE PLAN?

An employer may opt out of the state plan if the private plan is issued by an approved Massachusetts insurer and the confers the same (or better) benefits as those provided to employees and contract workers under MA PFML. The employer may apply for exemption from medical leave, family leave, or both. The employer must apply with the DFML for approval through the MassTaxConnect website. You may view a list of exemption questions on the department's website. You must upload proof of insurance by December 20, 2019, to be exempt from the October through December 2019 contributions. Applications will be accepted on a rolling basis thereafter, and employers must certify their plan with the state every year thereafter. See additional resources below for links to more information on the certification requirements and process.

The employer may also self-insure, though there are separate legal requirements that apply to a self-insured plan, such as that the employer must furnish a bond running to the state.

WHAT ARE THE GENERAL MA PFML JOB PROTECTIONS?

During a period of leave under the MA PFML law, the employer must continue to provide for and 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. An employee who has taken family or medical leave must be restored to their 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.

Upon reinstatement, having taken MA PFML may not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length of service or other employment benefits, plans or programs. There are non-retaliation provisions set forth in the law as well.

VISIT MASS.GOV FOR MORE INFORMATION:

<https://www.mass.gov/orgs/department-of-family-and-medical-leave>

ADDITIONAL RESOURCES:

MA PFML FAQs

<https://www.mass.gov/info-details/frequently-asked-questions-paid-family-and-medical-leave-exemption-requests>

Information on Private Plan Exemptions

<https://www.mass.gov/info-details/exemptions-from-paid-family-and-medical-leave-for-private-plans>

Workplace Poster

https://www.mass.gov/files/documents/2019/03/21/20190321_DFML%20Notice_FINAL.pdf

DFML Notice to MA Employers About PFML Delay

<https://www.mass.gov/news/notice-to-massachusetts-employers-about-pfml-delay>

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