



New Law - Massachusetts Paid Family and Medical Leave Law

By James Venable
Vice President, Employment Law
ReedGroup

On June 28, 2018, Governor Charlie Baker signed into law the Massachusetts Paid Family and Medical Leave (MA PFML) program. Benefits through the program will begin on January 1, 2021, while deductions to fund the program begin July 1, 2019. The law contains the following provisions:

Employee Eligibility: Employees are eligible for MA PFML if they meet the financial eligibility requirements for unemployment compensation (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).

Note: this law provides a new paid leave with job protection, with no employee hours or service requirements.

Covered Employers: All Massachusetts employers are covered by the MA PFML law, but an employer with fewer than 25 employees in the commonwealth is not required to pay the employer portion of premiums for family and medical leave.

Reasons for Leave: Paid family and medical leave benefits are for the following purposes:

Family Leave:

- To bond with the employee's child during the first 12 months after birth or to facilitate the placement of the child for adoption or foster care.
- Because of any 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; or
- To care for a family member who is a covered service member.
- To care for a family member with a serious health condition.

Medical Leave:

- For an employee's own serious health condition.

Covered Relationships: A family member is defined as a spouse, domestic partner, child, parent or parent of a spouse or domestic partner; a person who stood in loco parentis to the employee when the employee was a minor child; or a grandchild, grandparent or sibling of the employee.

Length of Leave:

- Family Leave: An employee can take a maximum of 12 weeks of family leave in a benefit year, with the exception that an employee can take family leave in order to care for an injured service member for a maximum of 26 weeks per benefit year.

- Medical Leave: An employee can take a maximum of 20 weeks of medical leave in a benefit year.
- Combined: An employee can take a maximum of 26 weeks combined family and medical leave.

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.

An employee can require certification of the need to take leave under the MA PFML law, as follows:

- Certification for an employee's medical leave: Must include the date the serious health condition began, the probable duration of the condition and the appropriate medical facts within the knowledge of the health care provider.
- Certification for a family member's health condition: Must include the date the serious health condition began, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider, a statement that the employee is needed to care for the family member and an estimate of the amount of time that the covered individual is needed.
- Certification for a covered individual taking family leave because of the birth of a child: Must include either the child's birth certificate or a document issued by the health care provider of the child, or the health care provider of the person who gave birth, stating the child's birth date.
- Certification for a covered individual taking family leave because of the placement of a child with the covered individual for adoption or foster care: Employee must provide a document issued by the health care provider of the child, an adoption or foster care agency involved in the placement or by other individuals that confirms the placement and the date of placement
- Certification for a covered individual taking family leave because of a qualifying exigency: Must include (i) a copy of the family member's active-duty orders; (ii) other documentation issued by the Armed Forces; or (iii) other documentation permitted by the department.
- Certification for a covered individual taking family leave to care for a family member who is a covered service member: Must include (i) the date the serious health condition began; (ii) the probable duration of the condition; (iii) the appropriate medical facts within the knowledge of the health care provider; (iv) a statement that the covered individual is needed to care for the family member; (v) an estimate of the amount of time that the covered individual is needed to care for the family member; and (vi) an attestation by the covered individual that the health condition is connected to the covered service member's military service.

Paid/Unpaid: Leave taken under the MA PFML program is paid.

- 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%.

The maximum weekly benefit amount is capped at \$850.00; this amount will be adjusted annually to be 64% of the state AWW. There is a waiting period of seven calendar days before the leave is paid, but an employee can use accrued sick or vacation pay or other paid leave provided under an employer policy during the waiting period. The 7-day waiting period does not apply to an employee who takes a family leave immediately following a medical leave for pregnancy or recovery from childbirth.

Benefits will be reduced by wages or wage replacement received under a government program or law (such as workers' compensation), other than for an unrelated permanent partial disability, or the employer's permanent disability policy or program. Benefits will not be lessened by an employer's temporary disability policy or paid family or medical leave policy unless the total amount would exceed the employee's AWW.

Premiums: The Family and Employment Security Trust Fund will be established to fund the MA PFML. For each employee, employers will send contributions to the Family and Employment Security Trust Fund. The contribution rate will be adjusted annually. An employer can deduct from the employee's wages a maximum of 40% of the contribution required for medical leave, and 100% of the contribution required for family leave. The initial rate will be 0.63% of the employee's wages.

*An employer employing less than 25 employees in the commonwealth is not required to pay the employer portion of premiums for family and medical leave.

State Administration: The Department of Family and Medical Leave (the "Department") will be established to administer the MA PFML law. The Department (via regulation) will set time standards for application processing which will provide for notifying applicants of their eligibility or ineligibility for benefits within 14 days of receiving a claim and will pay benefits not less than 14 days after the eligibility determination unless that determination occurs more than 14 days before the onset of eligibility, in which case benefits shall be paid as soon as eligibility begins. The Department will notify the employer not more than five business days after a claim has been filed and will use information sharing and integration technology to facilitate the disclosure of relevant information or records with the written consent of the individual applying for benefits. The Department will establish by regulation a system for appeals in the case of a denial of family or medical leave benefits.

The Executive Office of Labor and Workforce Development is responsible for the enforcement of the MA PFML and will establish rules and regulations.

Voluntary Plan: Employers can apply to the Department for approval to meet their obligations through a private plan. In order to be approved, a private plan must provide all the same rights, protections, and benefits set forth in the MA PFML law. A private plan must also comply with the following provisions:

- If the private plan is in the form of self-insurance, the employer must provide a bond;
- The plan must provide for all eligible employees throughout their period of employment; and
- If the plan provides for insurance, the forms of the policy must be issued by an approved insurer.

An employer can provide both family and medical leave coverage through an approved private plan or may provide medical leave coverage using an approved private plan and provide family leave coverage using the public plan or vice versa.

The Department can withdraw approval for a private plan when terms or conditions of the plan have been violated. Causes for plan termination shall include, but are not limited to, the following:

- Failure to pay benefits;
- Failure to pay benefits timely and in a manner consistent with the public plan;

- Failure to maintain an adequate security deposit;
- Misuse of private plan trust funds;
- Failure to submit reports as required by regulations promulgated by the Department; or
- Failure to comply with this chapter or the regulations promulgated hereunder or both.

Job Protection and Benefits: 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. 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.

Coordination with the FMLA and State Leave: MA PFML will run concurrently with leave taken under the Massachusetts Parental Leave Act and Family and Medical Leave Act if the employee is eligible for both leaves.

Notice:

- Employee Notice: An employee must give at least 30 days' notice to an employer of the anticipated starting date of a leave, the anticipated length of a leave and the expected date of return or must provide notice as soon as practicable if the delay is for reasons beyond the employee's control. But, if an employer does not provide notice as required (described below), the employee's notice requirement is waived.
- Employer Notice: Employers must provide notice to an employee of the MA PFML law via posting and written notice, issued no more than 30 days from the beginning date of the employee's employment.

Effective Dates:

- By March 31, 2019, the Department will publish for public comment and hearing proposed regulations necessary to establish procedures for the collection of contributions, and for the filing and timely processing of claims for benefits.
- By July 1, 2019,
 - The Department will promulgate all regulations necessary to implement the MA PFML law;
 - The Department will begin collection of contributions at an initial rate of 0.63% of the employee's wages; and
 - Employers must begin posting and providing written notice of the MA PFML law.
- On January 1, 2021, the Department will begin to pay leave benefits.
- By October 1, 2021, the Department will begin annually fixing the contribution rate, publish the first annual report, and make the initial annual adjustment to the maximum weekly benefit amount.

What Employers Must Do Now

Massachusetts employers are responsible for compliance with the new law upon its effective date(s).
Employers should:

- Determine how the employer will meet its obligations under the law;
- Review and update any policies or handbooks to include the new benefits;
- Train appropriate personnel (Human Resources, Benefits, etc.) on how to manage the new benefits and leave; and
- Train supervisors and managers on the new leave so they can help spot covered absences and enlist HR assistance.

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