

# HR Insights

## PFML Update and What Businesses Need to Do Now to Be Ready for 2021

The Massachusetts Department of Family and Medical Leave (DFML) recently amended the Massachusetts Paid Family and Medical Leave Act (PFML) final regulations. This article provides an overview of PFML as updated by the amendments and a checklist of items to consider for preparation purposes.

### PFML Update

PFML is funded through mandatory payroll taxes and administered by the Massachusetts DFML. In general, the payroll taxes (also referred to as contributions) are shared by employers and covered individuals (i.e., employees and covered contract workers). Unless a business chose and received approval to implement a private plan, payroll taxes began in October 2019 to fund paid leave starting in 2021.

### *Maximum Paid Leave, Qualifying Reasons, and When Leave First Available*

The table below shows the maximum weeks of paid leave, qualifying reasons for leave, and when leave is first available.

Maximum Weeks of Leave Per Benefit Year	Qualifying Reasons for Leave	When Benefits First Available
20	<b>Medical:</b> Serious health condition that incapacitates a covered individual from working	1/1/2021
12	<b>Family/Birth, Adoption, or Foster Care:</b> To bond with child during first 12 months after child's birth or placement with the covered individual for adoption or foster care	1/1/2021
12	<b>Family/Serious Health Condition:</b> To care for a family member who has a serious health condition	<b>7/1/2021</b>
26	<b>Family/Service Member:</b> To care for a family member who is a service member	1/1/2021
12	<b>Family/Qualifying Exigency:</b> For a qualifying exigency arising out of a family member's active duty or impending call to active duty	1/1/2021
26	<b>Aggregate:</b> Total combined family and medical leave allowed per benefit year	See above

#### Notes:

- **Benefit year** is the 52 consecutive week period beginning on the Sunday immediately preceding the first day the leave commences.
- Amendments to the final regulations now define **active duty** as full-time duty in the active military service of the U.S. and National Guard and **deployed to a foreign country**.

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## *PFML Definition of Family Member*

For businesses with over 50 employees that are also subject to the federal Family and Medical Leave Act (FMLA), it is important to know that PFML defines a family member far more broadly than FMLA. FMLA defines a family member as a spouse, parent (including *in loco parentis*), and child. Under PFML, family members include a:

- Spouse or domestic partner
- Child
- Parent or parent of a spouse or domestic partner
- Person who stood in loco parentis to the covered individual when a minor child
- Grandchild
- Grandparent
- Sibling

Because PFML defines family members more broadly, a business may not always be able to run PFML and FMLA concurrently, making it possible for a covered individual to use up PFML leave but still have leave available under FMLA. For example, if a covered individual takes 12 weeks of PFML to care for a domestic partner, parent-in-law, grandchild, grandparent, or sibling, that leave would not count towards the covered individual's FMLA entitlement.

## *Intermittent Leave*

Depending on the qualifying reason for leave, PFML may be taken on an intermittent or reduced leave basis, and when so, benefits are prorated. Intermittent leave may only be taken if "medically necessary" for the following reasons:

- For the covered individual's own serious health condition
- To care for a family member with a serious health condition
- To care for a family member who is a covered service member

In addition, a covered individual may take family leave due to a qualifying exigency arising out of a family member's active duty or impending call to active duty.

However, a covered individual cannot take intermittent leave to bond with a child because of birth or placement for adoption or foster care unless both the employer and covered individual agree.

Employers can designate a minimum increment of time to be taken as intermittent leave for all employees. Before the recent amendments, an employer could designate up to four hours as the minimum. However, the amendments changed this to 15 minutes. In addition, the amendments also provided that an individual may not apply for payment for intermittent leave until they have accumulated eight hours of leave time, unless more than 30 calendar days lapses since the initial taking of leave.

## *Eligibility for PFML*

Individuals who perform services in MA and who meet a financial eligibility test are eligible for paid leave under PFML. Unlike FMLA, there is no service requirement for eligibility.

Former employees who performed services in MA are also eligible for paid leave if they meet the financial eligibility test when separated AND have been separated from employment for not more than 26 weeks at start of leave.

## *Financial Eligibility Test*

An individual meets the financial eligibility test if they earned at least \$5,100 in the last 12 months, and if the amount earned is at least 30 times more than what the individual would get each week in PFML benefits. The amendments to the final regulations expanded the definition of the financial eligibility test to include wages received from multiple employers within the period used to determine whether an individual meets the test. This is significant for individuals employed by human services, healthcare, hospitality, landscaping, and other types of businesses where employees often work for multiple employers.

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## Benefits Payments

DFML will pay benefits directly to employees. Benefits begin after a 7-day waiting period during which employees may use their accrued PTO, vacation, and/or other employer-provided paid leave. The maximum weekly benefit is capped at \$850. (This cap will be reset annually to 64% of SAWW, i.e., the State Average Weekly Wage). The formula for calculating benefits is **the lesser of:** SAWW up to 50% of SAWW \*80% + amount over 50% of SAWW \*50% OR \$850.

The table below shows calculated benefits and income replacement ratios at different levels of wages using the current SAWW of \$1,431.66.

SAWW = \$ 1,431.66		50% of SAWW = \$ 715.83				
Employee's Average Weekly Wage	Hourly Equivalent Based on 40 Hours	80%	50%	Total Benefit Payable	Income Replacement Ratio	
\$ 510	\$ 12.75	\$ 408.00	\$ -	\$ 408.00	80%	
\$ 600	\$ 15.00	\$ 480.00	\$ -	\$ 480.00	80%	
\$ 800	\$ 20.00	\$ 572.66	\$ 42.09	\$ 614.75	77%	
\$ 1,000	\$ 25.00	\$ 572.66	\$ 142.09	\$ 714.75	71%	
\$ 1,200	\$ 30.00	\$ 572.66	\$ 242.09	\$ 814.75	68%	
\$ 1,600	\$ 40.00	\$ 572.66	\$ 442.09	\$ 850.00	53%	
\$ 2,400	\$ 60.00	\$ 572.66	\$ 842.09	\$ 850.00	35%	

**Insight:** Note that lower paid individuals receive a much higher percent of income replacement than higher paid. This is an issue to consider when reviewing PTO, vacation, and other benefits.

## Benefits Reductions

A covered individual's PFML benefits will be reduced by the amount received for the same period from:

- Any government program or law, including unemployment and workers compensation (unless for a permanent partial disability incurred before the family or medical leave claim)
- Another state or federal temporary or permanent disability benefits law
- An employer's permanent disability policy or program

However, benefits will NOT be reduced by the amount received from an employer's temporary disability policy,

unless the total received exceeds an individual's average weekly wage.

## Substitution of Employer-Provided Leave

Covered individuals may choose to use employer-provided accrued paid leave or leave through an extended illness bank program rather than PFML. Those who do will not receive any PFML benefits while receiving payments from the accrued leave program or extended illness bank. Businesses must inform covered individuals that the accrued leave and extended illness bank runs concurrently with PFML, and upon request from DFML, report the use of accrued leave taken by covered individuals.

In general, accrued paid leave is leave earned by or given to a covered individual pursuant to an employer's plan or policy such as sick leave, vacation, personal leave, or paid time off. The recent amendments added that accrued paid leave does **not** include paid leave under an employer-provided disability policy or program or a paid family or medical leave policy. In addition, the amendments define extended illness leave bank as a voluntary program under which employees may donate accrued leave to a bank for the benefit of a co-worker.

## Employer Reimbursement

Employers that make payments to individuals during a period of family or medical leave equal to or greater than the amount that would have been paid under PFML will be reimbursed by DFML unless the employer has a private plan exemption. To qualify for the reimbursement, the payments must be from one of the following:

- A temporary disability policy or program of the employer
- Paid family or medical leave policy of the employer
- Extended illness leave bank

An employer's policy or program or extended illness leave bank must be granted to a covered individual for a qualifying reason under PFML that is separate from and in addition to any accrued paid leave available to the

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employee. Employers will not be reimbursed for payments to a covered individual who elected to use their accrued paid leave. To be eligible for reimbursement, an employer must produce evidence that payments were made consistent with the requirements of PFML.

## *Private Plan Exemption*

A business may apply for an exemption from paying the payroll taxes for funding PFML benefits through the MassTaxConnect system by demonstrating they will offer a private plan that provides the same or better PFML benefits, including that individuals will still be entitled to all rights and protections provided under PFML. A business may apply for an exemption from making contributions for medical leave coverage, family leave coverage, or both. A business cannot apply for an exemption on behalf of only a portion of its covered workforce. At this time, several insurance carriers have been approved to offer insured and self-insured private plans.

The recent amendments to the final regulations made several changes to the private plan exemption provisions, including that employers may require a covered individual to provide verification of wages earned in MA to verify whether a covered individual meets the financial eligibility requirements and handling of claims from individuals who work for multiple companies.

## **What to Do Now to Prepare for 2021**

To prepare for 2021, here is HR@Work's checklist of items to consider for planning purposes:

ð Under PFML, the maximum number of weeks of leave a covered individual may take is based on benefit year, i.e., the 52-week period beginning on the Sunday immediately preceding the first day leave begins. If your business is subject to FMLA, consider changing the 12-month period for determining maximum leave available to match the PFML benefit year to avoid overlapping periods.

- ð Review your paid time off programs to determine how best to coordinate them with PFML. For example, if you provide paid sick days that are more generous than the MA earned sick time requirements, consider whether to design the program differently.
- ð Under PFML, lower paid individuals receive a higher percent of income replacement than higher paid individuals. Review your time off programs and disability insurance policies and consider what changes to make. Also, talk with your broker about disability insurance policies that may be better designed to coordinate with PFML.
- ð Review your leave programs to establish what leaves can run concurrently. For example, PFML may run concurrently with FMLA and MA Parental Leave. This is important to avoid stacking one leave on top of another.
- ð Identify potential administrative issues, including how PFML will be tracked and communicated to employees, and how your business will respond to DFML when requesting information for claim adjudication purposes. which must be provided to DFML within 10 business days.
- ð For family leave to bond with a newborn or child placed for adoption or foster care with an employee, determine whether your business will agree to intermittent leave, and if so, under what circumstances.

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