



FAQs on Massachusetts Paid Family Leave Law

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On June 20, 2018, Governor Baker signed the Massachusetts Paid Family Leave (PFMLA) into law. Since then, the newly-created Massachusetts Department of Family and Medical Leave published two sets of draft regulations on the PFMLA. In addition, last week Governor Baker signed a law delaying the implementation of the PFMLA by three months. As a result of the delay, **employers must begin complying with the law on September 30, 2019.**

Before then, it is important for human resources teams, employment attorneys, and all of those who are responsible for establishing and communicating workplace policies to understand the answers to 13 frequently asked questions about the law.

What is Paid Family Leave?

PFMLA provides 12 weeks of job-protected, paid family leave to care for a family member, for the birth or placement of a child, and to manage affairs if a family member is called into active duty. The law further provides up to 20 weeks of job-protected, paid leave for a covered worker's own serious health condition. Covered individuals may take up to a maximum of 26 weeks of combined leave each benefit year.

Leave can be taken in blocks of time or intermittently.

Who Pays for the Leave?

Covered individuals (and employers with over 25 covered workers) will contribute to a trust called the Family and Employment Security Trust Fund. When the Department of Family and Medical Leave grants paid leave to a covered worker, the money comes from the Fund.

Employers may deduct up to 40 percent of the total medical leave contribution from a covered individual's wages and 100 percent of the total family leave contribution. If the employer has more than 25 covered workers, the employer must contribute the other 60 percent toward the medical leave contribution for an individual.

Prior to the delay, for 2021, the contribution rate was 0.63 percent on the first \$132,900 of an individual's annual earnings (the maximum taxable earnings as established by the Social Security Administration). The 0.63 percent contribution rate was split as follows: 0.52 percent for the medical leave contribution and 0.11 percent for the family leave contribution. Since the collection date of contributions has changed from July 1, 2019 to October 1, 2019, the payroll tax rate will increase from 0.63 percent to 0.75 percent in order to collect the same amount of money in a shorter period of time. The 0.75 percent collection rate will be split as follows: 0.62 percent for the medical leave contribution and 0.31 percent for the family leave contribution.

How Much Do Covered Individuals Receive While on Paid Leave?

Weekly benefit amounts are calculated as a percentage of the employee's earnings. For the year 2021, the maximum weekly benefit amount is \$850 per week.

Does it Apply to Small Employers?

Yes. All private employers – regardless of size – must comply with PFMLA. The size of the employer is important, however, because companies with fewer than 25 “covered workers” do not have to pay the employer's portion of the contribution. Small employers must comply with all other aspects of the law.

How Do I Count the Number of “Covered Workers”?

To determine the number of “covered workers,” employers must count all W2 employees (full-time, part-time, and seasonal) and independent contractors. If 1099 contractors make up more than 50 percent of the workforce, they count toward the total number of workers. If the contractors make up less than 50 percent of the workforce, they do not count toward the total number of workers. Further, if 1099 contractors make up more than 50 percent of the employer's workforce, the independent contractors are also covered by the law and are eligible for benefits.

When Does the Law Go Into Effect?

While employees cannot begin taking paid leave until January 2021, employers are required to take certain steps sooner.

By **September 30, 2019**, employers must:

1. Display the Paid Family and Medical Leave workplace poster in a highly visible location (in English and in each language which is the primary language of five or more individuals in the workforce);
2. Provide written notice of contributions, benefits, and workforce protections to all workers (in the worker's primary language); and
3. Collect signed acknowledgments of receipt of the notice.

The poster and model notices can be found on the Department of Family and Medical Leave's website. The written notice to employees can be provided electronically, as long as the worker is able to acknowledge (or decline to acknowledge) receipt of the notice.

By **January 31, 2020**, employers must register with MassTaxConnect and file the first quarterly report. Employers must make the first contribution to the Family and Employment Security Trust Fund by **October 31, 2019**.

On **January 1, 2021**, employees may begin taking medical leave for all types of leave, except to care for family members. On **July 1, 2021**, covered individuals may begin taking all types of family and medical leave.

What if I Already Offer Paid Leave?

You can apply for an exemption from the deduction and contribution portion of the law. To qualify for the exemption, your paid leave plan must offer the same or better benefits than the law, and covered individuals may not be charged more than they would pay if they were making contributions under the law. Further, if you deny a request for leave under your plan, a covered individual has the right to file an appeal with the Department of Family and Medical Leave.

If your plan is approved for an exemption, employers must still comply with the job-protection and anti-retaliation provisions of the law. Further, the exemption is only valid for one year, so employers will need to re-apply for the exemption on an annual basis.

Do I Have to Hold a Covered Worker's Job For Them While They are Out on Leave?

Yes. This is true regardless of the size of the employer. The only exception to this requirement is if other employees of equal status and tenure have been laid off due to changes in economic or operational conditions while the covered individual was on leave.

If an employer terminates a covered individual within six months after taking leave, there is a rebuttable presumption that the employer engaged in unlawful retaliation. To overcome this presumption, an employer must show by clear and convincing evidence that the employer had independent justification for the termination.

Are Employees or Contractors Who Work in Other States Covered?

The draft regulations state that a worker is covered if: (i) the worker performs services entirely within Massachusetts; or (ii) the worker performs services both inside and outside Massachusetts, but the services outside Massachusetts are incidental to the work performed in Massachusetts, or (iii) the services are not localized in any state, but some part of the services are in Massachusetts and (i) the individual's base of operations is in Massachusetts; or (ii) if there is no base, the work is directed or controlled in Massachusetts; or (iii) there is no base or direction in any state where services are performed, but the individual lives in Massachusetts.

Does the PFMLA Run Concurrently with Other Leaves?

Yes. The PFMLA runs concurrently with FMLA, Parental Leave, and any other applicable leave law.

Will Employees on Leave Continue to Accrue Paid Time Off While on Leave?

As long as the employer acts in a manner consistent with its uniformly-applied policies or practices, employers do not need to treat leave periods as credited service for purposes of benefit accrual.

Does an Employee Still Have to Pay Their Health Insurance Premium While on Leave?

Yes. The employer must continue to make its share of the contribution to the health insurance premium, and the employee remains responsible for his or her contribution.

What if a Covered Worker Prefers to Use PTO While on Leave?

Covered workers may choose to use accrued paid time off rather than apply for PFML benefits for a particular leave. If the covered worker chooses to use paid time off, the leave still counts against the PFML leave period (even though the worker is not receiving PFML benefits).

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