



***THE MASS. PAID
FAMILY AND MEDICAL
LEAVE LAW***

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Review Of The PFML Law's Basics

What Is The PFMLA?

- In 2021, the PFMLA will provide MA workers:
 - up to 12 weeks of paid, job-protected family leave (effective 1/1/21 for all but one type of leave), and
 - up to 20 weeks of paid, job-protected medical leave for the employee's own serious health condition (effective 1/1/21).
 - The law sets a maximum aggregate of 26 weeks of paid leave per benefit year.

Who Is Covered?

- Unlike the federal FMLA, the state law will apply to all employers of one or more employees working in Massachusetts.
- All financially eligible Mass. employees.
 - Includes part-time, temporary, seasonal, etc.
 - No hours worked or service time requirements (unlike federal FMLA).
- Financially eligible former employees within 26 weeks following separation (including for approved private plans).
- A company's financially eligible 1099-MISC contract workers IF greater than 50% of its Mass. workforce = contract workers.
- Self-employed individuals who opt into the public program (and pay the contributions).

Financial Eligibility Test

- The DFML clarified the earnings eligibility requirement (adopted from the unemployment benefits law) for any individual who wants to take paid leave under the Law.
- At the time of leave, to be eligible for PFML benefits, over the 12 months preceding the claim for benefits, an individual must have received total wages from a Massachusetts employer or covered business entity that in the aggregate:
 - Equal or exceed 30 times the individual's weekly benefit amount (or generally about 15 weeks of employment/earnings); and
 - Equal or exceed \$4,700.

PFML Benefits: What Is Provided?

- The law sets a maximum aggregate of 26 weeks of paid leave per benefit year.
- Up to 20 weeks of paid, job-protected medical leave for the employee's own serious health condition (effective 1/1/21).
- Paid “medical leave” available to any covered individual with a serious health condition.
- Paid “family leave” available for the following reasons...

Family Leave Reasons:

- (i) to care for a family member with a serious health condition (effective 7/1/21);
- (ii) to bond with the worker's child during the first 12 months after birth or the first 12 months after the placement of the child for adoption or foster care with the worker;
- (iii) 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
- (iv) in order to care for a family member who is a covered servicemember with a serious injury or illness incurred or aggravated in the line of duty (for this particular reason, up to 26 weeks of leave may be taken in a benefit year).

How Much Wage Replacement Will Employees Receive For Family Or Medical Leave?

- After a 7-day waiting period (during which they may use accrued paid sick leave), workers will earn 80% of their wages up to 50% of the state average weekly wage, and then 50% of their wages above that amount, up to an **\$850/week cap**.
 - Although not paid by PFML, the 7-day waiting period is job-protected and will count against the maximum number of weeks of PFML.
- The \$850/week cap may be adjusted annually by the Director to 64% of the state average weekly wage.

Contributions To Supply The Public Trust Fund With \$\$\$

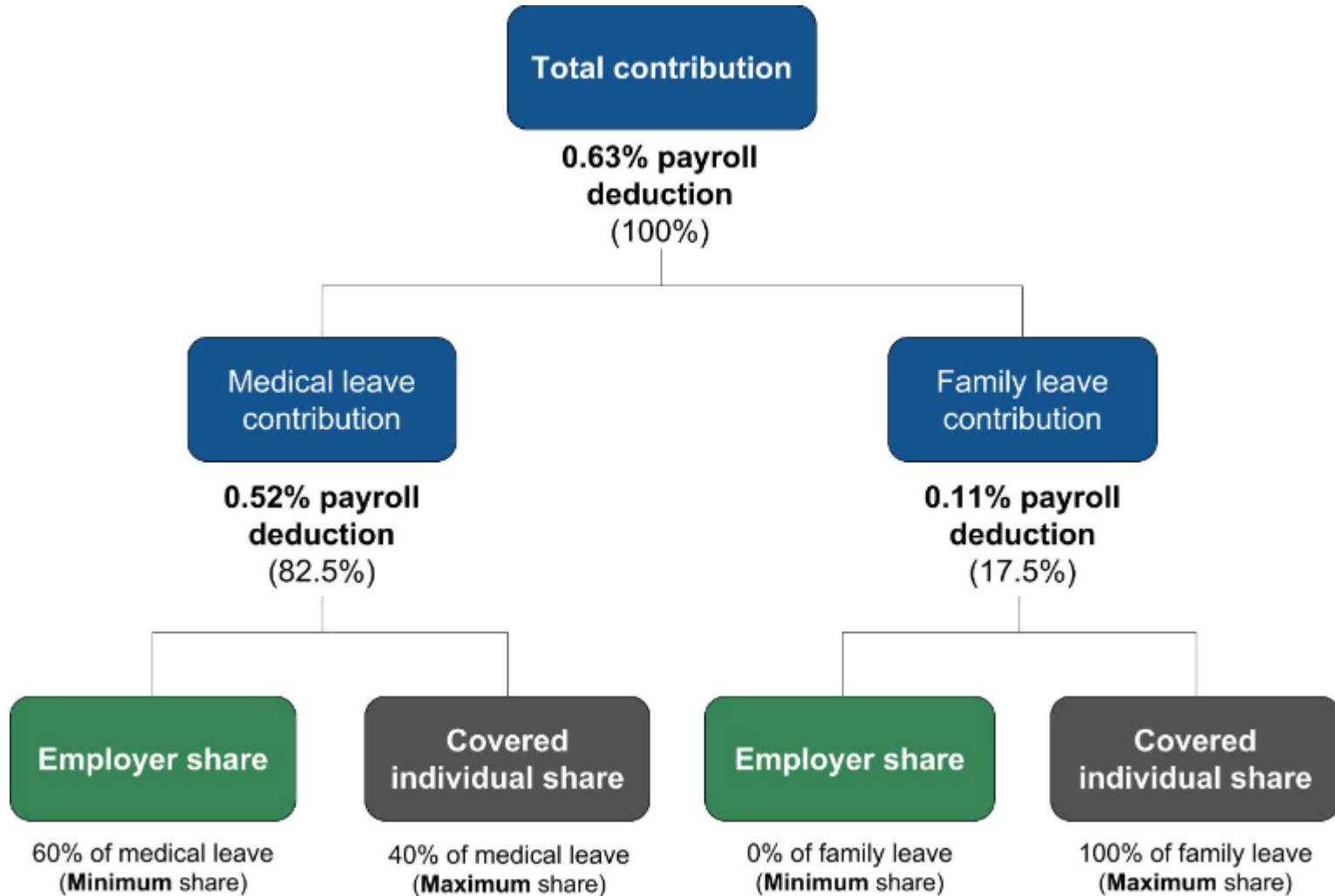
- The initial contribution rate will be 0.63% of the first \$132,900 of an individual's annual earnings.
 - This figure may be adjusted annually based on the contribution and base limit established by the federal SSA for the maximum amount of wages subject to the SS tax.
- The 0.63% contribution rate will initially be allocated as a 0.52% medical leave contribution and a 0.11% family leave contribution. These rates may be adjusted annually.
- While larger employers must remit the full 0.63% contribution, the cost may be shared between employer and employee at varying percentages, based on the type of leave and the size of the company.

What Is The Maximum Contribution Charged To Employees & Covered Contract Workers?

- If MA workforce averaged 25 or more covered workers, the company may deduct from each worker:
 - Up to 100% of the family leave contribution.
 - Up to 40% of the medical leave contribution, and
 - *i.e.* these companies must pay at least 60% of the medical leave contribution, but need not pay for any of the family leave contribution.
- If less than 25 MA covered workers, may deduct the full contributions for both medical and family leaves; but do not have to remit to the State the “employer’s share” (60%) of the medical leave contribution.

Dept. Visual For Companies With 25+

<https://www.mass.gov/info-details/family-and-medical-leave-contribution-rates-for-employers#visual-breakdown-explained>



DFML Example Of Breakdown For Worker Of Large Employer

- For every \$100 a worker earns (up to the maximum \$132,900 annually), \$0.32 will be deducted from the worker for the covered contribution share, broken down as follows:
 - This will consist of \$0.11 to cover the family leave contribution, and \$0.21 to cover the worker's share of the medical leave contribution
 - The company will contribute \$0.31 for every \$100 to cover the employer's share of the medical leave contribution.

Contributions (*cont.*)

- The DFML will calculate the total quarterly contribution amount owed based on the quarterly earnings report filed by the company.
- Contributions will be due within 30 days after the end of the quarter and will be paid through the *MassTax Connect* system.
- An employer or covered business entity which fails to make required contributions will be assessed 0.63% of its annual payroll, in addition to the total amount of benefits paid to covered individuals for whom it failed to make contributions.

Anti-Retaliation Provision

- The law prohibits retaliation against workers for exercising their rights under this law.
- ***Presumption of Retaliation:*** Any negative change in status or adverse employment action during a leave or within six months of the leave / return to work will create a rebuttable presumption of retaliation, which the employer can rebut with clear and convincing evidence that such action was not retaliation and was based on an independent justification.
- 3-year statute of limitations.
- Potential for treble damages (court “may” award...).

Timeline of Deadlines and Key Dates

Timeline

- **June 30, 2019:** Written PFML notices must be distributed to all employees and eligible 1099 contract workers (includes percentages of contributions deducting from employees and whether approved private plan); must provide worker ability to acknowledge receipt or decline to acknowledge receipt
- **July 1, 2019:** PFML Law & regulations effective; PFML posters posted; payroll tax begins (unless approved private plan); private plans must provide compliant paid leave benefits by 7/1
- **September 20, 2019:** Deadline for applying for private plan exemption in order to avoid payroll tax and contributions for July-September quarter

Timeline (cont.)

- **October 2019:** All employers and covered business entities must file quarterly reports via *MassTaxConnect* (including wages paid or other payments for services, etc. during quarter)
- **October 31, 2019:** Unless approved for private plan, all employers and covered business entities will start remitting the 0.63% contribution to the public Trust Fund
- **January 1, 2021:** Paid leave benefits available for medical leave and all forms of family leave except for the serious health condition of an employee's family member
- **July 1, 2021:** Paid leave benefits available for family leave for the serious health condition of an employee's family member

Mandatory Notice To All Workers

- By June 30, 2019, all employers also will be required to distribute written notice to their employees and eligible 1099 contractors about the State's PFML program.
- Must provide all Massachusetts W2 employees written notice of contributions, benefits, and workforce protections; and issue this notice to each new employee within 30 days of their first day of employment. [DFML's templates available online](#).
 - Different notice to eligible 1099 contractors required
- The notice must be written in the worker's primary language.
- Employers must obtain from each worker a written statement acknowledging receipt of the notice or a statement indicating the worker's refusal to acknowledge the notice.

Mandatory Notice To All Workers (*cont.*)

The employee notice must contain:

- An explanation of the availability of family and medical leave benefits;
- The employee's contribution amount and obligations;
- The employer's contribution amount and obligations;
- The employer's name and mailing address;
- The employer identification number assigned by the DFML;
- Instructions on how to file a claim for family and medical leave benefits; and
- The mailing address, email address, and telephone number of the DFML.

Mandatory Workplace Poster

- By July 1, 2019, all employers and covered business entities must post the DFML's mandatory workplace poster at the workplace in a location where it can be easily read.
- The poster must be available in English and each language which is the primary language of 5 or more individuals in the workforce (if such translations are made available from the DFML). Many are already posted on DFML website:
 - <https://www.mass.gov/info-details/informing-your-workforce-about-paid-family-and-medical-leave#notifying-massachusetts-w2-employees->



Private Plan Exemption

Private Plan Exemption Application Process

- Employers “already providing” paid leave benefits to their workforce may apply online now through *MassTaxConnect* for an exemption from collecting, remitting, and paying contributions to the public trust fund.
 - Therefore, to avoid the July 1st payroll tax and remitting contributions for the July-September quarter, you must provide the paid leave benefits by July 1, 2019.
- Applications will be accepted/reviewed on a rolling basis (valid for 1 year). DFML has posted the questions on the application.
- Applicants will receive approval or denial within 1 to 2 business days. If approved, will be asked to upload a copy of the plan. If denied, will be notified why it was denied, and if disagree with the basis for denial, may request a follow-up review.

Private Plan Requirements

- Must provide a weekly paid benefit amount that is greater than or equal to the benefit provided by the public PFML program, for a number of weeks greater than or equal to the number of weeks required by the PFML Law.
- Must not cost employees more than they would be required to contribute to the State plan.
- Must provide job protection while on qualified leave.
- All employees (full-time, part-time, permanent, and seasonal/temporary) must be eligible for the given leave benefits.
- Must cover former employees for up to 26 weeks after separation, or until obtain other employment (whichever is sooner).

Private Plan Requirements (*cont.*)

- Must confer all of the same rights, protections, and benefits provided to employees under the PFML Law.
- Must continue employer contributions to employment-related health insurance benefits, if any, at the level and under the conditions provided if the employee had continued working continuously.
- Leave may be taken intermittently or on a reduced leave schedule, with the weekly benefit amount being prorated.
- **The plan must specifically state that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits.**

Private Plan Exemption (*cont.*)

- Exemptions can apply to medical coverage, family coverage, or both.
- An employer must notify the Department in writing 30 days before implementing changes to terms or conditions of an approved private plan.
- The DFML may audit private plans for compliance.
- If provides for insurance, the forms of the policy must be issued by a Massachusetts-licensed insurance company.
- If in the form of self-insurance, must furnish a surety bond running to the State, in a form and amount approved by the DFML. We now know how the DFML will calculate the bond values...

Bond Requirements for Self-Insured Private Plan

- For every 25 covered employees, the DFML will require a bond value of:
 - \$19,000 for qualifying family leave plans;
 - \$51,000 for qualifying medical leave plans; and
 - \$70,000 for qualifying plans for both family and medical leave.

Other Private Plan Considerations

- If a company adopts a private plan sometime in the future and that plan is approved, the company can stop contributing to the public trust fund on the first day of the quarter following the quarter in which the exemption was approved.
 - They have not addressed if a company's prior contributions to the public trust fund will be refunded (if private plan approved in future but before 2021 benefits payouts commence).
- They have not addressed the opposite scenario – what if a company moves in the future from an approved private plan to the public program – will it owe the State contributions retroactive to July 1, 2019?

Public PFML Program's Interplay With Short-Term Disability Leave and Other Paid Leave Policies

Reductions To Leave Benefit For Other Sources Of Wage Replacement

- The weekly benefit amount shall be reduced by the amount of wages or wage replacement a worker receives for that period under:
 - any government program or law, including workers' compensation (other than for permanent partial disability incurred prior to the leave claim);
 - other state or federal temporary or permanent disability benefits law; or
 - an employer's permanent disability policy or program (*i.e.* LTD).

Reductions To Leave Benefit For Wage Replacement Under A Short-Term Disability Plan Or Paid Family Or Medical Leave Policy

- The weekly benefit amount (\$850 max.) shall not be reduced by the amount of wage replacement received while on leave under an employer's temporary disability policy or program (*i.e.* STD), or an employer's paid family or medical leave policy, unless the aggregate amount an employee would receive would exceed the employee's average weekly wage.
- An employer that makes payments to an individual during a period of family or medical leave that are equal to or greater than the amount required under the above sections shall be reimbursed from the trust fund by the DFML.
- In other words, if the STD plan or other paid leave is used to supplement public PFML benefits, the employee will not receive more than his/her average weekly wage; and if greater, DFML will reimburse the employer rather than pay the employee.

Full Substitution of Employer-Provided Paid Leave

- Under the proposed regulations, covered employees may choose to use accrued paid leave provided by their employer (e.g. PTO) rather than apply for PFML benefits for a particular leave.
- However, use of the employer-provided leave will run concurrently with the PFML leave period even though the worker cannot be compensated with PFML paid benefits for such period.
- Employers are required to inform employees who choose to use accrued leave paid by the employer that the use of it will run concurrently with the leave period under the PFML Law.
- Such employees may not receive PFML paid benefits while receiving accrued employer-paid leave.

Related Provisions

- During leave, an employee will NOT accrue additional benefits, such as PTO, vacation, sick time, etc.
- Upon reinstatement from leave, the taking of family or medical leave shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length of service credit, or other employment benefits, plans or programs.
- During the duration of leave, the employer shall continue to provide for and contribute to the employee's employer-provided health insurance benefits; and employee portion of health insurance premiums shall be remitted in accordance with employer's uniformly applied policies or practices.

Action Items

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- Determine private plan exemption option and employee contribution amounts, if any, and finalize the written notices to distribute to employees and eligible contractors by June 30 (with acknowledgment form).
- Confer with your payroll department to commence payroll deductions on July 1st.
- Post mandatory workplace posters by July 1st.
- If applying for private plan exemption, submit online application no later than September 20, and finalize your PFML policy/plan.
- Register with *MassTaxConnect* if not already registered.

Questions?