

CLIENT ALERT: Massachusetts Paid Family and Medical Leave Law

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Beginning January 1, 2021, the Massachusetts Paid Family and Medical Leave (PFML) law will require employers that employ any employees in Massachusetts to provide covered individuals with paid family and medical leave. PFML benefits will be funded through a payroll tax paid quarterly by the employers/covered entities to a trust fund administered by the Massachusetts Department of Family and Medical Leave (Dept. of FML).

The Dept. of FML has provided useful information, including general [guidelines](#), [calculators](#) and [forms](#), on its website:

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

Covered Individuals: Any Massachusetts employee who, over the 12 months preceding the employee's claim for benefits, has received total wages that equal or exceed 30 weeks of pay at the rate that would apply to unemployment insurance benefits for the employee, totaling at least \$4,700, is covered by the PFML law. Massachusetts 1099-MISC contractors will also be covered if in the last year more than 50% of an employer's Massachusetts W2 employees plus its Massachusetts 1099-MISC contractors (collectively comprising a covered business' Massachusetts workforce for purposes of PFML law) was made up of Massachusetts 1099-MISC contractors. A contractor is considered if her

services are localized in Massachusetts (i.e., entirely in the state or partially in state where any services performed outside the state are merely incidental to work performed in state), or if some part of the services is performed in the state and either (i) there is a base of operations, or services are directed or controlled in state, or (ii) the covered individual's residence is in state and her base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed.

Leave Obligations: The PFML law will require Massachusetts employers beginning on January 1, 2021 to provide covered individuals with:

- i. up to 12 weeks of paid family leave for the birth, adoption or foster care placement of a child or because of an exigency as a result of a family member being called to active service;
- ii. up to 20 weeks of paid medical leave if they have a serious health condition preventing them from work; and
- iii. up to 26 weeks of paid family leave to care for a family member who is considered a "covered servicemember" under the PFML law.

Beginning on July 1, 2021, employees may also be eligible for 12 weeks of paid family leave to care for a family member (i.e., spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the covered individual as well as a person who stood in loco parentis to the covered individual when that person was a minor child, or a grandchild, grandparent or sibling of the covered individual) with a serious health condition. Employees may be eligible for a maximum of 26 weeks of PFML leave in a single benefit year.

Employees are required to provide at least 30 days' notice to their employer of the anticipated starting date of any leave, anticipated length of leave and expected date of return. An employee that is unable to provide 30 days' notice due to circumstances beyond her control is required to provide notice as soon as possible. Employers may require that employees returning from work get a fitness-for-duty certification from a health care professional if a policy requiring it applies uniformly to all similarly-situated employees. Claims for PFML benefits shall be filed using forms and claims instructions available on the Dept. of FML's website.

Job Restoration; No Retaliation: Employees who take leave must be restored to their previous position or equivalent position, with the same status, pay, benefits, length-of-service credit and seniority as of the date of the leave. Employers must continue to provide for and contribute to employment-related health insurance benefits, if any, at the level and under the conditions

coverage would have been provided if the employee continued working during the leave. Employees may sue employers in superior court for discrimination or retaliation against them for exercising their rights under the PFML law within 3 years after such discrimination or retaliation.

Weekly Benefit Amount: Under the PFML law the portion of a covered individual's average weekly wage that is equal to or less than 50% of the state average weekly wage shall be replaced at a rate of 80%. The portion of a covered individual's average weekly wage that is more than 50% of the state average weekly wage shall be replaced at a rate of 50%. The maximum benefit is \$850.00 per week.

Payroll Deductions to Fund Benefits: Beginning **July 1, 2019**, Massachusetts employers may begin making payroll deductions from employee wages in order to fund the quarterly contributions to the PFML trust fund. The initial contribution rate is 0.63% of each employee's gross wages up to the contribution and base limit used by the Social Security Administration (\$132,900 currently), with 0.52% to fund medical leave and 0.11% to fund family leave. Employers with 25 or more covered individuals may deduct up to the full amount of the family leave contribution, and up to 40% of the medical leave contribution, from an employee's pay. Employers with less than 25 covered individuals are exempt from paying the employer share of the medical leave contribution and may deduct the full amount of the PFML

contribution from an employee's pay. An employer who does not opt to deduct the maximum amount from employees' wages is still required to pay the full contribution.

While the Dept. of FML is awaiting guidance from the IRS on how PFML contributions will be treated, the Dept. of FML has issued a statement that it anticipates the IRS will conclude that the employee contributions should be withheld from after-tax wages.

Required Quarterly Filings: Employers, covered entities and self-employed individuals who self-cover must file a quarterly "employment and wage detail report and payment" for their PFML contributions. These reports should be filed on MassTaxConnect on or before the quarterly deadline set by the Massachusetts Department of Revenue. The first quarterly report and contribution to the trust fund will be due on **October 31, 2019**. The reports include names, social security numbers and wages or other earnings paid for each employee, covered contract worker and self-employed individual. The report must contain the employer's or covered business entity's federal employer identification number.

Private Plan Exemptions: Employers that currently provide paid leave benefits can begin applying for an exemption to the contribution requirements on April 29, 2019. An employer or covered entity may receive an exemption from the Dept. of FML if:

- i. the employer's or business entity's private plan provides at least all of the

rights and benefits mandated by the PFML law;

- ii. the plan does not cost employees or covered individuals more than the state-administered plan would cost them;
- iii. the employer's or covered entity's insurance policy, if it has one, is with a Massachusetts-licensed insurer; and
- iv. the employer or covered entity, if self-insured, provides a bond.

If approved, an exemption will be valid for one year.

To avoid the contribution requirements for the upcoming July-September quarter, applications must be received by September 20, 2019 (the since extended deadline was originally June 30, 2019). If an exemption request for the upcoming quarter is denied, the impacted business will still be responsible for remitting the full contribution from July 1, 2019. Going forward, the Dept. of FML will accept private plan exemption applications on a rolling basis and such applications will need to be approved in the quarter prior to the quarter in which they go into effect.

A private plan must cover unemployed former employees who apply for leave benefits for up to 26 weeks after separation, or until they obtain other employment, whichever is sooner.

Obligation to Notify Workforce:

On or before **June 30, 2019** (the since extended deadline was originally May 31, 2019), covered business entities are required to display a workplace poster in a highly-visible location and provide written notice (which may be made electronically) of the PFML law to employees and covered individuals. Employers must obtain signatures from their workforce acknowledging receipt of the notice (or a statement of refusal to sign the acknowledgement).

A template of the written notice issued by the Dept. of FML can be found [at this link](#). The poster can be found [at this link](#). The poster shall be displayed in English and each language that is the primary language of 5 or more individuals in the workplace.

Following **June 1, 2019** all new employees must be issued a notice within 30 days of the first day of employment. For Massachusetts 1099-MISC workers, covered entities must provide written

notice about the PFML law when the parties enter into a contract for service.

Important Dates:

April 29, 2019- Dept. of FML begins accepting applications for private plan exemption

June 30, 2019 (original date was May 31, 2019)- Deadline to display poster and deliver notice to workforce and obtain signature acknowledging receipt of notice

July 1, 2019- Final regulations published and beginning of collection of payroll tax of 0.63 percent

October 31, 2019- Quarterly contributions due for July-September

January 1, 2021- Most benefits available

July 1, 2021- All benefits available
