



Massachusetts

Paid Family Medical Leave:

What Employers Need to Do Now



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Presented By



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What is Paid Family and Medical Leave (PFML)



- On June 28, 2018, Governor Charlie Baker signed a bill requiring employers in Massachusetts to provide paid family and medical leave benefits to employees who work in the Commonwealth
- The PFML program is overseen by the newly created Department of Family and Medical Leave (DFML)
- Final Regulations published on June 18, 2019

Which employers are subject to MAPFML?

- All private Massachusetts employers are required to provide employees with paid family and medical leave
- There is no minimum number of employees to trigger employer coverage
- The final regulations clarify that the statutory exclusions from the definition of “employment” set forth in the Massachusetts unemployment statute (M.G.L. ch. 151A, § 6) also apply to the PFML Law.



Who is Eligible for PFML Benefits?

- An employee whose employment has been with an employer in Massachusetts, regardless of length of service with the employer or hours worked;
- Covered employees include unionized individuals under collective bargaining agreement
- Financial eligibility requirement: employee must have earned at least 30x the weekly benefit amount the individual would be eligible to collect and at least \$4,700 during the prior year from any MA employer
- A former employee, assuming that the employee has not been separated from employment for more than 26 weeks at the start of the former employee's family and medical leave; or
- A self-employed individual who has elected coverage under the law and reported required self-employment earnings

How do I calculate my Covered workforce?



- All Massachusetts W-2 employees, including
 1. Full-Time
 2. Part-Time
 3. Seasonal

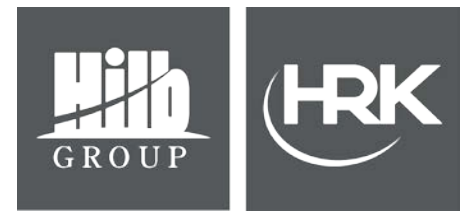
Total workforce under PFML law is calculated as:

- W-2 employees + 1099-MISC contractors
- A MA 1099 is an individual who resides and performs services in Massachusetts
 - Keep in mind, for the contractor to be covered you must be reporting payments for 1099's services on the IRS Form 1099-MISC
- In the prior year, if 1099-MISC contractors make up **more than 50%** of your total workforce, these 1099-MISC contractors are covered individuals.
- 1099-MISC contractors may also opt into the PFML benefits

What about out-of-state Employers/Employees?

- The final regulations provided additional clarity on when an out-of-state employer and what out-of-state employees will be subject to PFML
- An employer and employee are covered by PFML if the service provided by an individual **“is localized in the Commonwealth”**

For example. ...



- Fred lives in New Hampshire but commutes into Boston every day to work for his employer. Fred's services are performed entirely within Massachusetts (even if he does not live here). **Fred is a covered individual under PFML**
- Sarah drives a transport truck in Massachusetts but occasionally drives to New Hampshire to pick up supplies. **Sarah is a covered individual** because the services she performs outside of Massachusetts are incidental to the work performed inside Massachusetts, and her work is localized in Massachusetts



For example. ...



- Angela works in Connecticut as a consultant for a Connecticut employer but works remotely and lives in Massachusetts. Even though Angela's services are not directed or controlled in Massachusetts, part of her services are provided in Massachusetts and she lives in Massachusetts. **That makes Angela a covered individual.**
- Mark is a software salesman covering territories in the Southwest US. His employer's headquarters are in Massachusetts, where he often attends meetings and receives instructions from on what products to sell. Part of Mark's services are performed in Massachusetts, and his services are directed and controlled in Massachusetts. **Mark is a covered employee under PFML.**



Who do I NOT calculate in my Covered workforce?



- PFML excludes these categories of employment:
 - Real estate brokers/salespeople and insurance agents/solicitors in commission only jobs
 - Services performed for a son, daughter or spouse
 - If under 18, services a worker performs for father or mother
 - Services performed by inmates
 - Railroad industry workers
 - If under 18, newspaper sales and delivery
 - Employment by churches and religious organizations
 - Work-study students, student nurses and interns, work trainee programs administered by non-profit or public institutions

Who are covered family members under PFML?



- Family members include:
 - Spouse or domestic partner
 - Child (any age)
 - Parent or parent of a spouse or domestic partner
 - Person who stood in loco parentis to employee when employee was a child
 - A child to whom the employee stands in loco parentis
 - Grandchild or grandparent
 - Sibling



What does PFML Provide the Employee?



Type of leave	Annual Benefit Year Allotment	Effective Date
Medical (employee's own serious health condition)	Up to 20 weeks	Beginning January 1, 2021
Family (bonding with new child, *care for family member with serious health condition or qualifying military exigency)	Up to 12 weeks	Beginning January 1, 2021 Beginning July 1, 2021 *care for family member with serious health condition
Family (injured service member)	Up to 26 weeks	Beginning January 1, 2021
Maximum Combined Family & Medical	26 weeks available	

Leave Calculation Method: "Benefit Year" is measured forward 52 weeks from the Sunday preceding the first day the of the employees covered leave.

Can the Leave be taken Intermittently?

- Employees can take paid leave intermittently
 - “When medically necessary”
 - for medical leave for an employee’s own serious health condition
 - for family leave to care for a covered service member or a family member with a serious health condition
 - For family leave due to a qualifying exigency arising out of a family member’s active duty or impending call to active duty in the Armed Forces
- Employees cannot take family leave intermittently to
 - bond with a child
 - ***At employer's discretion by agreement between employer and employee***
- Intermittent leave or reduced schedule leave, paid on a prorated basis
- Employers can designate a minimum increment of time to be taken as intermittent leave, up to a maximum of 4 hours

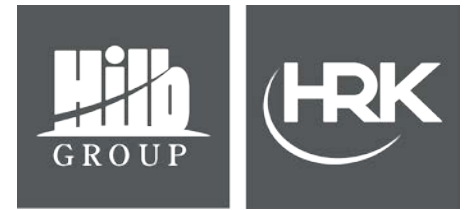


How will PFML interact with FMLA?



	Massachusetts PFML	FMLA
Family member	Spouse, domestic partner, child under age 18 and disabled child over age 18, parent or parent of spouse or parent of domestic partner, someone who stood in loco parentis when they were a minor or someone to whom the employee stands in loco parentis, grandchild, grandparent or sibling	Parent, spouse, child under age 18 and disabled child over 18. Includes concept of in loco parentis.
Leave duration	Depends on type of leave: 12 weeks family leave (26 for care of injured service member), 20 weeks medical leave for employee's own serious health condition. Combined maximum of 26 weeks per benefit year.	Up to 12 weeks regardless of reason (except 26 for care of injured service member).
Benefit year method	"Benefit year" defined as 52 consecutive weeks beginning on the Sunday immediately preceding the first day of leave	Four methods from which employer can choose: fixed date, rolling forwards, rolling backwards, calendar year
Intermittent leave	One hour minimum increment	Smallest increment of time tracked must be no greater than one hour
Eligibility	Any employee who meets requirements for MA unemployment (for any employer in MA) is eligible	Worked for the employer for at least 12 months, worked 1250 hours and location with 50 or more employees within a 75-mile radius

How will PFML Interact with MPLA?



- MA Parental Leave Act (MPLA) provides 8 weeks of unpaid job protected leave from work for bonding with a newborn or newly adopted child
 - Leave under the MPLA is available to full-time employees who have worked at least 3 consecutive month for the employer
 - MPLA applies to employers with 6 or more employees in MA
 - Employee is entitled to 8 weeks of leave per child In some circumstances,
- In some circumstances, PFML will run concurrently with leave taken under MPLA

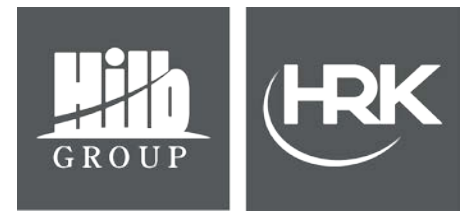


What about PTO and Earned Sick Time?

- MA Earned Sick Leave enables employees to earn up to 40 hours per year of sick leave to address certain personal and family needs
- PFML and Earned Sick Leave may run concurrently when the leave is for a qualified reason under both laws and the employee **chooses** to take sick time
- PFML eligible employees have the option to use accrued paid leave (such as PTO) rather than apply for paid benefits under the PFML
- Any leave provided under an employer policy that is used by an employee for a covered reason and paid at the same or higher rate counts against MA PFML allotment – if employer provides written notice to that effect



What do I need to communicate to my workforce?



- 3-Step notification process
 - Step 1 – Posting Requirement
 - Step 2 – Written Notice Requirement
 - Step 3 – Acknowledgement Requirement



What is the Posting Requirement?



Notice of Benefits Available Under M.G.L. Chapter 175M
Paid Family and Medical Leave

Beginning on July 1, 2019:

- Employers will deduct payroll contributions from a covered individual's wages or other earnings to fund PFML benefits.

Beginning on January 1, 2021:

- Covered individuals may be entitled to up to 20 weeks of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work.
- Covered individuals may be entitled to up to 12 weeks of paid family leave in a benefit year related to the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces.
- Covered individuals may be entitled to up to 26 weeks of paid family leave in a benefit year to care for a family member who is a covered service member with a serious health condition.

Beginning on July 1, 2021:

- Covered individuals may be entitled to up to 12 weeks of paid family leave to care for a family member with a serious health condition.

Covered individuals are eligible for no more than 26 total weeks, in the aggregate, of paid family and medical leave in a single benefit year.

Who is a Covered Individual Under the Law?

Generally, a worker qualifies as a covered individual and may be eligible for paid family and medical leave if:

- S/he is paid wages by a Massachusetts employer; or
- S/he resides in Massachusetts and is paid for contract services by a Massachusetts entity that is required to report payment for services on IRS Form 1099-MISC for more than 50 percent of its workforce; or
- S/he is a self-employed individual who resides in Massachusetts and chooses to opt-in to the program.

Job Protection

Generally, an employee who has taken paid family or medical leave must be restored to the employee's previous position or to an equal position, with the same status, pay, employment benefits, length-of-service credit, and seniority as of the date of leave.

These job protections do not apply to contractors.

Weekly Benefits

To fund PFML benefits, employers will deduct payroll contributions from a covered individual's wages or other earnings beginning on July 1, 2019. Covered individuals can apply for benefits beginning in January 2021 through the Department of Family and Medical Leave. A covered individual's average weekly earnings will determine his or her benefit amount, for a maximum weekly benefit of up to \$850.

No Retaliation or Discrimination

- It is unlawful for an employer to discriminate or retaliate against an employee for exercising any right to which s/he is entitled under the law.
- An employee or former employee who is discriminated or retaliated against for exercising rights under the law may, not more than three years after the violation occurs, institute a civil action in the superior court, and may be entitled to damages of as much as three times his or her lost wages.

Private Plans

If an employer offers employees paid family leave, medical leave, or both, with benefits that are at least as generous as those provided under the law, the employer may apply for an exemption from paying the contributions. Employees continue to be protected from discrimination and retaliation under the law even when an employer opts to provide paid leave benefits through a private plan.



If you have questions or concerns about your Paid Family and Medical Leave rights, please contact:
MassPFML@Mass.gov or visit: <https://www.mass.gov/DFML>

This notice must be posted in a conspicuous place on the employer's premises.

- Posting Requirements
- Employers are required to display a poster describing PFML benefits.
 - Display the PFML poster in a “highly visible” location
 - The posting must be in English and any other language that is the primary language of 5 or more employees
 - DFML has published a poster available for use (12 languages to date)

What is the notice requirement for W2 and 1099's?



Employer Notice to Employee

Rights and Obligations under the Massachusetts Family and Medical Leave Law, M.G.L. c. 175M

_____ (Employer Name)
_____ (Employer Street Address)
_____ (Employer City, State, Zip)
_____ (Employer's ID Number)

Explanation of Benefits

- **Beginning January 1, 2021,**
 - employees may be entitled to up to 12 weeks of paid family leave in a benefit year for the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces;
 - employees may be entitled to up to 20 weeks of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work
 - employees may be entitled to up to 26 weeks of paid family leave in a benefit year to care for a family member who is a covered service member undergoing medical treatment or otherwise addressing consequences of a serious health condition relating to the family member's military service.
- **Beginning July 1, 2021,**
 - employees may be entitled to up to 12 weeks of paid family leave in a benefit year to care for a family member with a serious health condition.
- Employees may be eligible for up to 26 total weeks, in the aggregate, of paid family and medical leave in a single benefit year.
- An employee's weekly benefit amount will be based on the employee's earnings, with a maximum benefit of \$850 per week.

- An employer must provide a written notice to all workers within 30 days of the worker's first day of employment, or at least 30 days prior to **October 1, 2019**, whichever is later
- For current employees that notice must be provided by **September 30, 2019**
 - Written in employee's primary language
 - Acknowledgement must be obtained
 - Notice may be sent via email
 - DFML has published a notice available for use
- The notice may be provided electronically
- Notice must include details of the employer's private plan, if applicable

Presented By



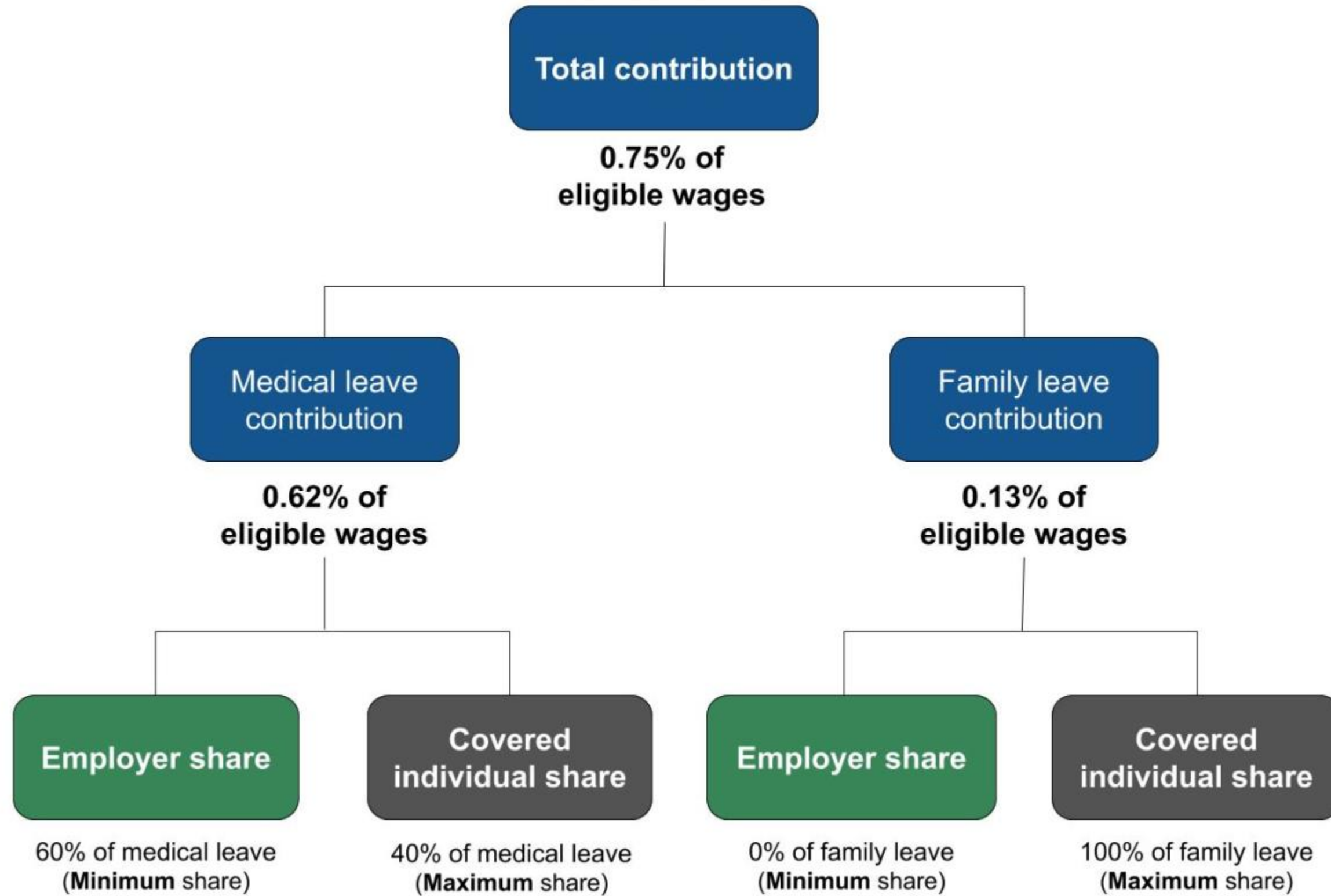
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Managing Director

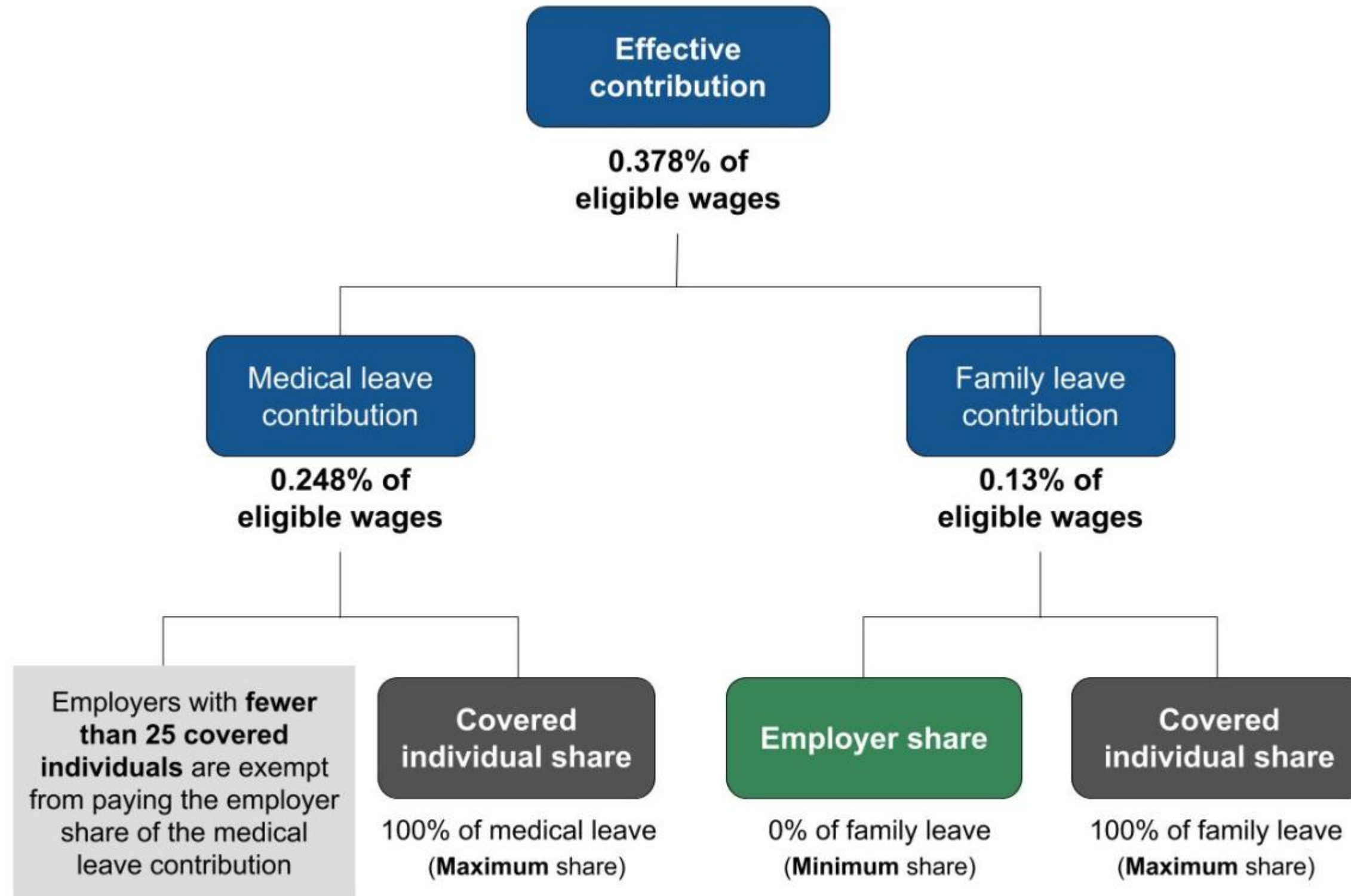
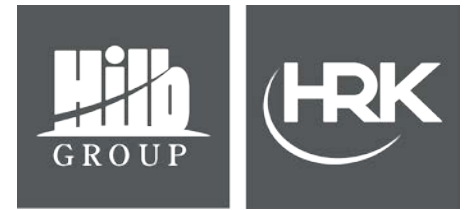
How are PFML Benefits Funded?

- The payroll tax will go to a state trust fund called the Family and Employment Security Trust Fund
- Employers will be required to contribute to the fund at a rate of **0.75%** of each employee's wages, up to \$132,900 in 2019
- The family leave portion of the PFML premium is 100% employee-funded
- Employers may charge up to 40% of the premium for the medical leave and the employers is responsible for the 60%
- Tax is split between:
 - Medical at **0.62%** of the wages go towards medical leave
 - Family Leave at **0.13%** of the wages go towards family leave

How are contributions split for over 25 employers?



How are contributions split for under 25 employers?



When do I Start Payroll Deductions?

- Employers must begin collecting employee contributions on **October 1, 2019**
- Family leave premium: 100% paid by employee
- Medical leave premium: 40% paid by employee, 60% paid by employer
- **Small employer exemption** – employers with fewer than 25 employees in Massachusetts are exempt from employer contribution
- Employer is responsible for collecting and remitting employees' share of premium regardless of employer size



Should Payroll Deductions be Pre-Tax?

Probably not. Massachusetts has requested guidance from IRS but DFML “anticipates that the IRS will conclude that employee contributions should be withheld from after-tax wages”

- Definitive rule for proper tax treatment of contributions will be available once IRS guidance is issued
- In NY, paid family leave benefits are taxable as 1099 income, and employee premiums are deducted on a post-tax basis

How will HRK deduct MAPFML from our employees' wages?

- For all Managed Payroll and Full-Service Clients, HR Knowledge will work with ADP to automatically deduct MA PFML contributions for pay dates October 1, 2019 or later.
- This will occur for all employees coded to state unemployment insurance.
- ADP will automatically take care of the filing with MassTaxConnect for Managed Payroll and Full-Service Clients who are setup in ADP to file/deposit Massachusetts unemployment insurance.
- Exempt employers should contact their Client Account Manager before processing their first October pay date with ADP.

Am I Required to make an Employer Contribution?

Depends on the size and configuration of your Massachusetts workforce

- An employer with **fewer than 25 employees** must contribute to the Fund on behalf of their employees but need not make an employer contribution
- An employer with **25 or more employees** must contribute to the Fund on behalf of their employees and must also make an employer contribution
- To determine if you meet the 25-employee threshold, you must calculate the average number of individuals on payroll – including all full-time, part-time, and seasonal employees, as well as independent contractors
- You must submit contributions for your 1099 contractors only if they make up more than 50% of your total workforce
- To estimate your PFML contributions, please view the state provided calculator located here: <https://www.mass.gov/info-details/calculate-your-paid-family-and-medical-leave-contributions>

Examples

Scenario 1 – last year, your Massachusetts workforce consisted of:

- 1 Massachusetts W-2 employee
- 2 Massachusetts 1099-MISC contractors

Scenario 2 – last year, your Massachusetts workforce consisted of:

- 24 Massachusetts W-2 employees
- 4 Massachusetts 1099-MISC contractors

Scenario 3 – last year, your Massachusetts workforce consisted of:

- 40 Massachusetts W-2 employees
- 83 Massachusetts 1099-MISC contractors

Is there a Reporting Requirement?

- Yes. All employers will be required to file quarterly reports through MassTaxConnect beginning in January 31, 2020
- Employment and Wage Detail Report (EWD Report)
 - Name, social security number, wages paid or other earnings
- Based on the EWD Report, DFML will calculate the total quarterly contribution, which must be remitted within 30 days after the end of the quarter
- Always report your total workforce numbers – but you're only responsible for submitting contributions on behalf of covered individuals

How much weekly pay does an employee on PFML receive?

Benefit Amount	<p>80% of the employee's wages, up to 50% of the state average weekly wage (SAWW). Any portion of the employee's wages over 50% of the SAWW will be paid at 50%.</p> <p>Current SAWW: \$1,383.41 / week (\$71,937.32 / year)</p>
Benefit Maximum	\$850 per week
Future Adjustments	<p>Maximum weekly benefit will be adjusted to 64% of the SAWW by October 1st of each year, effective the following January 1st.</p>

Can an Employer be more generous than the PFML law requires?

- Nothing in the final regulations address employers being more generous than the PFML law.
- The required written notice must be updated to reflect this increase in benefits.
- The total contribution rate will be set annually, no later than October 1 of each year.
- We recommend setting the contribution rate in the same manner, on October 1 of each year for the upcoming calendar year.

Must Health Insurance be continued during the leave?

Yes. During MA PFML, employer must continue health insurance benefits as if the employee were not on leave

Upon reinstatement, the taking of MA PFML must not affect:

- The employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits
- Time on leave need not be treated as credited service for purposes of benefit accrual, vesting, and eligibility to participate



When are PFML Benefits Reduced?

MA PFML weekly benefit **WILL be reduced by** amounts received under:

- Any government program or law including workers' compensation (but not for permanent partial disability incurred prior to the MA PFML claim);
- Under other state or federal temporary or permanent disability law; or
- A permanent disability policy or program of an employer

MA PFML weekly benefit **WILL NOT be reduced by** amounts received under:

- An employer's STD program or
- An employer's paid family or medical leave policy
...unless the aggregate amount an employee would receive would exceed the employee's weekly average wage

Examples

Katie earns \$4,000 per week and is entitled to the maximum PFML benefit of \$850 per week. Katie goes on STD leave, which covers 60% of her wages up to \$2,000 per week. Katie will receive both PFML benefits and her company-provided STD benefits, because the aggregate amount of benefits - \$2,850 – does not exceed her weekly wage.

Bob earns \$600 per week and is entitled to a PFML benefit of about \$480 per week. Bob goes on STD leave, which covers 60% of his wages up to \$2,000 per week. If Bob were to receive both the PFML benefit of \$480 and his STD benefit of \$360, he would receive \$840 – more than his average weekly wage of \$600. His PFML benefit would be reduced to \$240.

Note: Weekly benefits may be different for each individual, as calculated based on the employee's average weekly wage

Can I Adopt a Private Plan instead of Contributing to the Fund?

- Yes, with approval by the Department of Family and Medical Leave
 - Permitted for medical leave or family leave or both
 - DFML is accepting applications online
 - May be fully- or self-insured
 - Self-insured plans must post a bond
 - May not charge employees more than authorized by statute
 - Must provide at least the same benefits as MA PFML law
 - Must provide job protection and health insurance continuation
 - Approvals are effective for one year

The Department of PFML has provided a detailed list of private plan requirements on their website: <https://www.mass.gov/orgs/departments-of-family-and-medical-leave>

Private Plan Options

Guardian

- Self-funded **or**
- Fully-insured for groups >25 employees (No Bond Required)
 - Plan has been approved by the State
 - No premiums until 2021
 - Need to get an exemption before 10/1/2019
 - Will need to get an additional exemption 10/1/2020
 - Policy and premiums will need to go into effect 1/1/2021
 - Illustrative rates will be determined by census
 - Existing Guardian STD, LTD and Life clients will receive rates from HR Knowledge in a few weeks
 - We can work with you to get rates
 - Can be sold as a “stand-alone” benefit if using another Life/Disability Provider
 - We recommend that Life/Disability Carrier be integrated with PFML
- Employer needs to apply for the Exemption (This cannot be handled by Broker or Carrier)
- Other Carriers are beginning to offer Solutions (i.e. Prudential for groups over 100)

Private Plan Options, cont.

- Other Carriers are beginning to offer Solutions:
 - Prudential:
 - For groups over 100
 - SunLife:
 - Committed to being able to administer an employer's self-insured private plan option for leaves commencing January 1, 2021
 - •Actively exploring offering a fully insured PFML private plan option subject to requirements related thereto of the Massachusetts Department of Insurance

What is the bond Requirement for Self-Insured Private Plans?

- For every 25 employees covered by a private plan, DFML requires a bond value of:
 - \$19,000 for qualifying family leave plans
 - \$51,000 for qualifying medical leave plans
 - \$70,000 for qualifying plans that provide both family and medical leave

What is the Private Plan Process?

- ◆ Application is available on MassTaxConnect on Department of Revenue website.
- ◆ Application questions can be seen on DFML website.
- ◆ Employer must state whether the private plan is for medical leave, family leave, or both benefits.
- ◆ Employer must advise whether the private plan is insured or self-insured.
 - If self-insured, employer will be required to post a bond.
- ◆ Employer must answer certain questions to show that the plan will comply with MA PFML.
- ◆ Employer must upload a copy of their private plan.
- ◆ The State has indicated that it believes it will be able to review and rule on plans in 1 to 2 days.

<https://www.mass.gov/info-details/frequently-asked-questions-paid-family-and-medical-leave-exemption-requests#video-tutorial:-how-to-request-a-paid-family-and-medical-leave-exemption>

Will my Short-Term Disability Plan Qualify for any Exemptions?

Probably not. Some PFML provisions to keep in mind include:

- Part-time and seasonal workers
- Terminated employees
- Intermittent leave in up to 4-hour increments
- Waiting period waived for pregnancy
- Threshold for qualifying leave

What are those key dates, again?

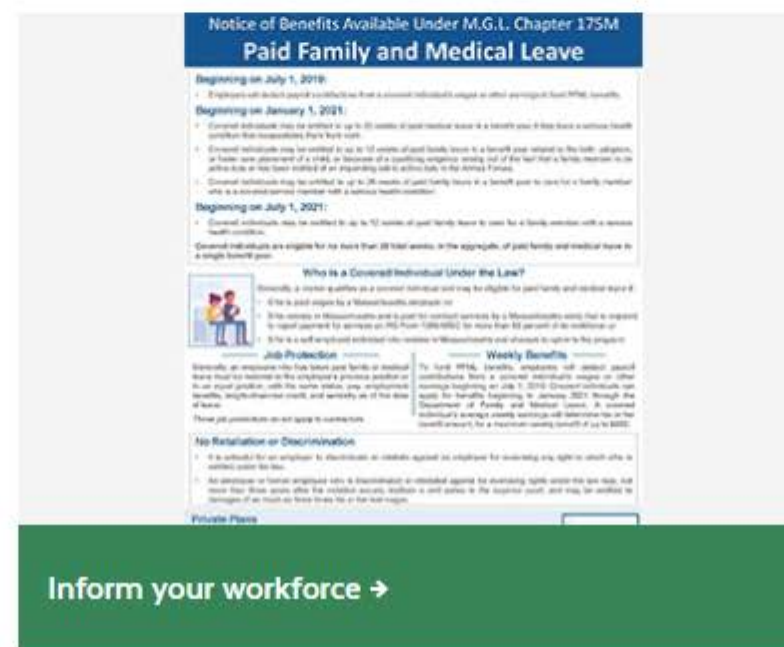
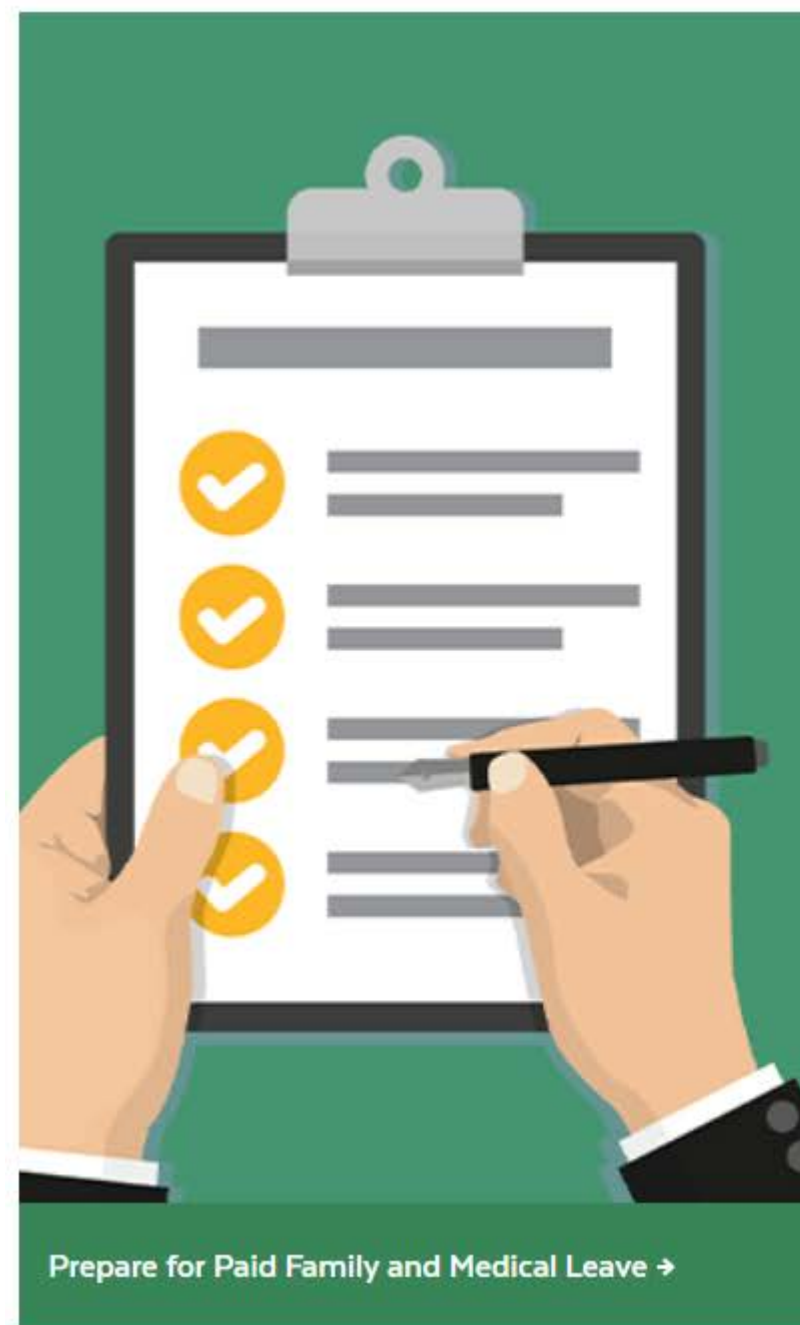
EFFECTIVE DATE	KEY ACTIONS
September 30, 2019	<ul style="list-style-type: none"> • Deadline to provide written notice to current employees (both W-2 and 1099) of their rights and obligations under the PFML law and obtain signed acknowledgements • Display the PFML workplace poster in a highly-visible location
October 1, 2019	Payroll deductions begin
December 20, 2019	The deadline to file for an exemption for the first quarter contributions
January 31, 2020	First quarterly contribution and report (for October 1 – December 31) are due – submitted through MassTaxConnect
January 1, 2021	Most benefits available
July 1, 2021	All benefits available

What do I need to do now, again?

- Evaluate your workforce to determine whether you meet the 25-employee threshold
- Work with your payroll provider to address the administrative aspects of payroll contribution requirements
- Register with MassTaxConnect
- Prepare to distribute all required notices to employees and display the required workplace poster
- If you're considering a private plan, evaluate that option and submit it for approval to DFML

Where can I get more resources?

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





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