

FAQ: Massachusetts Paid Family Leave

Background

Massachusetts employers should be aware of the key provisions of the new Paid Family and Medical Leave (PFML) law, as detailed in the statute itself and in proposed regulations recently issued by the Department of Family and Medical Leave. Final regulations are slated to be issued by July 1, 2019. Though workers will not be eligible to take paid family and medical leave until January 1, 2021 (or, in the case of leave to care for a family member with a serious health condition, July 1, 2021), employers will be required to comply with some of the law's key provisions **by October 1 2019**.

Frequently Asked Questions

Covered Employers

Question: **Does this law only apply to certain Massachusetts employers who meet a certain headcount threshold?**

Answer: The law applies to all Massachusetts employers with one or more employees.

Question: **Are religious organizations exempt from this law?**

Answer: Yes, only certain types of employment are excluded including churches or religious organizations, cities, towns, districts, and political subdivisions or their instrumentalities, services provided by real estate brokers, insurance agents in commission-only positions, and more. For a list of those industries excluded from PFML law, please review the state website [here](#).

Covered Individuals

Question: **Who is eligible for PFML benefits?**

Answer: Generally, a worker qualifies as a covered individual and may be eligible for paid family and medical leave, as indicated in the required poster, as follows:

- 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; or
- S/he is a former employee that has not been separated from employment for more than 26 weeks at the start of the former employee's family or medical leave.

Question: **Do part-time co-op employees count as covered individuals?**

Answer: Yes, part-time co-ops will count towards your total number of employees. MA W2 employees will always count as covered individuals as long as you generally withhold income tax for them through MassTaxConnect. These employees don't need to reside in Massachusetts to be covered. You will always be responsible for making payroll withholding and contributions on their behalf, this applies to full-time, part-time and seasonal.

Question: **Does the law cover union employees?**

Answer: Yes, union-represented employees are covered.

Question: **How does the law define "family member"?**

Answer: Covered individuals will be eligible for up to 12 weeks of family leave to care for a family member with a serious health condition and manage family affairs when a family member is on active duty in the armed forces. A family member is defined very broadly under PFML to include:

- Spouse or domestic partner
- Child, stepchild, adopted or foster child, a child to whom the employee is like a parent, or a person to whom the employee stood in the place of a parent when the person was a minor
- Parent, Parent of a spouse or domestic partner
- Grandchild, Grandparent
- Sibling

Beginning January 1, 2021, paid family leave benefits will be available to support workers who take leave in order to address needs relating to a family member in the armed forces. Beginning July 1, 2021, paid family leave benefits will be available for the care for any family member with a serious health condition.

Question: **How do I determine if a self-employed individual is covered under the law?**

Answer: If in the prior year, 1099 contractors make up more than 50% of your total workforce (calculated as W-2 employees and 1099 contractors), these 1099 contractors are considered covered individuals.

Question: **Are owners/Managing Partners counted when determining the number of employees of our Company, if they are not W2 employees or 1099 contractors?**

Answer: K-1 Owners/partners are not considered employees.

Interaction with Other Leaves

Question: **Is this the same as the federal Family and Medical Leave Act (FMLA)? How is it different?**

Answer: While the new law is based on the Federal program, there are key differences:

- To be eligible for FMLA, the employee must have been employed with the company for 12 months and worked at least 1,250 hours, however, under PFML has the same employee eligibility as unemployment, i.e., the employee must have earned 30 times the weekly unemployment benefit that the employee would be eligible to receive and must have earned at least \$4,700 during the last four calendar quarters.
- PFML leave could be greater than the 12 weeks allowed under FMLA. The PFML maximum is 26 weeks.
- The PFML benefit year is set by the Department of Family and Medical Leave, with no option to use the rolling 12-month period offered under FMLA.
- PFML has a broader coverage for family members (not just limited to spouse, parent, and child).
- PFML does not allow employers to require use of Paid Time Off for leave taken.
- The PFML certification and approval process is handled by the state and not by the employer.

Question: **Does the Massachusetts program (PFML) run concurrently with the federal program (FMLA)?**

Answer: Yes, leave taken under the PFML law runs concurrently with the federal FMLA, as well as the Massachusetts Parental Leave Act and Massachusetts Earned Sick Time when leave is for qualified reasons under those acts.

Question: **Can an employee use PFML intermittently?**

Answer: Yes, a covered individual can take leave intermittently or on a reduced-leave schedule and their benefits will be prorated. Intermittent leave may only be taken when “medically necessary” for the following covered reasons:

- 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 leave intermittently to bond with a child or at the employer’s discretion. Employers can designate a minimum increment of time to be taken as intermittent leave for all employees, up to a maximum of four (4) hours.

Notifying your workforce

Question: **Can the required notice be distributed electronically?**

Answer: Yes, the notice may be provided electronically, and it must include the opportunity for an employee or self-employed individual to acknowledge receipt or decline to acknowledge receipt of the information. All current employees must receive this notice by October 1, 2019, and new hires must receive it within 30 days of their first day of employment. You can use the template that the Department created, or you can create your own as long as it includes all the required components. The Paid Family and Medical Leave mandatory workplace poster must also be posted at your workplace in a location where it can easily be read.

Question: **Should I provide all 1099 contractors with the notice?**

Answer: 1099 contractors have the option to opt into the PFML program if they would like, so they are required to receive the mandatory notice. 1099 contractors would receive the notice for self-employed individuals and would pay 100% of the contributions if they decided to opt in.

Question: **I already had all my Massachusetts employees review and sign the Employer Notice to Employee Rights and Obligations under the Mass. Family and Medical Leave Law which has the deduction starting on 07/01/19. Do I need them all to fill out the one you attached with the new date of 10/01/19? I was planning on sending an e-mail to the employees to inform them of the date change and to have them notify all their employees. Does this comply?**

Answer: If you have already sent your employee notices, we recommend sending them the updated notices for acknowledgment by employees as the % of contribution has changed, as well as, the effective dates of the tax collection.

Required Contributions

Question: **How will the contribution collection be handled through our current ADP payroll system?**

Answer: ADP will begin withholding required premiums for all payroll processed with pay dates on or after October 1, 2019. The premiums for the family leave portion and the medical leave portion will be calculated and withheld separately. For an example of how the withholding for the premium is calculated, please refer to the Massachusetts Paid Family and Medical Leave [website](#).

Question: **Are PFML contributions considered taxable income?**

Answer: No, the PFML contributions that large employers pay on their behalf would not be considered taxable income and will not be reported on the W2.

Question: **Am I required to make an Employer contribution?**

Answer: 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

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- 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](#).

Out of state employers/employees

Question: **What about an out of state employee who lives out of state but works in Massachusetts? Are they a covered individual under PFML?**

Answer: If the employee's services are performed entirely within Massachusetts (even though they do not live there), this employee is a covered individual under PFML.

Question: **What about an employee who works in Massachusetts but occasionally travels out of state for work? Are they a covered individual under PFML?**

Answer: If the employee's services that are performed outside of Massachusetts are incidental to the work performed inside Massachusetts, and their work is localized to Massachusetts, this employee is a covered individual under PFML. If the employee travels across states, first you will need to determine if their services are localized in Massachusetts, or meet the following criteria:

- Services are performed entirely within MA;
- Services are performed in MA and any services performed outside of MA are incidental to the individual's services within MA (temporary or transitory in nature, or consists of isolated transactions); or
- Services are not localized in any state, but some part of service is performed in MA and the individual's base of operation is in MA or directed or controlled from MA.

Question: **What about employers whose headquarters are in Massachusetts and the employee lives out of state but performs services in Massachusetts? Are they a covered individual under PFML?**

Answer: PFML coverage extends to an employer if their operations or services occur entirely within Massachusetts or if some part of service occurs within the Commonwealth and a potential covered individual operates in Massachusetts.

Question: **What about employees who work out of state but live in Massachusetts and work remotely? Are they a covered individual under PFML?**

Answer: If part of the employee's services are performed within Massachusetts and the employee lives in Massachusetts, this employee is a covered individual under PFML.

Interaction with Benefits

Question: **If an employee is eligible for short-term disability and PFML, are they entitled to both benefits? How will these work together? Can an employee receive more than 100% of their pay?**

Answer: Currently, this is a gray area within the draft regulations; however, in other states that have disability or leave programs, the short-term disability policy becomes a supplemental plan. The short-term disability policies in other states were amended to include “offset language” which reduces the benefit amount received from the state program. As employees cannot/do not receive 100% income replacement in the other programs, we anticipate that Massachusetts will follow the same pattern.

Question: **Can we apply for the private plan exemption that would allow my company to opt out of the PFML system?**

Answer: Yes, Massachusetts employers may apply for an exemption from the PFML program. To get an exemption, you must complete an annual approved application to the Department of Family and Medical Leave. The deadline to file for an exemption for the first quarter contributions is December 20, 2019.

Question: **Is the short-term disability plan I currently provide my employees able to meet the requirements of the PFML program?**

Answer: Due to the uncertainty of key requirements of the paid-leave regulations, private insurance companies have yet to introduce policies that would qualify as an alternative. The Baker administration approved an extension for employers to file for an exemption until December 20, 2019; this will allow time for insurance companies to possibly create a product that would satisfy the requirements for a private solution.

Question: **How should employers charge an employee for health insurance costs during their leave when they are being paid benefits directly from the Department?**

Answer: We recommend that employers work with the employee before they go out on leave to map out how they will collect their benefit premiums. In general, most employers require the employee to pre-pay their premiums on a monthly basis via a check.

Question: **Can an employee choose to use accrued paid time off while on leave collecting PFML benefits?**

Answer: An employee may choose to use accrued paid time off but using such paid leave will run concurrently with PFML benefits and will not extend the total amount of paid leave available. If a covered individual does not receive more than their average weekly wage in total, their PFML weekly benefit amount will not be reduced for that period. If an employer provides paid time off to a covered individual and the paid leave is equal to or greater than the PFML benefits, they will be reimbursed from the trust fund by the Department of PFML.



Private Plan Exemptions

Question: **What are the requirements for getting a plan exemption approval?**

Answer: To qualify for an exemption from family leave contributions, your private plan must be equal to or more generous than those provided under the PFML program. The Department of PFML has provided a list of family leave benefit and medical leave benefit requirements located [here](#).

Question: **Can an employer be more generous than the law requires and pay more of the total contribution? If a company funds more than what is required, how often can the amount be adjusted?**

Answer: Nothing in the current version of the draft regulations addresses employers being more generous than the law allows. The required written notice to employees must include the employee's contribution to medical leave and family leave, so certainly that notice would need to be updated to reflect any change in the required contribution. As to how frequently the notice/contribution amount can be changed, and how much advance notice is required, the answer is not clear. The regulations say that the total contribution rate will be set annually and updated not later than October 1 of each year for the upcoming calendar year. In the absence of any guidance, the safest course would be for an employer to set the required employee contribution the same way — once annually, with any changes being announced as soon as administratively practicable after the Department releases the rate for the following year.

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