



Massachusetts Paid Family and Medical Leave: What you need to know

On June 28, 2018, Governor Charlie Baker signed a bill requiring employers in Massachusetts to provide paid family and medical leave (PFML) benefits to employees who work in the Commonwealth.¹ Beginning January 1, 2021, (for bonding, qualifying exigency, medical leave, and care of an injured servicemember) and July 1, 2021, (to care for a family member), employees of private employers in Massachusetts will be entitled to take the following:

- Up to 20 weeks of paid medical leave for employees who have a serious health condition;
- Up to 12 weeks of paid family leave to bond with a new child, to care for a seriously ill family member, or because of a qualifying military exigency caused by a covered family member on or called to active duty; and
- Up to 26 weeks of leave to care for an injured service member.

Employees are eligible for a combined maximum of 26 weeks of paid medical and paid family leave per year. Employees are eligible for the PFML benefits regardless of length of service or the hours worked. There is a 7 day waiting period but the waiting period is waived if the employee takes family leave immediately after taking a medical leave during pregnancy or for recovery from childbirth.

Intermittent leave

Under the law, intermittent leave or reduced schedule leave may be taken “when medically necessary” for:

- a medical leave,
- a family leave to care for a family member with a serious health condition, or
- for injured servicemember leave.

Intermittent leave may also be taken for qualifying exigency family leave. However,

intermittent or reduced schedule leave may not be taken to bond with a new child unless the employee and employer agree otherwise. The law does not specify the smallest increment in which intermittent leave may be taken though that may be addressed in the regulations when they are written.

Covered family members

In addition to child, parent and spouse, Massachusetts also includes domestic partners, grandchildren, grandparents, siblings and the parents of a spouse or domestic partner as covered family members.

Amount of PFML benefits

PFML benefits will be paid at the rate of 80% for the employees’ wages equal to or less than 50% of the statewide average weekly wage (SWAWW) and 50% for wages above 50% of the SWAWW. The maximum weekly benefit for 2021 will be \$850.

Other benefits/job restoration

The law provides that taking leave will not impact employees’ rights to accrue vacation time, sick leave, bonuses, advancement, seniority, etc. Further, employers are required to continue an employee’s health insurance during a covered leave at the same contributions and level. Employees will have the right to be restored to their job or an equivalent position at the conclusion of their leave.

Relationship to paid time off (PTO) and other leaves

Leave under the law will run concurrently with leave under the Massachusetts Parental Leave Act and/or the FMLA. The law provides that it does not “obviate” an employer’s obligation under company policy or collective bargaining agreement that provides for greater or

Next Steps

The Department is required to publish proposed regulations and procedures for public comment by March 31, 2019, and the regulations will be finalized by July 1, 2019. Sun Life will continue to monitor development with respect to the law and to evaluate services that Sun Life may be able to provide to assist employers including, but not limited to, a compliant private plan option.

additional rights. The law also states that it shall not “be construed to allow an employer to compel an employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave under this chapter.” An employer may require that paid leave under the law be “concurrent” or “coordinated with” disability or family care leave under a collective bargaining agreement or employer policy.

Claims and notice by employee

The law provides that employees will be required to submit claims for benefits under the law to a newly established Department of Family and Medical Leave that will be housed within the Executive Office of Labor and Workforce Development. The new department will be responsible for administering all aspects of the law. Employees must submit their claim for leave benefits within 90 calendar days after the start of the leave or benefits may be reduced. Employees are required to provide their employers with at least 30 days’ notice of the anticipated starting date of the leave, the anticipated length of the leave and the expected date of return or as soon as practicable if 30 days’ notice cannot be provided. Employees will be required to submit a certification supporting the leave request and the contents of the certification vary depending on the purpose of the leave.

Premium contributions

Employers must begin contributing to the Family and Employment Security Trust Fund at the rate of .63% of each employee’s wages. For medical leave, employers with 25 or more employees may

deduct up to 40% of the contribution from the employee’s wages. For family leave, the employer may deduct up to 100% of the contribution from the employee’s wages. Employers with less than 25 employees are exempt from employer contributions.

Private plans

Massachusetts permits employers to apply to the new department of family and medical leave for approval to meet the statutory PFML obligations by means of a private plan. A private plan must confer all the same rights, protections and benefits including but not limited to providing job protected leave for the same reasons, and the cost for employees under the private plan cannot be greater than the state plan. If the private plan is self-insured, the employer must furnish a bond. If the private plan is insured, an approved insurer requires a policy. Employers may provide both family and medical leave through an approved private plan or just one of the two.

Employer notice and non-retaliation requirements

Employers are required to provide notice to employees of their rights as prescribed by the law and to post information about employee rights. Employers also may not retaliate against employees for exercising their rights.

Former employees

Former employees may be eligible to receive paid leave benefits for family or medical leave that starts within 26 weeks of their separation from employment.

Contact Jonathan Kemp in Product or Abigail O’Connell in Legal with any questions at Joanathan.Kemp@sunlife.com or Abigail.OConnell@sunlife.com

1. California, New Jersey, New York, and Rhode Island already have laws in place that entitle employees to paid benefits for absences from work caused by a disability or to bond with or care for a covered family member. Washington State also has enacted a PFML law with leaves becoming available under the WA law on January 1, 2020. Hawaii has a law requiring statutory disability benefits for employees but has not yet adopted statutory paid family leave benefits. PFL legislation passed the Hawaii legislature in 2018 and is pending before the Governor. Finally, Washington, D.C. also has adopted legislation requiring employers to provide paid leave of varying lengths for an employee’s own serious health condition, to bond with a new child or to care for a seriously ill family member. Leaves under the Washington, D.C. law are available commencing January 1, 2020.

This article is not intended to be and should not be construed as legal advice. For legal advice, please consult your employment attorney.

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