

HR Insights

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MA Paid Family & Medical Leave: Updated Regulations, Poster, Notice & Toolkit for Employers

The Massachusetts Department of Family and Medical Leave (MA DFML) published updated proposed regulations on the Massachusetts Paid Family & Medical Leave Act (MA PFML) on March 29 that include significant clarifications to the first draft published in January. In addition, the MA DFML released a user-friendly, informative Guide for employers on March 26, and the mandatory poster. On April 17, the MA DFML released a template for the notice to employees. All materials are available on MA DFML's website.

This issue of *HR Insights* provides an overview of MA PFML in Q&A format of what employers need to know and do to prepare for implementing MA PFML.

How does the MA PFML program generally work?

MA PFML is a paid family and medical leave program administered by the MA DFML and funded through mandatory payroll taxes to a new trust fund called the Family and Employment Security Trust Fund. The payroll taxes are paid by employers, covered business entities, employees, and covered contract workers, and self-employed individuals electing coverage.

When is the MA PFML law effective?

In general, the MA PFML provisions regarding contributions to fund leave benefits and the posting requirements are effective July 1, 2019. The notice requirement must be met by May 31, 2019 with respect to existing employees. Provisions regarding payment of most leave benefits are effective January 1, 2021. The table that follows provides a timeline of what to expect next and when. Items highlighted in yellow are those that require covered employers to take specific steps to implement.

| Timeline | |
|------------|--|
| 4/29/2019 | Application for exemption based on approved private plan available |
| 5/31/2019 | Deadline for providing current employees notice of MA PFML benefits |
| 7/1/2019 | Payroll deducted employee contributions to fund benefits begins |
| 7/1/2019 | Posting requirements begin |
| 7/1/2019 | Final regulations promulgated |
| 10/31/2019 | First quarterly contribution due from employers (for July-September) |
| 1/1/2021 | Most MA PFML benefits available |
| 7/1/2021 | All MA PFML benefits available |
| 10/1/2021 | First annual adjustment to maximum weekly benefit |
| 10/1/2021 | First annual adjustment to contribution rate |

Is my business subject to the MA PFML law?

In general, if your business is subject to M.G.L. 151A (unemployment insurance), then it is subject to the new MA PFML law. In determining if your business is subject to the MA PFML law, the following applies:

- An individual employer is determined by the Federal Employer Identification Number (FEIN)
- The Department of Early Education and Care is the employer of Family Care Providers and the PCA Quality Home Care Workforce Council is the employer of Personal Care Attendants
- A municipality, district, political subdivision or its instrumentalities is not subject to the MA PFML law unless by majority vote of its authorized local legislative or governing body and otherwise as provided by law

A covered business entity is also subject to the MA PFML law. A **covered business entity** is a business or trade whose workforce is made up of 50% or more of contract workers whose payment for services are reported on IRS Form 1099-MISC.

Are small businesses exempt from paying contributions?

An employer or covered business entity whose average total workforce in Massachusetts is fewer than 25 covered individuals is not required to pay the employer portion of the contributions. However, covered individuals are not exempt from paying their share of the contributions.

For employers that are not covered business entities, the **average total workforce** is the total number of full-

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time, part-time, and seasonal employees on payroll during each pay period divided by the number of pay periods. For a business that is a covered business entity, the **average total workforce** is calculated as follows:

(Total W2 employees on the payroll during each pay period) + (Total number of 1099-MISC contract workers during each pay period)/Number of Pay Periods

Who must be counted when determining whether a business is exempt from contributions?

It depends on the makeup of a business's workforce. A business's **total workforce** includes all employees to whom the business issues W2's for work performed in Massachusetts plus all contract workers residing in Massachusetts to whom a business issues 1099-MISC's. Businesses are required to report their total workforce numbers. However, a business is only responsible for contributions on behalf of covered individuals.

Covered individuals always include W2 employees. However, contract workers count only if they make up more than 50% of a business's total workforce. Here are two examples:

Example #1: Last year, a business's total Massachusetts workforce consisted of four W2 employees and 10 1099-MISC contract workers. In this example, more than 50% of the total workforce is contract workers. Therefore, contract workers count as covered individuals this year. However, because the total number of covered individuals is fewer than 25, the business is not required to pay the employer share of the contributions.

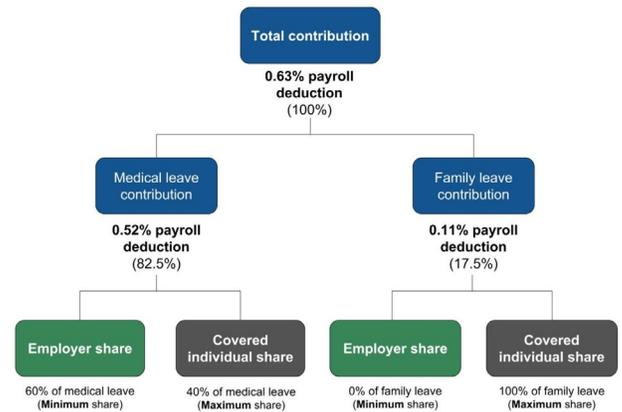
Example #2: Last year, a business's total Massachusetts workforce consisted of 22 W2 employees and six contract workers. In this example, less than 50% of the total workforce is contract workers. Therefore, the contract workers do not count toward the total number of covered individuals, and as a result, this year, the business must remit contributions for the 22 covered individuals. As there are fewer than 25 covered

individuals in the workforce, the business is not required to pay the employer share of contributions.

How much are the required contributions?

The total required contribution equals .63% of compensation paid to each covered individual up to the Social Security maximum wage base (currently \$132,900). The contribution rate will be adjusted annually starting October 1, 2021.

Of the .63%, .52% is for funding medical leave, and .11% is for family leave. Businesses may deduct part of the total contribution from employees' paychecks and from payments made to covered contract workers up to the maximum share shown in the chart below from the MA DFML's website.



To provide some context, the table below shows the employer share, employee share, and total contribution for medical and family leave per \$100,000 of payroll, assuming employees pay the maximum share.

| | Employer Share | Employee Share | Total |
|-----------------------------|----------------|----------------|-----------|
| Medical Leave | \$ 312.00 | \$ 208.00 | \$ 520.00 |
| Family Leave | \$ - | \$ 110.00 | \$ 110.00 |
| Total/\$100K Payroll | \$ 312.00 | \$ 318.00 | \$ 630.00 |

When must my business start paying contributions and how?

Businesses must begin withholding contributions from employee wages and payments to covered contract

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workers effective July 1, 2019. Contributions must be remitted on a quarterly basis starting October 2019.

After each calendar quarter ends, an employer, covered business entity, and self-employed individual electing coverage must file an Employment and Wage Detail Report and remit contributions through the MassTaxConnect system. If a business does not have a pre-existing account on the MassTaxConnect system, it must register and establish an account in order to file reports and remit contributions. Each quarterly report must include the following information:

- Name of each employee and contract worker, or name of a self-employed individual electing coverage
- Social Security number or individual taxpayer identification number for each person
- Wages or other earnings paid to each person
- Employer or covered business entity FEIN or if a self-employed individual, Social Security number

Based on the quarterly Employment and Wage Detail Reports a business files, the MA DFML will calculate the total quarterly contribution amount owed. Once calculated, a business must remit the amount owed through the MassTaxConnect system on or before the quarterly filing deadlines established by the MA Department of Revenue.

What penalties apply for failure to remit required contributions?

Failure to remit required contributions after receiving a written notice of unpaid amounts will result in a business being assessed .63% of its total annual payroll for each year it failed to comply or fraction thereof. In addition, a business will be required to repay to the trust fund the total amount of benefits paid to covered individuals for whom the employer failed to make contributions. Also, an employer may not recoup the any assessment or cost of repayment through charges to covered individuals.

What are the posting and notice requirements?

The posting and notice requirements require employers and covered business entities to:

- Display the Paid Family and Medical Leave workplace poster in a highly visible location
- Provide written notice of contributions, benefits, and workforce protections to W2 employees and 1099-MISC contract workers
- Collect signed acknowledgements of receipt of the written notice from both W2 employees and 1099-MISC contract workers

The workplace poster is available on the MA DFML website at:

https://www.mass.gov/files/documents/2019/03/21/20190321_DFML%20Notice_FINAL.pdf.

The poster must be posted in English and in any other primary language of five or more employees, provided the notice is available in that language from the MA DFML.

Employers and covered business entities must provide written notice to W2 employees about MA PFML benefits no later than May 31, 2019. The notice may be provided in paper form or electronically. New employees must receive the written notice within 30 days of their first day of employment and the notice must be written in their primary language. In addition, employers must obtain from each employee a written statement in paper form or electronically acknowledging receipt of the notice or a statement saying they refused to acknowledge the notice. The notice must include the following information:

- A description 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

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- The employer identification number assigned by the MA DFML
- Instructions on how to file a claim for family and medical leave benefits
- The mailing address, email address, and telephone number of the MA DFML

The requirements for notifying 1099-MISC contract workers are very similar except that the notice must be provided when a business enters into a contract for services.

The MA DFML issued a model/template notice for meeting the notice requirements on April 17, 2019 which is available at:

<https://www.mass.gov/info-details/informing-your-workforce-about-paid-family-and-medical-leave#written-notice-requirements->

What penalties apply for failure to comply with the posting and notice requirements?

A business that fails to comply with the posting and notice requirements is subject to a first-time civil penalty of \$50 per employee, and for any subsequent violation, \$300 per employee.

What are the qualifying reasons for family and medical leave and what is the maximum weeks of leave an individual can take?

The table below shows the maximum leave allotments for covered individuals and when the leave is first available.

| Maximum Weeks of Leave Per Benefit Year | Type of Leave | When Benefits First Available for Eligible Individuals |
|---|--|--|
| 26 | Aggregate: Total combined family and medical leave | See below |
| 20 | Medical: For a serious health condition that incapacitates a covered individual from work | 1/1/2021 |
| 12 | Family/Birth or Qualifying Exigency: For the birth, adoption, or foster care placement of a child, or due to 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 duty | 1/1/2021 |
| 26 | Family/Service member: To care for a family member who is a covered servicemember | 1/1/2021 |
| 12 | Family/Serious Health Condition: To care for a family member with a serious health condition | 7/1/2021 |

Leave allotments are based on the number of hours and days a covered individual works. For example, if a covered individual works part-time or variable hours, the maximum amount of leave an individual can take will be determined on a pro rata or proportional basis.

May covered individuals take leave on an intermittent or reduced leave schedule?

A covered individual may take medical leave on an intermittent or reduced leave schedule if medically necessary. The covered individual and the employer must try to work out a schedule that meets the needs of the individual without unduly disrupting the employer's operations, subject to the approval of the health care provider.

A covered individual may take family leave on an intermittent or reduced leave schedule:

- To care for a family member with a serious health condition or family member who is a covered service member, if medically necessary
- Due to a qualifying exigency or impending call to active duty to the Armed Forces

In addition, a covered individual may take family leave to bond with a child on an intermittent or reduced schedule, but only if the employer and employee agree.

What individuals are eligible for paid leave benefits?

Covered individuals eligible for paid leave benefits are:

- W2 employees who meet a financial eligibility test provided that all employment has been with a Massachusetts employer
- 1099-MISC covered contract workers: (1) for whom at least one employer or covered business entity is required to remit contributions; and (2) whose payments from the employer or covered business entity satisfy a financial eligibility test
- Former W2 employees who have: (1) met a financial eligibility test at the time separated from employment provided that all the employment was

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- with an employer in Massachusetts; and (2) been separated from employment for not more than 26 weeks at the start of family or medical leave
- Self-employed individuals: (1) who elect coverage under the new MA PFML program; (2) whose reported earnings from self-employment meet the financial eligibility test; and (3) who made contributions for leave benefits for at least two of the previous four calendar quarters

What is the financial eligibility test?

A covered individual meets the **financial eligibility test** if during the 12 months preceding the claim for benefits the individual receives 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 (which is approximately 15 weeks of earnings); and
- \$4,700

What weekly benefit amounts do individuals receive while on paid leave?

MA PFML replaces a portion of a covered individual’s average weekly wage. Benefits begin after a seven-day waiting period during which employees may use their accrued sick, vacation, or other paid leave available under their employer’s benefits program.

The maximum weekly benefit is capped at \$850. As of October 1, 2021, the cap will be reset annually to an amount equal to 64% of the state average weekly wage (SAWW). If reset, the new cap is effective on the following January 1. The SAWW is set annually by the Department of Unemployment Assistance. The SAWW as of October 1, 2018, is \$1,383.41.

The MA DFML will determine a covered individual’s eligibility for benefits and the benefit amount. The weekly benefit is calculated using the individual’s average weekly wage during the base period. The **base period** is the last four completed and reported calendar quarters immediately preceding the date of a qualified paid family or medical leave. The weekly benefit equals the **lesser of \$850 or the amount calculated** as follows:

- The portion of an individual’s average weekly wage that is equal to or less than 50% of the SAWW x 80% PLUS
- The portion of an individual’s average weekly wage that is more than 50% of the SAWW x 50%

The table below shows examples of calculated benefits at different levels of wages using the current SAWW and income replacement ratios.

| 50% of SAWW= \$ 691.71 | | | | | |
|----------------------------------|-----------------------|--------------------------|-----------------------|--------------------------|--------------------------|
| Individual's Average Weekly Wage | 80% | | 50% | | Income Replacement Ratio |
| | Total Benefit Payable | Income Replacement Ratio | Total Benefit Payable | Income Replacement Ratio | |
| \$ 480 | \$ 384.00 | 80.0% | \$ - | \$ 384.00 | 80.0% |
| \$ 600 | \$ 480.00 | 80.0% | \$ - | \$ 480.00 | 80.0% |
| \$ 800 | \$ 553.36 | 69.2% | \$ 54.15 | \$ 607.51 | 69.2% |
| \$ 1,000 | \$ 553.36 | 55.3% | \$ 154.15 | \$ 707.51 | 55.3% |
| \$ 1,200 | \$ 553.36 | 46.1% | \$ 254.15 | \$ 807.51 | 46.1% |
| \$ 1,600 | \$ 553.36 | 34.6% | \$ 454.15 | \$ 850.00 | 34.6% |
| \$ 2,400 | \$ 553.36 | 23.1% | \$ 854.15 | \$ 850.00 | 23.1% |

HR Tip: The income replacement ratios for the lower paid are significantly higher than most current short-term disability plans and significantly lower for the higher paid. Thus, consider reviewing your disability and time off programs to determine whether they should be redesigned to better coordinate with MA PFML. Also consider whether to apply for an exemption based on a private plan, a topic discussed on the last page of this issue of *HR Insights*.

In the case of covered individuals who take leave on an intermittent or reduced leave schedule, the weekly benefit amount is reduced in direct proportion to the intermittent or reduced leave schedule.

Under what circumstances are MA PFML benefits reduced?

MA PFML benefits will be reduced by the amount of wages or wage replacement that a covered individual on leave receives for that period from:

- Any government program or law, including unemployment benefits and workers compensation

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(unless for a permanent partial disability incurred before the family or medical leave claim)

- Another state or federal temporary or permanent disability benefits law
- An employer's permanent disability policy or program

Under what circumstances are MA PFML benefits not reduced for other wage replacement benefits?

Unless the total amount an employee receives would exceed the employee's average weekly wage, MA PFML weekly benefits will **not** be reduced by the amount of wage replacement an employee receives for that period from an employer's temporary disability policy or program or paid family or medical leave policy.

An employer that makes payments to a covered individual during a period of family or medical leave equal to or greater than the amount required under the MA PFML program will be reimbursed from the trust fund by the MA DFML.

Under what circumstances may covered individuals substitute employer provided paid leave for MA PFML?

A covered individual may choose to use employer-provided accrued paid leave (e.g., PTO) rather than apply for MA PFML program benefits. Those who do so must follow the employer's notice and certification requirements for use of the paid leave. In addition, they may not receive MA PFML benefits for a period of time for which they received compensation from the employer provided program.

Employers must inform employees who use employer-provided paid leave that the leave will run concurrently with the leave period under the MA PFML program. In addition, upon request from the MA DFML, employers must report the use of the accrued leave as a substitute for MA PFML.

Must benefits continue to accrue while a covered individual is out on MA PFML?

No. Covered individuals on MA PFML will not accrue additional benefits while on leave.

What are the requirements and process for obtaining a private plan exemption?

Employers may apply for an exemption from contributing to family leave, medical leave, or both, by submitting an annual approved plan application through MassTaxConnect beginning April 29, 2019. Employers that apply will receive immediate approval or denial. If approved, the employer must upload a copy of the plan on which the exemption is based. If denied, the employer will be informed of the reason for the denial and given an opportunity to request a follow-up review.

For an exemption to be approved, the private plan must offer benefits that match or exceed those provided under the MA PFML program. In addition, employees must still be entitled to all rights and protections provided under the MA PFML law, including the right to:

- Appeal if their application for benefits is denied
- Job protection during any leave taken
- Protections against retaliation from taking leave or exercising other rights under the MA PFML law

If an employer's private plan is insured, the insurance policy must be issued by a Massachusetts licensed insurance company. If self-insured, the employer must furnish a bond running to the Commonwealth in a form approved by the MA DFML and in an amount required by the MA DFML. In addition, the MA DFML may audit any approved private plan.

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