

# PAID FAMILY AND MEDICAL LEAVE IN MASSACHUSETTS

## Managing an Employer's Responsibilities

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# WHAT IS PAID FAMILY AND MEDICAL LEAVE?

- Mass. Gen. Laws chapter 175M
- Massachusetts Workers
  - Eligible to take up to **26 total weeks** of paid leave for personal **medical** or **family** reasons.
- Most benefits will be available to workers starting **January 1, 2021**
- All benefits will be available to workers starting **July 2021**
- Regulations 458 CMR 2.00

# WHO IS COVERED BY PFML?

- **W-2 workers** who work in Massachusetts,
  - This includes full-time, part-time, or seasonal workers paid wages by a Massachusetts employer.
- **Self-employed individuals**
  - Self-employed individuals are *not required* to contribute, but may choose to opt-in.
- **1099-MISC workers** who work in Massachusetts that do not qualify as independent contractors, and who also make up more than **50%** of their employer's workforce.

# WHEN ARE WORKERS ELIGIBLE?

- Must have earned at least **\$5100 in the last 4 completed calendar quarters.**
- **NOT** dependent on how **long** an individual has worked for the employer
- The maximum an employee would have to pay is \$0.38 per \$100.00 earned.
- The maximum weekly benefit shall not be more than \$850.

# JOB PROTECTION

- Generally, an employee who takes paid family or medical leave must be restored to their 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 apply when an employee is on leave for reasons associated with the MA PFML whether or not an application for benefits has been submitted.

# NO RETALIATION OR DISCRIMINATION

- It is unlawful for an employer to discriminate or retaliate against an employee for exercising any right to which she is entitled to under the law (such as exercising their right to paid family and/or medical leave.)
- An employee or former employee who is discriminated or retaliated against for exercising rights under the law may, not more than three (3) 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, benefits, other remuneration and the interest thereon, and attorney's fees.

# BEGINNING ON JANUARY 1, 2021

Covered PFML individuals are entitled to paid leave relating to:

- **Personal Serious Health Condition:** Up to 20 weeks of paid leave for a personal serious health condition (inpatient care in a hospital or continuing treatment by a healthcare provider) that incapacitates the individual from work.
- **Bonding with a New Child:** Up to 12 weeks of paid leave concerning the birth, adoption, or foster care placement of a new child to the family.
- **Armed Forces Service Member:**
  - Up to 12 weeks of paid leave to manage any immediate needs concerning a family member being notified of an impending call to active duty, or to address a situation that takes place immediately after a family member's deployment.
  - Up to 26 weeks of paid leave to care for a family member who is a current member of the Armed Forces for a serious health condition that was received or aggravated while deployed in a foreign country.

# ARMED SERVICES: 26 WEEKS CATEGORY

- Up to 26 weeks of family leave per year to care for current member of the Armed Forces who is:
  - Undergoing medical treatment, recuperation, or therapy for a serious health condition that was received or aggravated while they were deployed in a foreign country
  - In outpatient status for a serious health condition that was received or aggravated while they were deployed in a foreign country
  - On the temporary disability retired list for a serious injury or illness that happened **while deployed** in a foreign country.
  - On the temporary disability retired list for a serious injury or illness that existed **before the beginning of the member's active duty**, and was aggravated by service while deployed in a foreign country



# ARMED SERVICES: 12 WEEKS CATEGORY

- Up to 12 weeks of family leave per year to manage any needs that take place immediately after a family member is deployed in a foreign country or has been notified of upcoming deployment. These needs may include:
  - Caring for a deployed family member's child or other family member immediately before their deployment
  - Making financial or legal arrangements for deployed family member
  - Attending counseling
  - Attending military events or ceremonies
  - Spending time with a deployed family member during a rest or recuperation period
  - Spending time with a family member when they return from deployment
  - Making necessary arrangements following the death of a family member who had been deployed

# BEGINNING ON JULY 1, 2021

Covered PFML individuals are entitled to paid leave relating to:

- **Family Member’s Serious Health Condition:** Up to 12 weeks of paid leave to care for a family member with a serious health condition.
  - Employees may be able to utilize this prior to July 1, 2021 on a case by case basis.

# EMPLOYER RESPONSIBILITIES

## I – Determine your total workforce

- Based on previous year (for 2021, use the year 2020)
- Includes all Massachusetts W-2 employees (full-time, part-time, or seasonal) AND
- Massachusetts 1099-MISC contractors IF they–
  - Performed services as an individual entity
  - Lived in Massachusetts
  - Performed services in Massachusetts
- If workforce included an average of **25 covered individuals** – must contribute to PFML

# EMPLOYER RESPONSIBILITIES

## II – Determine your Contribution Amount

- .75% of the gross wages of all covered individuals in your workforce.
  - .62% for medical leave and .13% for family leave
- Employer's Required Payment:
  - 60% of the medical leave contribution (.62% of a covered individual's gross pay)
  - 0% of the family leave contribution (.13% of the covered individual's gross pay.
  - \*\*If workforce averaged fewer than 25 covered individuals last year, the Employer is not required to pay the 60% of the medical leave and can deduct all of the rest from the covered individual's wages.\*\*

# EMPLOYER RESPONSIBILITIES

## III – Notice to entire workforce:

- Employers must provide notice to their employees in two ways:
- **Notice of Benefits Poster:** Must be posted in a conspicuous space such as the break room. (Official poster available on Mass.gov)
- **Written Notice:** Employees must be provided written notice of contributions, benefits, and workforce protections to all covered individuals.
  - Employer **must** collect a signed acknowledgement from each covered individual.
  - Employer has 30 days to provide written notice to new hires.
- **Failure to Provide Required Notifications:**
  - First violation: \$50 per eligible employee.
  - Subsequent Violations: \$300 per eligible employee

# PRIVATE PAID LEAVE PLAN INSTEAD OF CONTRIBUTING TO THE FUND

An employer may elect to adopt a private plan in lieu of contributing to the Fund provided that the private plan:

- Confers all of the same benefits as PFML;
- Does not cost employees more than they would be charged under the state plan;
- Includes equivalent or better job and benefit protections; and is
- Approved by the Massachusetts Department of Family and Medical Leave.

# EMPLOYER-PROVIDED STD, LTD FOR FAMILY/MEDICAL LEAVE

- Employee can collect disability, medical and family medical benefits and collect PFML.
- Only up to 100% of employee's average weekly wage
- Benefits paid by such Employer-provided policy can be reimbursable from Trust Fund.

# ACCRUED PAID LEAVE

- Consists of PTO, vacation, sick, personal, compensatory leave
- Employer can choose to use either PFML or accrued leave
- Private plan may be able to use both.



# POTENTIAL CONFLICT / INTERACTION WITH OTHER LAWS AND POLICIES

There are a number of Acts and Laws that interact with PMFL. While discussed in more detail in the following slides, these include:

- Parental leave Act
- Family and Medical Leave Act (“FMLA”)
- PFML runs concurrently with the Parental Leave Act and FMLA
- PFML runs concurrently with sick leave, vacation, compensatory time, PTO if taken for any PFML-qualifying reason
- The time taken and paid for will count towards the employee’s allotment of PFML if Employer notifies employee of the policy

# PARENTAL LEAVE ACT

- The MA Parental Leave Law requires that employers with six or more employees provide eight weeks of unpaid leave for the purpose of giving birth or for the placement of a child under the age of 18 (or under the age of 23 if the child is mentally or physically disabled) for adoption.
- If an employee exhausts the 12 weeks of family leave under the PFML in 2021 for a reason other than bonding leave, then an employee would still have the right to eight weeks of unpaid leave under the MA Parental Leave law.
- PFML will run concurrently with any other leave so long as the leave is for a qualified reason under those laws.

# MASSACHUSETTS EARNED SICK TIME LAW

- MGL c. 149, §§ 148C and 148D. Employees who work for employers having 11 or more employees may earn and use up to 40 hours of paid sick time per calendar year, while employees working for smaller employers may earn and use up to 40 hours of unpaid sick time per calendar year.
- An employee can **elect** to use accrued leave **instead of** State PFML benefits. However, the employer **cannot require** an employee to apply for PFML instead of using accrued paid leave benefits. The employee has the right to choose.
- An individual **may not receive** paid family or medical leave benefits and paid sick time through their employer **at the same time**.

# SHORT TERM DISABILITY (“STD”)

- Employees can collect disability, family, or medical leave benefits through their employer, **AND** collect PFML benefits from the State.
- The State will only offset STD or other employer-sponsored paid family or medical leave (e.g. more generous paid parental leave), after the combined amount reaches **100% of the employee’s average weekly wage**.
- Employers can encourage use of the State-provided benefit by stating that the employer will reduce (offset) any amount of employer-paid disability, family, or medical leave for which an employee is eligible by the PFML benefit amount available to the employee (i.e. will deduct from employer-paid leave the amount of PFML for which the employee is eligible regardless of whether he/she submits a PFML claim to the State).

# PFML VS. FMLA

- Paid Family and Medical Leave Act (“PFML”) is a **Massachusetts state law** enacted in **2018**
  - The PMFL provides paid, job protected leave.
- Federal Family and Medical Leave Act (“FMLA”) is a **federal law** enacted in **1993**
  - The FMLA provides unpaid, job protected leave.
- Businesses that are **NOT** subject to FMLA, **MAY** be subject to PFML
  - Only businesses with **over 50 employees, public sector agencies, and private and public schools** are subject to FMLA. They may be subject to **both PFML and FMLA.**

# REGULATION CHANGES

- Substance Abuse Disorder: Leave may be taken for caring for covered family member receiving treatment and by covered individual, but non-discriminatory policy may allow termination.
- Private Plan Appeals: Employers must include an internal appeals process and 10 calendar days to appeal (or more).
- Covered employees who use accrued paid leave shall not receive PFML benefits at the time
- Former employees who were employed by the Employer less than a period of 26 weeks can receive benefits from the prior Employer if unemployed. If employed by a new employer, should apply for benefits from the new Employer
- Intermittent Leave: The DFML will pay for increments of 15 minutes of more and will accept applications only for 8 hours or more unless 30 days have gone by. Otherwise, Employee can use usual policies.

# REGULATION CHANGES

- **Presumption of Retaliation:** Regulations were changed or clarified to address the presumption that any negative change within an employee's first 6 months back was retaliation to state that "trivial" changes or "subjectively perceived inconveniences" would not trigger the presumption. The presumption also does not apply when there is an allegation of fraud or violation of an Employer policy.
- **Accrued Paid Leave** does not include Employer-provided STD, LTD or family or medical leave.
- **Waiting period** of 7 days for each application for benefits except for medical leave during pregnancy or following childbirth if the medical leave follows family leave. Only 12 weeks per year if multiple births/adoptions.
- **Extended Illness Leave Bank** provides for individuals to donate accrued leave time for benefit of co-worker.

# COVID

- Could be a serious health condition for individuals or family member, but likely not if asymptomatic.
- Serious health condition requires inpatient care or continuing treatment by health care provider
- Families First Coronavirus Response Act ends December 31, 2020





# Questions?