

MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE: A GUIDE FOR EMPLOYERS

INTRODUCTION

Employers that are subject to the Massachusetts Paid Family and Medical Leave Act (MA PFML) have compliance obligations regarding administration of the leave provisions, including employee notice obligations, calculation and remittance of premium payments, and tracking of leave balances. This Guide for Employers provides background and administrative guidance on MA PFML to assist employers in their compliance efforts. It includes an **MA PFML Benefits Chart** (Appendix A) and a **Sample Employee Communication** for advising employees of the new MA PFML premium as of each January 1 (Appendix B). For a comprehensive state-by-state overview of statutory disability and leave programs, including possible wage withholding and notice requirements as well as provisions for paid time off for qualified reasons, see the NFP publication **Quick Reference Chart: Statutory Disability and Paid Family & Medical Leave Programs**.

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EMPLOYERS SUBJECT TO MA PFML

All private employers that employ one or more individuals in Massachusetts are subject to MA PFML. This includes out-of-state employers with one or more employees in Massachusetts. It may also include remote employees working from their home in Massachusetts. Employers should confer with their tax consultant as needed to determine the applicable state tax nexus for employees whose worksite of record is in Massachusetts but who predominantly work remotely from another state.

Self-employed individuals may opt into the state plan. Also note that municipalities, districts and political subdivisions are exempt from MA PFML.

MA PFML FUNDING

Effective October 1, 2019 (delayed by three months from the original July 1, 2019, start date), MA PFML will generally be funded through payroll deductions expressed as a percentage of eligible earnings and adjusted annually as of each successive January 1. (For current rates, see Appendix A, **MA PFML Benefits Chart**. For a sample communication to advise employees of the new rates as of each January 1, see Appendix B, **Sample Employee Communication**.) There are some specific requirements surrounding the required employer contribution amount (employer versus employee contribution amount, maximum salary subject to the payroll tax, and independent contractor involvement). Also, employers with fewer than 25 employees do not have to pay the employer portion of the MA PFML premium, but they must still deduct the employee portion of the MA PFML premium (and must permit eligible employees to take PFML leave).

Payroll providers generally assist employers with processing MA PFML premium deductions.



MA PFML FILING AND REMITTANCE REQUIREMENTS

At the end of each calendar quarter, covered employers must file a report through the MassTaxConnect system. Payments generally become due on the last day of the month following the end of each calendar quarter (e.g., by January 31 for the October through December quarter). The filing requires the following information: employees' names, covered contract workers' names, Social Security numbers, earnings paid, payments for 1099-MISC individuals, and the employer's FEIN and withholding ID number. Employers with an approved private plan are not responsible for the filings or remittance of contributions.

INDIVIDUALS ENTITLED TO MA PFML

Employees are eligible for PFML if they meet the eligibility requirements of the Massachusetts unemployment compensation law, which is based on the amount of compensation that the employee earned while working for any employer in Massachusetts (not exclusively the current employer) during the last four completed calendar quarters. The employee must have 15 weeks or more of earnings and have earned at least the minimum amount set annually by the Department of Unemployment Assistance in the 12-month period before applying for leave. (For information about the earnings eligibility threshold, see the link to the MA PFML website under the Resources section below.) Full- and part-time employees, seasonal employees, and independent contractors are all eligible for MA PFML benefits — there is no "minimum hours worked" requirement.

1099-MISC workers are not included in the employer's count of employees and are not eligible for MA PFML benefits if they are considered independent contractors under a three-part test. Specifically, independent contractors are those who 1) are not controlled or directed by the employer; 2) perform work outside the usual course of the employer's business; and 3) are generally independently engaged in the business or trade for which they are performing the service. An independent contractor that meets that three-part test is not eligible for MA PFML.

Importantly, "family member" has a broader definition under MA PFML than under the federal Family and Medical Leave Act (FMLA). The PFML definition includes a spouse, domestic partner, child, parent, parent of spouse or domestic partner, grandchild, grandparent, or sibling of the covered employee. Employers have discretion to determine how employees certify their "family member" status; an employee attestation is generally sufficient. Employers can require additional documentation but should consider the administrative challenges associated with any such requirements. For information about establishing a working definition of domestic partner for the administration of MA PFML or other employee benefits, see the NFP publication [Domestic Partner Benefits: A Guide for Employers](#).

MA PFML QUALIFIED LEAVES

Type of Paid Leave	Max Per Benefit Year*
Family leave to bond with a child or to care for a family member with a serious health condition, or because of a qualifying exigency arising out of a family member's active duty in the armed forces.	12 Weeks
Family leave to care for a covered service member undergoing medical treatment or addressing consequences of a military service-related serious health condition.	26 Weeks
Medical leave for an employee's own serious health condition.	20 Weeks
Any combination of paid family and medical leave.	26 Weeks

*This leave allotment may vary if the employee is a part-time or variable hour employee.

Note that unlike federal FMLA, which permits employers to choose leave periods from among four methods (fixed date, rolling forward, rolling backwards or calendar year), MA PFML defines the benefit year as 52 consecutive weeks beginning on the Sunday immediately preceding the first day of job protected leave.

The following reasons qualify an employee for leave under MA PFML:

- Serious health condition of the employee that incapacitates them from work
- Birth, adoption or foster care placement of a child within the first 12 months following the child's birth or placement

- 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, including the National Guard or Reserves
- Care for a family member who is a covered service member and developed or aggravated a serious health condition while deployed

To begin the benefits claims process, employees generally must file a claim for benefits with the MA DFML. Employees must also provide employers with at least 30 days' notice of the anticipated leave start date, the anticipated length of leave, the type of leave and the anticipated return date. The DFML is required to notify the employer within five business days of receiving an employee's claim, and must provide relevant information regarding the claim (if the employee consents). Employees are required to provide certification supporting their leave request and will be notified by the department within 14 days of their request whether the leave is approved for payment.

MA PFML INTERMITTENT LEAVE

Intermittent leave is available on a prorated benefit and leave allotment in one hour increments. If the intermittent schedule is medically necessary for medical leave, for family leave to care for a family member with a serious health condition, or to care for an injured service member, then the employee must try to work out a schedule that meets the employee's needs without disrupting the employer's operations (subject to approval of the healthcare provider). If the intermittent leave relates to bonding with a new child, then it may be taken intermittently only if the employer agrees. The DFML will not pay intermittent leave in increments less than 15 minutes, and a covered individual is generally not permitted to apply for intermittent leave until they have eight hours of accumulated leave time.

MA PFML PRIVATE PLANS

Employers may opt out of the state plan if they obtain a private plan that is issued by an approved Massachusetts insurer and confers the same (or better) benefits as those provided to employees and contract workers under MA PFML. Employers may apply for exemption from medical leave, family leave or both, provided the employer applies its exemption(s) to all of its workforce. Employers that wish to opt out of the state plan must apply to the DFML for approval through the MassTaxConnect website. A list of exemption questions is available on the department's website.

Applications to opt out of the state plan are accepted on a rolling basis and employers must certify their private plan with the state every year. See under the Resources section below for links to additional information about the certification requirements and process.

Employers may also self-insure their paid family and medical leave benefits in Massachusetts. However, there are separate legal requirements that apply to self-insured plans, such as that self-insured employers must furnish a surety bond to the state.

MA PFML JOB PROTECTIONS

During a period of leave under the MA PFML law, employers must continue to provide for and contribute to an employee's employment-related health insurance benefits, if any, at the level and under the conditions that coverage would have been provided if the employee had continued to work for the duration of such leave. An employee who has taken family or medical leave must be restored to their previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the start date of the leave.

Upon reinstatement, having taken MA PFML may not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length of service or other employment benefits, plans or programs. MA PFML also includes non-retaliation provisions.

SUMMARY

Employers that are subject to MA PFML should review their employee notice and premium deduction and remittance obligations as well as their family and medical leave policies, benefits claim procedures and processes, and employment agreements (including collective bargaining agreements, as applicable) to ensure that they comply with MA PFML requirements. Employers should work with payroll and HR system administrators to ensure accurate calculation and processing of MA PFML premiums and tracking of MA PFML in the employer's absence management system. Employers should train HR staff, managers and supervisors on MA PFML rules so that they can identify situations where employees may be entitled to MA PFML protections. Employers should involve outside counsel as needed to develop appropriate policies and procedures or when specific questions or situations arise.

To discuss your MA PFML compliance obligations and other aspects of your employee benefits program, or for copies of NFP publications, contact your NFP benefits consultant. For further information regarding NFP's full range of consulting services, see [NFP.com](https://www.nfp.com).

RESOURCES

[Information on Private Plan Exemptions](#)

[MA PFML FAQs](#)

[MA PFML Website](#)

[Workplace Poster](#)

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For more information, visit [NFP.com](https://www.nfp.com).

APPENDIX A

MA PFML Benefits Chart

Calendar Year	Statewide Average Weekly Wage (SAWW)*	State Contribution Rate on Eligible Employee Wages**	Maximum Employee Contribution on Eligible Earnings***	Max Wkly Benefit
2022	\$1,694.24 (\$88,100.48/year)	0.68% Earnings Medical Leave = 0.56% Family Leave = 0.12%	0.344% Earnings Medical Leave = 0.224% Family Leave = 0.12%	\$1,084.31
2023	\$1,765.34 (\$91,797.68/year)	0.63% Earnings Medical Leave = 0.52%† Family Leave = 0.11%	0.318% Earnings Medical Leave = 0.208% Family Leave = 0.11%	\$1,129.82

*SAWW is the average weekly wage paid in Massachusetts as adjusted annually and promulgated by the Director of Unemployment Assistance each October 1.

**Eligible Employee Wages are capped at the Social Security taxable income limit for the calendar year. Contribution rates for private plans may differ from the rate for state plans.

***Maximum employee contribution toward Medical Leave portion = 40% of state contribution rate for Medical Leave. Maximum employee contribution toward Family Leave portion = 100% of state contribution rate for Family Leave.

†For employers with fewer than 25 employees, the medical leave contribution rate is 0.208% and is paid entirely by employees; there is no employer contribution.

APPENDIX B

Sample Employee Communication

Date: [Month DD, YYYY]
To: Massachusetts Employees
From: Human Resources Department
Re: Massachusetts Family Leave Premium and Benefits for 2023

The Massachusetts Paid Family and Medical Leave (MA PFML) law was enacted to provide job-protected, paid time off to Massachusetts employees for one or more of the following reasons:

Paid family leave may be taken to:

- Manage your own serious health condition
- Care for a family member with a serious health condition
- Bond with a child during the first 12 months after the child's birth
- Bond with a child during the first 12 months after adoption or foster care placement
- Care for a family member who is or was a member of the Armed Forces, National Guard or Reserves and developed or aggravated a serious health condition in line of duty on active duty while deployed
- Manage family affairs when a family member is on or has been called to active duty while in the armed forces, including the National Guard or Reserves

MA PFML benefit premiums are funded by a combination of employer contributions and employee after-tax payroll deductions. The premium rate is set annually by the Department of Family and Medical Leave (DFML). See the **MA PFML Benefits Chart** below for a comparison of 2022 and 2023 contribution rates and maximum weekly benefit amounts.

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For further information about MA PFML, including how to calculate your MA PFML benefits or file a claim, please contact the Human Resources Department or visit the [DFML website](#).