



e-Alert

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Massachusetts Finalizes PFML Regulatory Amendments

Background

Since Governor Charlie Baker signed the Massachusetts Paid Family and Medical Leave Act (MA PFMLA) into law on June 28, 2018, the state Department of Family and Medical Leave (DFML) has continued to issue updated guidelines and regulations for the program. Employees will become eligible for paid time off under PFML starting January 1, 2021, just a few months from now.

Summary

On July 24, 2020, the Massachusetts Department of Family and Medical Leave published the [final amendments to the Massachusetts PFML regulations](#). While some of the amendments simply tweaked or clarified the definitions of technical terms used in the law, others represent notable changes that employers need to be aware of. Here are a few of the most important amendments:

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Coverage and Eligibility Changes:

- Massachusetts employers and covered business entities (CBEs) with an approved private plan exemption must make coverage available to eligible new hires by their date of hire.
- To determine whether a new hire is eligible for PFML coverage, the employer may require them to provide verification of wages earned in Massachusetts.
- The weekly benefit amount available to employees and the amount of leave provided will be based on the covered employee's average working week as well as the wages earned with the employer at the time of their application for benefits.
- Employers that make payments to covered individuals that are equal to or greater than the amount required by the MA PFMLA will be reimbursed by the DFML. This does not apply to employers covered by an approved private plan exemption.
- The law was amended to avoid gaps in coverage for employees when an employer is transitioning between private plans or between the State Trust Fund and a private plan. Employers are responsible for ensuring that there are no gaps in coverage in these cases. Employees already on paid leave when the transition occurs will continue to be paid benefits from the plan that was in place when they filed for leave.
- The DFML is now required to notify employers of any changes to an approved private plan exemption with 60 days' notice (up from 30).
- If an employee has been separated from an employer for less than 26 weeks and applies for benefits, the employee should submit the application with their previous employer **ONLY** if they are still unemployed. If they are employed by a new company, then they should submit the application to their new employer.

Employees with Multiple Employers:

- The Weekly Benefit Amount should be calculated based on the wages from each specific employer. Employers cannot change the benefit amount offered based on wages earned or benefits received from other employers.
- Employees with multiple employers are not required to take leave from all their employers at the same time. Depending on their specific situation, an employee could take leave from one employer while continuing to work for another.

Substance Abuse Disorders:

- Substance abuse disorders may now qualify as a serious health condition for which an employee can take leave to receive treatment by a qualified treatment provider. Employers may not discriminate against an employee for taking leave to seek treatment or to care for a family member who is undergoing treatment for a substance abuse disorder. While coverage is now allowed for substance abuse *treatment*, it is not allowed for absences caused by an employee's use of a substance.
- In cases where an employer has clearly established and communicated a policy stating

that employees may be terminated for substance use under certain circumstances, the employer may terminate the employee for violating that policy, whether or not they have requested leave to undergo treatment.

- Covered employees that use accrued leave through an Extended Illness Leave Bank program provided by their employer cannot receive PFML benefits for the same period (i.e. no double dipping).
- Each request for intermittent leave must be recertified.
- Covered employees must notify the DFML within seven days of any changes in their circumstances that may affect their eligibility for benefits.
- No PFML benefits are payable during the first seven calendar days after the date on which the employee's job-protected leave begins.

In addition to the amendments outlined above, the final regulations include updated definitions of the following terms: *Accrued Paid Leave*, *Active Duty*, *Average Weekly Wage*, *Average Working Week*, *Base Period*, *Continuing Treatment by a Health Care Provider*, *Extended Illness Leave Bank*, *Financial Eligibility Test*, *Former Members of Armed Services*, *Intermittent Leave*, and *Job Protected Leave*. [Click here](#) for the updated definitions for these terms.

Employer Next Steps

- All Massachusetts employers should review the amendments summarized above in full and ensure that they understand them.
- If you have any questions regarding these amendments or MA PFML in general, please don't hesitate to reach out to HRK as well as legal counsel.
- If you are a Full-Service or Virtual HR client with Massachusetts employees and would like our assistance with updating your PFML policies, please [email us](#).

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