

Massachusetts Department of Paid Family and Medical Leave Releases New Forms and Updates Ahead of Tiered Benefits Rollout

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With January 1, 2021, quickly approaching, the Massachusetts Department of Family and Medical Leave (“DFML”) has released important updates for the commencement of leave benefits under the Massachusetts Paid Family and Medical Leave Law (“PFML”). As we previously [reported](#), since June 2019, the DFML has provided many updates to clarify the PFML. Our analysis of the DFML’s various proposals and revisions to the PFML are available [here](#), [here](#), [here](#), and [here](#).

As a reminder, beginning December 15, 2020, workers may take paid family leave to bond with a newborn, newly adopted child, or new foster child. Beginning [January 1, 2021](#), workers may take paid family leave to care for a sick family member and/or manage family affairs for a family member only if that family member is on active military duty in a foreign country. Beginning January 1, 2021, workers may also take medical leave to manage a personal illness or serious injury. Finally, beginning July 1, 2021, all PFML benefits will become available, including family leave to care for a family member with a serious health condition.

In anticipation of the availability of most benefits on January 1, 2021, the DFML has released helpful materials, described below, to guide employers and workers. The DFML has also issued a new workplace poster that must be displayed in the workplace. To help provide a seamless transition into the start of the PFML program in the new year, the following summary contains details about the new updates and links to forms prepared by the DFML.

Updated Frequently Asked Questions

In a new [Frequently Asked Questions](#) (“FAQs”) page, the DFML has provided clarification to questions regarding contributions and benefits. The FAQs note the following:

- There is *no* seven-day waiting period for workers seeking job-protected leave through their employers before they can request available benefits payments from the DFML.

- Workers *cannot* “top off” PFML benefits by using accrued paid time off provided by their employer (but an employer with a [private plan exemption](#) offering paid leave benefits that are equal to or more generous than those provided under the PFML *can* allow workers to supplement the private plan exemption benefit amount with accrued paid leave).
- Private disability policies that are purchased separately by the worker, including through voluntary worksite benefits, *do not* reduce the worker’s PFML benefits.
- An employer that terminates a private plan *will* be responsible for remitting retroactive contributions back to the effective date of the initial exemption approval if it fails to renew its plan for a second term. After the filing and approval of the renewal, an employer may terminate its private plan at the end of the second term without owing retroactive contributions. An employer with an exemption that was initially approved before January 1, 2021, must participate in one renewal cycle to avoid liability for retroactive contributions.
- An employer that failed to maintain a private plan or had its private plan renewal withdrawn by the DFML may be liable for retroactive contributions to the PFML program. If an employer failed to maintain a private plan, the DFML may assess a penalty of up to an amount equal to the employer’s total annual payroll for workers for each year, multiplied by the then-current annual contribution rate required under the PFML. The DFML may also assess additional penalties and interest against the employer.

Workplace Poster

As previously [reported](#), employers are required to display PFML workplace posters in English and in each language that is the primary language of five or more individuals in the employer’s workforce if the posters are available from the DFML. The DFML has issued an updated workplace poster, available [here](#).

Certification Form

Sometime in 2021, employers will become eligible to apply for benefits on behalf of workers. For now, workers must apply for benefits on their own.

To receive PFML benefits for a serious health condition, a worker must submit both an application and a [certification form](#). To complete the form, the worker completes sections 1 and 2, and a health care provider must complete sections 3 through 6. Claims will be delayed or denied without certification from a health care provider.

Information for Employers and Employees

Finally, the DFML has provided [information for employers](#) to learn more about their obligations under the PFML. In October 2020, employers were required to register a

PFML leave administrator with the DFML. The employer information page provides a link to where employers can both register an administrator and create an employer account to manage workforce PFML leave. Employers that manage leave for multiple entities must create accounts for each Employer ID number.

Additional information for employees can be found [here](#).

What Massachusetts Employers Should Do Now

As Massachusetts employers anticipate the tiered rollout of the state's PFML plan, they should:

- ensure that they have registered a PFML administrator with the DFML and created an employer account to manage workforce PFML leave,
- post the updated DMFL poster in English and any additional applicable languages, and
- continue to monitor the DFML's website for important updates.

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