

# Management Alert



## Massachusetts DFML Releases New Guidelines Providing Clarifying Information And Other Helpful Resources On Paid Family And Medical Leave In Advance Of Friday's Issuance Of The Proposed Regulations

By Daniel B. Klein

**Seyfarth Synopsis:** While we await Friday's release of the revised, proposed Paid Family and Medical Leave (PFML) regulations, the Department of Family and Medical Leave yesterday posted on its website new toolkits for employers and workers, providing useful information including the mandatory workplace poster, contribution rate calculators, and other interactive tools and information to assist with planning for the July 1, 2019 implementation of the PFML Law.

As we [previously reported](#) and [updated](#), the new Department of Family and Medical Leave (DFML) will be publishing an updated version of the required proposed regulations for public comment this Friday, March 29, 2019. In advance of that release, the DFML yesterday posted on its [website](#) new toolkits for employers and workers, providing useful information including the mandatory workplace poster, contribution rate calculators, and other interactive tools and clarifying information to assist with planning for the July 1, 2019 implementation of the PFML Law.

We highlight a number of clarifying and other noteworthy pieces of information provided by the DFML below:

- **Online Applications For Private Plan Exemption Available April 29th.** The DFML announced that, beginning April 29th, employers "already providing" paid leave benefits to their workforce may apply online through MassTaxConnect for an exemption from collecting, remitting, and paying contributions to the public Trust Fund. To be approved, the benefits offered must be greater than or equal to the benefits provided by the PFML Law and must not cost employees more than they would be required to contribute to the State plan.
- At this time, it is unclear if the DFML intentionally limited the current application to employers "already providing" such paid leave benefits or if applications for approval of new private plans will also be accepted as of April 29th, as the PFML Law and draft regulations permit applications for approval of any private plan providing equal or greater benefits. Stay tuned for further clarification.

- Employers applying for an exemption will receive an immediate approval or denial of exemption. If the exemption is approved, an employer will be asked to upload a copy of the plan. If the exemption is denied, the employer will be notified why it was denied, and if it disagrees with the basis for denial, the employer may request a follow-up review.
- The DFML provides further details of the minimum features a private plan must contain to be approved. To qualify for an exemption, a private plan must provide the following to all employees for either family leave or medical leave, or both:
  - All employees (full-time, part-time, permanent, and seasonal/temporary) must be eligible for the given leave benefits;
  - A weekly paid benefit amount that is greater than or equal to the benefit provided by the public PFML program, for a number of weeks greater than or equal to the number of weeks required by the PFML Law;
  - Job protection while the employee is on qualified leave;
  - Continued employer contributions to employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of qualified leave;
  - Leave may be taken intermittently or on a reduced leave schedule, with the weekly benefit amount being prorated; and
  - The plan must specifically state that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits.
- **July 1, 2019 Commencement Of Payroll Deductions.** Beginning July 1, 2019, unless receiving an approved exemption for a private plan, all Massachusetts employers will be required to commence payroll deductions to cover worker contributions from employees' wages and from payments for services to covered 1099-MISC contractors (where 1099-MISC contractors make up 50% or more of the workforce).
  - Contributions to the public Trust Fund will be remitted at an initial contribution rate of 0.63% on the first \$132,900 of an individual's annual earnings (this figure may be adjusted annually). The 0.63% contribution rate is split between a 0.52% medical leave contribution and a 0.11% family leave contribution.
  - Employers with 25 or more covered workers within Massachusetts must remit the entire 0.63% contribution to the Trust Fund. Such employers may deduct 100% of the 0.11% family leave contribution from employees and covered contractors and up to 40% of the 0.52% medical leave contribution (*i.e.* 0.21%) from employees and covered contractors. Such employers must pay an employer share of at least 60% of the 0.52% medical leave contribution (*i.e.* 0.31%).
  - Employers with fewer than 25 covered workers within Massachusetts do not have to pay the employer share of the medical leave contribution, nor do they have to remit that share to the Trust Fund. Such employers need only remit to the Trust Fund the remaining 40% employee share of the medical leave contribution and 100% of the employee's family leave contribution, all of which may be deducted from the wages of employees and the earnings of covered contractors.

- In the worker toolkit, the DFML provides a helpful breakdown for workers regarding their maximum contributions, explaining that for every \$100 a worker earns (up to the maximum \$132,900 annually), \$0.32 will be deducted from the worker for the covered contribution share. This will consist of \$0.11 to cover the family leave contribution, and \$0.21 to cover the worker's share of the medical leave contribution (employers with 25 or more covered workers will contribute \$0.31 for every \$100 to cover the employer's share of the medical leave contribution).
- **Quarterly Reports Beginning In October 2019.** All employers will be required to file quarterly reports (including wages paid or other payments for services) through MassTaxConnect beginning in October 2019. Reporting and documentation guidelines will be announced prior to July 1, 2019.
- **Employer Contributions To Trust Fund To Start October 31, 2019.** While payroll deductions from workers will commence July 1st, employers will not remit the quarterly contributions to the Trust Fund for the July-September quarter until October 31st. Quarterly contributions will be submitted through the Massachusetts Department of Revenue's MassTaxConnect system.
- **July 1, 2019 Mandatory Workplace Poster Requirements.** The DFML has clarified that the mandatory workplace posting requirement will take effect July 1, 2019, and the DFML released online its new mandatory poster: [Paid Family and Medical Leave mandatory workplace poster](#). This poster or an otherwise approved poster must be posted at the workplace in a location where it can be easily read. The poster must be available in English and each language which is the primary language of 5 or more individuals in the workforce (if such translations are made available from the DFML).
- **July 1, 2019 Written Notice To Workers.** According to the DFML, beginning July 1st, employers also will be required to notify their workforce about the State's PFML program. Employers must provide W2 employees written notice of contributions, benefits, and workforce protections; and issue this notice to each new employee within 30 days of their first day of employment. The notice must be written in the employee's primary language. Employers must obtain from each employee a written statement acknowledging receipt of the notice or a statement indicating the employee's refusal to acknowledge the notice. This notice must contain:
  - An explanation 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;
  - The employer identification number assigned by the DFML;
  - Instructions on how to file a claim for family and medical leave benefits; and
  - The mailing address, email address, and telephone number of the DFML.

A similar written notice must be issued to each Massachusetts 1099-MISC contractor who provides services to the company, when entering into a contract for services. The notice must be written in the contractor's primary language and contain similar information, including an explanation of the availability of family and medical leave benefits and the procedures for self-employed individuals to become covered individuals.

- **Covered Individuals' Earnings Eligibility Requirements.** The DFML clarified the earnings eligibility requirement (adopted from the unemployment benefits law) for any individual who wants to take paid leave under the law. Before applying for benefits, an individual must have:
  - Approximately 15 weeks or more of earnings within the Commonwealth; and
  - Earned at least \$4,700 in the previous 12 months within the Commonwealth.
- **Contributions Calculator And Other Resources.** In its employer toolkit, the DFML provides links to a number of helpful resources, including a contributions calculator for employers to calculate their estimated PFML contributions. The DFML also provides an interactive tool for determining if an employer is responsible for the employer share of the medical leave contributions by determining whether the employer has 25 or more covered individuals (including employees and 1099-MISC contractors when more than 50% of the workforce consists of 1099-MISC contractors). The site also includes a link for employers to register with MassTaxConnect.
- **2021 Commencement Of Paid Leave Benefits.** As previously reported, the starting dates for paid leave benefits claims (up to \$850 per week) are as follows:
  - On January 1, 2021, covered employees and covered contractors can begin claiming benefits for bonding with a child or newborn; service-member related events; and dealing with the employee's own serious health condition; and
  - On July 1, 2021, covered employees and covered contractors can begin claiming benefits to care for a family member with a serious health condition.

The DFML's newly posted information contains substantial information regarding the above items and more. We encourage you to review these resources. The DFML will be issuing the updated, proposed regulations for public comment this Friday, March 29th. The final regulations will take effect July 1, 2019. We will report on the updated, proposed regulations promptly. You may also join us for an interactive webinar on these developments next Wednesday, April 3rd at 1:00 p.m. EST by registering [here](#).

If you have any questions, please contact [Daniel B. Klein](#) at [dklein@seyfarth.com](mailto:dklein@seyfarth.com).

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