



Upcoming Deadline for Massachusetts PFML

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The Massachusetts Department of Family and Medical Leave (“DFML”) has finalized regulations regarding Massachusetts Paid Family and Medical Leave (“PFML”). The final regulations were effective July 1, 2019 and did not substantially differ from the proposed regulations previously issued by the DFML. Much of the below information has already been provided in our earlier article ([Click Here](#)) and this article shall briefly serve as a reminder of the upcoming October 1 withholding date.

■ Background

In 2018, Massachusetts enacted legislation to create a statewide PFML program providing benefits beginning in January 1, 2021 and July 1, 2021. With limited exception, all employers with employees in Massachusetts will be required to provide paid family and medical leave benefits to their employees through the state program or an approved private plan.

If providing benefits through the state program, employers will begin withholding contributions on October 1, 2019 (they were previously scheduled to begin on July 1, 2019).

Employers may opt out to provide an approved private plan to employees. These arrangements must be approved by

the DFML. If the employer secures approval on or before December 20, 2019 (previously July 1, 2019), the employer will not be required to remit contributions for the full period that begins with the October 1 start date.

■ Important Items to Remember/Note

- Generally, the DFML follows the same eligibility criteria as the unemployment insurance program in Massachusetts. Therefore, if an employer submits its Massachusetts W-2 employees for unemployment in Massachusetts, the employer would be subject to the PFML program.
- Employers that participate in the state program must begin withholding PFML contributions for the October 1 to December 31 quarter through MassTaxConnect by January 31, 2020 (for MassTaxConnect: <https://mtc.dor.state.ma.us/mtc/>).
- The total contributions for an employee has been adjusted from 0.63% to 0.75% of qualifying earnings, capped at the Social Security maximum, currently \$132,900.

- If an employer has at least 25 covered individuals (which includes employees and 1099 contractors in MA), both the employer and the employee share in the cost of medical leave benefits. If an employer has fewer than 25 covered individuals in Massachusetts, the employer is not required toward the medical leave or family portions of the benefit. The final regulations include a new contributions provision allowing an employer to deduct differing percentages from the wages or qualifying payments of different groups of covered individuals, but the employer may not deduct more than the maximum percentages allowed by the PFML law. The DFML will also refund contributions to an employer that overpays its contributions.
- If an employer chooses to provide benefits through an approved private plan option, it may do so through an insurance policy or self-insurance. If the employer's plan provides for insurance, the forms of the policy must be issued by a Massachusetts licensed insurance company (at this time, the carriers have not yet responded with new products in the marketplace). If an employer's plan is in the form of self-insurance, the employer must secure a surety bond running to the state in an amount based on the number of covered individuals and the surety company issuing the bond must be authorized to transact business in Massachusetts.
- An employer already providing a paid leave benefit to its workforce may be eligible to receive an exemption from the medical leave contribution, family leave contribution, or both through its MassTaxConnect account. The deadline to file for a private plan exemption for first quarter contributions is December 20, 2019. A self-insured employer must complete the state approved bond form and submit it to the DFML in order to complete the exemption application. The DFML may assess a penalty, including retroactive contributions to the Public Trust Fund, if an employer offers a private plan that has not received DFML approval or fails to renew an approved private plan prior to January 1, 2021.
- Employers should already have posted the mandatory PFML workplace poster (which can be found at https://www.mass.gov/files/documents/2019/06/14/20190614_DFML%20Notice_English.pdf).



- Employers must notify each of their Massachusetts W-2 employees in writing about available PFML benefits on or before September 30, 2019 (and issue this notice to each employee within 30 days of their first day of employment). If more than 50% of an employer's workforce is made up of Massachusetts 1099-MISC contractors, the employer is required to inform them of PFML benefits and protections the same as Massachusetts W-2 employees.
- Employers must file quarterly reports through MassTaxConnect beginning in January 2020. Reporting and documentation guidelines will be announced prior to October 1, 2019.

■ Employer Action

Employers with employees in Massachusetts should work with labor counsel and payroll processors to finalize their leave policies and procedures to make sure they are compliant with the Act by October 1, 2019. In addition, employers should monitor the state's PFML website for additional guidance and regulations

■ Additional Guidance

- The definition of "employment" for PFML includes the statutory exclusions contained in Massachusetts unemployment law (i.e., service performed by a student in the employ of a school, college or university, if such service is performed while regularly attending classes at such institution, is not covered by PFML).
- An employer may require intermittent leave to be taken in increments not smaller than a designated minimum time period; provided, however, that an employer's designated minimum time period may not be greater than four consecutive hours.
- Where the approved claim involves leave on an intermittent or reduced leave schedule, the wait period is seven consecutive calendar days, not the aggregate accumulation of seven days of leave.
- The DFML may contact an employee's health care provider to verify or supplement information necessary to support a leave certification.
- An employer is not required to restore an employee who was hired for a specific term or only to perform work on a discrete project, if the employment term or project is over and the employer would not otherwise have continued to employ the employee.