

Massachusetts Paid Family and Medical Leave (MA PFML) Act frequently asked questions

Last updated: September 3, 2020

Massachusetts will soon require private employers to provide paid family and medical leave (MA PFML) benefits to employees who work in the Commonwealth. The Massachusetts Department of Paid Family & Medical Leave (DFML), which is the agency responsible for administering the MA PFML law, has issued the final regulations, and has announced that employers will be able to submit an application to provide the MA PFML benefits through a private plan. **Milestones are noted below.**

The answers in this document are based on our knowledge of current the MA PFML law and regulations. If the DFML revises the regulations, adopts new policies or if the law itself is amended, we will update this document. This document is not intended to be and should not be construed as legal advice. Employers are encouraged to consult employment law counsel for legal advice.

Milestones

- April 29, 2019 – Date employers were able to submit applications for a private plan exemption.
- September 30, 2019 – Date employers must have provided written notification regarding MA PFML to their employees and have a state-mandated poster on display. (See mass.gov resources, [Informing your workforce](#), for sample.)
- October 1, 2019 – Date employers needed to start deducting MA PFML premium contributions from employee payroll and start paying for their portion of the MA PFML program costs if they did not seek a private plan exemption. This reflects a delay from July 1, 2019 and affects the amount of premium required to withhold, at least temporarily.
- December 20, 2019 – Current date by which a private plan exemption application must have been approved to ensure that Employers can keep the first quarter premium for use with a private plan (rather than have to remit to Commonwealth).
- January 31, 2020 – Date employers remitted first employee and employer premium payments to Commonwealth if they are participating in the state plan.
- January 1, 2021 – Date benefits will begin being payable under MA PFML for medical leave, bonding, military exigency, and care of an injured servicemember.
- July 1, 2021 – Date benefits will begin being payable under MA PFML for care of a family member.

Additional resources

- Visit the state's websites:
 - ✓ <https://www.mass.gov/orgs/department-of-family-and-medical-leave>
 - ✓ <https://www.mass.gov/info-details/frequently-asked-questions-paid-family-and-medical-leave-exemption-requests>
- Visit Sun Life's website: www.sunlife.com/mapfml

Answers to frequently asked questions, by topic

- [Section 1: Covered leave reasons, leave allotments, intermittent and reduced schedule leave](#)
- [Section 2: When MA PFML leaves begin and amount of benefit](#)
- [Section 3: Employer definition for compliance with MA PFML](#)
- [Section 4: Employee eligibility requirements](#)
- [Section 5: Employee/Employer rights under the MA PFML](#)
- [Section 6: Funding for MA PFML](#)
- [Section 7: Employer private plan options](#)
- [Section 8: Interaction of MA PFML with other benefits](#)
- [Section 9: MA PFML applications for benefits – filing, approval and appeals](#)
- [Section 10: How MA PFML interacts with other laws](#)

Section 1: Covered leave reasons, leave allotments, intermittent and reduced schedule leave

1.	What is MA PFML?	The MA PFML law mandates that covered individuals in the Commonwealth are eligible to receive paid job-protected time off of work, with health plan continuance, when they are absent for covered leave reasons.
2.	What are the covered leave reasons?	<p>Medical leave can be taken for the covered individual’s own serious health condition that renders the covered individual unable to perform the functions of his or her position.</p> <p>Family leave is available for:</p> <ul style="list-style-type: none"> • bonding with the employee’s newborn, newly adopted or newly placed foster child within 12 months of the birth, adoption or foster care placement; • to care for a covered family member with a serious health condition; • for a qualifying exigency when the employee’s family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or • to care for a family member who is injured while on active military duty.
3.	Who are covered family members?	<p>Family members include:</p> <ul style="list-style-type: none"> • employee’s spouse or domestic partner • child, parent or parent of the employee or of the employee’s spouse or domestic partner • grandchild • grandparent • sibling • a person who stood <i>in loco parentis</i> to the employee when the employee was a minor child • a child to whom the employee stands <i>in loco parentis</i> or a person to whom the employee stood <i>in loco parentis</i> when the person was a minor child

4.	What is a serious health condition under the MA PFML law?	<ul style="list-style-type: none"> • The MA PFML law defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves (i) inpatient care in a hospital, hospice or residential medical facility or (ii) incapacity plus treatment. • The regulations have a definition of “continuing treatment by a healthcare provider” that is consistent with the standards required under the FMLA. • Under the regulations, “incapacity” is defined as an inability to perform the functions of one’s position, or where the covered individual is a former employee, to perform the functions of one’s most recent position or other suitable employment as that term is defined under Mass. G.L. c. 151A, § 25(c), due to the serious health condition, treatment therefor, or recovery therefrom. • Under the regulations, leave is available for treatment of substance use disorders and care of a family member who is receiving treatment, but leave is not available related to use of the substance. Regardless of the right to leave for treatment, employers may take employment action based on substance use, under established, non-discriminatory policies.
5.	What are the leave allotments under the MA PFML?	<p>Medical leave is available for the employee’s own serious health condition for up to 20 weeks per benefit year.</p> <p>Family leave is available:</p> <ul style="list-style-type: none"> • For bonding, care of a family member or qualifying military exigency for up to 12 weeks per benefit year; or • for care of an injured service member for up to 26 weeks per benefit year. <p>There is a combined maximum of 26 weeks of leave available per benefit year.</p>
6.	What is a benefit year?	Benefit year is defined as the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day of job-protected leave.
7.	How are leave allotments calculated for employees who have part-time or variable schedules?	<p>According to regulations:</p> <ul style="list-style-type: none"> • Leave allotments are based on the number of hours or days an employee works, and that when an employee works a part-time schedule or variable hours, the amount of leave that an employee uses is determined on a pro rata or proportional basis. • If an employee’s schedule varies from week to week to such an extent that an employer is unable to determine with certainty how many hours the employee would otherwise have worked, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period will be used for calculating entitlement.
8.	Is intermittent and/or reduced schedule leave permitted?	Yes, intermittent and/or reduced schedule leave may be taken.

9.	What is the amount of the paid benefit when an employee takes intermittent or reduced schedule leave?	For an employee who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount calculated is pro-rated in direct proportion to the intermittent or reduced leave schedule.
10.	What is the minimum increment of intermittent leave that is allowed?	The regulations permit an employer to designate a minimum increment of leave time consistent with the established policy of the employer or covered business entity uses to account for use of other forms of leave. However, the regulations provide that under the administration of the state plan, the DFML will not pay in increments of less than 15 minutes. Under the DFML’s administration, a covered individual will not be permitted to apply for payment for benefits associated with intermittent leave until they have 8 hours of accumulated leave time unless more than 30 calendar days has lapsed since the initial taking of such leave.
11.	Are there any limits on an employee’s ability to take intermittent or reduced schedule MA PFML?	<ul style="list-style-type: none"> • For medical leave or family leave to care for a family member with a serious health condition or to care for an injured service member, leave may be taken on an intermittent basis or on a reduced schedule basis when medically necessary. • The regulations provide that the employee and the employer must attempt to work out a schedule for intermittent or reduced schedule leave for the employee’s own medical condition that meets the employee’s needs without unduly disrupting the employer’s operations, subject to the approval of the healthcare provider. • For leave, for a parent to bond with a new child, intermittent or reduced schedule leave can be taken only by agreement of the employee and the employer.
12.	What happens if the employee exceeds the agreed-upon or approved intermittent leave schedule?	<ul style="list-style-type: none"> • Under the regulations, an employee who is approved for intermittent or reduced schedule leave but who fails to work during the times or on the schedule agreed to with the employer may be subject to employer discipline. • The employer is required to notify the DFML when an employee approved for intermittent leave fails to adhere to the agreed-upon intermittent or reduced leave schedule.
13.	How are intermittent leave claims paid?	<ul style="list-style-type: none"> • The DFML will require a covered individual to apply for payment for benefits associated with intermittent leave only when they have 8 hours of accumulated leave time unless more than 30 calendar days has lapsed since the initial taking of such leave

Section 2: When MA PFML leaves begin and amount of benefit

14.	When can employees start taking leaves under the MA PFML law?	<p><i>Employees may begin taking the following leaves on January 1, 2021:</i></p> <ul style="list-style-type: none"> • Medical leave.
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		<ul style="list-style-type: none"> Family leave for a parent to bond with a new child, for a qualifying military exigency or to care for an injured service member. <p>Employees may begin taking the following leaves on July 1, 2021:</p> <ul style="list-style-type: none"> Family leave to care for a family member with a serious health condition.
15.	Is there a waiting period?	<ul style="list-style-type: none"> MA PFML benefits are not payable during the first seven calendar days after the date upon which the leave begins. The MA PFML law provides that an employee may utilize accrued sick or vacation pay or other paid leave provided under an employer policy during the first seven calendar days from the date the absence began. The regulations provide that seven-day waiting period counts against the total available period of leave. If the application for benefits is for intermittent or reduced schedule leave, the waiting period is seven consecutive calendar days after the first instance of intermittent leave and not the aggregate accumulation of seven days of leave. There is a seven calendar day waiting period for each application for benefits for MA PFML except that there is no waiting period for paid family leave that immediately follows a period of paid medical leave for pregnancy or recovery from childbirth.
16.	What is the amount of MA PFML benefit?	<ul style="list-style-type: none"> The benefits are paid at 80% of the employee’s average weekly wages for wages, up to 50% of the state’s average weekly wage (SAWW). Any portion of the employee’s average weekly wages that exceed 50% of the SAWW will be paid at 50%. The current SAWW is \$1,431.66/week (\$74,446.32/year). Wages are defined within M.G.L. c. 151A, § 1(s).
17.	Is there a maximum MA PFML benefit?	<ul style="list-style-type: none"> The maximum weekly benefit amount is \$850 for leaves starting January 1, 2021. The maximum weekly benefit will be adjusted to be 64% of the SAWW by October 1 of each year and will be effective on the following January 1. The \$850 maximum benefit is triggered for salaries of \$66,818.80/year or higher.
18.	Will MA PFML benefits be taxable?	<ul style="list-style-type: none"> There is no guidance at this time regarding the taxability of MA PFML benefits. The DFML has indicated that it has reached out to the Internal Revenue Service and has suggested that employers work with tax professionals for guidance. For reference, New York Paid Family Leave benefits are reportable as 1099 income and the premium deductions are withheld from employee payroll on a post-tax basis.
19.	Must an individual with multiple employers take leave from all employers?	An individual with multiple employers is not required to take PFML from each employer during a single period of paid family or medical leave

Section 3: Employer definition for compliance with MA PFML

20.	Which private employers are required to comply with MA PFML law?	All private employers employing one or more individual in the Commonwealth of Massachusetts are subject to this law.
21.	Employers of what size are required to comply with the MA PFML law?	<ul style="list-style-type: none"> • Employers are required to comply with the MA PFML law if they have one or more employees working in MA. • As discussed below, employers who have 25 or fewer employees working in MA do not have to pay the employer portion of the MA PFML premium. However, they must deduct the employee portion of the MA PFML premium and permit eligible employees to take MA PFML leave.
22.	Are public employers required to comply with the MA PFML?	The state, including all its branches and departments and its hospitals and institutions of higher education are subject to the law. Municipalities, districts, political subdivisions or their instrumentalities are not subject to this law but they may opt in by majority vote by the local legislative or governing body. City and town departments, such as school departments or departments of public works, are considered part of the municipality they serve. Housing authorities, regional school districts, and regional planning commissions are excluded from PFML law, but may choose to opt-in through a vote of their board members or governing committees, in accordance with Section 10 of M.G.L. 175M. Charter schools are not considered a part of a municipality and are not excluded from PFML law, with the singular exception of the Horace Mann Charter School. Horace Mann Charter School employees are considered municipality employees for the purposes of collective bargaining and are subject to municipality decision.
23.	Are self-employed individuals eligible to participate in the MA PFML Program?	Self-employed individuals can elect coverage for an initial minimum period of three years and cannot collect benefits until they have contributed premium for at least two calendar quarters.

Section 4: Employee eligibility requirements

24.	Which employees are considered covered and eligible for leave under the MA PFML law?	<ul style="list-style-type: none"> • The regulations define a covered employee as being a person who works in MA. When the employee’s services are performed inside and outside of the Commonwealth, he or she may still be a covered employee. • Under the regulations, if the service is performed both inside and outside of the Commonwealth, but the service performed outside the Commonwealth is incidental to the individual’s service within the Commonwealth, the employee is a covered individual for MA PFML. • The employee may still be a covered individual if the service is not localized in any state, but some part of the service is performed in Massachusetts and <ol style="list-style-type: none"> 1. the individual’s base of operations is in the Commonwealth or, if there is no base of operations, then the place from which such service is directed or controlled, is within the Commonwealth, or
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		<p>2. the individual’s base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s resident state is Massachusetts.</p> <ul style="list-style-type: none"> • Eligibility is transferrable even when the employee switches employers.
25.	Does an employee have to work a certain amount of time in order to be eligible?	<ul style="list-style-type: none"> • Eligibility is not measured by the number of hours worked for the employer. Rather, employees are eligible for MA PFML if they meet the eligibility requirements of the Commonwealth’s unemployment compensation law. This is called the financial eligibility test. • To be eligible for unemployment benefits, the employee must have earned the dollar amount calculated annually by the Department (initially \$5,100) during the last four completed calendar quarters and 30 times the weekly unemployment insurance benefit amount they would be eligible to collect. • Both full- and part-time employees are eligible for MA PFML benefits – there is no minimum-hours-worked requirement. • Eligibility is based on the amount of compensation that the employee has earned while working for any employer in Massachusetts during the last four completed quarters – not just for the specific employer. Therefore, new employees may be eligible if they previously satisfied the eligibility requirements by working for another Massachusetts employer during the requisite time period.
26.	Can former employees obtain MA PFML benefits?	<p>Yes. An employee continues to be eligible for MA PFML benefits if the employee has been separated from employment for not more than 26 weeks at the start of the leave provided that the covered individual remains unemployed on the date that the application for benefits is filed.</p> <p>The regulations have a special provision for filing of claims by former employees. The regulations provide that in administering a private plan if a former employee of the private plan employer has become employed by a different employer or contracted with a covered business entity at the time that that an application for benefits is filed, the individual should submit an application for benefits with their current employer or covered business entity and not with the private plan employer.</p>

Section 5: Employee/Employer rights under the MA PFML

27.	What are the requirements with regard to continuing health insurance while an employee is on leave covered by the MA PFML law?	<ul style="list-style-type: none"> • During a period of leave under the MA PFML law, the employer must continue to provide for and contribute to the employee’s 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 such leave. • The regulations provide that the employee portion of the employee’s employment-related health insurance premiums must be remitted by the employee in accordance with the employer’s uniformly applied policies or practices.
28.	What are the job protections for	<ul style="list-style-type: none"> • An employee who has taken family or medical leave must be restored to the employee’s previous position or to an equivalent position, with the same status,

<p>employees under the MA PFML law?</p>	<p>pay, employment benefits, length-of-service credit and seniority as of the date of leave.</p> <ul style="list-style-type: none"> • Upon reinstatement, the taking of 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. The regulations provide that leave periods under the MA PFML need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate. • An employer is not required to restore an employee who has taken family or medical leave to the previous or to an equivalent position if other employees with equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave; provided, however, that the employee who has taken leave shall retain any preferential consideration for another position to which the employee was entitled as of the date of leave. • An employer is not required to restore an employee who was hired for a specific term or only to perform on a discrete project if the employment term or project is over and the employer would not otherwise have continued to employ the employee. • Employers may not threaten to retaliate or retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee for exercising any rights under the MA PFML. • The regulations provide that nothing in the MA PFML law or the regulations limits an employer’s ability to reasonably communicate with an employee who is approved for MA PFML benefits. • The MA PFML law provides that any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of an employee that occurs any time during a MA PFML leave or during the six-month period following an employee’s MA PFML leave, or to an employee who has participated in proceedings or inquiries related to enforcement of the MA PFML law within six months of the termination of proceedings shall be presumed to be retaliation. • The MA PFML law provides that this presumption may be rebutted only by clear and convincing evidence that the employer’s action was not retaliation against the employee and that the employer had sufficient independent justification for taking such action and would have in fact taken such action in the same manner and at the same time the action was taken, regardless of the employee’s use of MA PFML leave, restoration to a position or participation in proceedings or inquiries.
<p>29. Are employers required to notify employees of their rights under the MA PFML?</p>	<ul style="list-style-type: none"> • Yes. Employers must post a notice prepared by the DFML and must also provide individual notice to employees no later than September 30, 2019, and, thereafter, within 30 days of hire of, describing, among other things, the following:

		<ul style="list-style-type: none"> ✓ an explanation of MA PFML benefits; ✓ the employee’s contribution amount and obligations; ✓ the employer’s name, mailing address and employer identification number assigned by the DFML; ✓ instructions on how to file an application for benefits; and ✓ the contact information for the DFML. <ul style="list-style-type: none"> • Under the MA PFML law, employees need to sign an acknowledgment that they received this notice, or, if they refuse to sign that acknowledgment, they must be given an opportunity to sign an acknowledgment of their refusal to sign. The MA DFML has indicated that in the event an individual employee fails to acknowledge receipt, it will consider an employer to have fulfilled its notice obligation if it can establish that it provided each member of its current workforce notice and the opportunity to acknowledge or decline to acknowledge receipt. • Failure to provide the required notice and to obtain a signed acknowledgement will result in a fine of \$50 per employee for the first violation and \$300 per employee for each subsequent violation. • The poster prepared by the DFML as well as a template employee notice can be found here. • You may use the state’s template or make your own. Sun Life has modified the template posted by the DFML to account for the September 30, 2019 deadline and temporary increase in the amount of the premium. We have made clear within the document that while employees have the opportunity to sign and return the notice, that is not legally required.
<p>30.</p>	<p>What remedies does an employee have if the employee believes that the employer has violated the MA PFML?</p>	<ul style="list-style-type: none"> • An employee may file an action in superior court within three years of the violation. • The employee is entitled to a jury trial, and a number of remedies are available, including orders of reinstatement, compensation at the rate of three times the lost wages, benefits and other remuneration and interest thereon, and payment by the employer of reasonable costs and attorney’s fees.
<p>31.</p>	<p>Are employees required to provide notice to employers when they intend to take leave under the MA PFML law?</p>	<ul style="list-style-type: none"> • The MA PFML law provides that an employee must give not less than 30 days’ notice to the employer of: <ul style="list-style-type: none"> ✓ the anticipated starting date of the leave; ✓ the anticipated length of the leave; and ✓ the expected date of return. • Or shall provide notice to the employer as soon as practicable if the delay of notice is for reasons beyond the employee’s control. • If an employer has failed to comply with its notice obligations (see next FAQ), the employee’s obligation to provide notice is waived. • The regulations require the employee to provide 30 days’ notice (or as many as practicable) to the employer of the anticipated start date of the family or medical leave.

32.	Can an employer require employees to provide a fitness-for-duty certification before allowing them to return to work from medical leave?	<ul style="list-style-type: none"> • The regulations incorporate the fitness-for-duty provisions of the FMLA, which permit fitness-for-duty certifications pursuant to a uniformly applied policy or practice that requires all similarly situated employees (same occupation, same serious health condition) who take leave for such conditions. • A number of limitations are discussed in the regulations, including that the employer may only seek a fitness-for-duty certification with regard to the particular health condition that caused the need for leave, and the employer may only seek a general certification of ability to resume work and of ability to perform essential job functions unless the employer provided a list of the essential job functions within five days of the notice to the employer of the designation of the leave by the DFML as approved leave under the MA PFML law. • The regulations also make clear that an employer may not request a fitness-for-duty return after each absence on an intermittent or reduced leave schedule. Rather, an employer may only seek certification of fitness to return to duty for such absence up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform the duties based on the serious health condition for which they took the leave.
33.	Can employers enforce their call-in procedures with regard to absences for leave covered by the MA PFML law?	<ul style="list-style-type: none"> • The regulations permit employers to require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances, including that the employer may require the employee to contact a specific individual to report the absence.
34.	What happens if an employee does not give proper notice or follow call-in procedures?	<ul style="list-style-type: none"> • The regulations provide that if an employee does not comply with the notice requirement or follow the employer's usual notice and procedural requirements and no unusual circumstances justify the failure to comply, protected leave may be delayed or denied.
35.	Are there any other requirements with regard to scheduling of leave under the MA PFML law?	<ul style="list-style-type: none"> • The regulations provide that when planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the treatment so as not to unduly disrupt the employer's operations, subject to the approval of the healthcare provider.
36.	What if the circumstances relating to the period of MA PFML change, or if the employee needs an extension of the leave?	<ul style="list-style-type: none"> • The regulations provide that if, after approval, there is a change in relevant circumstances that would justify an extension, reduction or other modification of the period of leave or the amount of benefits, both the employee and the employer have an affirmative obligation to notify the DFML within 7 calendar days of said change, using the forms prescribed by the DFML. • If an employee needs an extension of the period of leave, the employee must file a request for extension of benefits at least 14 calendar days prior to the expiration of the original approved leave, but the director of the DFML may allow a late-filed request for extension for good cause shown. • The request for extension must include: (1) the reason for the extension; (2) the requested duration of the extended leave; (3) the date on which the employee provided notice of the request for extension to the employer; (4) a newly

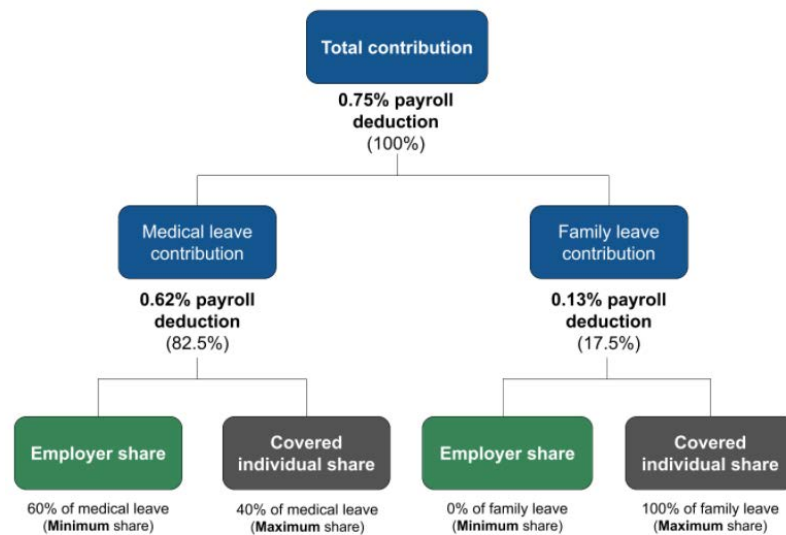
		<p>completed or updated healthcare certification for the employee or family member.</p> <ul style="list-style-type: none"> • The DFML will notify an employer of a request for extension not more than five business days following its receipt of a completed request form. The DFML will notify the employer of (1) the requested duration of the extension; (2) whether the newly requested leave is continuous or intermittent; (3) any additional certification from a health care provider; and (4) any other information or record the Department deems relevant to verifying and otherwise processing the application for benefits. • The employer must, within ten business days from the notice of the extension, provide the DFML all relevant information or records requested by the department, including (1) whether the employee will receive any paid leave benefits from the employer during the requested/extended leave; (2) whether the employer has approved or intends to approve the request for extension under the FMLA or any other policy allowing for paid or unpaid leave; and (3) any other relevant information or records related to the request for extension including, but not limited to, evidence of a fraudulent application for benefits. • The regulations provide that the initial seven-calendar-day waiting period will not apply to an approved extension of benefits. • Any extension of an application for benefits is limited to any period of paid family or medical leave the employee remains eligible for in the benefit year. • The DFML will provide contemporaneous notice to the employee and the employer of its approval or denial of the extension request. • Under the regulations, an employer can seek medical recertification of the employee's serious health condition following the expiration of the initial period of incapacity cited in the healthcare certification or where an intermittent leave has extended for a period of more than 6 months from the approval by the Department, whichever occurs first.
37.	<p>What happens if an employee fails to return to work after an approved MA PFML leave?</p>	<ul style="list-style-type: none"> • The regulations provide that an employee who fails to return to work or to the employee's regular work schedule following the expiration of the approved leave period may be subject to employer discipline.

Section 6: Funding for MA PFML

38.	<p>How is the MA PFML funded?</p> <p>Note: This response includes explanations for both a premium deduction of 0.63% or 0.75%.</p>	<ul style="list-style-type: none"> • All covered employers were required to begin making MA PFML premium payroll deductions from employees on October 1, 2019 (delayed from the initial date of July 1, 2019). These withholdings are to be remitted to DFML 30 days following the conclusion of each calendar quarter and should begin with the first payment made on or after Oct. 1, 2019. <p>The governor's office and legislature approved an increase in the amount of the premium so that the Commonwealth will not lose any premium collection as a</p>
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result of the three-month delay (from July 1 to October 1, 2019). The contribution rate was increased from 0.63 percent to 0.75 percent of wages on an annualized basis.

- **Employers with 25 or more employees** also must make employer premium contributions.
- **The revised amount of premium for the October 1 contribution date.**
 - ✓ Employers with 25 or more employees are required to contribute 0.75% of each employee’s wages to the Family and Employment Security Trust Fund.
 - ✓ The total premium of **0.75%** of employee’s wages is taken, up to the maximum Social Security limit (for 2020, the annual Social Security limit is \$137,700).
 - ✓ The family leave portion of the MA PFML premium is 100% employee funded.
 - ✓ Employers may charge employees up to 40% of the premium for the medical leave, and the employer is responsible for 60%.
- The DFML has advised that premiums will be apportioned as shown below.



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An employer employing fewer than 25 employees is not required to pay the employer portion of premiums for family and medical leave. However, employees of such employers will still be subject to payroll deductions for their portion.

39. **Can the employer choose to pay the employee’s portion of PFML premium?**

- Yes, the employer may choose to pay their employee’s portion of PFML premium.

40. **Can you provide an example of how premium is calculated?**

Example 1: For an employee earning the current State Average Weekly Wage of \$71,937.32 (assuming a 0.75% payroll deduction)

<p>Note: This response includes two sets of examples based on a premium deduction of 0.63% or 0.75%.</p>	<p>Calculate the total annual cost: $\\$71,937.32 \text{ annual wage} \times 0.75\% = \\$539.53 \text{ total annual cost}$</p> <p>Calculate the medical leave contribution: $\\$539.53 \times 82.5\% = \\$445.11 \text{ total for medical leave}$ <i>Calculate the employer cost: $\\$445.11 \times 60\% = \\$267.07 \text{ employer cost}$</i> <i>Calculate the employee cost: $\\$445.11 \times 40\% = \\$178.04 \text{ employee cost}$</i></p> <p>Calculate the family leave contribution: $\\$539.53 \times 17.5\% = \\$94.42 \text{ total for family leave}$ <i>Calculate the employer cost: $\\$94.42 \times 0\% = \\0 employer cost</i> <i>Calculate the employee cost: $\\$94.42 \times 100\% = \\$94.42 \text{ employee cost}$</i></p> <p>Calculate total annual employer cost: $\\$267.07 \text{ medical} + \\$0 \text{ family} = \\$267.07 \text{ total annual employer cost}$</p> <p>Calculate total annual employee cost: $\\$178.04 \text{ medical} + \\$94.42 \text{ family} = \\$272.46 \text{ total employee cost}$</p> <p>Calculate employee weekly cost: $\\$272.46/52 = \\$5.24 \text{ weekly cost for employee}$</p> <p>Example 2: For an employee earning the maximum Social Security limit of \$137,700.00 (assuming a 0.75% payroll deduction):</p> <p>Calculate the total annual cost: $\\$132,900 \text{ annual wage} \times 0.75\% = \\$996.75 \text{ total annual cost}$</p> <p>Calculate the medical leave contribution: $\\$996.75 \times 82.5\% = \\$822.32 \text{ total for medical leave}$ <i>Calculate the employer cost: $\\$822.32 \times 60\% = \\$493.39 \text{ employer cost}$</i> <i>Calculate the employee cost: $\\$822.32 \times 40\% = \\$328.93 \text{ employee cost}$</i></p> <p>Calculate the family leave contribution: $\\$996.75 \times 17.5\% = \\$174.43 \text{ total for family leave}$ <i>Calculate the employer cost: $\\$174.43 \times 0\% = \\0 employer cost</i> <i>Calculate the employee cost: $\\$174.43 \times 100\% = \\$174.43 \text{ employee cost}$</i></p> <p>Calculate total annual employer cost: $\\$493.39 \text{ medical} + \\$0 \text{ family} = \\$493.39 \text{ total annual employer cost}$</p> <p>Calculate total annual employee cost: $\\$328.93 \text{ medical} + \\$174.43 \text{ family} = \\$503.36 \text{ total employee cost}$</p> <p>Calculate employee weekly cost: $\\$503.36/52 = \\$9.68 \text{ weekly cost for employee}$</p>
<p>41. Can the employer choose to deduct differing contribution percentages from</p>	<p>Yes. The employer may deduct different percentages from wages or qualifying payments of different groups of covered individuals, provided that the employer does not deduct more than the maximum percentages permitted under the law.</p>

	different groups of covered individuals?	
42.	How are the number of employees determined?	An employer must determine the average workforce size by counting the number of employees, including full time, part-time and seasonal employees, on the payroll during each pay period and dividing by the number of pay periods.
43.	Does an employer have to count individuals who are performing services for it but are paid as independent contractors and provided an IRS Form 1099-Misc (and not a W-2)?	<ul style="list-style-type: none"> • It depends. • Under the MA PFML law and regulations, only employers who are “covered business entities” need to count IRS Form 1099-Misc individuals. • A “covered business entity” is a business or trade in which more than 50% of the workforce consists of IRS Form 1099-Misc individuals.
44.	When and how do employers have to pay the premiums to the Commonwealth?	<ul style="list-style-type: none"> • Employers in the state plan will be required to remit premiums to the Family and Employment Security Trust Fund and also submit an employment and wage detail report through the MassTaxConnect system quarterly in arrears. • The report must contain the employer’s federal employer identification number and the following information for each employee: name; Social Security number or individual taxpayer identification number; and wages paid or other earnings. • Once the report is submitted, the DFML will advise the employer of the amount of quarterly premium that is due, which must be remitted to the DFML before the quarterly deadline established by the DFML.

Section 7: Employer private plan options

45.	What options do employers have if we want to provide benefits that are more generous than the statutory minimum benefits?	<ul style="list-style-type: none"> • Employers are permitted to establish a private plan for either medical leave or family leave or for both medical and family leave. • If the employer’s application for a private plan exemption is filed and approved, the employer will be exempted from the Commonwealth’s MA PFML Program and will not be required to submit premium payments to the Commonwealth beginning on the first of the quarter following approval. • The employer may not seek a private plan exemption for only a portion of its covered workforce. All employees must be included in the private plan. • Under the MA PFML law, employees are not eligible for MA PFML benefits unless they have earned enough in the past 12 months from a Massachusetts employer to meet the eligibility threshold for unemployment compensation benefits. The private plan may require the employee to provide a verification of wages for purposes of determining whether the employee meets the financial eligibility requirement of MA PFML or the private plan may waive the test altogether. • To have a private plan accepted, the private plan must meet or exceed the Commonwealth benefits. Specifically, the private plan must:
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		<ul style="list-style-type: none"> ✓ provide leave for the same reasons, ✓ offer the same or greater maximum benefits, ✓ offer equal to or greater wage replacement amounts, ✓ allow leave to be taken on an intermittent or reduced schedule, ✓ impose no additional conditions or restrictions, and ✓ specifically state that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits.
46.	When do we have to start providing the MA PFML benefits if we are approved for a private plan exemption?	<ul style="list-style-type: none"> • Employers do not need to begin providing the MA PFML benefits until January 1, 2021, as provided in the MA PFML law.
47.	What are the recordkeeping obligations for private plans?	Employers with private plans must retain all reports, information and records related to the approved plan, including those applications for benefits made under the plan, for three years, and must furnish these records to the DFML upon request.
48.	Can employers provide MA PFML benefits through an insurer or do we have to manage the MA PFML program internally?	<ul style="list-style-type: none"> • Yes, private plans can be self-insured or fully insured. • If self-insured, employers must furnish a surety bond running to the Commonwealth. • If fully insured, the insurance policy must be issued by an insurance company licensed in Massachusetts.
49.	What is the amount of bond that must be posted for a self-insured plan?	<ul style="list-style-type: none"> • The bond value is based on average workforce count and expected cost of benefits. <p>For every 25 employees covered, the total cost of the benefits is \$16,000 for a combined family and medical leave plan. The majority of this cost is associated with medical leave (\$10,000) and the remainder is associated with family leave (\$6,000).</p> <ul style="list-style-type: none"> • Both the employer and a surety that is authorized to transact business in the Commonwealth must complete and sign the bond form which is uploading with the employer's private plan filing. • Electronic Signature is acceptable. • More information on bond requirements, a bond calculator, and the bond form can be found here: https://www.mass.gov/info-details/bond-requirements-for-approved-self-insured-plans
50.	What are the potential benefits of opting to provide the MA PFML benefits through a private plan?	<p>Sun Life believes that private plan administration will be attractive to employers because it will, among other things:</p> <ul style="list-style-type: none"> • Provide you with integration of MA PFML leave administration with leave, STD Program, and ADA accommodation administration under other statutory and company-sponsored leave programs.

		<ul style="list-style-type: none"> • Provide your employees with an experience better than having to apply for benefits through the state-run program, including quicker administration and easier-to-navigate claims processes and superior claim transparency. • Provide you, as the employer, with easier access to and more information and data about applications for employee leaves under the MA PFML. • Ensure appropriate claim review and decision-making with experienced staff. • Enable you, as an employer, to deduct differing percentages from the wages or qualifying payments, provided you do not deduct more than the maximum percentages authorized under the law. • Provide different benefits for different classes of employees provided you meet or exceed the state plan benefits for all classes.
51.	Will Sun Life be providing MA PFML private plans for leaves beginning January 1, 2021?	<ul style="list-style-type: none"> • Yes. • Sun Life will be offering leave and claim administration services for self-insured MA PFML private plans. • Sun Life will also to offer a fully insured MA PFML solution. • Please note, Sun Life will sell Paid Medical and Family Leave plans, but will not support stand-alone medical or stand-alone family leave plans. There is no ability to apply the combined maximum allotments when plans are split nor is there an effective way to waive the waiting period for family leave following medical leave for pregnancy disability or childbirth recovery.
52.	When and how can employers submit an application for a private plan exemption?	<ul style="list-style-type: none"> • The DFML has indicated that private plan applications may be filed through an online portal on MassTaxConnect at the Department of Revenue (DOR). • The DOR has released a video tutorial on how to complete the private plan exemption application. • Among other things, in the application: <ul style="list-style-type: none"> ✓ ER must state whether the private plan is for medical leave, family leave or both benefits. ✓ ER must advise whether the private plan is insured or self-insured. ✓ If self-insured, ER will be required to post a bond. ✓ ER must answer certain questions to show that plan will comply with MA PFML. ✓ ER must upload private plan.
53.	What do you recommend that we do if we are interested in a self-insured private plan option?	<ul style="list-style-type: none"> • If you are certain that you want to offer a self-insured private plan, we recommend that you submit an application for a self-insured private plan so that you can obtain approval for your plan. <ul style="list-style-type: none"> ✓

<p>54. What should we do if we are interested in having a fully insured private plan?</p>	<ul style="list-style-type: none"> We are approved to sell fully insured policies at this time and can provide you with a Declaration of Insurance for your fully insured private plan application. The Division of Insurance is in the process of reviewing our filed policy form.
<p>55. Will short-term disability (STD) insurance qualify as a private plan for medical leave?</p>	<p>Unfortunately, STD insurance policies are not likely to satisfy the requirements of the MA PFML law with regard to medical leave. There are many differences between medical leave under the MA PFML and eligibility for benefits under a typical STD policy. Here are some of the largest differences:</p> <ul style="list-style-type: none"> Eligibility: MA PFML is available to all full- and part-time employees who meet the threshold for unemployment compensation. In contrast, STD is typically available to those working a certain minimum number of hours per week (often 30+). In addition, under the MA PFML law, terminated employees are eligible for benefits for up to 26 weeks after termination. Serious health condition/disability: MA PFML can be taken for the employee’s own serious health condition. In contrast, STD is typically only available when the employee is experiencing a totally disabling condition. STD policies also may require a period of disability plus earnings loss to qualify for benefits. Intermittent leave. MA PFML can be taken intermittently in minimum increments based upon the employer’s policy used for other forms of leave. STD insurance policies do not allow intermittent leave. Benefit amounts: The MA PFML benefit can be up to 80% of an employee’s average weekly wage for lower-income employees. This is higher than the amount of benefits generally paid under an STD policy (often 60% to 66%). Special exclusions/limitations: No special exclusions are permitted under the MA PFML. It is not unusual for STD policies to cover only certain classes of employees, exclude coverage of preexisting conditions or require employment for a period of time before an employee becomes eligible. Extent of proof required. Under the MA PFML, employees need only submit a basic medical certification. However, under STD policies, employees are required to submit extensive medical documentation, including actual medical records. <p>When MA PFML and STD run concurrently, the STD policy will likely offset MA PFML, depending on the policy language.</p>
<p>56. What are the renewal requirements for private plans?</p>	<ul style="list-style-type: none"> Most private plans must be renewed annually. However, the DFML may establish a shorter or longer term of approval of the private plan when it deems necessary. In August 2020, the private plan exemptions for fully insured private plans that were approved in September 2019 were extended through the calendar year. Self-Insured plans with an approval date of October 1, 2019 must still renew their plan on or before October 1, 2020. Please note, that self-insured plans approved on or by December 20, 2019, were retro-dated to an October 1, 2019 effective date and must therefore renew before October 1, 2020.

		<ul style="list-style-type: none"> The regulations also indicate that if the DFML reduces the approval period of a private plan exemption, it will provide the private plan employer with 60 calendar days' prior notice.
57.	How can a private plan be terminated?	<ul style="list-style-type: none"> If a private plan is terminated, the termination will be effective on the first day of the first quarter following the date of termination or non-renewal. Upon termination or non-renewal private plan benefits must be continued for requests for leave filed with the private plan administrator with a start date commencing prior to the effective date of termination or non-renewal. In the case of intermittent leave, the private plan must continue coverage until the end of the employee's benefit year. Likewise, the DFML will continue to provide paid leave benefits to employees for the entire leave duration for leave filed with the DFML prior to the effective date of an employer transferring from the state plan to a private plan. An employer that switches from one insurance carrier or private plan administrator to another, they must ensure that there are no gaps in coverage.
58.	How are benefits calculated differently in a private plan v. the state plan?	<p>The weekly benefit amount and leave allotment for an employee covered by a private plan will be based on the covered individual's average working week and the wages with the private plan employer rather than total average weekly wages. Under the state plan, the state has the ability to look at other wages earned at other employers.</p>

Section 8: Interaction of MA PFML with other benefits

59.	Should employers cancel their disability insurance policies or programs?	<p>No. As noted above, medical leave and STD are not the same and STD will continue to be a valuable employee benefit.</p> <p>Cancelling STD benefits could leave your employees unprotected if they become disabled.</p> <ol style="list-style-type: none"> Benefit amount for higher-income employees. The current MA PFML max weekly benefit is \$850. Coverage is maximized for those making \$66,818.80 per year or more. If you have higher earners, you will need more income replacement. Consequences of interdependency of family and medical leave allotments. There is a combined and interdependent entitlement of family and medical leave under the MA PFML. If an employee takes 12 weeks of family leave in a
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60.	<p>How will MA PFML interact with Sun Life’s STD benefits?</p>	<ul style="list-style-type: none"> • Sun Life will offset the amount of the MA PFML benefit against the STD benefit in circumstances where the employee is eligible for both MA PFML and STD. • It is difficult to predict how often this will occur because the medical and family allotments are interdependent and the incidence rate of intermittent MA PFML is unknown. • We recognize that the offset will, in all likelihood, affect the rates that should be charged for STD. •
61.	<p>Can an employer require an employee to use accrued paid sick, vacation or personal time before taking or during MA PFML?</p>	<ul style="list-style-type: none"> • Employees may choose to use accrued paid leave rather than apply for a benefit through the MA PFML program. When accrued paid leave is used as a substitute for MA PFML benefits, the leave allotment available under MA PFML will run concurrently with the accrued paid leave and no MA PFML benefits will be payable. • The regulations provide that if an employee chooses to use accrued paid leave, they are required to comply with the employer’s notification and certification processes related to the use of this leave. • Employers are required to advise employees who choose to use accrued leave paid by the employer that the use of the employer-provided leave accruals will run concurrently with the leave period under the MA PFML. • Upon request by the DFML, employers must report the use of accrued leave by employees. • Employees are not eligible for compensatory benefits under the MA PFML programs for a period of time during which they received compensation through the use of accrued paid leave.
62.	<p>What if we offer a more generous paid family</p>	<ul style="list-style-type: none"> • As noted above, you may apply for a private plan exemption. • In addition, the MA PFML law provides that an employer may require that MA PFML benefits be made concurrently or otherwise coordinated with payment

<p>leave benefit or short-term disability benefit?</p>	<p>made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy such that the employee will receive the greater of the various benefits that are available for the covered reason.</p> <ul style="list-style-type: none"> • The MA PFML law also provides that the weekly MA PFML benefit amount will not be reduced by the amount of wage replacement that an employee receives while on family or medical leave under any of the following conditions, unless the aggregate amount an employee would receive would exceed the employee’s average weekly wage: <ul style="list-style-type: none"> i. a temporary disability policy or program of an employer; or ii. a paid family, or medical leave policy of an employer. <p>[Please note that the weekly PFML allotments are reduced by the amount of paid or unpaid leave taken during the benefit year for a MA PFML qualifying reason, and the benefits are reduced by any wages or wage replacement that a covered individual receives from any state or federal temporary, permanent disability benefits law or a permanent disability policy or program of an employer. Leave taken prior to January 1, 2021 will not count against the individual’s weekly benefit amount or allotment. Please see final regulations for complete list of reductions.]</p> <ul style="list-style-type: none"> • If an employer makes payments to an employee during any period of MA PFML leave that equal or exceed the amount required under the MA PFML law, the employer shall be reimbursed out of any benefits due or to become due from the trust fund for family or medical leave benefits for that employee covering the same period of time as the payments made by the employer. • Any leave provided under a collective bargaining agreement or employer policy that is used by the employee for a covered reason and paid at the same or higher rate than MA PFML shall count against the MA PFML entitlement.
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Section 9: MA PFML claims – filing, approval and appeals

<p>63. How will employees file an application for benefits for PFML benefits?</p>	<p>If an employer is participating in the state-run program (i.e., is not providing the benefits through a private plan), an employee will be required to file an application for benefits for MA PFML benefits using forms provided by the MA DFML.</p> <p>The regulations provide that when an employee files an application for benefits, the application must include the following:</p> <ul style="list-style-type: none"> • identifying information such as a SSN or individual taxpayer identification number; • the nature of the leave, whether family or medical leave; • the starting date and expected duration of the leave; • whether the leave will be continuous or intermittent; • the employer name and identification number; • the date notice was provided to the employer;
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		<ul style="list-style-type: none"> • any denied, granted or pending requests for leave for a qualifying reason from the employer during the current benefit year; • a statement regarding the family relationship in the form specified by the department if the leave involves family leave or leave relating to active military service by a family member; • a completed certification (as described below); and • additional specific information requested by the DFML where reasonably necessary to review and process an individual’s application for benefits. • For employers participating in a private plan, the private plan will provide an appeals process and the private plan administrator will review the initial appeal. If the employee’s denial or adverse decision is not overturned, the employee can exercise the right to appeal their claim to the DFML.
64.	<p>What forms will be used to apply for benefits and what documentation will an <u>employee</u> be required to submit?</p>	<p>Under the law and regulations, when an application for benefits is filed, the employee will need to meet certification requirements:</p> <ul style="list-style-type: none"> • Medical Leave. The employee must submit a certification from the employee’s healthcare provider that establishes: (1) that the employee has a serious health condition; (2) the date on which the serious health condition commenced; (3) the probable duration of the serious health condition; and (4) other information required by the DFML, including a certification by the healthcare provider that the employee is incapacitated from work due to the serious health condition and information regarding the need for intermittent leave if applicable. The regulations also provide that where the application for benefits for leave is on an intermittent or reduced schedule leave, the medical certification must contain information regarding the need for intermittent leave including a statement such leave or reduced schedule is medically necessary. • Family leave to care for a family member with a serious health condition. The employee must submit a certification confirming the relationship between the employee and the family member and must also submit a certification from the family member’s healthcare provider that establishes (1) the name and address of the family member and the relationship to the covered individual;(2)that the family member has a serious health condition; (3) the date on which the family member’s serious health condition commenced; (4) the probable duration of the family member’s serious health condition; (5) a statement that the employee is needed to care for the family member; d (6) an estimate regarding the frequency and the anticipated duration of time that the covered individual is needed to care for the family member; (7) information from the covered individual that proves to the satisfaction of the Department the identity of the family member. • Family leave for the birth of a child. The employee must submit (1) the child’s birth certificate; (2) a statement from the child’s healthcare provider stating the child’s birth date or (3) a statement from the healthcare provider of the person who gave birth stating the child’s birth date. The regulations do not currently require an attestation that the employee and employer have agreed to the intermittent or reduced leave schedule for all bonding claims including birth and

		<p>placement for adoption or foster care. Sun Life believes that this was an inadvertent error since the statute itself contains this requirement.</p> <ul style="list-style-type: none"> • Family leave for adoption or foster placement. The employee must submit a certificate from the child’s healthcare provider or from an adoption or foster care agency involved in the placement or the department of children and families must confirm both the placement and the date of placement. To the extent that the status of a covered individual as an adoptive or foster parent changes while an application for benefits is pending or while the covered individual is receiving benefits, the covered individual must provide written notice to the Department within five business days of such change in status. The Massachusetts Department of Children and Families may confirm in writing the status of the covered individual as an adoptive or foster parent while an application for benefits is pending or while a covered individual is receiving benefits. • Family leave for a qualifying military exigency. The employee must submit a certification including: <ul style="list-style-type: none"> (1) a copy of the family member's active duty orders; or (2) a letter of Impending Activation from the family member's Commanding Officer; or (3) other documentation reasonably acceptable to the Department in circumstances where, for good cause shown, the applicant is unable to produce the documentation specified above. or; (4) a statement of the family relationship between the service member and the family member requesting benefits in a form prescribed by the Department; (5) information from the covered individual that proves to the satisfaction of the Department the identity of the family member; (6) the name and address of the family member being cared for; (7) the dates or period of time for which leave is requested; and (8) the underlying reason for the exigency leave. • Family leave to care for an injured service member. The employee must submit a certificate from the family member’s healthcare provider that includes (1) the date on which the service member’s serious health condition commenced; (2) the probable duration of the condition; (3) a statement that the employee is needed to care for the family member; (4) an estimate of the amount of time the employee will be needed to care for the family member; (5) an attestation by the service member’s healthcare provider and the employee that the health condition is connected to the service member’s military service; (6) a statement of the family relationship between the service member and the employee; (7) other documentation required by the department; (8) The name and address of the family member being cared for; and (9) other information or documentation that may be required by the Department.
65.	<p>What is the standard required for medical</p>	<ul style="list-style-type: none"> • The MA PFML law states that an employee may take medical leave if the employee has a serious health condition rendering them unable to perform the functions of his or her position.

	<p>leave under the MA PFML law?</p>	<ul style="list-style-type: none"> • The regulations provide, that the employee must submit a certification from the healthcare provider that the employee is incapacitated from work due to the serious health condition. The approach of the regulations is consistent with the standard for leave under the FMLA because of an employee’s own serious health condition. • Incapacity is defined, in the regulations, as the inability to perform the functions of one’s position, or where the covered individual is a former employee, to perform the functions of one’s most recent position or other suitable employment due to the serious health condition, treatment thereof or recovery therefrom. • Suitable employment is defined within the state’s unemployment law and, among other considerations, evaluates whether the employment would be detrimental to the health, safety or morals of an employee, whether the covered individual is reasonably fitted by training and experience, and whether the position is located within reasonable distance of the covered individual’s residence or place of last employment of the covered individual.
<p>66.</p>	<p>How will an <u>employer</u> know whether an application for MA PFML benefits has been approved?</p>	<p>The regulations provide that the DFML will provide contemporaneous notice to the employee and the employer on an approval of an application for paid benefits, and that the approval for payment notice will include:</p> <ul style="list-style-type: none"> • the reason for the approved leave benefits; • the duration of the approved leave benefits; • for intermittent leaves, the frequency and duration of the leave benefits; and • the expiration of the approved leave benefits.
<p>67.</p>	<p>What information does an <u>employer</u> have to provide to the DFML when an employee submits an application for benefits?</p>	<ul style="list-style-type: none"> • The regulations provide that, upon request, an employer must provide the following: <ul style="list-style-type: none"> ○ Wage and/or earnings information for the past 12 months for the employee requesting leave. ○ A description of the employee’s position. ○ Whether the employee currently works a full- or part-time schedule. ○ Weekly hours worked. ○ Prior requests/approvals for a qualifying reason. ○ Amount of paid leave already taken for qualifying reasons during the current benefit year. ○ A description of the employer’s own paid leave policies and whether the employee has received paid leave during the current benefit year under any plan or practice of the employer and whether the employee will receive any paid leave benefits from the employer during the request leave period at issue. ○ Whether the covered individual has applied for concurrent FMLA or other leave and whether the employer has approved the application.

		<ul style="list-style-type: none"> ○ Whether the covered individual will be receiving any other wage replacement benefits. ○ Any other relevant information or records related to the application for benefits, including any evidence of a potentially fraudulent application for benefits.
68.	Does an <u>employer</u> have a right to see the application for benefits that was filed or the supporting certifications or documentation?	<ul style="list-style-type: none"> • The MA PFML law states that information contained in the files and records pertaining to an employee is confidential and not open to public inspection. • The regulations provide that an employee filing an application for benefits for MA PFML benefits must provide the DFML with consent to share information regarding the claim and other information necessary to process the employee’s application for benefits including consent to share information with the employee’s employer and/or healthcare provider. This regulation gives the DFML the right to share employee information with the employer, but there is nothing in the regulations that creates a process for an employer to request this information.
69.	What recourse does the DFML have when the application for benefits form is incomplete, inaccurate, insufficient or unauthentic?	When the DFML determines that a certification form lacks the required information, is not accurate or authentic or is otherwise insufficient, the DFML is permitted to contact the healthcare provider and require that it verify, supplement or otherwise amend the information in the certification.
70.	What happens if an employee does not submit all of the information required on a timely basis?	<ul style="list-style-type: none"> • The regulations provide that if an application for benefits is filed more than 90 calendar days after the start of leave or is filed but does not have all of required information, the covered individual may receive reduced benefits at the discretion of the director of the DFML.
71.	What information can the DFML require an <u>employer</u> to provide with regard to an application for benefits?	<p>The regulations provide that, upon request, an employer has five business days to provide requested information or records, including the following:</p> <ul style="list-style-type: none"> ○ Wage and/or earnings information for the past 12 months; ○ A description of the employee’s position; ○ Whether the employee works a full- or part-time schedule; ○ Weekly hours worked; ○ Prior requests/approvals for qualifying reasons; ○ Amount of paid leave already taken for a qualifying reason during the current benefit year; ○ A description of the employer’s own paid leave policies and whether the employee has received paid leave during the current benefit year under any plan or practice of the employer and whether the employee will receive any paid leave benefits from the employer during the requested leave period at issue;

		<ul style="list-style-type: none"> ○ Whether the employee has applied for concurrent FMLA or other leave and whether the employer has approved the application. ○ Whether the employee will be receiving any other wage replacement benefits. ○ Any other relevant information or records related to the application for benefits, including any evidence of a potentially fraudulent application for benefits.
72.	What are the time standard requirements for decisions on applications for benefits?	<ul style="list-style-type: none"> ● The regulations provide that the DFML will let benefits applicants know if they've been approved or denied MA PFML benefits, or if they need to send additional information within 14 calendar days of receiving an application. ● If the DFML sends a request for additional information within 14 days of receipt of the application, this will count as notice. ● The DFML will pay benefits not less than 14 calendar days after approving the application, unless that determination occurs more than 14 calendar days before the onset of eligibility, in which case the department will commence payment of leave benefits as soon as eligibility begins.
73.	Can an <u>employee</u> appeal a denial of benefits?	<ul style="list-style-type: none"> ● Under the state run MA PFML plan, employees who are denied benefits may appeal the denial to the DFML. ● Under private plans, the employee who is denied benefits must first appeal the denial to the private plan administrator, and if the denial is not overturned, they can appeal to the DFML. ● The regulations provide that a request for an appeal must be filed within 10 calendar days of the employee's receipt of the notice of the denial, but that time period may be extended by the DFML for good cause shown. ● Employees may seek judicial review of a denial of a request for MA PFML benefits in a district court within 30 days of the appeal decision.
74.	What rights do <u>employers</u> have to appeal approvals of benefits under the MA PFML?	<ul style="list-style-type: none"> ● There does not appear to be any process or right in either the MA PFML law or the regulations for employers to appeal an approval by the DFML of an employee's request for MA PFML benefits.

Section 10: How MA PFML interacts with other laws

75.	How will MA PFML interact with FMLA?	<p>Both laws mandate job protection and continuance of health plan benefits during a leave covered by the respective law. Where the employee is eligible under both laws and the leave reason is covered under both laws, the leaves will run concurrently. If the leave is eligible under one law but not the other, the leave will run only under the applicable law.</p> <p>Note: The MA PFML law provides that employees who take MA PFML leave while ineligible for leave under the FMLA may take leave under the FMLA in the same</p>
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benefit year only to the extent they remain eligible for concurrent leaves under the MA PFML. While the MA PFML law contains this provision, the provision may be unenforceable because state laws typically are not permitted to dictate when leave under a federal law is available.

There are some key differences between the FMLA and MA PFML that could result in the leaves not running concurrently.

- **Family member has a broader definition under the MA PFML law:**

- ✓ The FMLA defines family member as parent, spouse, child under age 18 and disabled child over age 18. The FMLA also includes the concept of *in loco parentis*.
- ✓ The MA PFML law includes the following in its definition of family member: spouse, domestic partner, child, parent or parent of spouse or parent of domestic partner, someone who stood *in loco parentis* to the employee when they were a minor; grandchild, grandparent or sibling of the covered employee.

- **Leave durations under each law differ:**

- ✓ The FMLA provides up to 12 weeks for all reasons except care of an injured service member, which provides up to 26 weeks. There is a combined maximum of 26 weeks available per leave year.
- ✓ The MA PFML law provides 12 weeks family leave, except it includes up to 26 weeks for care of an injured service member and provides 20 weeks medical leave for the employee's own serious health condition. There is a combined maximum of 26 weeks available per benefit year.

- **FMLA includes the option for employers to select leave year methods while MA PFML mandates the use of "Benefit year":**

- ✓ The FMLA includes four leave year methods from which the employer can choose to use the fixed date, rolling forward, rolling backward or calendar year leave year method.
- ✓ The MA PFML law mandates the use of benefit year, which is defined as 52 consecutive weeks beginning on the Sunday immediately preceding the first day of job-protected leave.

- **The minimum increments of intermittent leave are different under each law:**

- ✓ Under the FMLA, the smallest increment of time tracked for payroll or other purpose must be used and must be no greater than one hour.
- ✓ The minimum increment under MA PFML is set by the employer in an increment the employer uses to account for other forms of leave. MA PFML minimum increments could or could not align with the minimum increment the employer uses for FMLA.

- **Eligibility:**

- ✓ Employees must meet a three-prong test to be eligible for FMLA. They must have worked for the employer at least 12 months, worked 1,250 hours in the year preceding the leave, and work at a location with 50 or more employees within 75 miles.

		<ul style="list-style-type: none"> ✓ The MA PFML law makes eligible any employee who is eligible to receive unemployment compensation.
76.	How does the MA PFML interact with the MA Earned Sick Leave law?	<ul style="list-style-type: none"> • MA Earned Sick Leave enables employees to earn up to 40 hours per year of sick leave to address certain personal and family needs. • The final regulations are silent regarding the interaction of Earned Sick Time and MA PFML.
77.	How does the MA PFML interact with the MA Parental Leave Act?	<ul style="list-style-type: none"> • MA Parental Leave Act (MA PLA) provides eight weeks of unpaid job-protected leave from work for bonding with a newborn or newly adopted child. • Leave under the MA PLA is available to full-time employees who have worked at least three consecutive months for ER (or completed express probationary period). • MA PLA applies to employers with six or more employees in MA. • Employee is entitled to eight weeks of leave per child (e.g., if twins, 16 weeks).

The information in this document is based on our knowledge of the current MA PFML law and regulations. If the DFML revises the regulations, adopts new policies or if the law itself is amended, we will update this document. This document is not intended to be and should not be construed as legal advice. Employers are encouraged to consult employment law counsel for legal advice. Subject to regulatory approval, Sun Life's fully insured MA PFML coverage will be underwritten by Sun Life Assurance Company of Canada (Wellesley Hills, Mass.).

Sun Life's fully-insured MA PFML coverage, subject to regulatory approval, will be issued by Sun Life Assurance Company of Canada. Sun Life's self-funded or administrative-services-only MA PFML solution will be administered by Sun Life Assurance Company of Canada. This service is not insurance.

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