

# Rights and Obligations under the Massachusetts Family and Medical Leave Law<sup>1</sup>

[Name of Employer] (“the Company”) is providing you with this notice of your and The Company’s obligations under the Massachusetts Paid Family and Medical Leave law (MA PFML).

## Explanation of Benefits

- **Beginning January 1, 2021,**
  - employees may be entitled to up to 12 weeks of paid family leave in a benefit year for the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces;
  - employees may be entitled to up to 20 weeks of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work
  - employees may be entitled to up to 26 weeks of paid family leave in a benefit year to care for a family member who is a covered service member undergoing medical treatment or otherwise addressing consequences of a serious health condition relating to the family member’s military service.
- **Beginning July 1, 2021,**
  - employees may be entitled to up to 12 weeks of paid family leave in a benefit year to care for a family member with a serious health condition.
- **Maximum Combined medical and family leave.** Employees may be eligible for up to 26 total weeks, in the aggregate, of paid family and medical leave in a single benefit year.
- **Maximum Benefit.** An employee’s weekly benefit amount will be based on the employee’s earnings, with a current maximum benefit of \$850 per week.

## Eligibility for MA PFML benefits

- **Location of work.** The DFML has issued draft regulations for public comment. The draft regulations define a covered employee as being a person who works in the Commonwealth of Massachusetts. When the employee’s services are performed inside and outside of the Commonwealth he or she may still be a covered employee.
- Under the draft 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
  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
  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.

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<sup>1</sup> **NOTE TO EMPLOYERS:** *This notice is NOT intended for employers whose workforce consists of more than 50% individuals paid as IRS Form 1099-misc independent contractors instead of W-2 employees. Employers whose workforce is made up of more than 50% IRS Form 1099-misc independent contractors have special notice obligations that are not reflected in this notice.*

- **Amount of compensation earned.** Employees are eligible for MA PFML if they meet the eligibility requirements of the Commonwealth's unemployment compensation law.
- To be eligible for unemployment benefits, the employee must have earned \$4,700 during the last 4 completed calendar quarters and 30 times the weekly unemployment insurance benefit amount they would be eligible to collect.
- Eligibility is based on the amount of compensation that the employee has earned while working for any employer in Massachusetts during the last 4 completed quarters --- not the specific employer. Therefore, new employees may be eligible if they previously satisfied the eligibility requirements during the requisite time period at a prior Massachusetts employer.

### **Job Protection, Continuation of Health Insurance, No Retaliation**

- **Job Protection:** Generally, an employee who has taken family or medical leave under the law must be restored to the employee's previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of leave.
- **Continuation of Health Insurance:** 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.
- **No Retaliation:** It is unlawful for any employer to discriminate or retaliate against an employee for exercising any right to which such employee is entitled under the paid family and medical leave law. An employee or former employee who is discriminated or retaliated against for exercising rights under the law may, not more than three years after the violation occurs, institute a civil action in the superior court and may be entitled to damages of as much as three times their lost wages.

### **Employer/Employee Contributions to the DFML Family and Employment Security Trust Fund**

Premium collections and contributions to the Department of Family and Medical Leave (DFML) Employment Security Trust Fund were originally scheduled to begin on July 1, 2019. On June 11, 2019, the Governor and the Legislature approved a three month delay to October 1, 2019. . An employer will be responsible deducting employee contributions from payroll for sending both the employer and employee shares of premium to the DFML.

Originally, the total contribution amount was going to be 0.63% of wages up to the annual Social Security maximum. However, as part of the three month delay, the premium has been increased to 0.75% of wages. It appears that the increase is intended to be temporary so that the Commonwealth does not forfeit three months of premium that would have been collected without the delay. Of the 0.63% or 0.75% total contribution amount, there is a split: 82.5% is a medical leave contribution and 17.5% is a family leave contribution. This means the 0.63% total payroll cost becomes 0.52% of payroll for Medical Leave and 0.11% of payroll for Family Leave, and if the premium rate is 0.75%, approximately 0.62% of payroll is for Medical Leave and 0.13% is for Family Leave.

The medical leave premium contribution will be paid 60% by the employer and 40% by the employee. The family leave premium contribution will be paid entirely by the employee. The chart below shows the split of the premium contribution rates for medical leave and family leave, respectively, between the Company and the employee at both the 0.62% and the 0.75% premium contribution rates: <sup>2</sup>

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<sup>2</sup> **IMPORTANT: This draft assumes that the employer intends to require employees to contribute toward the premium. Employers are permitted to pay both the employee and employer share of the premium. If you decide to pay both the employee's and employer's share of the premium, you can and should advise the employee of this fact in this notice.**

Leave Type	Total Covered Payroll rate at 0.62%	Total payroll rate the Employer pays	Total payroll rate the employee pays
Medical leave	0.52%	0.31%	0.21%
Family leave	0.11%	0%	0.11%
<b>Total Combined</b>	<b>0.63%</b>	<b>0.31%</b>	<b>0.31%</b>

Leave Type	Total Covered Payroll rate at .75%	Total payroll rate the Employer pays	Total payroll rate the employee pays
Medical leave	0.62%	0.37%	0.24%
Family leave	0.13%	0%	0.13%
<b>Total Combined</b>	<b>0.75%</b>	<b>0.37%</b>	<b>0.37%</b>

As noted above, these rates are applied to wages up to the Social Security maximum.

### How to File a Claim

Employees must file claims for paid family and medical leave benefits with the DFML using the Department's forms. Forms and claim instructions will be available on the Department's website [www.mass.gov/DFML](http://www.mass.gov/DFML) before January 2021.

Employees are required to provide at least 30 days' notice to their employer of the anticipated starting date of any leave, the anticipated length of the leave and the expected date of return. An employee who is unable to provide 30 days' notice due to circumstances beyond his or her control is required to provide notice as soon as practicable.

### Private Plan Exemption<sup>3</sup>

An employer that offers paid leave with benefits that are at least as generous as those provided under the law may apply for an exemption from paying the Department of Family and Medical Leave Family and Employment Security Trust Fund contribution. An employer may apply for an exemption from the medical leave contribution, family leave contribution, or both.

The details of any private plan must be provided to employees by an employer at the same time as this Notice.

***Please note that The Company may choose to provide these benefits through a private plan and will update you with information about the private plan if it chooses that option.***

Employees enjoy rights to job-protected leave and from discrimination and retaliation under the law even if their employer is approved to provide leave benefits through a private plan.

### Department of Family and Medical Leave (DFML) Contact Information

The Massachusetts Department of Family and Medical Leave  
Charles F. Hurley Building  
19 Staniford Street, 1<sup>st</sup> Floor

<sup>3</sup> **NOTE TO EMPLOYERS:** *This section only needs to be included if you are contemplating offering a private plan. If you have intend to defer to the state's program, you need not include this section. If you already have applied and/or been approved to provide a private plan, you need to provide more specific notice about your private plan.*

Not intended as legal advice. Provided for informational purposes only.

Boston, MA 02114  
(617) 626-6565  
www.mass.gov/DFML

**Payment for Concurrent Leave**

Any paid leave provided under a collective bargaining agreement or employer policy and paid at the same or higher rate than paid leave available under this law shall count against the allotment of leave benefits available under this law.

Leave under the MA PFML will run concurrently with leave under the federal Family and Medical Leave Act (FMLA), the Massachusetts Parental Leave Act and the Massachusetts Earned Sick Time law when leaves under such laws are applicable.

**More Information is Available**

For more detailed information, please consult the Department’s website: [www.mass.gov/DFML](http://www.mass.gov/DFML).

The Company will also be providing additional information and keeping you updated about developments under the MA PFML law.

**Acknowledgment of receipt of notice**

Under the MA PFML law, The Company is required to request your signature acknowledging that you received this notice, and, if you refuse to sign, to provide any an opportunity acknowledging your refusal to sign.

You may sign this acknowledgment and return it to Human Resources at [insert email]. Alternatively, you may reply to the email forwarding the notice acknowledging that you received the email. If you fail to take either of these actions, The Company may prove delivery of the notice by email.

**ACKNOWLEDGMENT**

Your signature below acknowledges your receipt of the information above within 30 days from the start date of your employment or by September 30, 2019, whichever is later.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name**

**If you refuse to sign the acknowledgement, please sign below indicating your refusal.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name**

Your signed acknowledgement/refusal will be retained by The Company as part of your personnel file. Please retain a copy for your own reference.

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