

Massachusetts Paid Family & Medical Leave (MA PFML) update webinar Q&A

During our live presentation, we received several questions from participants through the Q&A function. We have combined some similar questions and provided answers. If you asked a question not shown here, please feel free to reach out to abigail.oconnell@sunlife.com or marjory.robertson@sunlife.com.

	Question	Answer
1.	Will Sun Life have a product that will support PFML in other states and municipalities?	Sun Life can administer your MA PFML fully insured or self-insured plan, effective January 1, 2021. You may contact us for a quote and information on how to apply for a private plan. Sun Life supports certain other state-mandated PFML programs. To learn more, please reach out to your Sun Life sales representative for a complete review of our product solutions.
2.	What happens if an employee's signed notice is not received? For example, if an employee was sent the notice and was reminded five times to return it, but the signed notice was never received.	While the law requires that you obtain a signed acknowledgment, the DFML has recognized that some employees may not respond. The DFML has indicated that, if you can prove that the notice was delivered, that should suffice.
3.	Will Sun Life apply for the private plan exemption if they are managing the plan for the Company?	Sun Life will help you apply for a Private Plan on the MA Tax Connect website. However, the employer owns the online account for the TaxConnect site. Therefore, the employer will need to submit the application. Sun Life will provide coaching and assistance to help you navigate the application process.
4.	Is there an employee minimum for this plan to go effect?	The law applies if you have one or more employee working in the state of MA.
5.	Please clarify W2 workers notice – does it only apply to workers in MA, or to all W2 workers in all states?	Employers must provide notice to W2 workers who work in the Commonwealth of MA.
6.	We have one salesperson who lives in MA, but our corporate location is in Georgia. Are we required to participate and collect premiums for one employee who does not work primarily in MA?	<p>The regulations define a covered employee as a person who works in MA. If the employee's services are performed inside and outside of MA, the employee may be a covered employee. If the service is performed both inside and outside of MA, but the service performed outside MA is incidental to the individual's service within MA, the employee is a covered individual for MA PFML.</p> <p>The employee may still be a covered individual if the employee's services are not localized in any state, but some part of the services are performed in MA and:</p> <ul style="list-style-type: none"> the employee's base of operations is in MA or, if there is no base of operations, then the place from which such services are directed or controlled is within MA, or

		<ul style="list-style-type: none"> the employee’s base of operations or place from which such services are directed or controlled is not in any state in which some part of the service is performed, but the individual’s resident state is MA.
7.	Can an employee collect short-term disability and MA PFML concurrently?	Yes. MA PFML benefits may run concurrently with short-term disability if the employee is eligible for benefits under both programs. MA PFML will pay “first,” and the short-term disability will be offset by the amount of MA PFML benefit, up to the short-term disability benefit maximum or the employee’s predisability earnings, based on the specific policy language in place.
8.	Please clarify Independent Contractor (IC) requirements – did you mean if the employer has 50% of its IC workforce in MA?	<p>Under the MA PFML law and regulations, only employers who are “covered business entities” need to count IRS Form 1099-Misc individuals.</p> <p>A “covered business entity” is a business or trade in which more than 50% of the workforce consists of IRS Form 1099-Misc individuals.</p> <p>Neither the law nor regulations specifically indicate whether the percentage of 1099-Misc workers is calculated by total employees or based on MA-based workers. In consideration of the direction to calculate premium liability based on MA-based workers, we anticipate this 1099-Misc percentage should be calculated based on MA-based workers.</p>
9.	How does MA PFML compare to Sun Life coverage of NY PFL?	<p>MA PFML is more generous than NY’s existing statutory benefit program.</p> <ul style="list-style-type: none"> MA PFML has a higher income replacement, particularly for lower-income employees NY Disability Benefits law requires that the employee be disabled to receive benefits, while MA PFML requires only that the employee be incapacitated due to his or her own serious health condition The definition of family member is broader under MA PFML Eligibility threshold for benefits is lower for MA PFML MA PFML offers job protection for both PML and PFL. In New York, only the PFL has job protection. <p>There are several other differences between these laws.</p>

10.	Can we require MA PFML to run concurrently with FMLA or any company leave policy?	You may require MA PFML to run concurrently with FMLA or any company leave policy as long as the employee is eligible under the terms of both. Please keep in mind that in some situations, differing eligibility requirements will prevent leaves from running concurrently. For example, if an employee takes MA PFML leave to care for a grandchild, he or she will retain his or her full FMLA entitlement since FMLA does not provide the right to take leave to care for a grandchild.
11.	Does the medical include the diagnosis?	The state has not yet established the claims process or written claim forms that they will use to administer PFML benefits. For federal FMLA, the certification forms ask for, but do not require, diagnosis. We cannot say whether the certification will require disclosure of diagnosis. The state's claim forms and continuing work on claims process will inform Sun Life's PFML private plan administration.
12.	Which rate pool will be more stable for employers (and closer to the state rate of .75% of payroll) – a private plan or the state-run program entering the first year 2021? And over a long-term period such as five years? Most private plan quotes appear to be illustrative.	It is too early to make any projections as to how the state rates will compare to private plan rates offered by insurance partners. For a number of reasons – including better integration of claims management and reporting – employers are interested in providing their MA PFML benefits through private plans administered by an insurance partner. Also, the employee experience will improve because all claims for benefits can be filed at the same time and insurance partners offer a better claimant experience through, among other things, access to mobile apps.
13.	As new statutory paid leave programs are added, is Sun Life proactively reviewing short-term disability pricing for existing Clients and lowering rates if warranted due to reduced liability?	Yes. As new state plans go into effect, Sun Life will review all potential impacts to our existing products and communicate any changes to our Clients. We also understand that the state PFML programs may require a reduction in short-term disability rates.
14.	Does a person on maternity leave get paid only by short-term disability or by both?	A woman who delivers a baby will be eligible for short-term disability as well as MA Paid Medical Leave (PML) for the period of time that she is recovering medically from childbirth (typically six to eight weeks). After that, the employee is eligible to take MA Paid Family Leave (PFL) to bond with the baby. The maximum MA PFL allotment per benefit year in MA is 12 weeks.
15.	If we have Sun Life coverage, do we automatically have coordination with you on MA PFML?	If you bundle a Sun Life MA PFML private plan and short-term disability policy, then yes, the claims will be automatically coordinated for both programs.
16.	What about an employee who works from home for a MA employer?	This employee would be covered under MA PFML if the home where they work is in MA.

17.	Is there a template letter that can be given to an employee regarding the notice of deductions and benefits starting in 2021?	Yes. There is a template on our website and on the DFML website . The links to both websites are listed in our slides.
18.	How can or should employers validate if an employee earned wages at a prior MA employer to determine eligibility and for eligibility tracking purposes?	The plan administrator, whether for the state or a private plan, will work with the employee and potentially the existing or former employer to verify eligibility for benefits.
19.	If we get a fully insured policy from Sun Life and we have an employee who terminates, will we have to continue to pay premiums for that employee for the time he or she is still eligible for coverage after termination?	No. Premiums liability is based on a percentage of wages paid and, assuming that no wages are paid on termination, there would not be a contribution associated with the terminated employee. Nevertheless, the employee remains eligible for MA PFML for up to 26 weeks.
20.	What if employees are part of a union?	The MA PFML law provides that an employer may require that MA PFML benefits be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy so that the employee will receive the greater of the various benefits that are available for the covered reason.
21.	Fred works for XYZ and then terminates and goes to work for ABC. If, after working 10 weeks for ABC, Fred applies for PFML for a disability, which private plan pays his benefit, XYZ or ABC? (Fred is eligible for the benefit.)	Fred should seek benefits under his current employer. Eligibility is transferable. Fred should seek benefits under the current employer since he will gain the right to restoration and continued health benefits if he is approved for PFML leave under his new employer.
22.	How will FMLA coordinate with required leave under the MA Sick Pay law?	The MA PFML states that it will run concurrently if taken together but the law also states that an employer cannot force an employee to use PTO. Employees may use PTO during the seven-day unpaid waiting period.
23.	Can an employer request reimbursement from the state if an employee is on continuation of pay? (Similar to NY PFL)	Yes. If an employer makes payments to an employee during any period of MA PFML leave that equals or exceeds the amount required under the MA PFML law, the employer can seek reimbursement out of any benefits due or those that will be due under MA PFML. The DFML has not yet set up a process or procedure for requesting reimbursement.

24.	Are there any requirements for Applicable Large Employers (ALEs) that I should be aware of? For example, say two employers both have a total of more than 50 employees. Some employees work some hours for each employer. Would employees be eligible for leaves from <i>both</i> employers?	There are no requirements specific to Applicable Large Employers (ALEs) under the MA PFML. Employees may be eligible for leave from multiple employers if they meet the eligibility requirements of MA PFML.
25.	Is the PFML for MA starting on January 1, 2020, or 2021?	Employees may take paid leave under the MA PFML on January 1, 2021, for all of the leave reasons except for care for a family member with a serious health condition. Those paid leaves begin on July 1, 2021.

This information is for educational purposes only and is not intended to be and should not be considered to be legal advice. We recommend Clients speak with legal counsel specializing in labor and employment law to ensure your organization has met all of the requirements under the Massachusetts Paid Family and Medical Leave (PFML) Act.

Subject to regulatory approval, when available, Sun Life's fully insured and self-insured MA PFML solution will be administered by Sun Life Assurance Company of Canada. The self-insured solution is not insurance.

Group insurance policies are underwritten by Sun Life Assurance Company of Canada (Wellesley Hills, MA) in all states, except New York. In New York, group insurance policies are underwritten by Sun Life and Health Insurance Company (U.S.) (Lansing, MI).

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