

# [Self-Insured MA PFML Private Plan Summary Plan Description Template]

[This MA PFML Summary Plan Description template is a sample only. The employer should consult with counsel for advice on the legal requirements of the MA PFML law. The contents of this template are not intended to be and should not be construed as legal advice by Sun Life. If you intend to change the content of this Summary Plan Description, please consult with Sun Life.]

## MA PAID FAMILY AND MEDICAL LEAVE PRIVATE PLAN SUMMARY PLAN DESCRIPTION

This document sets forth the terms of the private plan of \_\_\_\_\_ (“the Company”) for paid family and medical leave benefits under the Massachusetts Paid Family & Medical Leave (PFML) law (“the Plan”). This Plan is being administered for the Company by Sun Life Assurance Company of Canada (“Sun Life”).

The Plan will at all times be interpreted in accordance with the requirements of MA PFML law, and if there is a conflict between the provisions of this summary and applicable law and/or regulations, the applicable law and/or regulations will govern. The Plan will also be modified to comply with any changes to the MA PFML law and/or regulations that are adopted thereunder by the Commonwealth of Massachusetts and any written guidance published by the Massachusetts Department of Family and Medical Leave (MA DFML).

In accordance with the requirements of the MA PFML law, all presumptions shall be made in favor of the availability of leave and the payment of family and medical leave benefits.

This Plan will take effect and benefits will be payable under the Plan on the later of the first of the quarter after the Company’s private plan exemption is approved by the MA DFML or the date that benefits become available under the MA PFML law. For all leave reasons except family leave to care of a family member with a serious health condition, benefits will be payable beginning on January 1, 2021.

### 1) Definitions

This section sets forth certain definitions from the MA PFML Law. The list of definitions is not exclusive. All terms used in this Plan that are defined under the MA PFML shall have the same definition in this Plan.

**Accrued Paid Leave** is leave earned by or otherwise provided to a covered individual pursuant to a benefit plan or policy offered by the Company, including but not limited to, sick leave, annual leave, vacation leave, personal leave, compensatory leave or paid time off. Accrued paid time off does not include benefits under a (i) disability policy or program provided by the Company or (ii) paid family or medical leave policy of the Company.

**Application for benefits** is a request or claim for MA PFML benefits submitted to the Company’s third party administrator of its private plan.

**Average weekly wage** has the same meaning as provided in M.G.L. c. 151A, §1(w); provided, however, that the average weekly wage will be calculated using earnings for the Company from the base period.<sup>1</sup>

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<sup>1</sup> **NOTE TO EMPLOYER:** Wages has the same meaning that is used under the MA Unemployment Law. Under MA Unemployment law, the definition of wages is broader than salary. Sun Life is not providing legal advice as to what

**Average working week** is the average number of hours worked for the Company from the two highest quarters of the 12 months preceding the covered individual's application for benefits.

**Base period** is the last four completed calendar quarters within the previous five calendar quarter immediately preceding the date an application for benefits is filed with the Company for a qualified period of MA PFML leave.

**Benefit Year** is the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day of job-protected leave for the covered individual. The benefit year for a covered individual who received benefits for an intermittent leave will commence, following an approval by the Company or Sun Life, on the Sunday immediately preceding the first absence following the exhaustion of the prior benefit year.

**Child**, a biological, adopted or foster child, a stepchild or legal ward, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor child.

**Complete Application.** Is an application for benefits that contains all of the required information from the covered individual pursuant to 458 CMR 2.08(2) and all of the information required from the employer pursuant to 458 CMR 2.08(6). The application for benefits shall be deemed complete when the Company receives the information required under 458 CMR 2.08(6) or ten business days after the Company requests the information required under 458 CMR 2.08(6) from the employer, whichever is sooner.

**Covered Business Entity** is a business or trade that contracts with self-employed individuals for services and is required to report the payment for services to such individuals on IRS Form 1099-MISC for more than 50% of its workforce. The Company is not currently a Covered Business Entity and does not intend to become a Covered Business Entity. If at any time the Company becomes a Covered Business Entity it will comply with the requirements of the MA PFML with regard to Covered Contract Workers, including that the Company will extend the benefits of this private plan to Covered Contractor Workers.

**Covered Contract Worker** is a self-employed individual: (a) for whom an employer or covered business entity is required to report payment for services on IRS Form 1099-MISC; (b) for whom an employer or covered business entity is required to remit contributions to the Family and Employment Security Trust Fund; (c) who performs services as an individual in Massachusetts; (d) who resides in Massachusetts; and (e) who is not classified as an independent contractor.

**Covered Individuals** include the following individuals:

- all the [Company's] Employees in Employment in Massachusetts in Massachusetts, including full-time, part-time, permanent, temporary, on call, per diem or seasonal employees; and
- former Employees of the [Company] for not more than 26 weeks after separation or until re-employed, whichever comes first; and[.]
- Massachusetts 1099-MISC Covered Contract Workers if applicable, if the Employer is a Covered Business Entity.

**Covered Servicemember:** (i) a member of the Armed Forces, including a member of the National Guard or Reserves, who is (A) undergoing medical treatment, recuperation or therapy; (B) otherwise in outpatient status; or (C) is otherwise on the temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or a

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should and should not be included when you report wages. We recommend that you consult legal counsel to determine what wages should be reported.

serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces; or  
(ii) a former member of the Armed Forces, including a former member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces and manifested before or after the member was discharged or released from service.

**Employment in Massachusetts** is service, including service in interstate commerce, performed for wages or under any contract, oral or written, express or implied, by an employee for his employer. Employment includes work done within and without Massachusetts, if (A) the work is localized in Massachusetts or (B) work is not localized in any state but some of the work is performed in MA and (i) the Covered Individual's base of operations is in MA or if there is no base of operations then the place from which such service is directed or controlled is in MA or (iii) the Covered Individual's base of operations or place from which such work is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in MA.

**Employment benefits** are all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions.

**Family Leave** is leave take by a covered individual:

- To participate in providing care for a family member with a serious health condition;
- To bond with the covered individual's child during the first 12 months after birth or placement of a child under 18 years of age for adoption or foster care; 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 or order to active duty in the Armed Forces.
- To care for a family member who is a covered servicemember.

**Family leave benefits** means wage replacement paid pursuant to section 3 of M.G.L. c. 175M and provided in accordance with M.G.L. c. 175M, section 2 to a covered individual while the covered individual is on family leave.

**Family member** is the spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the covered individual; a person who stood *in loco parentis* to the covered individual when the covered individual was a minor child; or a grandchild, grandparent or sibling of the covered individual.

**Grandparent** is a parent of the covered individual's parents.

**Good cause** is a demonstration by a covered individual that a failure to comply with a requirement of the MA PFML was due to circumstances beyond that individual's control.

**Health care provider** is an individual licensed by the state, commonwealth or territory in which the individual practices medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy, and includes, but is not limited to the following: podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation indicated by X-ray) authorized to practice in a State and performing within the scope of their practice as defined under the laws of the State, commonwealth, or territory; nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under that state, commonwealth, or territory; Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and health care providers listed above who practice in a country other than the United States, who are authorized to practice in accordance with the law of that country, and who are performing within the scope of the person's practices as defined under such law.

**Incapacity** means 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 M.G.L. c. 151A, § 25(c) due to the serious health condition, treatment therefor, or recovery therefrom.

**Inpatient care** means an overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care.

**Intermittent leave** is leave taken in separate periods of time due to a single qualifying reason, rather than for one continuous period of time.

**Job protected leave** is the period of time immediately following the first date on which an employee commences the taking of any type of leave that is associated with a qualifying reason regardless of whether an application for benefits has been submitted to the Company in connection therewith or whether that leave is paid or unpaid. Employees who do not file an application for benefits with the Company pursuant to this Plan, but use any other type of leave, including accrued paid leave or unpaid leave approved by the Company, leave under a (i) temporary disability policy or program of the Company; or (ii) paid family, or medical leave policy of the Company; and taken for a qualifying reason, will be entitled to job protected leave as of the date of commencing such leave and that leave will run concurrently with the leave period provided for under the MA PFML so long as the employee has complied with applicable call-in and notice procedures and policies of the Company. For clarity, to be job protected leave, the leave must be approved by the Company.

**Medical leave** means leave taken by a covered individual due to a serious health condition.

**Parent** is the biological, adoptive, step- or foster mother or father of the covered individual.

**Qualifying exigency** means a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the Armed Forces, including, but not limited to, providing for the care or other needs of the military member's child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment or making arrangements following the death of the military member.

**Qualifying earnings** means wages paid to a covered individual.

**Qualifying reason** is any of the following reasons for which a covered individual is eligible for family or medical leave benefits: to bond with the covered individual's child during the first 12 months after the child's birth, adoption or foster care placement; to care for a family member's serious health condition; to care for a family member who is a covered servicemember; a qualifying exigency arising out of a family member's active duty or impending call to active duty in the Armed Forces; or the covered individual's own serious health condition that prevents the individual from performing the essential functions of the individual's job.

**Reduced leave schedule** means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of a covered individual.

**Serious health condition** is an illness, injury, impairment or physical or mental condition that involves (i) inpatient care in a hospital, hospice or residential medical facility; or (ii) continuing treatment by a health care provider. Continuing treatment includes any one or more of the following:

- (a) Incapacity and treatment: A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  - (i) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct

- supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (ii) Treatment by a health care provider on at least one occasion, that results in a regimen of continuing treatment under the supervision of the health care provider. Treatment includes examination to determine if there is a serious health condition. Treatment does not include routine physical examinations, or eye, or dental examinations. A regimen of continuing treatment includes a course of prescription medication or therapy requiring specialized equipment to resolve or alleviate the health condition.
  - (iii) The requirement in paragraphs (a) (i) and (ii) of this section for treatment by a health care provider means an in-person visit or telehealth visit to a health care provider. The first (or only) in-person or telehealth visit must take place within seven days of the first day of incapacity.
  - (iv) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
  - (v) The term extenuating circumstances in paragraph (a) (i) of this section means circumstances beyond the covered individual's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.
- (b)** Pregnancy or prenatal care. Any period of incapacity due to pregnancy, or for prenatal care.
  - (c)** Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one that:
    - (i) Requires periodic visits (defined as at least twice per calendar year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
    - (ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
    - (iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
  - (d)** Permanent or long-term conditions. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The covered individual or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
  - (e)** Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
    - (i) Restorative surgery after an accident or other injury; or
    - (ii) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
  - (f)** Absences attributable to incapacity under paragraph (b) or (c) of this definition qualify for leave even though the covered individual or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days.
  - (g)** Cosmetic treatments are not serious health conditions unless inpatient hospital care is required or unless complications develop.
  - (h)** A Substance Use Disorder may be a serious health condition. Family or medical leave may only be taken for treatment for substance use disorder by a health care provider, by a provider of health care services on referral by a health care provider or by a program licensed or approved by the Massachusetts Department of Public Health. An absence because of the covered individual's use of the substance, rather than for treatment, does not qualify for leave.
    - (i) Treatment for substance use disorder does not prevent the Company from taking employment action against an employee; provided, however that the Company may not take action against the employee because the employee has exercised his or

her right to take leave for treatment. However, if the Company has an established policy, applied in non-discriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance use, pursuant to that policy, the employee may be terminated whether or not they are presently taking leave.

- (ii) A covered individual may also take leave to care for a covered family member who is receiving treatment for substance use disorder. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance use disorder because the employee has exercised his or her right to take leave.

**Sibling** means the biological, adoptive or step- brother or sister of the covered individual.

**State average weekly wage** means the average weekly wage in Massachusetts as calculated under subsection (a) of section 29 of M.G.L. c. 151A and determined by the Commissioner of Unemployment Assistance.

**Wages** shall have the same meaning as provided in the Massachusetts Unemployment Insurance Benefit law (M.G.L. c. 151A § 1, and includes, among other things, base salary, bonuses, commissions, and tips.

**Weekly benefit** amount is the amount of wage replacement paid to a covered individual on a weekly basis while the covered individual is on approved family or medical leave for a qualifying reason.

## 2) **Eligibility requirements**

[All Covered Individuals as defined above in the definitions section]

## 3) **Benefits Provided**

At all times, the benefits provided under this Plan will be at least equivalent to benefits under the MA PFML state plan.

### a) **Weekly and Daily Benefit Amounts**

- i) For each period of family or medical leave, a covered individual covered by this Plan is eligible to receive a weekly benefit amount that will be calculated as follows:
  - (1) The portion of a covered individual's average weekly wage that is equal to or less than 50 percent of the state average weekly wage will be replaced at a rate of 80 per cent; and
  - (2) The portion of a covered individual's average weekly wage that is more than 50 percent of the state average weekly wage will be replaced at a rate of 50 per cent.
- ii) For calendar year 2021, the maximum weekly benefit is \$850. Thereafter, the maximum weekly benefit amount will be 64 percent of the state average weekly wage, as adjusted annually by the DFML.
- iii) For a covered individual who takes leave on an intermittent or reduced schedule leave, the weekly benefit will be reduced in direct proportion to the intermittent or reduced leave schedule.
- iv) The benefits will be reduced to the next lower multiple of one dollar.
- v) The weekly benefit amount will be reduced by the amount of wages or wage replacement that a covered individual on family or medical leave receives for that period from:
  - (1) any government program or law, including unemployment benefits or workers' compensation, other than for permanent partial disability incurred prior to the family or medical leave claim; or
  - (2) under other state or federal temporary or permanent disability benefits law; or
  - (3) a permanent disability policy or program of an employer.
- vi) Unless the aggregate amount a covered individual receives would exceed the covered individual's average weekly wage, the weekly benefit amount for a period shall not be reduced

by the amount of wage replacement that a covered individual on family or medical leave receives for that period from:

- (1) a temporary disability policy or program of the employer; or
- (2) a paid family or medical leave policy of the employer

**b) Duration of Benefits**

- i) The maximum duration of benefits payable to any covered individual is:
  - (1) Up to 12 weeks for any period of family leave to care for a family member with a serious health condition, to bond with the covered individual's new child, or for a qualifying exigency;
  - (2) Up to 20 weeks for any period of medical leave;
  - (3) Up to 26 weeks of family leave to care of a family member who is a covered servicemember; and
  - (4) Up to an aggregate maximum duration of 26 six weeks of combined family and medical leave per Benefit Year.
- ii) Leave allotments are based on the number of hours or days a covered individual works for the Company.
- iii) When a covered individual works a part-time schedule or variable hours, the amount of leave that a covered individual uses is determined on a pro rata or proportional basis.
- iv) If a covered individual's schedule varies from week to week to such an extent that the Company is unable to determine with certainty how many hours the covered individual would otherwise have worked (but for the taking of MA PFML leave), a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period will be used for calculating the leave entitlement.
- v) A covered individual's family or medical leave allotment shall be proportionately reduced by the amount of family or medical leave taken by the covered individual for any qualifying reason during the benefit year.

**c) Waiting Period**

- i) Benefits are payable after a waiting period of the first seven consecutive calendar days of a job protected leave; provided, however, no waiting period is required for leave during pregnancy or recovery from childbirth if supported by documentation from a health care provider that is immediately followed by family leave.
- ii) The initial seven-day waiting period for paid leave benefits will count against the total available period of leave in a benefit year; provided, however, that if intermittent or reduced schedule leave is taken during a waiting period only the job protected leave actually taken during the waiting period will count against the available period of leave.
- iii) There is a separate waiting period for each application for benefits.
- iv) There is no additional waiting period if a claim is properly extended in accordance with this Plan.

**d) Intermittent leave/Reduced schedule leave**

- i) The smallest increment for leave for a qualifying reason under this Plan is [insert ].<sup>2</sup>
- ii) A covered individual may take intermittent or reduced schedule leave as follows:
  - (1) For family leave to bond with a child during the first 12 months after the child's birth, adoption or foster care placement, leave may be taken on an intermittent or reduced leave schedule only if the employer and employee mutually agree.<sup>3</sup>

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<sup>2</sup> **NOTE TO EMPLOYER:** Under the MA PFML regulations, employers can set the minimum increment of time in which MA PFML intermittent leave can be to be consistent with a minimum increment used for other forms of leave. If the employer is subject to the FMLA, you should consider setting the minimum increment to the same increment you use for FMLA. Options will be discussed during implementation.

<sup>3</sup> **NOTE TO EMPLOYER:** During implementation, we will discuss whether you want to permit intermittent or reduced schedule leave for bonding, and possible options relating thereto.

- (2) For family leave to care for a family member's serious health condition, or to care for a family member who is a covered servicemember, leave may be taken on an intermittent or reduced leave schedule if the health care provider determines it is medically necessary.
  - (3) For family leave due to a qualifying exigency arising out of a family member's active duty or impending call to active duty in the Armed Forces, leave may be taken on an intermittent or reduced leave schedule.
  - (4) For medical leave due to a covered individual's own serious health condition, intermittent or reduced schedule leave may be taken if medically necessary. A covered individual shall advise the Company, upon request, of the reasons why the intermittent or reduced schedule leave is necessary and of the schedule for treatment, if applicable. The employee and the Company shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting the Company's operations, subject to the approval of the health care provider.
  - iii) **Agreed-to Intermittent or Reduced Leave Schedules.** An employee who is approved for and takes leave on an intermittent or reduced leave schedule and who fails to work during the times or on the schedule agreed to with the Company may be subject to discipline.
  - iv) **Impact on Leave Allotments.** Taking leave intermittently or on a reduced leave schedule will result in a proportionate reduction in the covered individual's available allotment of leave. If an covered individual who would otherwise work 40 hours a week takes eight hours of intermittent leave in a week, that leave would count as one-fifth (1/5) of a week of leave. If a covered individual who would otherwise work 30 hours per week only works 20 hours on a reduced leave schedule, the covered individual's 10 hours of leave would constitute one-third of a week of leave to be counted against the annual benefit.
  - v) **Weekly Benefit Adjustment.** A covered individual who takes leave on an intermittent or reduced schedule shall receive a weekly benefit amount that is reduced in direct proportion to the intermittent or reduced leave schedule.
- e) **Expiration of leave entitlement for bonding with a new child**
- i) Family leave for birth, adoption or placement of a child expires at the end of the 12-month period beginning with birth, adoption or placement.

#### 4) **Application for Benefits**

##### a) **Process for filing:**

- i) A covered individual must file an application for benefits for family leave or medical leave benefits using forms prescribed by Sun Life.
- ii) A covered individual may file an application for benefits with Sun Life no more than 60 calendar days before the anticipated start date of the family or medical leave.

##### b) **Notice of leave:**

- i) Employees must provide the Company with notice at least 30 calendar days in advance of such leave of the following:
  - (1) The date that such leave will commence;
  - (2) The anticipated length of the leave;
  - (3) The type of MA PFML leave; and
  - (4) The employee's expected return to work date.
- ii) If for reasons beyond the employee's control, the employee cannot provide 30 days' notice then the employee must provide notice as soon as practicable.
- iii) The Company may require an employee to comply with the Company's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. An employee also may be required by the Company's policy to contact a specific individual to report the information.
- iv) If an employee does not comply with the notice requirements set forth above (including but not limited to the Company's usual notice and procedural requirements) and no unusual circumstances justify the failure to comply, protected leave may be delayed or denied.

- v) When planning medical treatment the employee must consult with the Company and make a reasonable effort to schedule the treatment so as not to unduly disrupt the Company's operations, subject to the approval of the health care provider.
- c) **Application for benefits.** When filed, an application for benefits must include all information necessary for the Company's review and processing including but not limited to:
- i) Identifying information such as a Social Security number or Individual Taxpayer Identification Number or other identifier assigned by the Company.
  - ii) The nature of the leave, whether family leave or medical leave and, if family leave, the specific type (i.e. bonding with a new child, care for a family member with a serious health condition, qualifying exigence or care for covered servicemember).
  - iii) The starting date and expected duration of the leave.
  - iv) Whether the leave will be continuous, intermittent or on a reduced schedule.
  - v) The date that notice was provided to the Company.
  - vi) Any denied, granted or pending requests for MA PFML leave for a qualifying reason during the 12 month period prior to the filing of the application for benefits.
  - vii) A statement regarding the family relationship.
  - viii) A completed certification as set forth below.
  - ix) Additional information requested by the Company where reasonably necessary to review and process the covered individual's claim.
  - x) If an application for benefits is filed with the Company or is filed but does not include all required information and more than 90 calendar days have passed since the start of the covered individual's period of leave, the covered individual may receive reduced benefits in the discretion of the Company and consistent with the requirements of the MA PFML.
- d) **Consent.**
- i) A covered individual filing an application for benefits must provide Sun Life with consent to share information regarding the application for benefits and other information necessary for Sun Life to process the individual's application for benefits, including consent to share information with the Company and health care provider.
  - ii) Consent shall be acknowledged by the individual in a form provided by Sun Life.
  - iii) An application for benefits will not be processed, unless a consent is provided by the covered individual.
  - iv) Where the Company or Sun Life determines that a medical certification lacks required information, or is not accurate or authentic, or is otherwise insufficient, Sun Life may contact the health care provider and require that it verify, supplement or otherwise amend the information in the certification. To be eligible for MA PFML benefits, the covered individual or covered family member (as applicable), must consent to permitting the health care provider to provide the requested information.
- e) **Certifications.** All claims for benefits must be supported by a certification evidencing that the leave is for a qualifying reason.
- i) **Medical leave.** The certification must be from a health care provider and must include:
    - (1) A statement that the covered individual has a serious health condition;
    - (2) The date on which the serious health condition commenced;
    - (3) The probable duration of the serious health condition;
    - (4) An estimate of the frequency and duration of the leave; and
    - (5) Other information required by the Company, including a certification by the health care provider that the covered individual is incapacitated from work due to the serious health condition, as well as information regarding the need for intermittent or reduced schedule leave, if applicable;
  - ii) **Family leave to care for a family member with a serious health condition.** The certification must contain a statement in a form prescribed by the DFML confirming the relationship between the covered individual and the family member and must include the following from the family member's health care provider:

- (1) The name and address of the family member and the relationship to the covered individual;
  - (2) A statement 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 covered individual is needed to care for the family member; and
  - (6) An estimate regarding the frequency and 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 company the identity of the family member.
- iii) **Family leave for the birth of a child.** The leave period for which benefits are requested may only include dates within 12 months of the child's birth date. The certification must include:
- (1) The child's birth certificate;
  - (2) The leave period for which benefits are requested may only include dates within 12 months of the child's birth date. In the case of multiple births, no more than 12 weeks of leave benefits total are available in a benefit year for that purpose.
  - (3) A statement from the child's health care provider stating the child's birth date; or
  - (4) A statement from the health care provider of the person who gave birth stating the child's birth date;
  - (5) Where the application for benefits is for leave on an intermittent or reduced leave schedule, the employee must certify that the employee and the employee's manager mutually agree to the leave schedule.
- iv) **Family leave for the placement of child for adoption or foster care.**
- (1) The certificate must be from the child's health care provider or from an adoption or foster care agency involved in the placement or the Massachusetts Department of Children and Families may confirm both the placement and the date of the placement.
  - (2) The leave period for which benefits are requested must be for dates within 12 months of the placement date. In the case of multiple placements, no more than 12 weeks of leave benefits total are available in a benefit year for that purpose.
  - (3) If the status of the 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 within 5 business days of such change in status provide written notice to the Company.
  - (4) Where the application for benefits is for leave on an intermittent or reduced leave schedule, the employee must certify that the employee and the employee's manager mutually agree to the leave schedule.
- v) **Family leave for a qualifying exigency** arising out of the fact that a family member is on active military duty or has been notified of an impending call or order to active duty in the Armed Forces. The certificate must include:
- (1) A copy of the family member's active duty orders;
  - (2) A letter of Impending Activation from the family member's Commanding Officer; or
  - (3) Other documentation in circumstances where, for good cause shown, the applicant is unable to produce the documentation specified in in (1) or (2); and
  - (4) A statement of the family relationship between the servicemember and the covered individual requesting benefits.
  - (5) Information from the covered individual that proves to the satisfaction of the company the identity of the family member.
  - (6) An estimate regarding the frequency and anticipated duration of time that the covered individual will need to leave for the qualifying exigency.
- vi) **Family leave to care for a family member who is a covered servicemember.** The certificate from the servicemember's health care provider must include:
- (1) The date on which the covered servicemember's serious health condition commenced;
  - (2) The probable duration of the condition;

- (3) A statement that the covered individual is needed to care for the covered servicemember;
- (4) An estimate of the amount of time the covered individual will be needed to care for the covered servicemember;
- (5) An attestation by the servicemember's health care provider and the covered individual that the health condition is connected to the servicemember's military service; and
- (6) Other information that may be required by the Company to adjudicate the claim consistent with the requirements of the MA PFML.

vii) For applications for benefits for intermittent leaves, the Company may seek a medical certification for the intermittent leave expires or when intermittent leave has extended for a period of more than six months from the approval by the Company or Sun Life.

**5) Processing and adjudication of claims; payment of benefits**

- a) Within 14 calendar days of receiving an application for MA PFML benefits, the Company will notify an applicant of its approval or denial, or if it needs additional information from the covered individual. If the Company requests additional information to process an application for paid leave benefits within 14 calendar days of receiving the claim, that request shall meet the Company's obligation to notify applicants in a timely manner.
- b) The approval for payment of benefits notice will include:
  - (1) The duration of the approved leave benefits;
  - (2) For intermittent leaves, the frequency and duration of the leave benefits;
  - (3) For reduced schedule and
  - (4) The expiration of the approved leave benefits.
- c) A denial of payment of benefits notice shall include:
  - i) The reason for the denial of leave benefits; and
  - ii) A description of the individual's appeal rights.
- d) The Company will commence payment of leave benefits not less than 14 calendar days after approving an application, unless the determination occurs more than 14 calendar days before the onset of eligibility in which case the Company will commence payment of leave benefits as soon as job protected leave for the approved qualifying reason begins.

**6) Application for Benefits Verification. Amendment or Extension of Leave Period and Paid Leave Benefits**

- a) **Application for Benefits Verification.** For each request for payment associated with intermittent leave, the covered individual must verify with the Company and/or Sun Life the hours of leave taken each week in order to receive benefit payments.
- b) **Amendment of benefits.** Following an approval of an application for benefits, if 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, the covered individual has an affirmative obligation to notify the Company and/or Sun Life within 7 calendar days of said change. . Where the Company finds that a covered individual has failed to provide the Company with notice of a relevant change in circumstances which would have reduced the amount of benefits paid, the covered individual shall be responsible to reimburse the Company the amount overpaid within 30 calendar days of a request made by the Company or Sun Life.
- c) **Extension of benefits.** If a covered individual requires an extension of benefits, the covered individual must file an application to request for an extension using forms prescribed by the Company and/or Sun Life.
  - i) A request for an extension must be filed 14 calendar days prior to the expiration of the original approved leave; provided, however, the Company may allow a late filed request for extension for good cause shown.
  - ii) A request for an extension must include all information reasonably required by the Company in accordance with the MA PFML law, including the following:

- (1) the reason for the extension;
- (2) the requested duration of the extended leave;
- (3) the date on which the covered individual provided notice of the request for extension to the employer;
- (4) A newly completed or updated health care certification for medical or family leave.
- iii) The initial seven calendar day waiting period for benefits will not apply to an approved extension of benefits.
- iv) Any extension of an application for benefits will be limited to any period of paid family or medical leave for which the covered individual remains eligible in the benefit year.
- v) Requests for extension will be subject to the claim approval process discussed in section 6 (b).
- vi) The Company will seek a medical recertification of the covered individual'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 six months from the approval, whichever occurs first

## 7) Substitution of Employer-Provided Paid Leave

- (a) Employees who need for a leave of absence for a qualifying reason, may choose to use accrued paid leave provided by the Company rather than apply for PFML.
- (b) Employees who choose to use accrued paid leave are required to follow the Company's notice and certification processes related to the use of this leave.
- (c) Absences for employees who choose to use accrued paid leave will run concurrently with MA PFML.
- (d) [Covered individuals may not be compensated with MA PFML benefits for a period of time for which they received compensation through the use of accrued paid leave.]<sup>4</sup>
- (e) The Company may require that MA PFML benefits payments 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 Company policy such that the will receive the greater of the various benefits that are available for the covered reason. Any leave provided under a collective bargaining agreement or employer policy that is used by the covered individual for a covered reason and paid at the same or higher rate than leave available under the MA PFML law shall count against the allotment of leave available under this chapter.

## 8) Reduction of benefits

- a) The weekly benefit amount for a period shall be reduced by the amount of wages, wage replacement or leave (paid or unpaid) that a covered individual on family or medical leave receives for that period from:
  - i) Any government program or law, including unemployment benefits under M.G.L. c. 151A or worker's compensation under M.G.L. c. 152, other than for permanent disability incurred prior to the family or medical leave application for benefits; or
  - ii) Under other state or federal temporary or permanent disability benefits law; or
  - iii) A permanent disability policy or program of an employer.
- b) Unless the aggregate amount a covered individual receives would exceed the covered individual's average weekly wage, the weekly benefit amount for a period shall not be reduced by the amount of wage replacement that a covered individual on family or medical leave receives for that period from:
  - i) A temporary disability policy or program of the employer; [or]
  - ii) A paid family or medical leave policy of the employer [.] [or]
  - iii) [Accrued Paid Leave][.]<sup>5</sup>

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<sup>4</sup>**NOTE TO EMPLOYERS:** Employers may choose to permit the usage of accrued paid leave to "top up" the covered individual's MA PFML benefit to the extent that the employee will receive up to 100% of their pre-leave earnings. If the employer provides the opportunity to "top up" MA PFML, this section 9 (d) should be removed.

<sup>5</sup> **NOTE TO EMPLOYERS:** This would only be included if you are allowing an employee to top up MA PFML benefit with accrued paid leave.

- c) A covered individual's family or medical leave allotment shall be proportionately reduced by the amount of family or medical leave taken by the covered individual for a qualifying reason during the benefit year.
- d) The weekly benefit amount shall be reduced by any paid family or medical leave that a covered individual on family or medical leave receives from any source for any qualifying reason in the 12-month period prior to filing an application for benefits. However, any leave taken by the covered individual or the same qualifying reason prior to January 1, 2021 shall not count against the covered individual's weekly benefit amount and/or leave allotment.

**9) Claim Denials and Appeals**

- a) A covered individual who is denied family and medical leave benefits may appeal a denial to Sun Life within 10 calendar days of the covered individual's receipt of the initial determination. If the covered individual demonstrates that circumstances beyond the covered individual's control prevent the filing of a request for an appeal within 10 days, Sun Life may extend the period for filing an appeal with Sun Life. Sun Life will make a decision on the covered individual's appeal within 30 calendar days of receipt of the appeal.
- b) A covered individual who is denied family or medical leave benefits after receiving a decision from Sun Life on the covered individual's appeal Sun Life pursuant to section (a) may appeal the denial to the MA DFML in accordance with the procedures adopted by the MA DFML and the provisions of section 8(d) of M.G.L. c. 175M.
- c) The covered individual's request for an appeal shall be filed within 10 calendar days of the covered individual's receipt of Sun Life's decision on the covered individual's appeal pursuant to section (a) above. The MA DFML may extend the 10-day filing period where an individual establishes to the satisfaction of the MA DFML that circumstances beyond the individual's control prevented the filing of a request for an appeal within the prescribed 10-day filing period.
- d) When requesting an appeal to the MA DFML, a covered individual may request a hearing; however, that the MA DFML may decide an appeal on the basis of the record and without a hearing. The MA DFML will issue a written final decision affirming, modifying or revoking the initial determination within 30 calendar days of the hearing.
- e) Following the MA DFML's issuance of a final decision on the appeal, an individual aggrieved by the MA DFML's decision may take a further appeal by filing a complaint in the district court for the county in Massachusetts where the individual resides or was last employed. Such court action must be commenced within 30 calendar days of the date the MA DFML's final decision is received by the individual.

**10) Employment Protection/Health Benefits Continuation/Employer Notice**

**a) Job Protection**

- i) An employee who has taken MA PFML shall on returning to employment at the close of a period of approved family or medical leave 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.
- ii) The Company is not required to restore an employee who has taken MA PFML to the previous or to an equivalent position if other employees of 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; however, 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.
- iii) Upon reinstatement, taking of MA PFML shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of service credit or other employment benefits, plans or programs. Leave periods under MA PFML need not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.
- iv) **Health Benefits continuation.** During the duration of an employee's leave under the MA PFML, the Company will 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 employee portion of the employee's employment-related health insurance benefits

must be remitted by the employee in accordance with the Company's uniformly applied policies or practices.

**b) Retaliation**

- i) Under the MA PFML law, it is unlawful for any employer to threaten to retaliate or to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an covered individual for exercising any right to which such covered individual is entitled under MA PFML or with the purpose of interfering with the exercise of any right to which such covered individual is entitled under MA PFML.
- ii) It is also unlawful for any employer to threaten to retaliate or to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against a covered individual who has filed a complaint or instituted or caused to be instituted a proceeding under or related to this anti-retaliation provision, has testified or is about to testify in an inquiry or proceeding or has given or is about to give information connected to any inquiry or proceeding relating to this provision. However, nothing shall limit an employer's or Covered Business Entity's ability to reasonably communicate with a covered individual or covered contract who is approved for leave benefits.

**c) Call-in procedures** Additionally, an employee who was providing services to the Company at the time of commencement of leave who has been approved for leave benefits must still comply with reasonable attendance and call in procedures established by the Company.

**d) Intermittent/reduced schedule leave.**

- (1) An employee who was providing services at the time of commencement of leave who is approved for intermittent leave benefits must work with the Company to make an effort to take leave so as not to unduly disrupt the employer's operation.
- (2) An employee who takes leave on an intermittent or reduced leave schedule and who fails to work during the times agreed to between the employer and the employee may be subject to employer discipline. An employee who fails to return to work or to the employee's regular work schedule following the expiration of the leave period may be subject to the Company's discipline.

**e) Presumption of retaliation.**

- i) Under the MA PFML law, 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 leave taken by an employee under MA PFML, or during the six month period following an employee's leave or restoration to a position pursuant to this Plan, or an employee who has participated in proceedings or inquiries pursuant to this Plan within six months of the termination of proceedings shall be presumed to be retaliation.
- ii) Such presumption shall be rebutted only by clear and convincing evidence that the Company's action was not retaliation against the employee and that the Company 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 leave, restoration to a position or participation in proceedings or inquiries as described in this section.
- iii) The Company's ability to reasonably communicate with an employee who is approved for leave benefits shall not be considered retaliation.
- iv) A negative change shall not include trivial or subjectively perceived inconveniences that affect de minimis aspects of an employee's work.
- v) Notification of a bona fide belief that a covered individual has committed fraud in connection with the covered individual's application for benefits shall not be deemed retaliation.
- vi) The Company's application of a preexisting employment rule or policy shall be deemed to be clear and convincing evidence.
- vii) In the event that an employee's utilization of intermittent leave is inconsistent with the Company's approval, it shall not be considered retaliation for the Company to request additional information related to the use of leave.

**f) Employer Notice obligations**

- i) The Company will post in a conspicuous place on each of its premises a workplace notice prepared or approved by the DFML providing notice of benefits available under this chapter. The workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is the primary language of at least 10,000 or ½ of one per cent of all residents of Massachusetts. The required workplace notice shall be in English and each language other than English that is the primary language of five or more employees or self-employed individuals of that workplace, if such notice is available from the DFML.
- ii) Each employer and Covered Business Entity shall issue to each employee not more than 30 days from the beginning date of the employee's employment, the following written information provided or approved by the department in the employee's primary language:
  - (1) an explanation of the availability of family and medical leave benefits provided under this chapter, including rights to reinstatement and continuation of health insurance;
  - (2) the employee's contribution amount and obligations under this chapter;
  - (3) the employer's or Covered Business Entity's contribution amount and obligations under the MA PFML statute;
  - (4) the name and mailing address of the employer or Covered Business Entity;
  - (5) the identification number assigned to the employer by the department;
  - (6) instructions on how to file an application for family and medical leave benefits;
  - (7) the mailing address, email address and telephone number of the DFML; and
  - (8) any other information deemed necessary by the department.
- iii) Delivery is made when an employee provides written acknowledgement of receipt of the information. If the employee refuses to sign the acknowledgment, the Company may prove delivery by other means. Successful electronic transmission of the notice to the employee's email of record shall be evidence of delivery.

**11) Attestations and False Statements**

- a) Covered Individuals applying for benefits must attest to the truthfulness of all statements and submissions made to the Company. An individual shall not be eligible to receive family or medical leave benefits if the Company finds by a preponderance of the evidence that the individual willfully made a false statement or representation or willfully withheld a material fact in order to obtain benefits.
- b) In determining whether an individual willfully made false statements, the Company will consider the nature and cause of the false statement and the capacity of the particular individual to recognize the error resulting in the false statement. Factors considered shall include the individual's age and intelligence as well as any physical, mental, educational or linguistic limitation, including lack of facility with the English language.
- c) A good faith mistake of fact by the individual in the filing of an application for benefits does not constitute willfulness.
- d) A false statement shall be considered willful if the individual
  - i) furnishes information that the individual knew, or reasonably should have known, to be incorrect; or
  - ii) fails to furnish information that the individual knew or reasonably should have known to be material; or
  - iii) accepts a payment that the individual knew, or reasonably should have known that the individual was not entitled to receive.
- e) If the Company finds that an individual received benefits on the basis of a false statement, it may require the individual to repay any benefits received. Individuals who have been determined to have received benefits on the basis of a false statement shall not receive the protections and benefits of the MA PFML.

**12) Interaction with State and Federal leave laws**

- a) Leave taken under the MA PFML law will run concurrently with leave taken under other applicable state and federal leave laws, including but not limited to the MA Parental Leave Act, the federal Family and Medical Leave Act of 1993, as amended, and the MA Earned Sick Time Act when the leave is for a qualified reason under those laws.

**13) Transmission of notices**

- a) When a notice of determination, decision or communication of the Company is transmitted by means of an electronic communication, it shall be presumed received on the date it is sent, except that any notice transmitted after 5:00 p.m. or on a state or federal holiday, Saturday or Sunday shall be presumed received on the next business day.
- b) When a notice of determination, decision or communication is sent by regular mail, it shall be presumed received three days after it is mailed, except that if the third day falls on a state or federal holiday, Saturday or Sunday, the notice shall be presumed received on the next business day.
- c) However the notice of determination, decision or communication is transmitted, the presumption may be rebutted by substantial and credible evidence satisfactory to the Company that the notice of determination, decision or communication was actually received on an earlier or later date.
- d) A request for appeal shall be deemed filed on the postmark date if sent by regular mail and otherwise when actually received by the Company.
- e) A request received after 5:00 shall be deemed filed the next business day.

**14) Assignment of claims administration to Sun Life**

- a) The Company may assign its obligations to adjudicate and/or pay claims for MA PFML benefits under this Plan to Sun Life but the Company will remain responsible for complying with the MA PFML law.
- b) To the extent that this Plan references claims administration actions by referring to the Company, Sun Life is authorized to take such actions as well.

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