

Sun Life's Self-Insured Private Plan Template

Before using this template:

The template purposefully includes content in red font and "DRAFT." Edit the red areas accordingly and remove "DRAFT" and our disclosure before submitting the template with the application.

Filing for a self-insured MA PFML private plan:

- Employers or Covered Business Entity that offer paid leave benefits at least as generous as those required under the PFML law may apply to the MA Department of Family and Medical Leave (DFML) for an exemption from making contributions. Employers and Covered Business Entities who apply and are approved for a private plan exemption before December 20, 2019 will not be required to remit premium contributions for the full period commencing with the October 1 start date. If your private plan exemption application is approved after December 20, 2019, you will be required to remit both the employer (or Covered Business Entity) and employee share of the premium until the first of the quarter after your private plan exemption is approved.
- The template contemplates that the employer will provide both the paid medical leave benefits and the paid family leave benefits through a private plan. Employers or Covered Business Entity may opt to provide one or both of the benefits through a private plan.
- This template is structured so that the employer or Covered Business Entity will self-administer, but the plan specifically states that it may be revised to be administered by a third party, or the employer may switch to a fully-insured plan.
- The template currently provides that the employer will require employees to pay the employee share of the premium. Employers have the option to pay both the employer and employee premium shares.
- The DFML has not published a private plan template and also has not clarified how it will process or review templates that are submitted. Sun Life cannot guarantee that the template provided will be approved by the DFML. If an employer chooses to use the template to apply for a private plan exemption, Sun Life will assist the employer with questions or comments it may receive from the DFML on the plan language.

The instructions and template are not intended to be and should not be construed as legal advice.

MA PFML PRIVATE PLAN

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 Private Plan”).

The Private 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 Private 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 Private Plan will take effect on the effective date that is approved by the MA DFML. 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. Family leave taken for care of a family member with a serious health condition will be payable beginning on July 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 Private Plan that are defined under the MA PFML shall have the same definition in this Private Plan.

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.

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.

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.

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 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.

Employee's average weekly wage shall have the same meaning as that provided in subsection (w) of section 1 of chapter 151A; provided, however, “average weekly wage” shall be calculated using earnings from the base period. Base period is the last four calendar quarters completed immediately preceding the starting date of a qualified period of paid family or medical leave. A completed calendar quarter is one for which an employment and wage detail report has been filed.

Employment 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 the state, 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 an employee:

- To participate in providing care for a family member with a serious health condition;
- To bond with the employee'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 an employee while the employee 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.

Health care provider is an individual licensed by the State in which the individual practices medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy, and includes, but is not limited to: 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 that State's law; 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 State law; Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "instrumental activities of daily living" as described in 29 CFR § 825.300.

Incapacity means an inability to work, attend school, or perform other regular daily activities 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, and may include leave periods from an hour or more to several weeks.

Medical leave benefits means wage replacement paid pursuant to section 3 of M.G.L. c. 175M, and provided in accordance with section 2 of M.G.L. c. 175M, to an employee while the employee is on medical leave.

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 an employee.

Qualifying reason is any of the following reasons for which an employee is eligible for family or medical leave benefits: to bond with the employee'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 employee's own serious health condition that prevents the individual from performing the essential functions of his or her job.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

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 to a health care provider. The first (or only) in-person treatment 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 employee'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 a 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 employee, 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 employee, 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.

Sibling means the biological, adoptive or step- brother or sister of the employee.

State average weekly wage means the average weekly wage in the Commonwealth 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 clause (s) of section 1 of M.G.L. c. 151A.

2) Eligibility requirements

- a) An employee is eligible for benefits if, over the 12 months preceding the employee's claim for benefits, the employee has received total wages as an employee or payments for service as a covered contract worker from a Massachusetts employer or a Massachusetts Covered Business Entity that in the aggregate equal or exceed 30 times the individual's weekly benefit amount as determined under the MA unemployment law and that in the aggregate are not less than the dollar amount calculated annually by the Department of Unemployment Assistance (\$4,700 for the year 2021).
As of January 2021, the employee:
 - i) has met the financial eligibility requirements of Massachusetts unemployment insurance (i.e., has approximately 15 weeks or more of earnings and earned at least \$4,700 in the previous 12 months), provided that such employment has been with a Massachusetts employer with respect to such services; or
 - ii) is a former employee who has:
 - (1) met the financial eligibility requirements of Massachusetts unemployment insurance at the time of the former employee's separation from employment, provided that all such employment has been with a Massachusetts employer with regard to such services; and

- (2) been separated from employment for not more than 26 weeks at the start of the former employee's family or medical leave.
- b) An employer (including but not limited to the Company) or a Covered Business Entity is considered a Massachusetts employer or with respect to services performed by an employee for the employer (or covered contract worker for a Massachusetts Covered Business Entity), and an employee is considered a Massachusetts employee (and a covered contract worker is considered a Massachusetts covered contract worker) with respect to all services provided within, or both within and without the Commonwealth for an employer or Covered Business Entity, as applicable, if
 - i) the service is localized in the Commonwealth. Service shall be deemed to be localized within the Commonwealth if the service is performed entirely within the Commonwealth, or the service is performed both within and without the Commonwealth, but the service performed without the Commonwealth is incidental to the individual's service within the Commonwealth; for example, it is temporary or transitory in nature, or consists of isolated transactions.
 - ii) the service is not localized in any state, but some part of the service is performed in the Commonwealth 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 residence is in the Commonwealth.

3) **Benefits Provided**

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

a) **Weekly and Daily Benefit Amounts**

- i) For each period of family or medical leave, an employee covered by this Private Plan is eligible to receive a weekly benefit amount that will be calculated as follows:
 - (1) The portion of an employee'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 an employee'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) The maximum weekly benefit amount will be 64 percent of the state average weekly wage, as adjusted annually by the DFML.
- iii) For an employee 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) For 2021, the maximum weekly benefit is \$850, and such amount may be adjusted each year to be 64 percent of the state average weekly wage in alignment with the state PFML plan.
- vi) The weekly benefit amount will be reduced by the amount of wages or wage replacement that a an employee 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.
- vii) 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 are:
 - (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 employee'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.
- 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 an employee's schedule varies from week to week to such an extent that the Company is unable to determine with certainty how many hours the employee 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.

c) Waiting Period

- i) Benefits are payable after a waiting period of the first seven calendar days of an approved initial claim for benefits; 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) As of the date of this filing, the initial seven-day waiting period for paid leave benefits will count against the total available period of leave in a benefit year.

d) Intermittent leave/Reduced schedule leave

- i) The largest increment for claim duration is four hours of leave.
- ii) An employee 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.
 - (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 an employee's own serious health condition, intermittent or reduced schedule leave may be taken if medically necessary. An employee 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 employee's available allotment of leave. If an employee 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 an employee who would otherwise work 30 hours per week only works 20 hours on a reduced leave schedule, the employee'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.** An employee 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) **Employee Contributions**

- a) The Company may require each employee covered by this Private Plan to contribute no more than the maximum deduction permitted under the MA PFML law.
- b) [The Company will collect such contributions by regular payroll deductions.] [The Company will not charge employee's for MA PFML benefits.]

5) **Application for Benefits**

a) **Notice of leave:**

- i) Employees must provide the Company with notice at least 30 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.

b) **Claim for benefits.** When filed, a claim 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 or intermittent.
- v) If the Private Plan is being administered by a third party, 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 52-week period prior to the date that leave is to commence.
 - vii) A statement regarding the family relationship in the form specified by the MA DFML if the leave involves family leave.
 - viii) A completed certification as set forth below.
 - ix) Additional information requested by the Company where reasonably necessary to review and process the employee's claim.
 - x) If a claim 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 employee's period of leave, the employee may receive reduced benefits in the discretion of the Company and consistent with the requirements of the MA PFML.
- c) **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 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;
 - (4) Other information required by the Company, including a certification by the health care provider that the employee 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;
 - (5) If the employee's serious health condition prevents the employee from providing the required certification within 90 calendar days, the Company will allow for a good cause exemption to permit delayed notification.
 - 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 employee and the family member and must include the following from the family member's health care provider:
 - (1) A statement that the family member has a serious health condition;
 - (2) The date on which the family member's serious health condition commenced;
 - (3) The probable duration of the family member's serious health condition;
 - (4) A statement that the employee is needed to care for the family member; and
 - (5) An estimate regarding the frequency and anticipated duration of time that the employee is needed to care for 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) A statement from the child's health care provider stating the child's birth date; or
 - (3) A statement from the health care provider of the person who gave birth stating the child's birth date;
 - (4) Where the claim 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 department of children and families must 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.
 - (3) If the status of the employee as an adoptive or foster parent changes while an application for benefits is pending or while the employee is receiving benefits, the employee must within 5 business days of such change in status provide written notice to the Company.

- (4) Certification provided by the employee that the employee and the employee's manager mutually agree to the leave schedule, if the claim for benefits is for leave on an intermittent or reduced 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 employee requesting benefits in a form prescribed by the DFML.
- (5) An estimate regarding the frequency and anticipated duration of time that the employee 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 employee is needed to care for the covered servicemember;
- (4) An estimate of the amount of time the employee will be needed to care for the covered servicemember;
- (5) An attestation by the servicemember's health care provider and the employee 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.

6) 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 applicants of its approval or denial, or if it needs additional information from the employee. 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 reason for the approved leave benefits;
 - (2) The duration of the approved leave benefits;
 - (3) For intermittent leaves, the frequency and duration of the leave benefits; and
 - (4) The expiration of the approved leave benefits.
- c) 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 eligibility begins.

7) Amendment or Extension of Leave Period and Paid Leave Benefits

- a) **Amendment of benefits.** Following an approval of a claim 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 employee has an affirmative obligation to notify the Company using the forms prescribed by the DFML.
- b) **Extension of benefits.** If an employee requires an extension of benefits, the employee must file a request for extension using forms prescribed by the DFML.

- 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) A newly completed or updated health care certification for medical or family leave in accordance with section 5(c) above.
- iii) The initial seven calendar day waiting period for benefits will not apply to an approved extension of benefits.
- iv) Any extension of a claim will be limited to any period of paid family or medical leave for which the employee remains eligible in the benefit year.
- v) Requests for extension will be subject to the claim approval process discussed in section 6 (b).

8) Fitness for Duty at Close of Medical Leave Period

- a) As a condition of restoring an employee whose leave was occasioned by their own serious health condition that incapacitated the employee, the Company may have a uniformly applied policy or practice that requires all similarly situated employees (i.e., same occupation, same serious health condition) who take leave for such conditions to obtain and present certification from their health care provider that the employee or covered individual is able to resume work.
- b) The Company may seek a fitness-for-duty certification only regarding the particular health condition that caused the employee's need for leave. The certification from their health care provider must certify that the employee is able to resume work.
- c) Additionally, the Company may require that the certification specifically address the employee's ability to perform the essential functions of their job. In order to require such a certification, the Company must provide an employee a list of the essential functions of their job within five days of the notice of the designation of medical leave and must indicate that the certification must address the employee or covered individual's ability to perform those essential functions. If the Company satisfies these requirements, the employee's health care provider must certify that the employee can perform the identified essential functions of their job.
- d) The Company may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the Company has failed to provide the notice required in section 11(f). If the Company provides the notice required, an employee who does not provide a fitness-for-duty certification following the approved leave period by the MA DFML is no longer entitled to reinstatement.
- e) The Company is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule. The Company is entitled to a certification of fitness to return to duty for such absences up to once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform their duties, based on the serious health condition for which they took leave.

9) 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 leave paid by the Company 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 leave paid by the Company will run concurrently with PFML.

- (d) Employees or covered individuals may not be compensated with PFML benefits for a period of time for which they received compensation through the use of accrued paid leave in an amount equal to or greater than the MA PFML benefit.
- (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 employee 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 employee 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.

10) Claim Denials and Appeals

- a) An employee who is denied family or medical leave benefits may appeal a denial in accordance with the procedures adopted by the MA DFML and the provisions of section 8(d) of M.G.L. c. 175M.
- b) The employee's request for an appeal shall be filed within 10 calendar days of the employee's receipt of notice of the determination. 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.
- c) When requesting an appeal, an employee 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.
- d) 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 the Commonwealth 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.

11) 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 employee for exercising any right to which such employee is entitled under MA PFML or with the purpose of interfering with the exercise of any right to which such employee 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 an employee 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 an employee 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 section, or an employee who has participated in proceedings or inquiries pursuant to this section within six months of the termination of proceedings shall be presumed to be retaliation under this section.
 - 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.
- 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 the Commonwealth. 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 this chapter;
 - (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 a claim 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.

12) Attestations and False Statements

- a) Employees 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 a claim 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.

13) 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.

14) 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.

15) Assignment of claims obligations to a third party administrator or insurer

- a) The Company may assign its obligations to adjudicate and/or pay claims for MA PFML benefits under this Private Plan to a third party (including but not limited to through a fully insured plan) but the Company will remain responsible for complying with the MA PFML law.
- b) The Company will notify the DFML of changes to this Private Plan in accordance with the requirements of the MA PFML and its regulations.

This is not to be considered 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 & Medical Leave (PFML) Act.

When available, Sun Life's self-insured MA PFML solution will be administered by Sun Life Assurance Company of Canada. This service is not insurance.

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