

**Labor & Employment Alert
December 2020**

Massachusetts Paid Family and Medical Leave Benefits Begin on January 1, 2021: Are You Ready?

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On January 1, 2021, most benefits provided by the Massachusetts Paid Family and Medical Leave Act (“PFML”) will become available. While employers have been wrestling with issues regarding contributions, private plan exemptions, and notice requirements for quite some time, the availability of benefits next month is likely to prompt new questions and generate new challenges. This alert is designed to highlight some key issues that employers should be aware of as they prepare to handle employees’¹ requests for benefits.

Benefits Available as of January 1, 2021 and July 1, 2021 - Overview

Beginning on **January 1, 2021**, benefits will be available for the following qualifying reasons for leave:

- **Medical:** To manage an employee’s serious health condition that incapacitates them from work;
- **Family/Birth, Adoption, or Foster Care:** To bond with child during first 12 months after child’s birth or placement with the covered individual for adoption or foster care;
- **Family/Service Member:** To care for a family member who is a service member; and
- **Family/Qualifying Exigency:** For a qualifying exigency arising out of a family member’s active duty or impending call to active duty

Beginning on **July 1, 2021**, benefits will be available for the following qualifying reason for leave:

- **Family/Serious Health Condition:** To care for a family member who has a serious health condition.

Notice Requirements – DFML Revises Mandatory Poster

Pursuant to the PFML, employers are required to notify employees of the availability of benefits, including posting posters in their workplaces. On November 17, 2020, the Department of Family and Medical Leave (“DFML”) issued an updated workplace poster. The DFML subsequently

¹ In this alert, the term “employees,” where it is used, also includes “covered individuals” under the PFML.

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announced that all employers are required to display an updated poster at their place of work in accordance with their own posting practices.

It is important that employers replace the previous poster with the updated poster, located at <https://www.mass.gov/doc/paid-family-and-medical-leave-mandatory-workplace-poster/download> as soon as possible.

Interaction of PFML Benefits and Employer-Provided Accrued Paid Leave – DFML Provides Updated Guidance

The PFML benefit available to employees does not amount to 100% wage replacement, but rather is calculated based on a percentage of the employee's wages and is currently capped at \$850 per week. As a result, employers may have employees who request use of accrued paid leave from their employer to supplement or "top off" the PFML benefit.

In a PFML Update issued on November 25, 2020, the DFML clarified that employees *may not* "top off" PFML benefits by using accrued paid time off from their employer, *unless* the employer has a private plan exemption.

It is important to note, however, that the DFML distinguishes between employer-provided Accrued Paid Leave, and a disability policy or program provided by an employer or an employer-provided paid family or medical leave policy that is separate from other paid leave policies. Accrued Paid Leave is defined as including, but not limited to, sick leave, annual leave, vacation leave, personal leave, compensatory leave or paid time off. While an employee cannot supplement state-provided PFML benefits with Accrued Paid Leave, wage replacement provided pursuant to an employer's temporary disability policy or program or an employer's paid family or medical leave policy will not reduce the PFML benefit amount, *unless* the aggregate amount received by the employee would exceed their average weekly wage. Further, the DFML clarified in its November 25, 2020 PFML Update that wage replacement provided by private disability policies purchased separately by employees likewise would not cause a reduction in PFML benefits.

In contrast, the regulations governing the PFML make clear that an employee's weekly benefit amount will be reduced by:

- Unemployment benefits and workers' compensation, other than those benefits for permanent partial disability prior to the employee's application for PFML benefits;
- Amounts received pursuant to other state or federal temporary or permanent disability benefits laws (e.g. SSI or SSDI); or
- Amounts received pursuant to an employer's permanent disability policy or program.

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Finally, many employers likely have questions about when and how they can be reimbursed for paying PFML benefits. While we expect additional guidance from the DFML on the reimbursement provisions, in general, employers are only eligible for reimbursement if they do not have a private plan exemption, and if the PFML-qualifying benefits are paid out of a temporary disability policy, a family and medical leave policy that is separate from other types of paid leave policies offered by an employer, or an extended illness leave bank.

More updates are likely as the January 1, 2021 launch date approaches. We will continue to keep employers apprised of important updates regarding the PFML and its implementation.

This Client Alert was prepared by Rachel Mills and was reviewed with Nan O'Neill and Kier Wachterhauser. If you have any questions about this issue, please contact Rachel Mills, Nan O'Neill, Kier Wachterhauser, the attorney responsible for your account, or call (617) 479-5000.

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