



COMPLIANCE BULLETIN

HIGHLIGHTS

- Paid family leave program contributions will be delayed for three months, until Oct. 1, 2019.
- Paid family and medical leave claims will be administered by the state.
- Paid family and medical leave will run concurrently with other employee leave entitlements.

IMPORTANT DATES

October 1, 2019

Employers must begin remitting contributions to the trust.

January 1, 2021

Workers may begin receiving paid leave benefits.

Massachusetts Paid Family and Medical Leave

OVERVIEW

Enacted on June 28, 2018, the Massachusetts [Paid Family and Medical Leave Act](#) establishes a statewide paid family and medical leave (PFML) program financed by employer and employee contributions. On June 11, 2019, Massachusetts Congressional leadership and Governor Charlie Baker issued a [joint statement](#) agreeing to **delay the required contributions for three months, until Oct. 1, 2019**. The statement also promised additional technical changes to clarify the program design.

On June 14, 2019, the Department of Family and Medical Leave (DFML) issued a [notice](#) regarding the three month delay. The payroll tax contribution will be **adjusted to .75%** to offset the shorter period for collections. In addition, employers now have until **Sept. 30, 2019, to notify covered individuals of their rights and obligations under PFML**. However, the dates for commencement of leave benefits will remain the same.

ACTION STEPS

Employers should continue to keep track of developments related to the paid family and medical leave program. More information is available through the DFML [website](#).

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Covered Employers

All Massachusetts employers must comply with the paid family and medical leave requirements. However, **employers with fewer than 25 employees** in Massachusetts are not required to pay the employer portion of premiums.

Out-of-state Employers

The [final regulations](#) regarding the PFML program provide additional guidance on when out-of-state employers may be considered a “Massachusetts employer” for this purpose. Specifically, an employer is considered a Massachusetts employer with respect to services performed by a covered individual for the employer if the service is:

- ✓ Localized in Massachusetts. Service is localized in Massachusetts if the service is performed:
 - Entirely within Massachusetts; or
 - Both within and outside of Massachusetts, but the service performed outside of Massachusetts is incidental to the individual's service within Massachusetts (for example, is temporary or transitory in nature, or consists of isolated transactions); or
- ✓ Not localized in any state, but some part of the service is performed in Massachusetts and:
 - The individual's base of operations is in Massachusetts or, if there is no base of operations, then the place from which the service is directed or controlled is within Massachusetts; or
 - The individual's base of operations or place from which the 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 Massachusetts.

All Massachusetts employers must comply with paid family and medical leave requirements. However, small employers with fewer than 25 employees are not required to pay the employer portion of the premium for family and medical leave benefits.

Eligible Employees

Virtually all employees working in Massachusetts will be covered individuals who are eligible for paid family and medical leave benefits. There are no restrictions on length of employment or other eligibility requirements, other than having a qualifying reason for paid leave benefits.

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Qualifying Reasons for Paid Family and Medical Leave

Paid Family Leave

Covered individuals can take **paid family leave** for any of the following reasons:

1	To bond with the employee's child during the first 12-month period following the birth or the first 12 months after the placement of the child for adoption or foster care with the employee;
2	To care for a family member with a serious health condition;
3	Because of any 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; or
4	To care for a family member who is a covered service member with a serious injury or illness incurred or aggravated in the line of duty.

For purposes of paid family leave, an employee's **family member** includes the employee's:

- ✓ Spouse or domestic partner;
- ✓ Child (biological, adopted, foster, legal ward or child to whom the employee stands *in loco parentis*—that is, in place of a parent—or a person to whom the employee stood *in loco parentis* when the person was a minor);
- ✓ Parent, including parents-in-law and a parent of the employee's domestic partner;
- ✓ Grandchild and grandparent; and
- ✓ Siblings.

A person who stood *in loco parentis* (in place of a parent) to the employee when the employee was a minor is also included in the definition of family member.

Paid Medical Leave

Employees may take paid medical leave due to the employee's own serious health condition.

Serious Health Condition: For purposes of Massachusetts' paid family and medical leave program, a serious health condition is defined similarly to the definition of serious health condition under the federal Family and Medical Leave Act (FMLA). In general, it refers to an illness, injury, impairment or physical or mental condition that involves (1) inpatient care in a hospital, hospice or residential medical care facility; or (2) continuing treatment by a health care provider.

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Effective Dates

The DFML will administer the paid family and medical leave program, including processing claims for paid leave benefits. The DFML [clarified](#) that employees may begin claiming paid leave benefits on:

- ✓ **Jan. 1, 2021**, for bonding with a child or newborn, service-member-related events and the employee's own serious health condition; and
- ✓ **July 1, 2021**, for a family member with a serious health condition.

Duration of Paid Family and Medical Leave

The paid family and medical leave program provides the following leave amounts during the benefit year:

Family Leave	Up to 12 weeks (however, if leave is due to caring for a covered service member, up to 26 weeks of family leave)
Medical Leave	Up to 20 weeks
Combined Family/Medical Leave	Up to 26 weeks

The “**benefit year**” is defined as the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that paid family and medical leave begins.

Employee Notification Requirements

Employees must provide their employer at least **30 days' notice** of the intent to take paid family or medical leave. The employee's notice should include the anticipated start date of leave, the anticipated length of leave and the employee's anticipated date of return. If the employee cannot provide 30 days' advance notice due to reasons beyond his or her control, the employee must notify the employer as soon as practicable. However, if an employer fails to comply with its notice requirements, the employee notice requirement is waived.

Employer Notification Requirements

Effective Sept. 30, 2019, employers must conspicuously **post a workplace notice** that informs employees of benefits provided under the paid family and medical leave program. This notice was originally required to be provided by July 1, 2019, but was delayed as part of the extended deadline for required contributions. The DFML provides a [model poster](#) for employers to use. Employers are required to post the notice in English, as well as in the primary language of five or more employees of the employer's workforce (translations are available from the [DFML](#)).

In addition, effective Sept. 30, 2019, employers must provide **each new hire** with written notice detailing the new family and medical leave program within **30 days from the employee's start date**. The employer must

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obtain each new hire's **written acknowledgement of receipt** of the information above, or have the employee sign a statement that he or she refused to sign the acknowledgement. The DFML provides a [model new hire notice](#) for employers to use. The notice must be provided to the employee in the employee's primary language (translations are available from the [DFML](#)).

Amount of Family and Medical Leave Benefits

While on family and medical leave, employees will be paid 80 percent of their salary up to 50 percent of the average weekly wage, plus 50 percent of their salary exceeding 50 percent of the average weekly wage, up to a **maximum of \$850 per week**. These amounts may be adjusted annually.

Weekly benefit payments begin after an initial **seven-day waiting period**. Employees may use other accrued paid leave, such as sick leave or vacation, during this seven-day waiting period.

Paid Leave Funding

The paid family and medical leave program is funded by a mandatory payroll tax of **0.63 percent** on the first \$132,900 of an employee's wages, to be adjusted annually. The payroll tax will be split between employers and employees. However, for **employers with fewer than 25 employees**, no employer contribution is required for family or medical leave premiums.

Although employers were originally required to begin remitting contributions by July 1, 2019, Congressional leadership and the Governor issued a joint statement agreeing to delay these contributions until Oct. 1, 2019. As a result, employers have an additional three months to prepare to make these required contributions.

The PFML law requires the DFML to adjust the contribution rate to offset the shorter period for collections that will result from the three-month delay. As a result, the total contribution rate has been **adjusted from .63% to .75% of employee qualifying earnings**. This adjustment will ensure that full funding will be in place for the commencement of benefit payments in January 2021.

Interaction with Existing Leave Laws and Employer Policies

Paid family and medical leave benefits will run concurrently with an employee's leave entitlement under the federal FMLA or the Massachusetts Parental Leave Law (if the employee is eligible for these types of leave). In other words, paid family and medical leave does not extend an employee's leave entitlement under these laws.

Job Protections

An employee who takes paid family or medical leave is entitled to be reinstated to his or her 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.

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In addition, an employee's right to accrue vacation, sick leave, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs cannot be affected by the taking of paid family or medical leave.

An employer is required to **maintain the employee's health plan benefits** for the duration of a family or medical leave on the same terms and conditions as though the employee had not taken leave.

Private Plans

The law permits employers to apply to the DFML for approval to meet obligations under the law through a private plan. An employer's private plan must provide all of the same rights, protections and benefits as provided under the paid family and medical leave law. Employers may apply to provide medical leave under a private plan and provide family leave using the public plan, or vice versa.