

# Massachusetts Paid Family and Medical Leave Law FACT SHEET

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Under the new Massachusetts Paid Family and Medical Leave Law, Massachusetts workers will be entitled to take paid family and medical leave starting in 2021. The law creates a new state agency, the Department of Family and Medical Leave (the “Department”), to administer the new paid leave program. The new law also creates the Family and Employment Security Trust Fund (the “Trust Fund”) to fund paid leave benefits.

This fact sheet discusses some key facts and requirements under the new law. The language of the law raises several questions. The Department is required to issue draft regulations regarding the new paid leave program by March 31, 2019, and final regulations by July 1, 2019, which hopefully will answer those questions.

## COVERED EMPLOYEES

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The law applies to all private Massachusetts employers, regardless of their size or number of employees.

## ELIGIBLE EMPLOYEES

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Employees will be eligible for paid family and medical leave benefits if they meet the financial eligibility requirements for unemployment benefits. Self-employed individuals who elect coverage and make contributions to the Trust Fund are eligible too.

## QUALIFYING USES

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Employees will be allowed to use paid **family** leave:

- to bond with a child during the first 12 months after the child’s birth or the first 12 months after the placement of the child for adoption or foster care with the employee;
- to care for a family member (as defined by the law) with a serious health condition;
- 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
- to care for a family member who is a covered service member (as defined by the law).

Employees will be allowed to use paid **medical** leave for their own serious health condition.

## MAXIMUM LEAVE ENTITLEMENTS

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| Type of Paid Leave   | Maximum Entitlement Per Benefit Year |
|--|--------------------------------------|
| Family leave to bond with a child or to care for a family member with a serious health condition | 12 weeks                             |
| Family leave to care for a covered service member  | 26 weeks                             |
| Medical leave for an employee's own serious health condition                                     | 20 weeks                             |
| Any combination of paid family and medical leave   | 26 weeks                             |

## INTERMITTENT LEAVE

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Employees can take paid leave intermittently, when medically necessary, for medical leave for an employee's own serious health condition and for family leave to care for a covered service member or a family member with a serious health condition. Employees cannot take family leave intermittently to bond with a child.

## THE BENEFIT YEAR

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The paid family and medical leave benefit year is measured as the 52-consecutive week period beginning on the Sunday preceding the first day the protected leave begins. (Note: this is the "measure-forward" method under the FMLA. It is not the often-used "rolling" method, which measures backwards.)

## EMPLOYEE NOTICE OBLIGATIONS

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Employees are required to give at least 30 days' notice of the anticipated start date for family or medical leave, the anticipated length of the leave, and the expected return date. If 30 days' notice is impracticable for reasons beyond the employee's control, notice must be given as soon as practicable.

## EMPLOYER POSTING AND NOTICE OBLIGATIONS

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Employers will be required to post a multi-lingual workplace poster setting forth employees' rights under the new law. Employers also will be required to provide written notice to employees of their rights under the law within 30 days of hire and to obtain written acknowledgment confirming receipt of the notice. The workplace posting and written notice must be approved by the Department, which likely will prepare standard postings and notice forms.

These posting and notification requirements take effect July 1, 2019. Failure to comply with these posting and notice requirements will result in a civil penalty of \$50 per employee for the first violation and a civil penalty of \$300 per employee for subsequent violations.

## **PAYMENT OF LEAVE BENEFITS**

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Employees will file claims to the Department to apply for paid leave benefits. The Department will be responsible for determining eligibility and paying benefits. The Department will establish procedures and forms for filing claims under the law and certifying the need for leave. The Department will also establish a system for employees to appeal the denial of paid leave benefits. Although the law provides that the Department will notify employers of claims within 5 business days, it is unclear from the law what rights or procedures will be available to employers to contest claims for paid leave.

Eligible employees will receive a percentage of their weekly wages, as calculated by a statutory formula that compares their average weekly wage to the state average weekly wage. The maximum benefits will be \$850 per week, subject to recalculation by the Department annually.

## **INTERACTION WITH OTHER LEAVE**

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Paid leave taken under the law will run concurrently with leave under the Family and Medical Leave Act and the Massachusetts Parental Leave Act. Employees can choose but may not be required to use paid sick, vacation, or personal time while on family or medical leave.

Employers can require that family or medical leave taken under an employer disability or leave plan or policy run concurrently with leave taken under the law. The law also provides that employers will be reimbursed from the Trust Fund for payments made pursuant to an employer plan or policy that are equal to benefits due under the paid leave program.

## **JOB PROTECTION AND HEALTH INSURANCE CONTINUANCE**

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Employees who take paid family or medical leave must be restored their previous position, or to an equivalent position, with the same status, pay, benefits, length of service credit, and seniority as of the date of leave. This will not apply, however, where the employee's status would have changed anyway, for example where the employee would have been laid off. Paid family or medical leave also cannot affect an employee's right to accrue sick, personal, or vacation time, or other employment benefits.

Employers are required to continue employees' health insurance benefits, under the same conditions of coverage that would have been provided if the employee had not taken leave. This means employers will need to continue paying the employer portion of health insurance premiums while employees are on paid family or medical leave.

## **ANTI-RETALIATION AND NO INTERFERENCE**

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Employers are prohibited from retaliating against employees for taking family or medical leave, exercising their rights under the law, taking legal action under the law, or participating in a proceeding related to the law. Employers are also prohibited from interfering with an employee's rights under the law.

The law creates a presumption of retaliation for any adverse employment action taken within 6 months of an employee’s leave, return to work, or participation in a proceeding or legal action relating to the law. This presumption can be rebutted only by clear and convincing evidence that the adverse action was not retaliation.

Under the law, employees can bring civil lawsuits for retaliation or interference. Employers found to have violated the law may be required to rescind any adverse action, reinstate the employee, reinstate benefits, pay triple damages for lost wages, and pay the employee’s attorney fees.

## FUNDING PAID LEAVE

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Paid leave will be funded by a .63% payroll tax contribution (to be adjusted annually), which will be paid into the Trust Fund. Employers with 25 or more employees will be required to pay the full contribution but may deduct from employees’ wages up to 100% of the contribution for family leave and up to 40% of the contribution for medical leave. Employers with less than 25 employees will not be required to pay the employer portion of the contribution but will still need to deduct the employee portion from employees’ wages.

## PRIVATE PLAN ALTERNATIVE

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Employers have the option to opt out of the Commonwealth’s paid leave program and to fulfill their obligations under the law through a private plan. Private plan alternatives must be approved by the Department and must provide employees with the same rights, protections, and benefits as the new law. Employers can have private plan alternatives for both family and medical leave or for just family or medical leave.

## TIMING OF PAID FAMILY AND MEDICAL LEAVE PROGRAM

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The table below provides key dates for the implementation of the new law:

| Date            |   |
|-----------------|---|
| March 31, 2019  | → Department issues draft regulations   |
| July 1, 2019    | → Department issues final regulations<br>→ Employer posting and notice requirements take effect<br>→ Trust Fund contributions begin |
| January 1, 2021 | → Paid medical leave begins<br>→ Paid family leave to bond with a child or to care for a covered service member begins              |
| July 1, 2021    | → Paid family leave to care for a family member with a serious health condition begins  |