

HR COMPLIANCE BULLETIN

Massachusetts Issues Final Amendments to PFML Rules

Final amendments to the Massachusetts Paid Family and Medical Leave (PFML) regulations were published July 24, 2020, by the state's Department of Family and Medical Leave. The amendments were first proposed in May 2020.

The Amendments

The amendments cover a range of subjects, and include changed or new definitions of accrued paid leave, average weekly wage, average working week and base period. Other amendments affect areas such as:

- Telehealth
- Multiple employers
- Private plans
- Coverage of former employees
- Timing of job-protected leave periods
- Substance abuse
- Intermittent leave
- Determining wages earned
- Employer reimbursement

Massachusetts Paid Family and Medical Leave

The 2018 Massachusetts Paid Family and Medical Leave Act established a statewide paid family and medical leave program financed by employer and employee contributions. Contributions began in October 2019, and employee leave benefits become available on Jan. 1, 2021, and July 1, 2021, depending on the reason for leave.

Action Steps

Employers should become familiar with the amendments to ensure that their policies comply with the requirements of the program.

Highlights

Extended Illness Leave Banks

The amendments add a definition for programs under which individuals donate accrued leave time for co-workers experiencing a qualifying reason for PFML leave.

Private Plans

The amendments clarify certain requirements for private plans, including the date coverage begins, eligibility criteria and coverage when employers switch plans.

Telehealth

Continuing treatment by a health care provider now includes telehealth visits.

Important Dates

July 24, 2020

Final amendments to the PFML regulations were published.

Jan 21, 2021

Employee leave benefits begin.



JP Griffin Group



Final Amendments to Massachusetts Paid Family and Medical Leave Regulations

The Massachusetts Department of Family and Medical Leave has published final amendments to regulations issued under the state's Paid Family and Medical Leave (PFML) program. The amendments were first proposed in May 2020; the final version was published on July 24, 2020.

The PFML program, passed into law in 2018, provides 12 to 26 weeks of employee leave for specified purposes having to do with employees' own medical care or the care of family members. The program is funded by employer and employee contributions, which began in October 2020. Employees may begin claiming leave benefits on Jan. 1, 2021, and July 1, 2021, depending on the reason for leave. Nearly all Massachusetts employers and employees are covered.

Final Amendments

The final amendments to the PFML regulations affect various features of the program. Some of the changes alter definitions in the original regulations or add new definitions, and some of the amendments provide clarification to existing regulations.

Definitions

Key changes and additions to definitions in the original regulations are listed below:

- **Accrued paid leave**—Expanded definition includes employer-provided leave such as sick leave; annual, vacation or personal leave; or paid time off. It does not include leave under an employer's disability plan or an employer's paid family and medical leave.
- **Active duty**—Changed definition requires foreign deployment.
- **Average weekly wage**—Changed definition states that the average weekly wage is calculated separately for each employer.
- **Average working week**—New definition provides that the average working week is the average number of hours worked from the two highest quarters of the 12 months preceding the application.
- **Base period**—Changed definition sets the base period as the last four completed calendar quarters of the five calendar quarters before an application is filed.
- **Continuing treatment by a health care provider**—Now includes telehealth visits. Amendment removed qualification regarding substance use disorders.
- **Extended illness leave bank**—New definition provides for a voluntary leave donation program.
- **Financial eligibility test**—Expanded definition addresses calculations where there are multiple employers.
- **Intermittent leave**—Sets minimum increment at 15 minutes.
- **Job-protected leave**—Definition changed to specify that use of an employer's disability policy, paid leave policy or extended illness leave bank program begins job-protected leave, which runs concurrently with PFML.

Clarifications

The following are key amendments clarifying existing regulations:

- Clarification of effective coverage date under private plans.
- Clarification of criteria for financial eligibility and leave benefits under a private plan.
- Clarification of coverage obligations when an employer terminates a private plan, leaves the state plan for a private plan or transfers between private plans.

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- Clarification of when applications can be filed with the Department of Family and Medical Leave following an employer's termination of a plan.
- New provision addresses coverage of former employees.
- New provision addresses leave for substance use disorder treatment.
- Clarifications about benefit determinations where individuals have benefits and wages from different employers.
- Clarification that job-protected leave period begins with commencement of seven-day waiting period.
- Clarification that certain employer-provided leave runs concurrently with PFML leave.
- Clarification about situations in which employers are entitled to reimbursement.

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