

# INFOBRIEF



## TOPIC: MA PAID FAMILY AND MEDICAL LEAVE LAW

ISSUED 3/7/19

In July of 2018, the Governor signed the MA Paid Family and Medical Leave (PFML) into law making MA the seventh state to implement state-mandated paid family and medical leave law. As with all laws, it starts as a framework with the basic tenets of what the law needs to accomplish. From there, department agencies write the specific regulations necessary to implement the law. The January 23, 2019, draft regulations include the following detail about the upcoming law and its implementation:

### Implementation Timeline:

- March 29, 2019 Publication of proposed regulations for public comment and hearing
- July 1, 2019 Final regulations promulgated and collection of 0.63% tax begins
- January 1, 2021 Most leave benefit payments begin
- July 1, 2021 All leave benefits available

### Applicability

1. Mandatory for businesses who employ one or more individuals.
2. No participation requirement for self-employed individuals, municipalities, district, political subdivision or its instrumentalities,
  - a. These groups may opt-in to the arrangement through the Department of Family and Medical leave
  - b. Self-employed individuals who opt in must do so for an initial period of three years:
    - Benefits begin once they make the full amount of the contributions for a minimum of two full quarters.
    - Failure to make the required contributions for at least three years will disqualify the individual from making any election thereafter.
3. Employer Exemption
  - a. Employers with private plans that are at least as generous as the paid family leave law may apply for exemption from medical leave coverage, family leave coverage, or both.
  - b. If exempt, employees will not be covered by the state PFML.
  - c. Approved exemptions are valid for one year and may be renewed.

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### Eligibility for Paid Leave Benefits

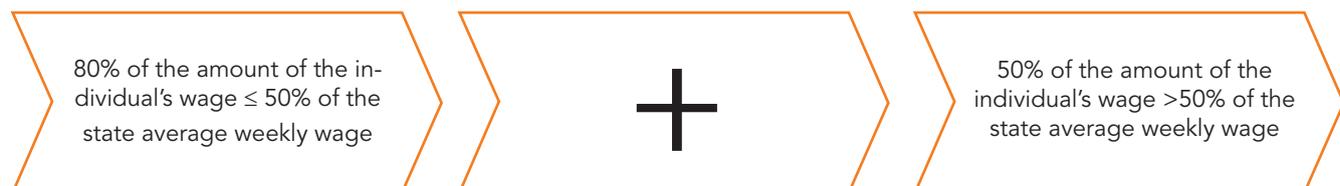
Benefits must be for a covered purpose. These valid leave reasons include:

- Medical leave: for self, due to a serious health condition;
- Family leave:
  - to care for a family member with a serious health condition;
  - for birth of a child (request must be within 12 months of the child's date of birth);
  - for placement of a child for adoption or foster care (request must be within 12 months of the date of placement);
  - for exigency because a family member is on active military duty or has been notified of an impending call or order to active duty; and
  - to care for a family member who is a covered servicemember with a serious health condition.

### Weekly Benefits Payable

After approval of the claim request for benefits, a seven calendar day waiting period applies to the initial claim for benefits, which counts against the total available period of leave allowable in a calendar year

**Benefit Calculation:** The weekly benefit amount calculation is based on each individual's average weekly wage per the quarterly reports sent to the department.



**Weekly Benefit Maximum:** Initial weekly benefit maximum is \$850.00. Subsequent weekly benefit amounts will be 64% of the state average weekly wage. These numbers will be adjusted annually by October 1 for the upcoming year calendar year.

1. All benefits are offset by any government program, e.g. workers' compensation, other than for permanent partial disability incurred prior to the family or medical leave claim, under other state or federal temporary or permanent disability laws, or the employer's permanent disability policy.

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### **Maximum Benefit Period:**

1. Beginning January 1, 2021, covered individuals are, within a benefit year, eligible for up to:
  1. 26 weeks, in aggregate, of family and medical leave;
  2. 12 weeks of family leave for birth, adoption or foster care placement and exigency due to active duty or impending active duty;
  3. 26 weeks of family leave in order to care for a family member who is a covered servicemember with a serious health condition;
  4. 20 weeks of medical leave if they have a serious condition that incapacitates them from work.
2. Beginning July 1, 2021, covered individuals are eligible for up to 12 weeks of family leave to care for a family member with a serious health condition.

**Multiple Periods of Leave:** If an employee qualifies for leave under this MA Family and Leave Law, the total time of the leave will run concurrently any qualifying leave under either the Commonwealth's Parental Leave law or the federal Family and Medical Leave Act (FMLA).

**Intermittent Leave:** Certain types of leave may be taken on an intermittent basis. The quantity of intermittent leave proportionately reduces the employee's available leave allotment and the weekly benefits reduce in direct proportion to the intermittent leave. Types of intermittent leave include:

1. Family leave to bond with a child during first 12 months after birth, adoption, or foster care placement and only if agreed upon by employer and employee;
2. Family leave to care for a family member's serious health condition, to care for a covered servicemember, or for the employee's own serious health condition and if it is medically necessary;
3. Family leave due to a qualifying exigency arising out of a family member's active duty or impending call to active duty;
4. Self-employed individuals who have elected coverage and former employees.

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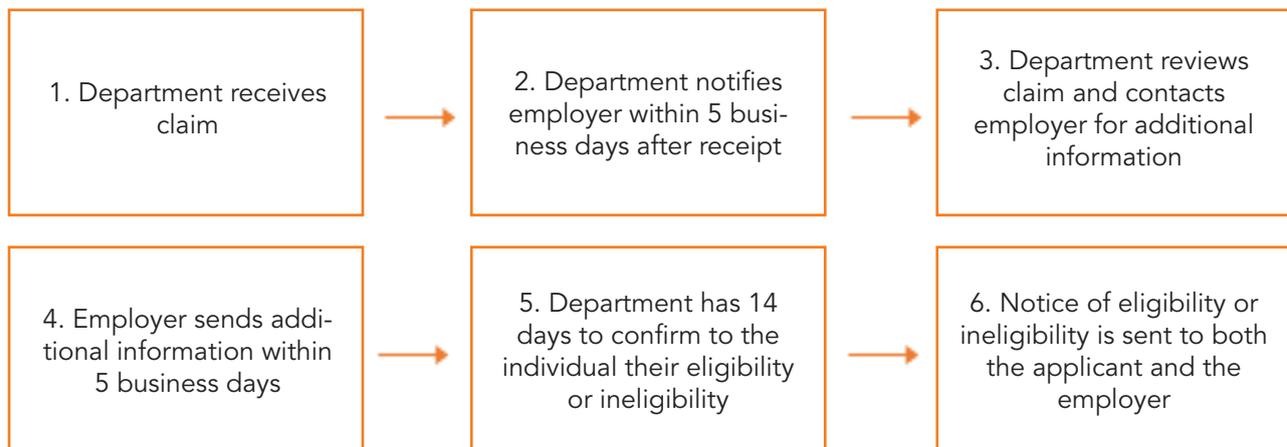


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### Claim Filing

Individuals will use department forms to file claims for family or medical leave:



1. Individuals must provide employer with 30 days' prior notice of the anticipated start date of the leave describing the anticipated length of the leave, type of leave, and expected return date (if extenuating circumstances prevent an individual from providing a 30-day notice, the individual will provide notice as soon as is it practicable).
2. Department will share the following information with the employer: expected duration, whether continuous or intermittent and other relevant information (an individual is required to sign a consent form authorizing the department to share this information with the employer).
3. If request form is received more than 90 days after the leave starts, the department (upon its discretion) may reduce benefits.
4. Additional information the employer must provide includes: wages for last 12 months, position description, full or part-time status, weekly hours worked, prior requests or approvals for leave, amount of paid leave already taken during the current year, description of covered business entity's paid leave policies and any anticipated benefits the employer may provide, and any other relevant information.

Payment of benefits will proceed upon final eligibility determination and communication to the applicant. Employees must still comply with their employer's attendance and call in procedures. Specific procedures exist for requesting an amendment or extension of benefits.

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### Claim Denials and Appeals

- Claim denials and appeals will be made to both the individual and the employer.
- The individual may appeal the decision.
- Appeals are made to the department.
- The request for appeal should be filed within 10 calendar days of receipt of the notice of determination – the department may extend this period where the individual can demonstrate circumstances beyond their control that prevented filing on time.
- Individuals may also request a hearing.
- The department will issue a written decision within 30 days of the hearing.
- If the individual wants to pursue after that, they must file a court action in the district court and that action must commence within 30 days of receipt of the department's final decision.

### Job Protection

The law provides protections to individuals on leave requiring employers to:

- Restore an employee to their previous position, or to an equivalent position, with the same pay status, employment benefits, length of service credit and seniority as of the date of leave.
- Abstain from reducing or affecting accrual of vacation time, sick time, bonuses, advancement seniority, length of service credit or other employment benefits or programs.
- Continue health benefit plan contributions during the leave.

*Exceptions are allowable if all other employees of equal length of service or credit have been laid off due to economic decisions or change in operating conditions.*

It is unlawful for any employer to retaliate by discharging, firing, suspending, disciplining, expelling, discriminating against, or threatening, in any manner, for exercising their right to take leave or within six months of their return from leave.

### Employer and Employee Contributions

The total cost for each employer and employee depends on the size of the employer.

Step 1: Each Federal Employer Identification Number (FEIN) calculates their number of employees by counting the total number of employees for each pay period, including full-time, part-time, seasonal, temporary employees, and 1099s in the prior calendar year [NOTE: Businesses with more than 50% of its workforce, who are 1099's, must treat these individuals as "covered individuals" and remit contributions to the department for these individuals.

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Step 2: Divide by the number of payroll periods.

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### Calculating the Payment Amount:

The contribution rate is 0.63% of the first \$128,400 of annual earnings, or a maximum of \$808.92 – the director will publish new amounts by October 1 for the upcoming calendar.

Type of Leave	Contribution Rate	Employee Contribution	Employer Contribution
Medical Leave	.52%	Up to 40%	Employers pay the difference between the total rate and the employee contribution
Family Leave	.11%	Up to 100%	

- Businesses with 25 or more employees remit both the employer and employee contribution amount.
- Businesses with fewer than 25 employees remit only the employee contribution amount.

### Remitting Payment

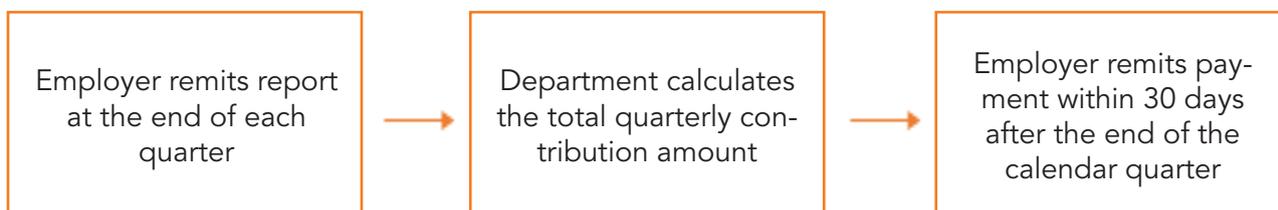
Employers must submit an earnings report following the end of each calendar quarter to the Family and Employment Security Trust using the Department of Revenue's MassTax Connect system

- Employers without accounts will need to register and establish an account.
- Self-employed individuals who opt-in will file a Self-Employed Notice of Election with the department and then register.

### Report Information

1. Each employee's name, social security number, and wages paid or other earnings
2. The federal employer identification number and the identification number the employer, covered business entity, or self-employed individual is required to include on a withholding tax return

### Remittance Process



Failure to remit the required contribution results in a .63% assessment of employer's total annual payroll for each year it fails to comply PLUS the amount of benefits paid out to covered individuals for whom no contributions were paid.