



# Massachusetts family/medical leave private plan renewal due soon

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Employers that offer their Massachusetts-based employees a Paid Family and Medical Leave (PFML) private plan have upcoming renewal obligations. Certain self-insured employers must file renewals by Sept. 30, 2020, and submit revised surety bond amounts. Employers offering insured private plans set to expire before 2021 must renew between Nov. 30 and the end of the year. In addition, the [Department of Family and Medical Leave \(DFML\)](#) has updated [PFML final regulations](#) to clarify terms, private plan requirements and reimbursements to employers. DFML plans to publish more program information throughout the fall, leading up to the Jan. 1 start of benefits.

## Massachusetts PFML

Beginning in 2021, the Massachusetts PFML law ([Mass. Gen. Laws Ch. 175M](#)) will give employees up to 12 weeks of protected leave with partial wage replacement to bond with a new child, care for a family member with a serious health condition or handle a military exigency. The law will also let employees take up to 20 weeks to address their own serious health conditions and up to 26 weeks to care for a covered servicemember. A cap will limit any employee's total PFML to 26 weeks in a 52-week period.

## PFML private plan renewal

Employers may [apply for an exemption](#) from the state's program, including contributions, by establishing an approved, [insured](#) or [self-insured](#) plan. Applications for exemptions are accepted and reviewed by the DFML on a rolling basis and are effective no earlier than the quarter immediately following the date of approval. Exemptions are effective for up to one year.

Plan sponsors that obtained approval for an exemption in late 2019 must renew their plans for 2021 if they plan to continue. If an approved private plan isn't in place as of Jan. 1, 2021, the employer will owe

contributions retroactive to Oct. 1, 2019, or the date of the private plan approval. Employers that choose not to renew the private plan must notify the PFML contact center via [Mass Tax Connect](#) or by telephone.

### Self-insured plan renewals

Employers maintaining a self-insured PFML plan that expires on Sept. 30, 2020, must use their PFML account to complete the renewal application on [Mass Tax Connect](#) by that date. The required bond amount and form for 2021 have changed. Regulators have developed a [calculator](#) to help employers determine the correct bond amount. Each submission must include a copy of the required, revised [surety bond form](#) with the bond amount and [self-insurance declaration](#).

### Insured plan renewals

Employers with insured private plans that expire on Dec. 31, 2020, must renew their PFML exemption on [Mass Tax Connect](#). The employer can renew the exemption by providing the policy number found on the insurer's signed insurance declaration document. Insured plan renewals won't be accepted before Nov. 20 and must be completed by Dec. 31.

## Updated regulations

DFML has amended earlier final regulations to clarify some terms, modify a few private plan requirements, and outline when an employer may receive a reimbursement.

### Revised definitions

Accrued paid leave provided under an employer's benefit plan includes sick, annual, vacation, personal, and compensatory leave or paid time off, but doesn't include the employer's disability or paid family or medical leave policy. Covered individuals can use accrued paid leave rather than receive a paid benefit through the PFML program.

Regulators also clarify that job-protected leave takes effect when an employee begins leave for a qualifying reason, regardless of whether the employee has or will apply for PFML benefits or whether that leave is paid or unpaid. This leave will run concurrently with available PFML leave.

An employer, covered business or administrator that has received approval from DFML may submit an application for benefits on behalf of a covered individual, subject to certain requirements, including the submission timelines.

Permitted intermittent leave may be taken in increments consistent with the established employer policy for other forms of leave. The amended regulations reduce the minimum length of available increments to 15 minutes from four hours. However, employees can't file a claim for benefits until they have accumulated eight hours of qualifying leave. When medically necessary, intermittent leave may be taken

to deal with a military exigency, address the employee's own serious health condition, or to care for a covered servicemember or a family member with a serious health condition. Intermittent leave doesn't apply to new child bonding, unless the employee and the employer agree otherwise.

### Private plan exemption

The rules add responsibilities and some clarity for private plans. An employer may [seek a private plan exemption](#) from the family leave portion of the law, the medical leave portion, or both. However, any exemption granted must include the entire covered workforce. For example, an employer can't opt for a private plan for salaried employees and exclude hourly or part-time workers. Coverage under a private plan begins on the first day of the first quarter following DFML approval. Under the revised rules, the plan must implement an appeals process to be completed before an employee can appeal to the state. Any adverse determination document must advise the employee of the appeal rights.

In addition, a new section ([§2.07\(8\)\(e\)](#)) clarifies a private plan's obligations to former employees. A covered individual who is a former employee separated for fewer than 26 weeks will file with the former employer if unemployed at the time of filing. If reemployed with a different employer when applying, the individual must apply with the current employer's approved private plan, if there is one, or with DFML.

### Employer reimbursement

An employer that pays an employee during a family or medical leave period may apply to the DFML for reimbursement of the amount paid up to the employee's entitlement amount. Reimbursements are paid out of benefits due to the employee from the state and are not available for employers with approved private plans. To qualify, the payments must have been paid from the employer's temporary disability, paid family, or medical leave plan or policy — and the employee can't have received benefits from the state for the same period. This provision doesn't extend to accrued paid leave. For example, an employer that pays a short-term disability salary continuation benefit may apply for reimbursement. But if an employee uses accrued, paid sick days, no reimbursement is available.

## Related resources

### Non-Mercer resources

- [Paid family and medical leave law Mass. Gen. Law Ch. 175M](#) (Massachusetts General Court)
- [Department of Family and Medical Leave](#) (Massachusetts.gov)
- [PFML final regulations](#) (Massachusetts DFML)
- [Mass Tax Connect](#) (Massachusetts Department of Revenue)

### **Mercer Law & Policy resources**

- [Massachusetts clarifies paid leave taxes for temporary telecommuters \(July 29, 2020\)](#)
- [Massachusetts readies for paid family and medical leave \(Jan. 13, 2020\)](#)

### **Other Mercer resource**

- [State paid leaves: Three things employers should do in 2020 besides comply \(Jan. 20, 2020\)](#)

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