

CLIENT ALERT: MA Paid Family and Medical Leave Law Will Allow Employees to “Top Off” PFML Benefits with Accrued PTO

The Massachusetts Paid Family and Medical Leave Law (“PFML”) has been amended to allow employees to “top off” their PFML benefits with accrued paid leave (such as vacation, sick time and/or other forms of PTO). The amendment will be effective as to claims filed on or after November 1, 2023. Accordingly, employers will need to review their policies to allow employees the ability to “top off” their PFML benefits with accrued paid leave as of November 1st. The “top off” amendment affects Massachusetts employers that offer PFML through either the Commonwealth or a private plan.

For employers who administer PFML benefits through the Commonwealth’s plan, the PFML does not currently permit employees to use accrued paid leave to supplement, or “top off,” their PFML benefits. Employees can only use accrued paid leave during the PFML’s seven-day waiting period and/or before or after they receive PFML benefits.

For PFML applications filed on or after November 1, 2023, employees will have the option of either “topping off” their PFML benefits with accrued paid leave or saving accrued paid leave to be used at a later date, in accordance with their employer’s paid leave policies. “Topping off” allows employees to supplement their PFML benefits with accrued paid leave to receive up to 100% of the employee’s Individual Average Weekly Wage (“IAWW”). The Massachusetts Department of Family and Medical Leave (“DFML”) has stated that employers will be responsible for ensuring that the combined weekly sum of employer-provided paid leave benefits and PFML benefits do not exceed the employee’s IAWW. Employers will be able to find an employee’s weekly PFML benefit rate and IAWW on the employee’s individual PFML Approval Notice. The DFML has stated it will be providing further guidance about “topping off” on its website (mass.gov/dfml) in the near future.

Employers should review their PFML policies and contact their M&J attorney

for any questions regarding the PFML amendment. MBJ will continue to monitor these developments.

[Jaclyn L. Kugell](#), [Maura D. McLaughlin](#) and [Robert Papandrea](#) are attorneys with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666, or jkugell@morganbrown.com; mmclaughlin@morganbrown.com; or rpapandrea@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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