

CLIENT ALERT: Massachusetts Department of Family and Medical Leave Has Issued Important Guidance on 2022 Benefit Calculations

On December 13, 2021, the Massachusetts Department of Family and Medical Leave (DFML) issued **guidance** on various topics related to MA Paid Family and Medical Leave law ("PFML"), including the impact of the changes to the State Average Weekly Wage and the weekly benefit rate maximum effective January 1, 2022. As most Massachusetts employers are aware, under the PFML, a covered individual is eligible for up to 12 weeks of family leave (or up to 26 weeks of family leave to care for an injured service member), up to 20 weeks of medical leave for their own serious health condition, all subject to a 26 weeks combined maximum for all covered leave reasons during the course of the "benefit year" (defined under the PFMLA as the period of 52 weeks rolling forward from the Sunday prior to the worker's first day of paid leave). As summarized below, the DFML's new guidance addresses several open questions, many of which relate to the changes in weekly benefit rate calculation, as well as changes in coverage, and whether bonuses affect PFML benefits in the week received.

Weekly Benefit Rate

While taking DFML-approved PFML, an employee will receive a weekly benefit amount, which the DFML calculates based on a percentage of the employee's earnings and the average weekly wage for workers throughout Massachusetts, capped at a maximum weekly benefit amount. The part of an employee's average weekly wage that is less than or equal to 50% of the average weekly wage for Commonwealth workers will be covered at a rate of 80%. If part of the employee's average weekly wage is greater than 50% of the average weekly wage for Massachusetts workers, it is covered at a rate of 50%, up to the maximum allowed benefit amount. For 2022, DFML **announced** in October that the new maximum weekly benefit rate is \$1,084.31. However, following that announcement, questions remained such as how the new benefit rate would impact open claims that carried over from 2021 to 2022. The DFML's most recent guidance answers many of these questions.

While the DFML is responsible for calculating benefits, it is worth noting that the two factors that go into the calculation of an employee's PFML benefits—the claimant's average weekly wage and the state average weekly wage—will be applied by the DFML in distinct ways. For the calendar year 2022, although the state average weekly wage will be determined based on the start date of the claim, the claimant's average weekly wage is calculated at the start of the benefit year and remains the same for all claims submitted during that benefit year. Below is a summary of the DFML's guidance related to the maximum weekly benefit rate, which should be incorporated into employer policies, whether they use the state plan or have an approved private plan in place:

- **Open Leave Claims That Carryover From 2021 Into 2022**

Claims for benefits for approved leaves that started in 2021 and carry over into 2022 will continue to be eligible for the 2021 maximum weekly benefit rate (i.e., \$850 per week), until either the claim or the benefit year (the 52 weeks rolling forward from the Sunday prior to that worker's first day of paid leave) expires. (A plan that pays more than the \$850 per week will still be compliant).

- **New Claims Filed in 2022**

Claims for a leave starting in 2022 are eligible for the 2022 maximum weekly benefit rate of \$1,084.31.

- **Bonding Leave Following Medical Leave for Pregnancy or Childbirth**

Under the PFMLA, “bonding leave” is defined as family leave used to bond with a child. A claim for a bonding leave following a medical leave for pregnancy or childbirth will be treated as a separate claim, and the benefit rate at the time of the claim’s filing will apply.

- **Extensions of Leave**

At times, workers request an extension of their family or medical leave. An extension will be subject to the maximum benefit rate of the year in which the extension starts.

- **Applicable Rates Under Private Plans**

To be compliant under PFML, private and self-insured paid leave plans must calculate new benefit rates and new allotments at the start of a new benefit year if a leave extends beyond the current benefit year.

Claim Ownership (i.e., where multiple plans cover an employee)

As noted in the DFML’s guidance, under the PFML Program, it is possible for employers to switch coverage between the state-run paid leave plan and a private, employer provided paid leave plan (and vice versa). It is also possible for an employer to have an exempt private plan for medical leave benefits but participate in the state-run program for family leave benefits (or vice versa). Where multiple plans could cover a particular employee, coverage is determined for each claim individually and applies based on the plan in effect for those types of claims (i.e. family or medical) as of the *start* date of the leave covered by the claim. Notably, employees who apply in advance of their leave will need to apply with the carrier providing coverage as of the date the leave starts (rather than the carrier providing coverage as of the date of the application, if different).

Employers who are transitioning between plans should provide employees as much notice as feasible about the change so that employees can submit their application under the appropriate, applicable plan.

Bonuses

Income received through a bonus, like a holiday bonus or year-end bonus, will not cause a reduction in a worker’s PFML benefits for the week in which it is paid. Workers should not report bonuses to the DFML in their application or when reporting other income received during their leave.

MBJ will continue to monitor any forthcoming guidance from DFML. In the meantime, please contact your MJB attorney with any questions you may have regarding MA PFML.

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This alert was prepared on December 22, 2021.

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