

CLIENT ALERT: Massachusetts Department of Family and Medical Leave Issues New Forms and FAQs on Upcoming Paid Family and Medical Leave

With January 1, 2021 rapidly approaching, the Massachusetts Department of Family and Medical Leave (the "Department") has recently issued new forms and FAQs so as to prepare employers and employees for the new Paid Family and Medical Leave ("PFML") benefits available to covered employees in the coming year. The following is an overview of the most recent updates:

- **If they have not already done so, employers should create an online account to review and manage PFML applications for their staff.** Employers may do so by following the prompts [here](#). Employers who have received private plan exemptions are also encouraged to create an online account to receive information from the Department and manage any appeals filed by their employees with the Department.
- **The Department has issued a new workplace Poster (found [here](#)) which must be posted in a conspicuous place on the employer's premises.** Employers with remote employees may consider e-mailing a copy of the poster to remote workers and sharing the poster on the employer's intranet.
- **The Department has issued the Medical Leave Certification Form (found [here](#)).** This form must be used for medical leave due to the employee's own serious health condition, and family leave to care for a family member with a serious health condition (including care of a covered service member). Employees are required to submit this form to the Department as part of their application for paid leave. Certifications will also be required for other leave types, including family leave benefits for the birth, adoption, or foster care placement of a child, and for a qualifying exigency. Employers with private plan exemptions may use their own certification forms, so long as they require no additional information beyond what is required by the Department.
- **The Department has confirmed that Employees receiving PFML benefits from a private plan (for which their employer received an exemption from PFML contributions), may "top-off" their benefits with accrued paid time off.**

As the previously-issued regulations indicate, employees receiving state-issued PFML benefits may not “top-off” their benefits with accrued paid time off. Accrued paid time off includes, vacation, sick, personal, an extended illness leave bank, or similar paid time off.

- **Employers who were approved for a private plan exemption, but who terminate their private plan before the conclusion of the second term will be required to remit retroactive contributions back to the effective date of the initial exemption approval.** Once a renewal has been approved, the employer may terminate its private plan at the end of the second term without owing retroactive contributions. Employers who were approved for an exemption prior to January 1, 2021 must go through one (1) renewal cycle in order to avoid retroactive contributions. For example, an employer who was approved on October 1, 2020 for a private plan exemption commencing January 1, 2021, must renew, and maintain its plan through calendar year 2022 in order to avoid retroactive contributions.
- **Employers who terminate their private plan before the end of the second term may be assessed penalties and interest, and may be required to repay the Trust Fund for any benefits received by their employees during the period the employer failed to maintain its plan.**

Please note that this information is current as of the date of this publication, and additional materials and guidance may become available as the new year approaches. Employers should visit [the Department Website](#) for the most accurate and up-to-date information.

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