CLIENT ALERT: Massachusetts Department of Family and Medical Leave Issues Proposed Revisions to Paid Family and Medical Leave Regulations

Over the past few weeks, the Massachusetts Department of Family and Medical Leave ("DFML") has issued a markup of the proposed revisions to the Paid Family and Medical Leave law ("PFML") regulations released in June, 2019. As explained previously, the regulations provide detailed implementation guidance for the PFML, which allows covered employees to begin taking leave under the new law on January 1, 2021. While the proposed revisions are subject to further changes pursuant to the required public hearings (the first of which is scheduled for June 11, 2020, via WebEx) and comment period, the following is an overview of some of the salient proposed changes:

Updated Definitions. The proposed revisions add various new definitions to some important terms and offer additional information and/or clarification to terms previously defined. For example, "Job Protected Leave" under the PFML is now anticipated to include "any type of leave that is associated with a qualifying reason regardless of whether an application for benefits has been submitted to the Department…or whether that leave is paid or unpaid…" In other words, under the proposed regulations, leave that is otherwise qualifying will be "job protected" in accordance with the PFML regardless of whether the employee applies for leave and/or the absence is paid or unpaid. They also propose to change and/or clarify terms previously defined, including, without limitation, "Continuing Treatment by a Health Care Provider," which, among other things, provides that "substance abuse disorders" will not be serious health conditions unless inpatient care is required or unless complications develop. Finally, the proposed regulations redefine the time increments for "Intermittent Leave". The regulations released in June, 2019, provide that an employer could require intermittent leave be taken in minimum increments of not more than 4 hours. The proposed regulations seek to change this employer imposed threshold and now state that intermittent leave "shall be taken in increments of 15 minute intervals".

Optional Coverage for Employers Not Subject to the PFML Law. In addition to the existing regulations on optional coverage for Self-Employed Individuals, the proposed revisions outline the process by which an employer not subject to the PFML law may become a covered employer. This includes the manner in which municipalities, districts, political subdivisions, housing authorities, regional school districts, regional planning commissions, and Horace Mann charter schools may opt-into coverage.

Exemption Due to Approved Private Plans. The proposed revisions offer significantly greater detail surrounding the application process for covered employers seeking an exemption from PFML obligations because they offer paid family and/or medical leave benefits to covered individuals in their

© 2026 Morgan, Brown & Joy, LLP

workforce through a private plan. The proposed changes cover the process for submitting a request for exemption. While allowing for exemptions for medical leave, family leave, or both, the proposed regulations make clear that an employer may not seek an exemption for a portion of its workforce. The proposed revisions also clarify that coverage for employees under a private plan begins "no later than the first day of the first quarter immediately following" the date the private plan is approved regardless of whether the employee meets the financial eligibility threshold for PFML. Additional requirements for exemption are also detailed, including that a private plan must contain an appeals process, provide notice of the employee's rights under both the plan and the PFML, and calculate the weekly benefit amount based on the wages or qualified earnings earned with the employer or covered business entity at the time of the application for benefits. The proposed revisions add further guidance on the method by which employers or covered business entities may request review of an exemption denial. With respect to terminating or non-renewed private plans, the proposed revisions add guidance on the effective date of the termination or non-renewal, provision of leave following the effective date of termination or non-renewal, ongoing coverage for leave, reporting requirements following termination or non-renewal, and steps required by employers or covered business entities who have been approved for an exemption and thereafter dissolve, or undergo an acquisition or merger.

Applications for Benefits. The proposed revisions to the regulations amend the notice requirements, providing that employees or covered contract workers must give not less than 30 calendar days' notice to their employer or covered business entity of the anticipated start date of PFML (or as soon as practicable if a delay is beyond their control), and notice must be given prior to an application to the DFML. The proposed amendments to the regulations also provide additional information to be filed with the benefits application, including proof that the employer or covered business entity has been notified of the intended leave, the full name of the covered individual taking leave and/or the full name of the family member whom the covered individual will be caring for or bonding with, anticipated start date and length of leave, type of leave, and expected return date. With respect to PFML for the birth of a child, the proposed revisions provide that in the case of multiple births, no more than 12 weeks of leave benefits total are available in a benefit year. Under the proposed revisions, the DFML will request from the employer or covered business entity information supporting the PFML request, including whether the covered individual will be receiving any other wage replacement benefits. Finally, the proposed revisions add that the DFML may allow an employer or covered business entity or its designee to submit an application for benefits on behalf of a covered individual.

Application for Benefits Verification. The proposed amendments to the regulations add a requirement that individuals utilizing PFML on an intermittent basis must verify with the DFML the hours of leave taken each week in order to continue receiving benefits. The DFML will also provide notice to the individual and to the employer of any report of a change in relevant circumstance. Employers or covered business entities may also seek a medical recertification of the employee or covered contract worker's serious health condition following expiration of the initial period of

© 2026 Morgan, Brown & Joy, LLP

incapacity cited in the healthcare certification or where an intermittent leave has extended for a period of more than six months from the approval by the DFML, whichever occurs first.

Weekly Benefit Amount. The proposed revised regulations clarify that the weekly benefit amount is to be calculated based on the individual's average weekly wage at the time of the filing of a request for PFML, and shall not change during the term of the approved leave period, subject to any prorated or reduced benefit amount permitted by the regulations. The proposed revisions also state that in addition to reductions for wage replacements provided by government programs (*i.e.*, unemployment benefits, workers' compensation) state or federal disability benefits law, or permanent disability policies of the employer, benefits will be subject to reduction as a result of payments received through a private plan for which the employer or covered business entity received an exemption, and wages from another employer or self-employment. The proposed revised regulations also provide that a covered individual's leave allotment will be proportionately reduced where the individual's weekly benefits are subject to any such reduction. Likewise, the weekly benefit amount and/or leave allotment will be reduced by any paid or unpaid leave, wages, or wage replacement, that a covered individual on PFML receives from any source for the same qualifying reason in the 12-month period prior to filing an application for benefits, but any leave taken for the same qualifying reason prior to January 1, 2021, will not be counted against the individual's weekly benefit amount and/or leave allotment. Finally, the proposed revisions state that the weekly benefit amount may be reduced where the covered individual has an outstanding tax or child support obligation.

Substitution of Employer-Provided Paid Leave. The proposed revisions to the PFML regulations clarify that for covered individuals choosing to use accrued paid leave provided by their employers rather than PFML benefits, the accrued paid leave will run concurrently with PFML leave. Individuals may also choose to use accrued paid leave provided by their employer through an extended sick leave program rather than PFML benefits. In either case, individuals will not be compensated with PFML benefits for a period of time for which they receive compensation through the use of accrued paid leave or leave through an extended sick leave program.

Employer Reimbursement. The proposed revisions provide that employers or covered business entities that make payments to a covered individual during a period of PFML that are equal to or greater than the weekly benefit amount shall be reimbursed out of any benefits due to the covered individual or to become due from the Trust Fund by the DFML. To qualify for reimbursement from the DFML, a temporary disability policy or program of an employer or covered business entity, or a paid family or medical leave policy of an employer or covered business entity must be a policy or program that is granted to a covered individual for a qualifying reason under PFML, that is separate from and in addition to any sick leave, annual leave, vacation, personal leave, or accrued paid time off that is made available to the covered individual. Employers and covered business entities will not be eligible for reimbursement for payments to a covered individual where they have elected to utilize accrued paid leave whether it is in lieu of applying for PFML benefits or supplementary to a (i) temporary disability policy or program of an employer or covered business entity; or (ii) paid family or medical leave policy of an employer or program. A voluntary program where covered individuals may donate

© 2026 Morgan, Brown & Joy, LLP

accrued leave time to fund a bank for the benefit of a co-worker experiencing a qualifying reason for PFML may be reimbursable. The DFML will not reimburse an employer or covered business where the covered individual received a benefit from the Trust Fund for the same period of time.

Intermittent and Reduced Schedule Leave. The proposed revised regulations add guidance for tracking intermittent leave, including that if an employee's utilization of intermittent leave is inconsistent with the DFML's approval, it shall not be considered retaliation for an employer to request additional information related to the use of leave. Further, employers or covered business entities with covered individuals approved for intermittent leave must provide the DFML with wages or qualified earnings paid to the covered individual on a monthly basis or at other intervals deemed necessary at the discretion of the DFML for purposes of offsetting benefit payments by amounts received in wages. For the purposes of calculating benefits for covered individuals whose work schedule varies from week to week, the proposed revisions explain that the benefits are to be calculated based on the average number of hours worked from the two highest quarters of the 12 months preceding the covered individual's PFML application, and the covered individual will not be eligible for benefits in excess of the number of hours so determined by the DFML.

Retaliation. With respect to the PFML's rebuttable presumption of retaliation (discussed in greater detail here), the proposed revisions to the regulations add that a negative change shall not include trivial, or subjectively perceived inconveniences that affect *de minimis* aspects of an employee's work. The revisions also add that a notification to the DFML by an employer, under a bona fide belief that the employee has committed fraud in connection with the employee's application for benefits, shall not give rise to an action of retaliation or presumption. The revisions also clarify that the rebuttable presumption provisions will be applied to all leave associated with a qualifying PFML reason, irrespective of whether an employee actually files an application for benefits with the DFML, and an employer's application of a pre-existing employment rule or policy shall be deemed to be clear and convincing evidence that the employer's action was not retaliatory.

Next Steps. The DFML will hold a public hearing on the proposed amendments to regulations on June 11, 2020, at 10 a.m., at which time anyone interested will have the opportunity to present comments on them. If you are interested, you can register to attend here. Written comments can also be summited to the DFML by 5:00 p.m. on June 12, 2020.

This alert is a summary based on the proposed amendments to the PFML regulations published as of the date of this writing. As indicated above, they are subject to further review and revision in connection with the required public hearing and comment period, so these revisions are not yet final. MBJ will continue to monitor the progress of these revisions and provide updates accordingly. In the meantime, employers with questions about PFML, FMLA, employee illness, disability and/or medical leave laws should consult with their MBJ attorney.

Jaclyn Kugell and Jaclyn Kawka are attorneys with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666, or at jkugell@morganbrown.com, and jkawka@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

© 2026 Morgan, Brown & Joy, LLP

This alert was prepared on May 27, 2020.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information purposes only and you should consult an attorney concerning any specific legal questions you may have. Customize the Author Byline?
byline-default

© 2026 Morgan, Brown & Joy, LLP