

What Leave Are Individuals Entitled To?

Starting January 1, 2021, individuals covered by the PFML law can take leave as follows:

- Up to 12 weeks off for birth, adoption, or foster care placement of a child;
- Up to 12 weeks off for a qualifying exigency involving a family member in the armed forces;
- Up to 20 weeks off for one's own serious health condition; and/or
- Up to 26 weeks off to care for the serious health condition of a family member in the armed forces.

Starting July 1, 2021, individuals may also take up to 12 weeks off to care for a family member's serious health condition. An individual cannot take more than 26 weeks of PFML in total during the year.

Employees can also request, and be granted, either reduced schedule leave or intermittent leave (for instance, leave taken occasionally for medical appointments, or leave taken several days at a time spread over a period of months).

Individuals apply to the state for this leave. While the individual needs to give notice to his or her employer, the Department of Family and Medical Leave alone decides whether the leave is approved. The Department may, but is not required to, ask for information from the employer. If the leave is approved, the state will provide the individual with payments equal to a percentage of his or her regular pay (up to \$850 per week).

Individuals denied leave by the Department may appeal that determination. However, businesses have no right to challenge an individual's request for leave.

PFML leave can run concurrently with other leaves, such as FMLA, state sick leave, or state parental leave. However, the PFML is significantly broader than many other leave laws. Therefore, an individual could take PFML leave that would not be covered by another leave law, and take leave under another law later in the year.

How Much Weekly Pay May an Individual Receive?

The weekly benefit amount is calculated based on a percentage of the individual's earnings and is capped at \$850 per week. The amount is calculated at 80 percent of the individual's weekly earnings if the individual's average weekly wage is equal to or less than 50 percent of the state average weekly wage, and 50 percent of the individual's weekly earnings if the individual's average weekly wage is more than 50 percent of the state average weekly wage. The Department will reevaluate the maximum weekly benefit annually.

There is a seven-day waiting period before an individual may receive pay from the Fund. During the waiting period, an employee may *elect* to use accrued paid time off (PTO). An employer cannot *require* an employee to use PTO during the waiting period.

Does PFML Run Concurrently with Other Leave?

Yes, in some circumstances. PFML will run concurrently with any other leave taken under the Family and Medical Leave Act (FMLA), Massachusetts Parental Leave Act and the Massachusetts Earned Sick Time Law, provided the leave is for a qualified reason under those laws.

May an Employer Require That Payments Under PFML Be Coordinated with Other Payments Offered Under an Existing Employer Plan?

Yes, in certain circumstances. An employer may require that any PFML payment be made concurrently or otherwise coordinated with payment made or leave allowed under a collective bargaining agreement or employer policy, so that the employee receives the *greater* of the benefits available for the covered reason. Any such paid leave by the employer will count against the allotment of PFML leave. The employer must give an employee notice of this requirement.

May an Employer Require That an Employee Use Sick, Vacation or Personal Time During PFML Leave?

No, an employer may not compel an employee to exhaust rights to any sick, vacation or personal time prior to, or while, taking PFML leave.

Minimum and maximum compensation rates

Find the minimum and maximum workers' compensation rate for your date of injury.

NOTE: The maximum and minimum compensation rate for workers' compensation benefits are set each year on October 1st by the Commissioner of the Division of Unemployment Assistance, as defined in MGL c. 152, § 1, as follows:

(10) "Maximum weekly compensation rate," one hundred per cent of the average weekly wage in the commonwealth according to the calculation on or next prior to the date of injury by the deputy director of the division of employment and training."

(11) "Minimum weekly compensation rate," twenty per cent of the average weekly wage in the commonwealth according to the calculation on or next prior to the date of injury by the deputy director of the division of employment and training."

Date Of Change	Maximum Rate	Minimum Rate
10/1/18	\$ 1,383.41	\$ 276.68

$\$1,383\text{wk}/40\text{hr-wk} = \34.57hr -Payment threshold 50%-80% benefit- $\$34.57 \times 50\% = \17.28hr

Note: at 80% payment \$17.28hr benefit equals the 50% payment level at \$27.65hr

How Does an Individual File a Claim for Benefits at the Department?

To request benefits, the individual will file a claim for benefits directly with the Department, including a certification evidencing that the leave serves a covered purpose. The certification must include information about dates of the proposed leave and appropriate medical facts or other facts relevant to the purpose of the leave.

The Department will notify the employer of the individual's claim for benefits within five business days and verify the individual's name, type of leave at issue, expected duration of the leave, whether the request is for continuous or intermittent leave and any other information relevant to the claim.

The Department will notify the applicant of his or her eligibility (or ineligibility) within 14 days of receiving the claim. The Department will begin payment within 14 days of the eligibility determination. The Department will provide the individual and the employer with contemporaneous notice.

An individual may appeal a denial of PFML benefits to the Department by filing a request for appeal within 10 days of the party's receipt of notice of the determination.

May a Covered Individual Take Intermittent or Reduced Schedule Leave?

Yes, in certain circumstances. A covered individual may take intermittent or reduced schedule leave for the individual's own serious health condition, or to care for a family member's serious health condition or to care for a service member. However, an individual may *not* take intermittent or reduced schedule leave for child bonding or to address a qualifying exigency arising out of a service member's deployment, unless the employer and covered individual specifically agree. A covered individual who takes intermittent or reduced schedule leave will receive a pro-rated weekly benefit.

Must a Covered Individual Provide Notice to the Employer of PFML Leave?

Yes. An employer may require an employee to provide notice of the anticipated start date of the leave, the anticipated length of the leave, the type of leave and the expected return date at least 30 days in advance (or as soon as practicable). The employer must first notify employees of this requirement, such as through a written PFML workplace policy.

Does an Employee Accrue and Receive Benefits During PFML?

Yes. The employee must continue to receive health insurance benefits and accrue other employment benefits typically provided by the employer, including vacation time, sick leave, seniority and length of service.

Does an Employee Have a Right to Job Restoration?

Yes. An employee returning from PFML is entitled to their same position, or an equivalent position with the same pay, employment benefits, seniority and length of service.

An employer is *not* required to restore the employee to his or her position "if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave," provided that the employee who took leave "shall retain any preferential consideration for another position to which the employee was entitled as of the date of leave."

Does the Act Include Anti-Retaliation Provisions?

Yes. An employer is prohibited from interfering with an employee's rights under the law or retaliating against an employee for exercising the employee's rights.

This law creates a presumption of retaliation if there is any negative change to an employee's status or adverse action against the employee during the leave or within six months of the leave. The employer must rebut the presumption with "clear and convincing evidence" that the

action was not retaliation and that the employer had "sufficient independent justification" for taking that action and "would have taken such action in the same manner and at the same time the action was taken."

Note: This information is for illustrative purposes only, please check for full current details at the Mass Department of Family Medical Leave, the state may make changes without notice.

Great Harbor Benefits Insurance Agency is not responsible for any action a business takes or does not take regarding any benefits or federal, state, local laws and regulations. Businesses are urged to consult with knowledgeable legal counsel prior to development and publication of any manual, policy statements, or employee handbook.