

PREPARING FOR 2023: WHAT MASSACHUSETTS EMPLOYERS NEED TO KNOW ABOUT PAID FAMILY AND MEDICAL LEAVE CHANGES

Insights
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Massachusetts employers should review and update their employee handbook policies and notices to ensure they accurately reflect Paid Family and Medical Leave (PFML) obligations. Notably, as the second year of PFML draws to a close, the Massachusetts Department of Paid Family and Medical Leave (DMFL) issued a number of changes for the program starting next year. What does your company need to know about these changes as you prepare for 2023?

PFML Refresher

Though similar to the federal Family and Medical Leave Act (FMLA), the Massachusetts statute is much broader in many respects:

- Covered employees are eligible for up to 12 weeks for family leave and 20 weeks for medical leave (with a combined maximum of 26 weeks in any year);
- In addition to spouses, sons and daughters, and parents covered by FMLA, Massachusetts expanded "family" to cover leave taken to care for parents-in-law, domestic partners, grandchildren, grandparents, and siblings;
- Employers cannot require employees to exhaust other forms of paid time off prior to or during the use of PFML; and
- Former employees remain eligible for leave within 26 weeks of separation from their employer.

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Employers are also prohibited from retaliating against employees for the use of PFML, and the law presumes retaliation when any adverse action — such as a negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment — occurs within six months of an employee's use of leave.

Employers are also required to provide notice of the law to employees at the start of their employment. While use of a specific format is not required, the state has provided a template notice for these purposes [here](#).

Lower Contributions

The required contribution rates are set annually. For 2022, the employer contribution rate for employers with 25 or more employees is .68% of eligible wages and for employers with less than 24 employees, 0.34%. Recently, DMFL released the new contribution rates effective January 1, 2023.

For employers with 25 or more employees, the contribution rate will be reduced to .63%. This is comprised of:

- .52% of medical contribution
 - .312% of the employer's share
 - .208% of the employee's share
- .11% of family contribution
 - 0% of the employer's share
 - .11% of the employee's share

For employers with 24 or less employees, the contribution rate will be reduced to .318%, withheld from the employee's paycheck.

- .208% of medical contribution
 - .0% of the employer's share
 - .208% of the employee's share
- .11% of family contribution
 - 0% of the employer's share

- .11% of the employee's share

Increased Benefit Amounts

While the contribution percentage has been reduced, the maximum weekly wage an eligible employee may receive while taking PFML will increase from \$1,084.31 in 2022 to \$1,129.82, effective January 1, 2023.

Anything Else?

Governor Baker recently vetoed proposed changes to the PFML program that would have permitted employees to “top off” their PFML benefits with accrued paid leave (such as vacation, sick, or other types of leave). In response, the House of Representatives voted to override the Governor's veto the next day, but the Senate did not. It is possible the legislature will take this up again once the new session starts in January 2023.

Best Practices for Massachusetts Employers

In addition to reviewing and updating existing policies, you should reiterate to your managers that an employee's use of PFML (or other protected leave) should play no role in employment decisions. Finally, you should reach out to experienced counsel to determine and implement best practices.

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Massachusetts employers, so make sure you are subscribed to [Fisher Phillips' Insights](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Boston office](#).

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