

Sullivan Benefits Webinar Follow-up

MA Paid Family & Medical Leave – Employer Update Q & A

February 26, 2019

1. How will employees file claims?

A claim form is in development and will need to be filed by the employee with the MA Department of Family and Medical Leave.

2. What are the required job protections?

An employee must be reinstated to his or her previous position or to an equivalent position with the same status, pay, benefits, length of service credits and seniority as of the date taking leave. In addition, the employee's rights to accrue vacation, sick leave, bonuses, advancement etc. cannot be affected by taking leave. Health benefits must be maintained under the same terms and conditions as if the employee had not taken leave.

3. What are the notice requirements?

Employers must post a workplace notice/poster informing employees of the new law. The Department of Family and Medical Leave will provide a model poster for employers to use. In addition, employers must provide each new hire with a written notice detailing the law within 30 days of their date of hire- this notice should have a written acknowledgement of receipt by the employee. Again, the Department of Family and Medical Leave will supply a sample notice.

Employees are required to provide at least 30 days of their intent to take leave unless, due to reasons beyond their control they are unable to.

4. What is continuing treatment by a health care provider?

This definition is broad and expected to cover chronic conditions and conditions such as pregnancy as well as conditions resulting in a short-term period of incapacity when combined with ongoing treatment by a health care provider.

5. Under Family leave, does the bonding with a child allow for fathers to be covered?

Yes. This applies to Moms and Dads – and is for birth children or adopted children.

6. How do employers apply for private plans and where an they get them?

Private plans may be insured or self-insured, and must provide benefits equal to or better than the MA Paid Family and Medical Leave program. Employers will be able to apply to the state for

a private plan – details on this should be included in the regulations due no later than March 31, 2019. Also, a reminder, self-funded plans will be required to post a bond – at this time we do not have details on the amount, but that should be included in the March 31st regulations as well.

7. Can the employer just pay employees 100% while on leave?

Yes; benefits equal to or greater than the MA PFML requirements are acceptable. However; please note that any self-insured benefits require approval by the state and a bond.

8. Are employees eligible for MA PFML after 1 year or >1,250 hours like FMLA?

The FMLA applies only to employees who have worked at least one year and at least 1250 hours over the previous twelve months. The Massachusetts laws is more expansive and applies to any employee who, while working for Massachusetts employers, has earned enough money over the preceding year to meet the financial test (i.e., the employee must have at least 15 weeks or more of earnings and must have earned at least \$4,700 during the last four calendar quarters). The law also will apply to certain former employees after separation and self-employed workers with whom companies contract (i.e., independent contractors).

9. For companies that offer paid leave already would we have employees first use the state paid leave and then top off their pay to make up difference?

This depends ultimately on how you set up your plan, but yes you may have them utilize MA PFML benefits first and then, if desired, supplement accordingly for your employer specific policies.

10. I have 3 questions:

- a. If an employee has twins, can they request 24 weeks of baby bonding?
- b. Can a mother take paid medical leave for maternity and then request baby bonding leave at the end of the medical leave?
- c. Is there no wage cap for the purposes of the taxes paid even though there's a wage cap on the benefits received?

We do not have answers to these questions at this time, these should be addressed in the regulations that are released no later than March 31, 2019.

11. So, medical and family leave will be separate?

Yes, there are separate allowances and a combined maximum.

12. Does MA PFL provide job and benefits protection?

Yes, employees must be restored to their previous position, with the same status, pay, employment benefits, length of service credit and seniority as of the date of their leave; this includes benefits, plans or programs offered by the employer.

13. What happens to the contributions of an employee who leaves the company?

Contributions remain with the state; contributions are paid in arrears on a quarterly basis, so any adjustments can be made for terminated employees before submission.

14. If we offer an STD plan, can an employee receive both the MA benefits and STD benefits? Or would it be pro-rated?

Yes; however, the benefits should be coordinated or offset accordingly. Most likely you would have the MA PFML pay first and the STD plan supplement.