MASS-ive Developments
Massachusetts Paid Family and Medical Leave
April 2019

Your Lines are Muted
Please Enter All Questions using the Provided Q&A Feature
Today’s Presenters

Marti Cardi, Esq.
Vice President, Product Compliance
Matrix Absence Management

Jim Huebner
National Account / Practice Leader
Absence Management & Integrated Employee Benefits
Reliance Standard Life Insurance Company
Disclaimer!

This presentation represents Matrix’s current best efforts at understanding the Massachusetts PFML Act and how it will work.

Our interpretations and analysis may change as more information is available from the Commonwealth. In the meantime, we hope this presentation will assist you in getting ready for Massachusetts PFML!

And of course, nothing in this presentation is intended or should be construed as legal advice. Please consult your own attorney for legal guidance.
Massachusetts Paid Family and Medical Leave –
When Last we Spoke…Just a Quick Re-Cap
When Last We Spoke…Just a Quick Re-Cap *(the basics)*

**Administration:** Department of Family and Medical Leave

**Regulations:** 2nd draft issued by DFML March 31, 2019
*(Final regulations due by July 1, 2019)*

**Effective Dates:**
- Premium contributions: 07-01-2019
- Benefits start:
  - 01-01-2021 – All leave reasons except family member SHC
  - 07-01-2021 – Leave for family member SHC
Massachusetts Paid Family & Medical Leave

Employee Eligibility:

• Must be a Massachusetts covered individual – determined by looking at situs of employee’s work and other factors
  
  See Appendix A: Determining Worker’s Massachusetts Status

• Employee has been paid wages in the base period amounting to at least 30 times the employee’s weekly benefit rate (“Financial Eligibility Test”)
  
  o “Base period” is the last 4 completed calendar quarters immediately preceding the first day of an individual's benefit year

• Includes former employees if above eligibility is met at time of separation and claim is made within 26 weeks of separation

• Includes independent contractors if employer’s workforce consists of more than 50% as 1099-MISC workers
Covered Employer:

- Any employer subject to the laws of Massachusetts and its political subdivisions
- Includes the state and subdivisions;
- A municipality, district, political subdivision or its instrumentalities not required to comply but can opt in
- No minimum number of employees
Leave Reasons (total 26 weeks per leave year):

- Medical Leave: Employee’s serious health condition (20 weeks)
- Family Leave:
  - Family member’s serious health condition (12 weeks)
  - Bonding with new child (birth, adoption, foster placement) (12 weeks)
  - Military exigencies (12 weeks)
  - Care for ill or injured service member (26 weeks)
Covered Family Members:

- Spouse
- Child (under 18 or disabled)
- Parent
- Child (any age)
- Parent-in-law (including parent of domestic partner)
- Grandchild
- Grandparent
- Sibling
- Domestic partner
Benefits:

• Formula based on employee’s average weekly wage during the base period (last 4 completed calendar quarters) and state average weekly wage:
  o 80% of employee’s AWW that is equal to or less than 50% of the state AWW, PLUS
  o 50% of employee’s AWW that is greater than 50% of the state AWW

• Cap on benefits = 64% of state AWW on prior October 1

• $850 per week absolute cap

See Appendix B for definitions of “wages” and employee’s “average weekly wage”
So . . .
What’s New?
What’s Now?
MA PFML Contributions
• Employee withholding and employer liability for contributions to the Trust Fund start July 1, 2019!

• Employers and employees both contribute to premium
  o Employer can elect not to withhold for employees’ share of premiums

• Maximum wages subject to premium contributions based on SSA wage limit
  o $132,900 in 2019
MA PFML Contributions

- Initial rate = Total of 0.63% of employee’s AWW (for ’19, ’20 & ‘21)
- Family leave premium (0.11% of wages) fully paid by employee
- Medical leave premium (0.52% of total) paid 40% by employee, 60% by employer
- Result: Employer and employee each pay about ½ of total premium
- Calculation tool on DFML website
• Employers with fewer than 25 employees in Massachusetts don’t have to pay employer share of medical leave contributions

  See Appendix C, Calculating Average Total Massachusetts Workforce

• Independent contractors ("self-employed individuals") responsible for own contributions
  
  ○ UNLESS employer’s workforce consists of more than 50% as 1099-MISC workers
Employer Notices to Employees & Contractors
MA PFML – Notices to Employees & Contractors

Poster

- Posted at workplace in location where it can be read easily
- Posted in English and each language which is primary language for 5 or more individuals
  - But only if translation is available from DFML
  - Current: English, Arabic, Chinese, French, Haitian Creole, Italian, Khmer, Korean, Lao, Portuguese, Russian, Spanish, Vietnamese
- No provision for electronic “posting”
- No DFML deadline – POST NOW

Employer Notices – W-2 Employees and 1099-MISC Contractors

- Must notify each Massachusetts W-2 employee AND 1099-MISC contractors (“workers”) in writing about PFML benefits, contributions, etc.
- Paper or electronic notice permitted
- Initial notice to all workers by May 31, 2019
- Then notice to each worker within 30 days of first day of employment or at time of contractor engagement
- Notice must be written in worker’s primary language –
  - No limitation that must be available from DFML
  - Current: English, Chinese, French, Portuguese, Spanish, Vietnamese
- Notice must include details of employer’s private plan, if applicable
Employer Notices – W-2 Employees and 1099-MISC Contractors

- Employers must obtain from each worker:
  - A signed statement acknowledging receipt of the notice OR
  - A signed statement indicating the worker’s refusal to acknowledge the notice OR
  - If worker refuses to sign either, employer must be able to establish that it provided each worker notice and the opportunity to acknowledge or decline to acknowledge receipt

- Notice and acknowledgment forms available on DFML website

- Alternatives can be used but must contain all required info
**MA PFML – Notices to Employees & Contractors**

Notice forms contain some fill-in-the-blanks:

<table>
<thead>
<tr>
<th>Medical Leave</th>
<th>Family Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Employer Name)</td>
<td>(Employer Name)</td>
</tr>
<tr>
<td>will contribute</td>
<td>will contribute</td>
</tr>
<tr>
<td>____%</td>
<td>____%</td>
</tr>
<tr>
<td>of the medical leave contribution</td>
<td>of the family leave contribution</td>
</tr>
<tr>
<td>and the remaining</td>
<td>and the remaining</td>
</tr>
<tr>
<td>____%</td>
<td>____%</td>
</tr>
<tr>
<td>will be deducted from your earnings</td>
<td>will be deducted from your earnings</td>
</tr>
</tbody>
</table>

- □ Does not have an approved private plan;
- □ Has an approved private plan for both family and medical leave;
- □ Has an approved private plan for family leave only;
- □ Has an approved private plan for medical leave only.
ACKNOWLEDGMENT

Your signature below acknowledges your receipt of the information above within 30 days from the start date of your employment or at least 30 days prior to July 1, 2019, whichever is later.

_______________________________________________       __________________
Signature                      Date

_______________________________________________
Name (Print)

Your signed acknowledgement will be retained by your employer. Please retain a copy for your own reference. In the event that you refuse to sign this acknowledgement, your employer must permit you to sign a statement indicating your refusal to sign this acknowledgement, and that will be retained by your employer.
Penalties for failure to provide notices:

Includes posting and individual notices:

First violation: $50 per W-2 employee or 1099-MISC worker
Second+ violations: $300 per W-2 employee or 1099-MISC worker
Massachusetts Private Plans
Private plans can provide family leave, medical leave, or both

Can start applying for approval April 29, 2019

Apply online at MassTaxConnect –
- Series of questions designed to show compliance

No application fee
Massachusetts Private Plans – Applications

• Businesses identified by federal employer identification number (FEIN) – one plan per entity

• No identified process for TPA to file on behalf of employer
  o But DFML Director indicates this is being developed
  o Matrix will follow process similar to WA PFML until different guidance
  o May need employer’s MassTaxConnect logon credentials
Massachusetts Private Plans – Applications

• Private plan will be effective as of 1st day of quarter following approval

• No deadline to file (“rolling” application process), but financial incentive to get approval by June 30, 2019
  o Employers without approved private plans must pay employee and employer contributions to Commonwealth’s Trust Fund quarterly

• Employer with private plan must post a bond to ensure compliance
  o NO DETAILS YET – by April 29 ???

• Separate employer trust account not required
Massachusetts Private Plans – Applications

- Email notification within 1-2 business days indicating that a determination has been made
- Log onto MassTaxConnect to review the decision
- If the exemption is approved, upload a copy of the plan on which the exemption is based
- If the exemption is denied, review reason why it was denied
  - If you disagree with the basis for denial, you may request a follow-up review
- Approval lasts 1 year, annual renewals
- Changes to plan require 30-day notice to DFML
Minimum PFML Private Plan Requirements

- All employees (full-time, part-time, permanent, seasonal, former) are eligible for medical leave benefits
- Benefit amounts greater than or equal to the benefits provided by the public plan
- The following minimum leave & benefit durations in a benefit year:
  - 20 weeks for employee’s own SHC
  - 12 weeks to bond with a new child
  - 12 weeks for military exigencies
  - 12 weeks to care for a family member with a SHC
  - 26 weeks to care for a family member with a SHC
  - Aggregate total of 26 weeks in a benefit year
Minimum PFML Private Plan Requirements

• No additional conditions or restrictions on the use of family or medical leave beyond those explicitly authorized by the law or regulations
• Job restoration following leave to same or equivalent position
• Continued employer contributions to existing employment-related health insurance benefits
• Leave allowed on intermittent or reduced schedule if medically necessary, with prorated weekly benefits
• Provision against retaliation
• Plan specifically states that all presumptions shall be made in favor of the availability of leave and the payment of leave benefits
Reporting & Payment Requirements
Initial Quarterly Reporting (more to come after benefits start)

- All employers must file quarterly reports through MassTaxConnect
  - Beginning in October 2019 for July-August-September 2019
- Reporting and documentation guidelines will be provided by DFML prior to July 1, 2019
- Reports must include (at a minimum):
  - For each employee and 1099-MISC worker:
    - Name
    - Social Security number
    - Wages paid or other payments for services
  - Employer federal employer identification number (FEIN)
Contribution Payments to Fund

- Employers and covered business entities who do NOT have an approved private plan:
  - Must make quarterly payments of employer and employee contributions to the Family and Employment Security Trust Fund
- Timing, form, and manner to be determined by DFML
- Draft regulations (03-29-2019) state:
  - DFML will calculate total quarterly contribution amount owed
  - Contributions to be remitted through MassTaxConnect
  - Deadlines to be established by Department of Revenue
Contribution Payments to Fund

- Penalty for failure to make payments:
  - 0.63 per cent of employer’s total annual payroll for each year it failed to comply, or fraction thereof, PLUS
  - The total amount of benefits paid to covered individuals for whom it failed to make contributions
Interaction with Other Paid Time Off & Leave Benefits
<table>
<thead>
<tr>
<th>PTO</th>
<th>PAY OR TIME OFF BENEFIT</th>
<th>MA PFML PROVISION</th>
<th>STATUTE §</th>
</tr>
</thead>
</table>
|     | Vacation               | Employer cannot require employee to use or exhaust before or during PFML leave | § 2(h)(1)(iii)  
|     | Sick leave             | Employee can elect to use during 7-day waiting period | § 3(a) |
|     | Similar paid/unpaid time off | Employer may require that PFML payments be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave such that the employee will receive the greater of the various benefits that are available for the covered reason.  
If employer gives written notice to employees, then any leave provided by CBA or employer policy and used by the employee for a PFML covered reason and paid at the same or higher rate than leave available under this chapter counts against the employee’s PFML entitlement  
Employer must still honor any CBA or company contract for greater leave and benefits rights | § 2(h)(2) |
|     | Employer policies (disability or family care) CBAs | §2(h)(2) |
|     | Workers’ compensation | PFML benefits are reduced by wage replacement received by employee for temporary or permanent disability  
EXCEPTION: no benefit reduction for benefits received for permanent partial disability incurred prior to the PFML claim | § 3(c) |
|     | State or federal disability benefits law | §3(c) |
|     | Company permanent disability program | §3(c) |
|     | Employer’s temporary disability program | Benefits not reduced by wage replacement received by employee  
Employer reimbursement (probably not applicable to payments made by private plan):  
If an employer makes payments to an employee that are equal to or more than the amount of PFML benefits payable to the employee from the Trust Fund, . . .  
the employer shall be reimbursed out of any benefits due or to become due from the trust fund for PFML benefits for that employee . . .  
covering the same period of time as the payments made by the employer | §3(c) |
Interaction with Other Paid Time Off & Leave Benefits

- Several statutory provisions relate to interaction of PFML and other paid time off and leave benefits
- Complex, less than clear
- Chart on preceding slide is a summary – check actual statutory sections
- Send Matrix specific scenarios; we will compile and submit to DFML
Considerations and Next Steps
Considerations & Decisions – Private vs. Public Plan?

Why Choose a Private Plan:

• Employee experience
  o One point of reporting claims
  o Faster processing
• Improved employer access to claim information
• Integration & coordination with other leave & disability programs & claims
• No per-claim reporting requirements
• Potential for reduced costs & enhanced benefits
Next Steps

1. Post the employee notice poster immediately
2. Determine whether to withhold employee contributions from paychecks – by 05-31-2019
3. Consider Private Plan
   - Feasibility study
   - Review existing plan, sample plan, or develop own
   - Consider what benefits to offer
4. Provide individual employee / 1099-MISC notices and collect acknowledgements – by 05-31-2019
5. Register with MassTaxConnect if the employer doesn’t already have an account
6. Review existing time-off & benefits plans to ensure coordination & no overlap
Our Plan for Supporting Service Excellence
One More Thing – RESOURCES!
A “GRAND BARGAIN” – MASSACHUSETTS ENACTS PAID MEDICAL AND FAMILY LEAVE

Posted on: June 29, 2018

BY MARTI CARDI, VP-PRODUCT COMPLIANCE & GAIL COHEN, DIRECTOR-EMPLOYMENT LAW/COMPLIANCE

Governor Charlie Baker signed a bill on June 28 making Massachusetts the seventh jurisdiction to enact paid family and medical leave (PFML). The paid leave provisions are part of a so-called Grand Bargain between the state legislature and voters that was designed to keep several voter initiatives off the November ballot.

Here are some key provisions:

Funding. The benefits will be funded at an initial rate of 0.63% of employees’ average weekly wage (to be adjusted annually):

- The premium for medical leave (employee’s own serious health condition) will be paid 40% by the employee and 60% by the employer
- The employee pays 100% of the premium for family leave
- The premium has not (yet) been apportioned between medical leave and family leave

Premium contributions. Employers and employees must begin making premium contributions July 1, 2019.

Paid leave benefits available. Paid leave benefits for all leave reasons except

Benefit amount. Benefits are paid based on a percentage of an employee’s wages, with a cap of $850 weekly.

Leave duration. Leave durations in a 12-month period are up to:

- 20 weeks for medical leave (an employee’s own serious health condition)
- 12 weeks of family leave (care of a family member with a serious health condition, bonding, or military exigencies)
- 26 weeks to care for a seriously ill or injured service member
- Aggregate maximum of 26 weeks in a 12-month period for all leave reasons

Voluntary plan. Employers can meet obligations through the state plan or through a private plan(s) for medical
Massachusetts PFML websites

Department of Family and Medical Leave main website: https://www.mass.gov/orgs/department-of-family-and-medical-leave

Paid family and Medical Leave Act

Regulations – Draft 03-29-2019

Employer’s Guide:
Massachusetts PFML websites

**Employer Notice Forms:**
https://www.mass.gov/info-details/informing-your-workforce-about-paid-family-and-medical-leave#workplace-poster-

**Poster:**

**Premium/Contributions Calculation Tool:**

**Private Plans:**
https://www.mass.gov/info-details/exemptions-from-paid-family-and-medical-leave-for-private-plans#general-overview-

**Register with MassTaxConnect:**
https://www.mass.gov/how-to/register-your-business-with-masstaxconnect
Questions?

Thank you.
(2) Scope.

Under these regulations, an employer or covered business entity shall be considered a Massachusetts employer or covered business entity with respect to services performed by a covered individual for the employer or covered business entity, and a covered individual shall be considered a Massachusetts covered individual with respect to all services provided within, or both within and without the commonwealth for an employer or covered business entity, if

(a) the service is localized in the commonwealth. Service shall be deemed to be localized within the commonwealth if the service is performed entirely within the commonwealth, or the service is performed both within and without the commonwealth, but the service performed without the commonwealth is incidental to the individual's service within the commonwealth; for example, is temporary or transitory in nature, or consists of isolated transactions.

(b) the service is not localized in any state, but some part of the service is performed in the commonwealth and (i) the individual's base of operations is in the commonwealth or, if there is no base of operations, then the place from which such service is directed or controlled, is within the commonwealth, or (ii) the individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in the commonwealth.
Appendix B: Definition of “Wages” for Calculating Contributions and Benefits

Definitions from MA PFML, Section 1:

“Wages”, shall have the same meaning as provided in clause (s) of section 1 of chapter 151A.

“Average weekly wage”, shall have the same meaning as provided in subsection (w) of section 1 of chapter 151A; provided, however, that “average weekly wage” shall be calculated using earnings from the base period, as that term is defined in subsection (a) of said section 1 of said chapter 151A; and provided further, that in the case of a self-employed individual, “average weekly wage” shall mean one twenty-sixth of the total earnings of the self-employed individual from the 2 highest quarters of the 12 months preceding such individual’s application for benefits under this chapter.

Provisions from MA Unemployment Insurance Law Chapter 151A

Section 1   DEFINITIONS

(s)(A) "Wages", every form of remuneration of an employee subject to this chapter for employment by an employer, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all remuneration paid in any medium other than cash; provided, however, that such term shall not include: . . .

MANY MORE DETAILS:
https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section1
Appendix C: Calculating Average Total Massachusetts Workforce

*From MA PFML draft regulations 03-29-2019:*

Section xx.05 Contributions

(1) Generally.

(d) An employer or covered business entity with an average total workforce in the commonwealth of fewer than 25 persons, including employees and covered contract workers, as determined by the method specified in subsection 2, below, shall not be required to pay the employer portion of premiums for family and medical leave, as defined in subsection 4, below.

(2) Average Total Workforce Count.

(a) For an employer that is not a covered business entity, the employer shall calculate its average total workforce by counting the number of employees, including full time, part-time, and seasonal employees, on the payroll during each pay period and dividing by the number of pay periods. [NOTE: Time period for included pay periods is not specified. Question pending with DFML.]

(b) For a business or trade that is a covered business entity, the business or trade shall calculate its average total workforce by first, adding (i) the number of employees, including full time, part-time, and seasonal employees, on the payroll during each pay period, and (ii) the number of self-employed individuals for whom the covered business entity is required to report payment for services on Internal Revenue Service form 1099-MISC on the payroll during each pay period. The covered business entity shall then divide that sum of (i) and (ii) by the number of pay periods.