

Massachusetts Maternity Leave: Everything Expectant Parents Need to Know About the New Paid Family Leave Law

Here's how and when the Massachusetts Paid Family and Medical Leave legislation will go into effect.

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Paid family leave is coming to Massachusetts, a state so committed to passing some form of paid leave that enough signatures were collected to put the measure on the ballot. But rather than waiting for the electorate to vote (and polling had shown paid family leave would win), the legislature took action, and on June 28, 2018, Governor Charlie Baker signed the Massachusetts Paid Family and Medical Leave Act into law.

The law goes into effect on January 1, 2019, though funding won't start until July of 2019, and benefits will not begin until Jan 1, 2021 (though some caregiving leave will not be available until July 2021). Here's everything you need to know about the MA PFML, and when and how it will be implemented.

How many weeks of paid maternity leave do I get?

The MA PFML provides up to 12 weeks of paid family leave to bond with a new child—for moms or dads. But the bill also provides paid family leave for other life events, up to 12 weeks for caring for a loved one (up to 26 weeks if the health condition resulted from active duty) and 20 weeks for caring for yourself. Caring for yourself can include medical complications from pregnancy, birth or postpartum recovery, so it's possible to add additional time to your maternity leave if you have a health condition, though the annual leave is capped at 26 weeks.

Also note there is a one-week waiting period before the leave goes into effect, during which the employee will not be paid by the employer and would have to use other benefits, like vacation or sick time, to be paid.

Who qualifies for paid family leave?

Most people who work in Massachusetts will qualify for paid family leave, including people who live in other states

but commute to Massachusetts for work. The stipulation is that they must work for an employer that pays into the unemployment insurance fund, which most employers do. (Rebecca Pontikes, a lawyer who specializes in pregnancy and workplace discrimination in Massachusetts, says that the few exceptions to this are work/study programs and some religious organizations.) Live in Massachusetts but work in another state? Sorry, but your company doesn't contribute to the state's unemployment insurance fund, and therefore you can't receive benefits.

Also, there is a minimum income requirement of having earned at least \$4,700 over the last 12 months. People who are self-employed will have to work for at least four consecutive quarters before being able to draw the benefit. They'll additionally be expected to continue paying into the system for three years, but will be eligible to draw leave during that three-year period.

How much will I be paid?

While on leave, Massachusetts employees will receive 80 percent of their average weekly wages up to one-half of the state's average weekly wage (currently \$1,338.05, 50 percent of which is \$669). If an employee earns on average more than \$669 a week, they'll receive one half of their average weekly wages in excess of \$669, in addition to the \$669, with the total capped at \$850 per week.

In other words, those who make up to \$669 a week will receive 80 percent of their weekly pay. Those who make more than \$669 a week on average will receive additional wage replacement at the rate of 50 percent for earnings above \$669, capped at \$850 a week.

The cap is adjusted annually, consistent with the changes in the state's average weekly wage, to equal 64 percent of the state's average weekly wage. (That's why it's \$850 right now.) If the state's average weekly wage goes up (say Amazon moves to Massachusetts, and it shoots up to \$1,500), then the benefit will adjust accordingly.

If you're taking leave on a part-time basis, for example, two days a week or 20 hours a week, then the benefit amount will be prorated accordingly.

Can I take paid family leave for something other than a new baby?

Yes. The law also provides up to 12 weeks of paid family leave to care for a family member with a serious health condition, and up to 26 weeks of paid family leave to care for a family member whose serious health condition arose from active duty military service. You can receive up to 20 weeks of paid medical leave for your own serious health condition. Leave is capped at 26 weeks in a single benefit year, even with more than one qualifying event. So if you are caring for an injured service member and have a baby, you're still limited to 26 weeks.

Can I take more than 12 weeks off?

Unless you are caring for yourself or an injured service member, 12 weeks is the limit for taking paid family leave while receiving your job benefits and protections. Any additional time off and payment is up to your employer. The state law runs concurrently with the national Family and Medical Leave Act (FMLA), which also provides 12 weeks of job-protected leave.

The good news is MA PFML covers more workers than FMLA (only 60 percent of workers across the U.S. are eligible for FMLA leave), and you might qualify in situations where you wouldn't be eligible for FMLA—for example, FMLA requires a year with the same employer.

Do I need to use all my leave at once?

People can use their leave intermittently, or at one time. The cap is a calendar-year cap, not a 12-month period.

What about my spouse?

If your spouse qualifies under the law, she or he will also be entitled to the benefits. But one spouse's eligibility does not guarantee the other's.

What if I foster, adopt or use a surrogate? Are those qualifying events?

Yes. A new child definition includes birth, fostering or adoption of a child. If a child "arrives" through a means other than childbirth, the child would be covered even if he or she were not formally adopted.

I need to take time off to take care of family. Which family members are included?

Family members covered include a spouse, domestic partner, child, parent, parent of a spouse or domestic partner of the employee; a person who was like a parent to the employee when the employee was a minor; a grandchild, grandparent or sibling of the employee.

And Massachusetts has a broad definition of what constitutes one's child. It can be a biological, adopted or foster child, stepchild or legal ward, a child to whom the employee is like a parent, or a person to whom the employee stood in the place of a parent when the person was a minor, even if that child is now an adult.

How is the benefit paid for?

The funding methods are split between employees and employers, and it varies slightly for family leave as compared to funding for medical leave.

Similar to an insurance program, each employee pays a premium, the cost of which can be split between employers and employees. For the family leave program, employers can require employees to pay 100 percent of the premium (deducted from each paycheck), but for medical leave, employers have to pay at least 60 percent of the premium cost.

"Because most of the leaves are medical, it averages out to a 50-50 split," says Andrew Farnitano, spokesperson for Raise Up Massachusetts, a coalition that led the campaign for paid leave in the state. His organization estimates that within total payroll deductions, employers and employees will each pay about half, and the average cost per worker for the paid leave benefit premiums comes out to \$2.48 a week.

So for the price of a single Starbucks coffee a week, employees in Massachusetts will now have access to paid time off work to have a baby, recover from an illness, or care for a loved one.

Employers with fewer than 25 workers on their payroll are not required to contribute the employer's share of premiums as long as less than half of their workforce is comprised of self-employed individuals. (Farnitano explained that this exemption was a priority change to the bill from business groups, who wanted to protect small businesses with primarily full-time employees, as opposed to small businesses that primarily hire self-employed people).

For people who are self-employed, they must cover 100 percent of the premiums.

If my company pays for some portion of leave, can I combine it with MA PFML to receive 100 percent of my salary?

That's up to your employer. Massachusetts pays for the first portion of paid leave but employers can "top off" the state's paid leave option by giving employees additional time or salary. Employers are not required to provide benefits beyond the paid leave, and any company-specific benefits for paid leave will be provided on top of the state program.

Farnitano says his coalition expects companies to use the state benefit as a baseline, but then offer benefits like 100 percent of income reimbursement for a number of weeks, or the option to extend the number of weeks out of the office. "They might do it for a longer period now that it's more affordable to offer it," he said.

If my employer currently offers six weeks of paid leave, and Massachusetts now offers 12, can I combine the two?

The state plan is the baseline. An employer should clarify if the paid leave benefit is in addition to MA PFML. Some employers may offer additional benefits, or full salary, but this would need to be specified as an additional benefit, not in lieu of the state option.

Is the leave pay taxed?

The paid leave law did not specifically address tax issues, so the issue of taxation is likely to be clarified in 2019. "In general, wage replacement payments are taxable (unemployment insurance for example), so the federal and state taxing authorities have treated parental and family leave benefits as income taxable," Farnitano explains. But the insurance benefits for medical leave, like temporary disability insurance, are not taxable if the worker pays income tax on the premiums paid by the employer or pays the premiums directly herself.

What do I have to do to get the money? How am I paid?

Massachusetts is creating a new statewide Department of Family and Medical Leave. Once established, likely in April 2019, the department will create regulations and begin collecting contributions in July 2019, in anticipation of people being able to take paid leave in January 2021. The department will also have online tools to determine eligibility, and for opting in and signing up.

Employees who want to know before then if they are eligible for the benefit can check the state's unemployment insurance page, which has similar eligibility requirements.

Are there any monetary caps on the benefit annually or during one's lifetime?

There is no lifetime cap; the annual cap is 26 weeks at \$850 per week.

Do I still receive my benefits while I'm out?

Yes, similar to FMLA, you are allowed to take the time off and your job and benefits are protected.

Is my job protected while I'm on leave?

Yep. Employees are also protected from unlawful retaliation for the use of MA PFML for six months following their return to work following such leave. And unlike FMLA, there is no limit to the job protection based on the size of the employer's workforce. That means your job is safe no matter if your company has 20 employees or 20,000.

I'm giving birth in 2019. Can I take advantage of the new law to get paid on my maternity leave?

Sadly, no.

Where do I go if I have more questions?

More details can be found at this site, and more information will be available in 2019 as the Massachusetts Department of Family and Medical Leave Office is established.

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