

Employment Law Alert: MA Announces Major Changes to the Paid Family and Medical Leave Act

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The Massachusetts Paid Family and Medical Leave Law ("PFML") provides Massachusetts employees with up to 26 weeks of job-protected, paid family and medical leave, on an annual basis, through a public-sponsored insurance program. Check out an overview of this [complex benefits law](#).

Recently, the Massachusetts Department of Paid Family and Medical Leave (the "Department") announced two significant amendments to the PFML which will require employers to revisit their PFML policies. Those amendments are discussed below:

New "Top Off" Rights

The PFML has been amended to permit covered employees the right to "top off" their PFML benefits. Specifically, for PFML applications filed on or after **November 1, 2023**, employees may elect to supplement (or "top off") their weekly PFML benefit with any available accrued paid leave (such as vacation, sick time and/or other forms of paid time off), up to the employee's average weekly wage rate. For example:

- An employee's average weekly wage rate is \$2,000.
- That same employee applies for and receives PFML benefits that provide the employee with a \$1,100 PFML benefit per week.
- The employee has four weeks of accrued, but unused vacation time at the time of the PFML application.
- Under the new "top off" rule, the employee may elect to supplement his/her weekly PFML benefit with up to \$900 per week of his/her accrued vacation time.

Previously, the option to "top off" was only available to those employees who received Massachusetts PFML benefits under a private plan, *and only if* that private plan included the option to "top off." Employees subject to the public fund were not permitted to use paid leave benefits while also receiving PFML benefits.

Under the new "top off" standards, regardless of whether employees receive PFML through the public fund or a private plan, employees will now have the discretion to choose whether they want to "top off" their PFML benefit with accrued leave or reserve their leave for use at another time. As such, employers whose private plans do not allow for "topping off" must amend their plans to bring them into compliance with this new rule. Further, employers that provide PFML benefits through the public fund must now amend their policies to include, and to inform their employees of, these new "top off" rights.

Contribution Rate Changes

The public PFML fund is financed through the employee and employer payroll taxes – described in the PFML regulations as “employee share contributions” and “employer share contributions.”

Effective **January 1, 2024**, the applicable contribution rates are set to increase dramatically.

For employers with 25 or more employees, the contribution rate is set to increase from **0.63% to 0.88% of eligible wages**, according to the following breakdown:

- .70% for medical leave
 - .42% of the employer’s share
 - .28% of the employee’s share
- .18% for family leave
 - 0% of the employer’s share
 - .18% of the employee’s share

For employers with fewer than 25 employees, there is no employer contribution. However, under the new standards, the employee share contribution rate is set to increase from **0.318% to 0.46% of eligible wages**, according to the following breakdown:

- .28% for medical leave
 - 0% of the employer’s share
 - .28% of the employee’s share
- .18% for family leave
 - 0% of the employer’s share
 - .18% of the employee’s share

Employees will also see a change in the maximum weekly benefit, which increases from **\$1,129.82 to \$1,149.90** in 2024.

Further guidelines and instructions for PFML compliance are anticipated in the next few weeks from the Department.

The **Morse Employment Law Team** will continue to keep you informed of these important updates and is available to assist employers in navigating these new PFML standards.

Please contact **Matthew Mitchell** or **Rebecca Alperin** should you have questions concerning this subject.