**OVERVIEW**

**What is Massachusetts Paid Family and Medical Leave?**

The state of **Massachusetts** has enacted the **Massachusetts Paid Family and Medical Leave Act** (**MPFMLA)** to give eligible **Massachusetts workers** temporary income replacement for certain life events such as a serious illness or injury, to care for an ill family member, for the birth of a child and for certain military considerations.

**How the Massachusetts Paid Family and Medical Leave Act affects TechNeeds and its Massachusetts employees:**

* Tech Needs will be contributing **60%** of the cost for the Medical Leave portion of this law beginning on **January 1, 2021** on all the wages paid to our Massachusetts workers.
* All our temporary employees **working**in the state of **Massachusetts**will be requiredto contribute a small percentage of the cost for the Medical and Family program from their weekly paychecks.
* This contribution will be beginning with their paycheck dated **January 21,2021.**

**Ex:** Jim Smith earned **$800.00** in gross wages for the week. Jim’s weekly medical leave contribution deduction would be **.20% of $800.00 or $1.60** for his share of the medical leave.  Jim’s weekly family leave contribution deduction would be **.22% of $800.00** or **$1.76** for his share of the family leave.The total weekly deduction for Jim would be **$3.36 ($1.60+$1.76)**

Tech Needs has obtained **Equitable Insurance Company** (a Private Insurance company) to administer our medical and family leave claims due to **MPFMLA.**

**Important Dates:**

**January 1, 2021** – the date benefits begin for the employee’s own serious health condition, bonding, military exigency, and care for an injured service member.

**July 1, 2021** – the date benefits begin for care for a family member with a serious health condition.

**What are the covered leave reasons?**

**Medical leave** – can be taken for the employee’s own serious health condition that incapacitates them from work.

**Family Leave** – available for:

* bonding with the employee’s newborn, newly adopted or newly placed foster child within 12 months of the birth, adoption, or foster care placement.
* to care for a covered family member with a serious health condition.
* for a qualifying exigency when the employee’s family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or
* to care for a family member who is injured while on active military duty.

**How is family member defined?**

Family Member means the spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the covered individual; a person who stood *in loco parentis* to the covered individual when the covered individual was a minor child; or a grandchild, grandparent, or sibling of the covered individual.

**How is serious health condition defined?**

Serious Health Condition means an illness, injury, impairment or physical or mental condition that involves:

(a) inpatient care in a hospital, hospice, or residential medical facility; or

(b) continuing treatment by a health care provider.

A substance use disorder may be a serious health condition. Family or medical Leave may only be taken for treatment for substance use disorder by a health care provider, by a provider by health care services on referral by a health care provider or by a program licensed or approved by the Massachusetts Department of Public Health. An absence because of the employee’s use of the substance, rather than for treatment, does not qualify for leave.

**How much leave can an employee take?**

**Medical Leave** –up to 20 weeks per benefit year

**Family Leave:**

* Bonding – up to 12 weeks per benefit year
* Care for a family member – 12 weeks per benefit year
* Military exigency – 12 weeks per benefit year
* Care for an injured service member – 26 weeks in a benefit year

The maximum combined allotment for all leaves is **26 weeks** in a benefit year.

**What is a benefit year?**

Benefit Year means the period of **52** consecutive weeks beginning on the Sunday immediately preceding the first day family or medical leave commences.

**What is the amount of the benefit?**

The benefit is calculated as follows:

80% of the employee’s average weekly wage, up to 50% of the statewide average weekly wage; PLUS

50% of the employee’s average weekly wage in excess of 50% of the statewide average weekly wage

The maximum weekly benefit is $850.

The statewide average weekly wage and maximum weekly benefit may be updated annually in October with an effective date of the following January 1.

**Is there a waiting period (aka elimination period) that must be satisfied before benefits become payable?**

Yes, there is a 7-day waiting period for each application for medical and family leave benefits. The exception to this is a family leave to bond with a new child that immediately follows a medical leave due to the pregnancy. In this case the 7-day waiting applies to the medical leave, however, does not apply to the family leave.

Employees may use sick leave, vacation time, or other paid leave available from their employer during the 7-day waiting period.

**Does the waiting period count towards the total leave allotment?**

Yes, the 7-day waiting period counts towards the total medical &/or family leave allotment.

**Is leave available on an intermittent or reduced schedule?**

Yes, leave can be taken on an intermittent basis.

**How does the waiting period work for intermittent leaves?**

The 7-day waiting period begins on the first day of leave and is based on calendar days and not the aggregate accumulation of 7 days of leave.

**How is the benefit impacted by intermittent leave?**

The benefit payable will be prorated based on how much leave is taken.

**EMPLOYEE ELIGIBILITY**

**Which employees are covered under the MA PFML law?**

A covered employee is a person who works in MA. If the employee works both inside and outside of MA as part of their normal job, then they still may be covered if the services provided outside MA are “incidental to” the services provided inside MA. If the employee is covered for MA Unemployment Insurance, they would also be covered under the MA PFML plan. The employee eligibility is also transferrable when the employee changes from one covered employer in MA to another.

**How many hours does an employee have to work to be eligible for benefits?**

There is no specific number of hours an employee must meet to be eligible for benefits, rather they must meet the financial eligibility test as defined in the MA Unemployment law. This means that in addition to regular full-time employees, part-time, seasonal, and temporary employees may be covered. Additionally, eligibility is based on how much an employee has earned while working in MA; it does not have to be all with the same employer.

**What if an employee works for multiple covered employers?**

If an employee works for multiple covered employers in MA, then the employee would be covered by both employer’s MA PFML plans.

**What if an employee leaves the employer?**

Former employees of a covered employer continue to be eligible for MA PFML benefits under their prior employer’s plan for up to 26 weeks following their separation from employment. If the employee becomes employed by another MA covered employer, then they would no longer be eligible for benefits under their prior employer as a former employee, rather they would be covered under their new employer’s MA PFML plan.

**How does MA PFML work in conjunction with the federal FMLA?**

If the employee is eligible under both laws, then the leaves will run concurrently. There are differences in the laws that could result in an employee being eligible under one and not the other or the leaves not fully running concurrently:

* **Employee eligibility** – under FMLA an employee must have worked for the employer for at least 12 months, worked at least 1,250 hours in the year preceding the leave, and work at a location with 50 or more employees within 75 miles. The eligibility for MA PFML is simply based on the employee meeting the financial eligibility test.
* **Leave duration** – FMLA provides 12 weeks of covered leave for all reasons except care for an injured service member (26 weeks); while MA PFML provides 20 weeks for the employee’s own serious health condition, 12 weeks for family leave, and 26 weeks to care for an injured service member.
* **Benefit year** – FMLA allows an employer to choose from 4 different methods to calculate the leave year, while MA PFML mandates it be the 52 consecutive weeks starting on the Sunday immediately preceding the first day of leave.
* **Definition of family member** – FMLA has a narrower definition of family member as it only includes parent, spouse, child (under 18 or over 18 and disabled), and in loco parentis; while MA PFML also includes domestic partner, parent of a spouse or domestic partner, grandchild, grandparent, & sibling.

**CLAIMS**

**If an employee has a serious health condition that started prior to January 1, 2021 are they eligible for MA PFML benefits as of January 1, 2021?**

Yes, the employee would be eligible for up to 20 weeks of medical leave beginning on January 1, 2021.

**If an employee gives birth prior to January 1, 2021 what MA PFML benefits will they be eligible for?**

It all depends on when the employee gave birth and whether the resulting period of disability stretches in 2021. If the employee remains disabled as of January 1, 2021 then they would be eligible for paid medical leave under MA PFML after satisfying the 7-day benefit waiting period. The MA PFML medical leave would continue until the employee no longer has a serious health condition, up to a maximum of 20 weeks. Following their medical leave, they would be eligible for up to 12 weeks of family leave to bond with the new child. If they take the family leave immediately following the end of the medical leave, they will not have to satisfy the 7-day benefit waiting period for the family leave.

**Does an employee that gives birth to a child have to take family leave immediately following the end of their medical leave?**

No. An employee can choose to take family leave to bond with a new child any time following the birth as long as it is within 12 months of the birth.

**How will an employee submit a claim for MA PFML benefits to Equitable?**

Equitable will support telephonic, fax, and mail options for employees to submit MA PFML claims. As we get closer to the effective date of benefits, additional information (e.g., claim forms, toll-free number, instructions, etc.) will be made available.

**Will MA PFML benefits be taxable?**

The DFML has not provided any guidance at this time as it relates to how the family and medical benefits should be taxed. Equitable is taking the position that both family and medical leave benefits are taxable. The medical leave benefits will be treated as third party sick pay and will be taxed based on the contribution structure of the plan, like how STD works. The family leave benefits will be taxable as ordinary income. The Equitable approach may change as additional guidance is received from the DFML.

**If the benefits are taxable, how will they be reported?**

The medical leave benefits should be reported as third-party sick pay via a W-2 and family leave benefits should be reported as ordinary income via a W-2.

**Are there notice requirements the employee must abide by?**

Yes, the MA PFML law indicates that employees must provide at least 30 days notice to the employer of the anticipated start date, the anticipated duration, and the expected date of return. If there are reasons out of the employee’s control, the must provide notice as soon as is practicable.

**What if the employee does not provide the required notice?**

The MA PFML regulations allow for the leave to be delayed or denied.

**What if an employee does not return to work following an approved MA PFML leave?**

The MA PFML regulations indicate that an employee may be subject to discipline from the employer if the fail to return to work following the expiration of an approved leave period.