

June 25, 2025

Via Electronic Mail

William Alpine, Director
Department of Family and Medical Leave
100 Cambridge Street
Boston, MA 02114
William.Alpine@mass.gov

Re: Paid Family and Medical Leave – Unpaid Seven-Day Wait Periods

Dear Director Alpine:

The Office of the Inspector General (OIG) conducted a review of the Massachusetts Department of Family and Medical Leave's (DFML) policies regarding Paid Family and Medical Leave (PFML) for applicants who split their leave to bond with a child.

The OIG found that DFML's process requires applicants who split their leave to file multiple applications, resulting in multiple unpaid seven-day wait periods. While DFML allows applicants to appeal a second seven-day unpaid wait period, many applicants appear to be unaware of this option and do not appeal despite being eligible.

Based on its investigative findings, the OIG recommends that DFML (1) amend its regulations to allow applicants splitting their leave to link their applications, eliminating the additional unpaid seven-day wait periods after the initial period; and (2) proactively inform the public of this regulatory change through updates to DFML's website and other promotional materials.

Background

In 2018, the Legislature passed Chapter 175M of the Massachusetts General Laws, creating PFML in Massachusetts. This leave is administered through DFML and funded through a tax on employers and employees. DFML sets the tax rate every year. Employers who offer their own family and medical leave benefits can opt out of paying the tax. As of June 30, 2023, the Family and Employment Security Trust Fund (which pays for PFML and its administrative costs) held approximately \$1.7 billion in cash and cash equivalents, much of which was carried over from the previous year. In Fiscal Year (FY) 2023, the fund took in about \$934 million in taxes and distributed approximately \$835 million in PFML benefits.

PFML is allowed for specific qualifying reasons: to care for the applicant's medical condition (including pregnancy and childbirth); to care for a family member's medical condition; to care for a family member injured while serving in the armed forces; and to bond with a newly born or adopted child. Employees in Massachusetts are allowed to take up to 12 weeks of leave related to the birth, adoption, or foster care placement of a child, known as family leave to bond with a child, and can take up to 20 weeks of paid medical leave.¹ An applicant is limited to 26 total weeks of paid leave during a "benefit year"² or single 365-day period, but may "split" their leave by taking multiple periods of leave in the same benefit year.

Section 3 of Chapter 175M states, in relevant part, "No family or medical leave benefits shall be payable during the first 7 calendar days" of PFML. Further, a DFML regulation states, "No family or medical leave benefits are payable during the first seven calendar days after the date on which job protected leave begins. The initial seven-day wait period for paid leave benefits will count against the total available period of leave in a benefit year."³ That regulation also states, "There shall be an initial seven-day wait period for each application for benefits, with the exception of medical leave during pregnancy or recovery from childbirth if supported by documentation by a health care provider that this medical leave is immediately followed by family leave, in which case the seven-day wait period for family leave shall not be required."⁴

Findings

Finding 1: Applicants who split family leave create multiple applications, resulting in multiple unpaid seven-day wait periods.

Elaborating on the regulatory language requiring a "seven-day wait period for each application for benefits," DFML's website⁵ has a "frequently asked questions" section indicating that splitting leave may result in multiple unpaid seven-day wait periods:

Q. If I take separate leaves for the same situation, is there a waiting period each time?

A. Yes. Each separate application for paid leave benefits requires a new 7-day waiting period.

¹ DFML reported paying approximately \$917 million in family bonding leave benefits from FY21, when the program began, through FY24. The average weekly benefit has increased during this period from \$733.07 in FY21 to \$939.07 in FY25.

² "Benefit year" is defined in 458 CMR 2 as "The period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that job-protected leave under M.G.L. c. 175M commences for the covered individual."

³ 458 CMR 2.12.

⁴ *Id.*

⁵ See <https://www.mass.gov/info-details/pfml-frequently-asked-questions-for-employees>.

Q. Can I split up my family leave to bond with a child or does it have to be taken all at once?

A. There is no restriction as to how you split the time if it is taken as continuous leave as long as it is within 12 months of the child's birth, adoption or foster care placement.... Please note that if you split your bonding time, you may have an additional unpaid 7-day waiting period.

Pursuant to Chapter 175M, an employee who applies for 12 weeks of continuous leave for the birth of a child will only be paid for 11 weeks. Under the DFML regulation, an applicant who splits their leave into two six-week periods will submit two applications and will receive paid leave for only 10 out of 12 weeks if no appeal is filed and approved.

Finding 2: While applicants for family leave may appeal a second unpaid seven-day wait period, many do not, resulting in millions of dollars in unclaimed benefits.

DFML notes on its website that it allows applicants to appeal "any aspect of a decision" regarding their benefit application. However, DFML appears to have no policy of proactively alerting applicants that they can appeal a second unpaid seven-day wait period.

To determine the frequency and success of appeals regarding second unpaid seven-day wait periods, the OIG requested and DFML supplied a list containing each approved unique family leave claimant who split family bonding leave, along with:

- a. The claimant's approved weekly benefit;
- b. Whether the claimant appealed a second unpaid seven-day wait period; and
- c. Whether the claimant's appeal of a second unpaid seven-day wait period was approved.

DFML's data showed that 2,192 unique applicants split their family leave since PFML began in 2021, with an average approved weekly benefit of \$1,013.63. Of those applicants, only 335, or 15%, filed appeals for their second unpaid seven-day wait period. The remaining 1,857 applicants, or 85%, took no action.

The applicants who did file appeals were approved at a 65% rate. The OIG applied the 65% success rate to the 1,857 applicants who did not file appeals and multiplied that figure by the average weekly benefit to estimate a loss of more than \$1.2 million in benefits the applicants may have received had they appealed. If all 1,857 applicants appealed and were approved, nearly \$1.9 million in additional benefits would have been disbursed.

Finding 3: DFML has considered changing aspects of the unpaid seven-day wait period.

While the unpaid seven-day wait period was created by statute and would require legislative action to change, the requirement that each PFML application have a separate unpaid seven-day wait period is established by the DFML regulation.⁶

In an interview with the OIG, the director of DFML stated he did not know why the Legislature created an unpaid seven-day wait period by statute,⁷ but that DFML has considered a preliminary change stipulating that there be only one unpaid seven-day wait period for certain qualifying reasons. The director gave the example of a person with a medical condition using part of their PFML to go on leave and then needing to use PFML again if that condition reoccurred later in the year with the same qualifying reason.

Recommendations

Based on its investigative findings, the OIG recommends that DFML implement the following remedial measures:

1. Update the applicable regulation, 458 CMR 2.12, and issue guidance to create a process for all PFML applicants who are splitting their leave to link or connect their applications in order to avoid a second unpaid seven-day wait period;
2. Proactively inform the public of this regulatory change through visible and consistent updates across DFML's website and other PFML promotional materials; and
3. Until long-term solutions can be enacted, immediately add language to DFML's website clearly describing how split leave creates a second unpaid seven-day wait period and how to appeal a second unpaid seven-day wait period.

Next Steps

Within 30 days of receiving this letter, please notify this office in writing of your plans to implement the recommendations herein.

If you have any questions, please contact George Xenakis, director of the OIG's Audit, Oversight and Investigations Division, at 617-722-8853 or George.Xenakis@mass.gov.

⁶ 458 CMR 2.12.

⁷ The unpaid seven-day wait period for PFML is similar to the unpaid seven-day wait period for unemployment benefits that is mandated by M.G.L. c. 151A, § 23.

William Alpine, Director, DFML
June 25, 2025
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Thank you for your attention to this matter.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG
Inspector General

cc (by email):

Her Excellency Gov. Maura Healey
The Hon. Kim Driscoll, Lieutenant Governor
Kate R. Cook, Chief of Staff, Office of the Governor
Lauren Jones, Secretary, Executive Office of Labor and Workforce Development
Eugenia M. Carris, Esq., General Counsel, OIG
George Xenakis, Director of Audit, Oversight and Investigations, OIG
Nataliya Urciuoli, Senior Executive Assistant, OIG