

## **Paid Family and Medical Leave Template** **Carrier Questions & Answers**

The Department of Family and Medical Leave (“DFML”) and the Division of Insurance (“DOI”) have compiled this listing of Questions & Answers (“Q&A”) to assist Carriers in developing paid family and medical leave (“PFML”) insurance policies.

### **Should carriers develop their own review checklist?**

No, in an effort to streamline the review for the Examiners, only the DOI developed checklist should be used.

### **Can the order of the policy provisions in the PFML template differ, so long as the substantive requirements of the PFML template are satisfied?**

Unless the PFML Policy Template indicates that the Policy provisions need to be on the first page of the policy or in a certain section, Carriers may order the sections of a policy according to their own preferences.

### **Are renewable policy terms of 12 months allowable? Are “evergreen” or indefinite term policies allowed?**

Yes, a Carrier may have a PFML Policy without an end date. While a carrier may only nonrenew a policy on the calendar anniversary of the initial policy (with appropriate notice), it may cancel a policy for other reasons, such as nonpayment. If the Carrier is to cancel a policy, according to allowable reasons, it must provide at least 30 days’ notice to the Employer and the DFML prior to the cancellation date. If a Carrier elects to nonrenew a policy, it must provide at least 60 days’ notice to the Employer and to DFML prior to the non-renewal date.

### **Will the DFML or the DOI provide any guidance on whether the PFML policy will be governed by ERISA?**

Neither the DFML nor the DOI are providing guidance as to whether PFML policies are governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 18 §1001 et seq., (“ERISA”). Carriers and Policyholders should consult with their own legal and tax advisors with questions regarding the applicability of ERISA.

### **With respect to the merger, acquisition, and dissolution of Carriers or Policyholders, will there be provisions in the draft regulations allowing for termination of Policies?**

The DFML anticipates adding provisions to its regulations at 458 CMR 2.00 relative to the treatment of mergers, acquisition, dissolutions and other business-related changes for the purposes of obtaining an exemption from remitting contributions to the Family and Employment Security Trust Fund (“Trust Fund”).

**With respect to the section “Minimum Weekly Benefit Amount – Wage Information,” how do we obtain wage information if this information is not readily available?**

The DFML anticipates adding provisions to its regulations at 458 CMR 2.00 to further clarify how Carriers can calculate private plan wage and benefit amount determinations.

**The Average Weekly Wage (“AWW”) includes wages from prior employment, if any, during the Base Period, but does the AWW include wages from *concurrent* employment?**

The DFML anticipates providing further clarification on private plan wage determinations and the intersection of private plans and the state plan by revising its regulations at 458 CMR 2.00.

**Are benefits offsettable or reduced by the receipt of other benefits? If so, which benefits will offset a PFML benefit payment and which will not?**

The DFML anticipates providing further clarification on what wages will reduce benefits in calculating the weekly benefit amount by revising its regulations at 458 CMR 2.00.

**Can a PFML Policy offset or reduce benefits if a Covered Individual receives accrued sick leave or salary continuation from the Employer?**

Yes. The DFML anticipates providing further clarification on what wages will reduce benefits in calculating the weekly benefit amount by revising its regulations at 458 CMR 2.00.

**Is the employer responsible for matching the Federal Insurance Contributions Act (“FICA”) tax for a Covered Individual who is out of work and receiving MA PFML benefits?**

We recommend that you consult with employment counsel and/or tax advisors on issues related to the taxability of benefits and the payment of federal taxes.

**Will the maximum benefit amount of \$850 listed in M.G.L. c. 175M remain through the 2021 benefit year, even if the Statewide Average Weekly Wage (“SAWW”) is increased in October of 2020?**

The maximum benefit amount that is applicable beginning on January 1, 2021 will be adjusted in accordance with the SAWW that is set by the Director of the Department of Unemployment Assistance (DUA) each October. Please see M.G.L. c. 175M, § 3(a)(2), which states that “annually, not later than October 1 of each year thereafter, the department shall adjust the maximum weekly benefit amount to be 64 per cent of the state average weekly wage and the adjusted maximum weekly benefit amount shall take effect on January 1 of the year following such adjustment.”

**The DFML issued a notice titled “Policy Update on Employer Reimbursement.” It clarifies that, for the purposes of qualifying for a reimbursement from the DFML, a temporary disability policy or program of an employer or a PFML policy of an employer must be a policy or program that is granted to an employee for a qualifying reason under M.G.L. c. 175M, that is separate from and in addition to any sick leave, annual leave, vacation, personal leave, or paid time off that is made available to the employee.**

**Can you clarify how reimbursement would work if a Covered Individual was eligible for both paid medical leave and benefits paid under a short-term disability policy? If applicable to our private plans, what exactly are we required to reimburse the Employer?**

The Carrier is not required to include in its Policy a provision reimbursing the employer for paid leave. However, if the Policy provides for Employer reimbursement of paid leave remitted to a Covered Individual, the Policy shall state the terms and conditions for reimbursement. The DFML anticipates providing further clarification on Employer private plan reimbursement and what qualifies as a temporary disability policy or program of an employer in its revised draft regulations.

**Do we know how the state will get benefit payment records? Will it be the employer's responsibility or the Insurance Carrier's?**

The DFML anticipates providing further clarification on obtaining other benefit payment records by revising its regulations at 458 CMR 2.00.

**Private plan benefits for covered individuals to care for a family member with a serious health condition must begin no later than July 1, 2021. May carriers provide paid family leave coverage as of January 1, 2021 as an added benefit to Covered Individuals?** The start date of the leave to care for a family member with a serious health condition may begin any time on or before July 1, 2021. Neither the DFML nor the DOI is restricting the leave period and/or the start dates of coverage that Carriers may offer. The only requirement is that coverage for covered individuals to care for a family member with a serious health condition must begin on or before July 1, 2021 and coverage for all other leave types must begin on or before January 1, 2021. Furthermore, Carriers should be aware that starting coverage earlier than required may also prompt job protection considerations that Policyholder employers and carriers should evaluate.

**Can this be variable for future year filings?**

For policies with effective dates that begin after July 1, 2021, the coverage may begin at any time. Otherwise, the coverage must follow the schedules listed in the section “Eligibility for Paid Family and Medical Leave Coverage” in the template.

**How can an Employer Policyholder receive an exemption from remitting contributions to the state plan if it has secured private plan coverage? What information can we provide to employers?**

Although a PFML policy meeting the standards to obtain an exemption may be effective at any time, Policyholders will not be exempt from making contributions to the Trust Fund until they complete a Request for Exemption using the Department of Revenue’s web-based tax filing system, MassTaxConnect (<https://mtc.dor.state.ma.us/mtc/>) and are notified of the exemption approval.

Exemptions may be filed on a quarterly basis and may begin only on the first day of any quarter (January 1, April 1, July 1, or October 1). The deadline for filing a Request for Exemption is the date before the effective

date of the exemption begins. For example, employers must apply between January 1, 2020 and March 31, 2020 to receive an exemption effective date of April 1, 2020.

Quarter	Quarterly Exemption Application Deadline	Approved Exemption Effective Date
1	March 31, 2020	April 1, 2020
2	June 30, 2020	July 1, 2020
3	September 30, 2020	October 1, 2020
4	December 31, 2020	January 1, 2021

It is highly recommended that Carriers inform Policyholders that if they fail to file a Request for Exemption in MassTaxConnect before the deadline, they will be required to remit contributions for the upcoming quarter. This deadline applies even if the employer has obtained sufficient proof of private plan coverage from a Carrier prior to the deadline. More information is available at:

<https://www.mass.gov/info-details/paid-family-and-medical-leave-exemption-application-process-for-employers>

**The initial Filing Guidance, 2019-I: Accident and Sickness Insurance (dated September 16, 2019), states that Carriers must submit to the DOI a Paid Family and Medical leave policy form filing consistent with those standards that are identified in a subsequent Filing Guidance. Do employers with an exemption from remitting contributions to the Trust Fund also need to submit these policy forms to DFML?**

No. Carriers should follow the instructions and standards identified in Filing Guidance, 2020-A: Accident and Sickness Insurance (dated April 3, 2020) when filing a policy forms with the DOI. However, Employer Policyholders do not need to submit a policy form to the DFML if they have already submitted a Carrier-issued Declaration of Insurance to the DFML as described in Filing Guidance, 2019-I: Accident and Sickness Insurance.

Employers that filed a Carrier-issued Declaration of Insurance with the DFML in order to obtain an exemption were previously notified that they would be required to submit a policy form to the DFML once it was available from their Carrier. However, the DFML is no longer requiring these employers to submit a policy form to the DFML prior to the date of renewal of the exemption.

The DFML will request policy form numbers from employers at the time of exemption renewal and will update its website to describe these procedures.

At this time, Employer Policyholders that have not yet requested an exemption from the DFML (initial applicants) should continue to submit either a Carrier-issued Declaration of Insurance or a policy form when available. The DFML may revise these procedures at a later date and will issue guidance on its website at that time.

**Regarding lump sum and accelerated payments, “The Carrier must describe in this section that lump sum payments or accelerated payments are only to be offered at the beginning of the qualified leave period and only if the Covered Individual agrees to lump sum or accelerated payments.” What does at the beginning of the qualified leave period mean?**

The Carrier is not required to issue lump sum or accelerated payments to Covered Individuals. However, if the Carrier offers lump sum payments in lieu of a Weekly Benefit Amount and/or pays benefits at the beginning of a claim or in higher amount installments at the commencement of a claim, the Carrier must describe this payment schedule in detail. This payment should occur during the beginning of the qualified leave period, which should not be less than 14 days after the eligibility determination unless that determination occurs more than 14 days before the onset of eligibility; in which case, benefits shall be paid as soon as eligibility begins.

**Is the State expecting a master with this policy?**

The policy that is being submitted to the DOI is the master template for which carriers may individualize for each client.

**With regard to the Condition of Eligibility section stating “This section cannot contain any elimination periods that are not authorized under the PFML statute and regulations,” may elimination periods can be more generous if the carrier chooses?**

Carriers are not required to have an elimination period or a waiting period in a PFML policy. However, if they do require an elimination period or waiting period, it may not be a greater length than the 7-day waiting period as described in the PFML statute and regulations. PFML policies may include a shorter elimination period (*e.g.*, 3 days).

**When can an Employer transfer back to the state plan, assuming they satisfy any requirements to make the change (e.g. retroactive premiums to the state)?**

The DFML anticipates issuing further clarification on the issues associated with employers transferring between a private plan and the state plan by revising its regulations at 458 CMR 2.00.

**Regarding the section “Calculation of Weekly Benefit Amount and Use of Wages,” Are we able to offer more than one policy to an employer? Our standard is to offer one policy for each class of employees and this section states that if the weekly benefit differs by class, then those differences must be outlined. Can we continue our current practice of issuing multiple policies?**

Yes, a Carrier may offer more than one PFML policy to an employer or covered business entity. An employer may have different policies offering varied benefits or a different length of coverage for classes of Covered Individuals so long as each policy meets the minimum requirements of the PFML statute and regulations.

For example, employer may offer full salary replacement or a greater number of weeks of benefits for its full-time employees, but only partial salary replacement or the minimum number of weeks of benefits for

part-time, temporary, or per diem staff. The Carrier may delineate the separate classes in one policy or it may issue multiple policies to a Policyholder.

**Is there a process that should be used to notify the DFML of “non-renewals” or terminations since SERFF cannot be utilized? Also, do termination requests need to be approved by the DFML?**

Please note these recent updates to the PFML template: If the Carrier elects to terminate a Policy, it must provide at least 30 days’ notice to the Employer and to the DFML prior to terminating a Policy. If a Carrier elects to non-renew a Policy, it may only do so on the calendar anniversary of the initial Policy Effective Date and must provide at least 60 days’ notice to the Employer and to DFML prior to non-renewing a Policy. The DFML will issue guidance regarding how Carriers may notify the DFML of non-renewals and terminations at a later date.

**“All proposed material amendments during a policy term should be sent to the DFML by the Carrier 30 days prior to the proposed effective change” What is the process for carriers to submit material amendments to the DFML since SERFF cannot be utilized? What is the definition of “material amendments”? Also, does the DFML expect to approve the content of amendments before they can be issued?**

This provision was removed from the PFML template.

**The section regarding Appeals indicates “If the Carrier denies a claim, it must include in the denial notice that the Covered Individual may appeal a denial to the DFML and should identify how to contact the DFML.” 458 CMR 2.14 requires that claimants provide employers with a complete copy of the appeal to the DFML. Is it possible to require that employers provide Carriers with copies of the appeals?**

This provision was removed from the final PFML template.

**Since January 1, 2021, is a Friday and benefits are not payable before January 1, 2021, how many days would be payable for a qualified leave in that first week?**

The DFML anticipates issuing further clarification regarding the start date for payment of claims during the first week of benefits becoming available on January 1, 2021.

**When does the allotment of available leave get replenished? (For example, a leave commences on November 1, 2021.)**

According to the regulations at 458 CMR 2.00 and the definitions in the template, “Benefit Year,” is defined 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.

*Example: A covered individual with a leave start date of Monday, November 1, 2021 will have a Benefit Year beginning on Sunday, October 31, 2021. The Benefit Year will end on Saturday, October 29, 2022. If the covered individual has exhausted their leave, the allotment would be replenished on Sunday, October 30, 2021.*

**If an application is approved what is the effective date of the benefit year? Is it the approval date, leave date or something else?**

According to the regulations at 458 CMR 2.00 and the definitions in the template, “Benefit Year,” is defined 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.

*Example: John is scheduled to have surgery on Tuesday, March 2, 2021. If the medical leave begins on that date, the Benefit Year would begin on Sunday, February 28, 2021.*

**Is the waiting period protected leave?**

Yes. Although the waiting period may be unpaid, employers are obligated to follow the job protection, non-retaliation, and continuance of health insurance benefits provisions of M.G.L. c. 175M beginning on the date of filing a request for paid leave.

**Does job protection apply only on the day that the intermittent leave is taken?**

No. The job protection provisions of M.G.L. c. 175M apply to the entire period of the leave, even if the covered individual is on an intermittent leave and is only out of work for a short amount of time each week

**Under a private plan does a carrier have the responsibility to notify the Employer that a leave has been filed within 5 days? If so, does the Employer have the ability to waive this 5-day requirement?**

Please view the Claims Provisions and other sections of the PFML template, including the Payment section, for information about notification requirements to Employers and Covered Individuals. Otherwise, the carrier and the employer may determine what notifications are to be required in a plan.

**When is the determination made with respect to hours worked and how AWW and the benefit are calculated? Is it based on application date or leave start date?**

The DFML anticipates issuing further clarification on benefit calculation determinations by revising its regulations at 458 CMR 2.00.

**If a person has two jobs, and one employer has a private plan, and the other has the state plan, can they collect PFML from both? If so, how will the two payers know if the employee’s combined payments exceed the \$850/week maximum?**

The DFML anticipates providing further clarification on private plan wage determinations and the intersection of private plans and the state plans by revising its regulations at 458 CMR 2.00.

**How should the Carrier calculate intermittent leave benefits?**

The DFML anticipates providing further clarification on intermittent leave by revising its regulations at 458 CMR 2.00.

**Does the intermittent leave have to be in an increment of four hours or more to be payable?**

An employer may require that intermittent leave be taken in increments not smaller than a designated minimum time period; provided, however, that an employer's designated minimum time period may not be greater than four consecutive hours. If the Covered Individual has a qualifying claim for intermittent leave, the employer and Carrier may only limit intermittent leave to minimum increments of four hours. If the employer and Carrier allow shorter length increments (e.g. two hours), the Covered Individual must receive a prorated amount for the entire amount of intermittent leave taken.

**Regarding Termination and Reinstatement of the Policy the template states that the insurer must explain when we can terminate "due to non-payment or fraud." Is this implying these are the only reasons for termination of a Policy?**

This provision in the template has been revised to allow for other reasons for termination of a policy. The Carrier will be required to explain when a Carrier can terminate a Policy and must state that the Employer will receive a notice explaining the reasons why the Policy is being terminated. This section should identify the Carrier's termination notification procedures and how the Carrier will provide notice of the final termination of the Policy.

**Is there a process that should be used to notify the DFML of "nonrenewals" or terminations since SERFF cannot be utilized? Also do termination requests need to be approved by DFML?**

Employers will be required to notify the DFML for termination of private plans. It is our understanding that no notice is owed to the DFML for nonrenewal, as the failure to renew the private plan serves as notice itself. Notices of termination will not be in the form of a "request" so there will be no need for the DFML to approve any request.

The carrier may require the Covered Individual to provide notice to the Carrier requesting an extension of leave. This notice period may not be greater than 14 calendar days prior to the date of expiration of the approved leave. Can a claim be denied due to untimely notice?

No, we would not deny if there is good cause shown pursuant to 2:10(2)(a) for the delay. However, during the initial application for benefits if a covered individual does not provide 30-days' notice before a leave the leave could be delayed or denied. Would that apply here if someone requested an extension late could the payment be delayed or denied?

The regulation permits pre-filing at least 30 days in advance of a foreseeable leave. Also the 14-day limitation isn't complete enough to account for someone who files less than 14 days in advance. As currently written, carriers could deny for less than 14 days.