

Massachusetts Department of Paid Family Leave Releases New Guidance

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The current circumstances surrounding the COVID-19 crisis have brought paid family and medical leave to the forefront of the national consciousness. While the federal government and other states have created new, immediately effective, paid family and medical leave laws, Massachusetts has remained committed to the existing timeframe for the Paid Family and Medical Leave Act (PFMLA), which will be effective January 1, 2021.

Despite the focus on the COVID-19 crisis, the Commonwealth of Massachusetts continues to prepare for the implementation of PMFLA in 2021. On April 7, 2020, the Massachusetts Department of Family and Medical Leave (DFML) announced new guidance for employers who have applied for or plan to apply for a “private plan” exemption and use a third-party insurer for the privately funded paid leave plan.

Employers who intend to use such a “private plan” provided by an insurance carrier must ensure the plan meets minimum state requirements. To that end, The DFML has worked in conjunction with the Department of Insurance (DOI) to verify private plans created by insurers. The DOI has released [Filing Guidance 2020 – A: Paid Family and Medical Leave](#). Under the guidance, insurance carriers who offer private plans must submit the plans to the DOI for review before June 3, 2020. Once approved, the carriers will receive an approved policy form number.

While the guidance is intended for insurance carriers, it can assist employers as well. The guidance’s template paid family and medical leave policy contains the necessary provisions under the PFMLA. In addition, the DOI also released a [checklist](#) for compliant policies. Employers who have or plan to apply for an exemption based on a self-insured plan should review the template policy and the checklist to ensure their private plan meets the PFMLA requirements.

If an employer has already applied for and received an exemption based on a private insurance plan, that exemption is still valid, but the employer will have to provide the approved policy form number during the exemption renewal period. If an employer is filing for an exemption based on a plan created by its insurance carrier, but it has not yet received a policy form number from the carrier, the employer should submit its insurance declaration document signed by the employer’s representative and the carrier’s representative. If an employer has a policy form number already, the employer should submit its insurance declaration document with the policy form number.

Importantly, if an employer plans to use a paid leave program funded by the employer to fulfill its PFMLA obligations, it does not need to submit anything to the DOI or receive a policy form number.

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The other deadlines under the PFMLA remain the same. Employers without an exemption must remit funds to the Family and Employment Security Trust Fund on April 30, 2020, as scheduled. The benefits available to employees under the PFMLA are still scheduled to begin on January 1, 2021.

Employers with questions regarding the PFMLA or seeking clarification on their private plan should contact a Jackson Lewis attorney.

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