

## Significant Change to Massachusetts PFML

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Recent amendments to the Massachusetts Paid Family and Medical Leave (PFML) law now allow employees to use accrued paid leave, such as sick time, vacation time and personal days, to supplement PFML benefits at any time during leave. The Department of Family and Medical Leave (DFML) has also announced the new contribution and benefit amounts for 2024. The following summarizes these important updates to the PFML.

### “Topping Off” With Accrued Paid Leave

As most Massachusetts employers know, PFML provides qualifying employees with partial wage-replacement benefits during leave taken to deal with a personal health crisis, bond with a child, care for a sick relative or covered service member, or manage an emergency arising from a family member on active duty. PFML benefit amounts vary depending on the employee’s average weekly wage and are subject to a maximum weekly benefit amount, which may be less than 100% of the employee’s income. Until recently, employees receiving PFML benefits have been barred from using accrued paid leave (e.g., sick time, vacation, PTO, personal time, etc.) to supplement wage-replacement benefits received through the DFML, with the exception of doing so during the initial seven-day waiting period during which PFML benefits are not available.

Effective November 1, 2023, employees receiving benefits from the DFML now have the option to supplement (or “top off”) PFML benefits with any available accrued paid leave benefits or other paid leave available under employer policies, including under collective bargaining agreements, in order to receive 100% wage replacement during leave. The decision whether to do so continues to rest with the employee—employers may not compel employees to use their accrued paid leave while receiving PFML benefits.

Importantly, these changes affect all Massachusetts employers, including both those that pay into the state-administered leave system and those that qualify for an exemption (through either a self-insured or a third-party private plan). Until recently, employers who offered the MA PFML program through a private plan had the option to allow their employees to “top off” the benefits from the private plan with accrued paid leave. With the new legislative amendment, private plan employers are now required to provide employees with the top-off option.

### New Contribution Rates and Benefit Amounts for 2024

Each October 1st, the DFML is required to update employer contribution rates and benefit amounts for the upcoming year. The changes to benefit contribution rates are as follows:

For employers with 25 or more covered individuals, the total contribution rate will increase from 0.63% to 0.88% of eligible wages. For employers with 24 or fewer covered individuals, the total contribution rate will increase from 0.318% to 0.46% of eligible wages. These new contribution rates apply equally to employers that have private plans, so all employers must review and update their plans and contribution rates for January 1, 2024.

The DFML increased the maximum weekly benefit amount available to individuals to \$1,149.90. This benefit is keyed off the Commonwealth’s average weekly wage and is an increase from the current amount, which is \$1,129.82 a week.

### What Does It Mean for Employers

Employers should be on the lookout in the coming weeks for guidance from the DFML regarding compliance with the PFML amendments allowing topping off, including required notices. In the meantime, all employers, including those with a private plan exemption, should review their PFML policies and procedures and work with their payroll division to create an internal procedure, including a process to calculate the accrued paid leave to supplement MA PFML benefits at an employee's request.

Employers are responsible for monitoring and ensuring that the combined weekly sum of employer-provided paid leave benefits and PFML benefits does not exceed the employee's individual average weekly wage. If an employee receives more paid benefits than their average weekly wage, the employer, rather than the DFML, will be responsible for recouping the excess amount paid to the employee. As mentioned above, the DFML is expected to issue guidance to employers regarding compliance with the PFML amendments allowing topping off. This guidance will likely include information as to how to correctly calculate an employee's PFML benefit in order to know how much company paid leave can be applied. The DFML website currently contains a calculation tool that may be helpful to employers and is available [here](#).

In addition, Massachusetts law requires employers to notify new and existing employees of the 2024 updates to contribution rates and weekly benefit amounts under the PFML law and display an updated 2024 PFML law poster in the workplace. The DFML has not yet released an updated poster and template notice forms for distribution, but employers should plan to comply with the employee notice requirement by December 2, 2023, by issuing updated PFML contribution rate information to employees once the DFML publishes updated notice documents.

Contact [Morgan E. Hedly](#) or [Michael A. Gamboli](#) to learn more on this topic and other potential legal risks and likely impacts. [Partridge Snow & Hahn](#) is available to answer questions about this update. For additional information and resources, visit [Employment & Labor](#).

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