

Changes to MA PFML – "Topping Off" and New 2024 Benefit Rates

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On October 17, 2023, Governor Healey signed a significant amendment to the Massachusetts Paid Family and Medical Leave ("PFML") law. The amendment addresses the "topping off" issue that has elicited concerns from employers and employees alike since the PFML went into effect in 2021. The Massachusetts Department of Paid Family and Medical Leave ("DFML"), which administers PFML, also released new contribution and benefit rates for next year.

"TOPPING OFF" AMENDMENT

With the amendment, for claims filed on or after **November 1, 2023**, employers must allow employees the option to supplement or "top off" the PFML compensation they receive with any available paid leave to which they are entitled from their employer, such as vacation, sick time, PTO, etc. "Topping off" permits an employee to receive both their PFML benefit **and** use their accrued paid leave to ensure that they receive a total of 100% wage replacement up to their Individual Average Weekly Wage ("IAWW") while they are out on leave.

The law previously prohibited employers participating in the state's PFML program from allowing employees to "top off" their state-provided PFML benefit. In effect, this forced those employees to choose whether to receive PFML compensation through the state (a maximum of $1,129.84 per week in 2023) **or** use the paid leave available to them through their employer. They were unable to receive both at the same time.

Employers using private PFML plans, distinct from the state program, *could* permit this "topping off" prior to the amendment, but now will be required to provide this option to employees.

Now, all employees on PFML – regardless of whether their employers participate in the state program or a private plan – will be free to choose whether to use their available paid leave to "top off" their PFML benefit up to 100% of their IAWW or to save that leave for another time, and employers must provide them that option.

The DFML has also released helpful FAQs for employers and employees that further detail how the "topping off" amendment will impact the PFML program.

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2024 CONTRIBUTION AND BENEFIT RATES

In 2024, the maximum weekly PFML benefit will increase to $1,149.90 per week. In addition, the DFML released the 2024 PFML contribution rates, which go into effect on **January 1, 2024**.

For employers with 25 or more covered employees, the contribution rate will increase up to 0.88% (from 0.63%) of eligible employee wages. Specifically, for family leave the contribution rate will increase up to 0.18% (from 0.11%), and for medical leave the contribution will increase up to 0.70% (from 0.52%). The proportion of PFML contributions will remain the same, with these employers permitted to withhold up to 100% and 40% from eligible employee wages for family leave and medical leave, respectively.

For employers with less than 25 covered employees, the total contribution rate will increase up to 0.46% (from 0.318%), comprised of 0.18% for family leave and 0.28% for medical leave. The proportion of PFML contributions also remains the same for these employers, allowing them to withhold the entirety of the family and medical leave contributions from eligible employee wages.

Employers will need to communicate these rate changes to their employees 30 days prior to the effective date of January 1, 2024.

We will continue to monitor these developments and provide further updates accordingly. Please contact your Bowditch employment lawyer with any questions.

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