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NATIONAL LAW REVIEW

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## Massachusetts Paid Family and Medical Leave: Final Regulations, Updated Notices, and Educational Sessions

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Monday, June 24, 2019

On June 18, 2019, the Massachusetts Department of Family and Medical Leave (DFML) issued final regulations regarding the Massachusetts Paid Family and Medical Leave Law (PFML). This follows months of revisions, public hearings, and comments. The DFML has published an [unofficial version of the regulations](#) on its website and has stated that the official version will be available on or before Monday, July 1, 2019, from the Office of the Secretary of the Commonwealth.

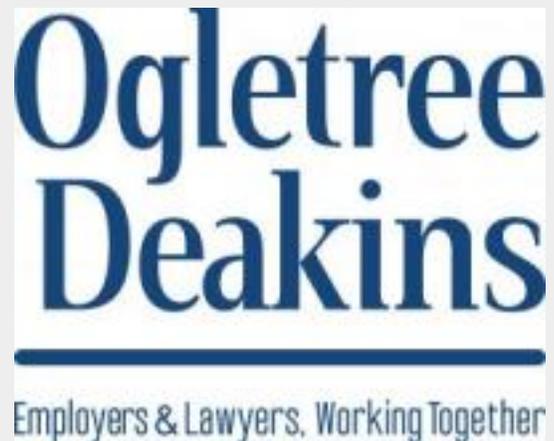
The DFML has also issued new template notices on its website following the announcement of a [three-month delay](#) to the contributions that will fund the state's leave program. The DFML has also stated that employers that already provided written notice to their workforces prior to the delay announcement must provide those individuals with a rate sheet explaining the changes.

Finally, the DFML has scheduled three "educational sessions" in late June promising to provide an opportunity to ask questions of representatives from the DFML.

### Final Regulations

The final regulations maintain most of the language of the draft version but also incorporate significant changes (likely in response to information received during the public comment period). Several significant updates are highlighted below:

- The definition of "intermittent leave" now includes additional language that allows an employer to require that intermittent leave be taken in increments no smaller than a designated time period, but states that said designated time period cannot exceed four consecutive hours.
- "Pay Period" is defined as "the shortest pay period used by a business or trade for regular payments to any group of employees of the business or trade."
- The final regulations contain additional language on calculating "average total workforce" as it relates to 1099-MISC contractors.
- The final regulations outline a different calculation of penalties for employers or covered business entities that fail to make contributions in accordance with the law, but also allow the DFML to waive or modify penalties upon a showing of "good cause."
- The section of the final regulations addressing approved private plans clarifies that plans in the form of self-insurance must furnish to the DFML *surety* bonds. The surety companies issuing such bonds must be authorized to transact business in the Commonwealth.
- The final regulations include additional language clarifying requirements related to private plan



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applications.

- The final regulations contain additional language detailing the requirements for an individual to request an extension of benefits.
- The initial seven-day waiting period for an intermittent or reduced leave schedule is seven *consecutive* days, not the aggregate accumulation of seven days of leave.
- The final regulations include additional language detailing the requirements surrounding a covered individual's request for an appeal.
- The final regulations contain additional language clarifying employer requirements surrounding employee job security. The section on job protection now states that an employer is not required to restore the position of an employee who had been hired for a specific term or only to perform work on a discrete project and who took leave under the law if the employment term or project is over and the employer would not otherwise have continued to employ the individual.
- The final regulations contain additional language clarifying employer requirements surrounding retaliation. The section on retaliation now clarifies that an employer may require an employee who has been approved for leave benefits to comply with the employer's reasonable attendance and call-in procedures.
- The final regulations now state that employers or covered business entities can choose to deduct different percentages from different groups of covered individuals for the purpose of making contributions, as long as the deductions do not exceed the maximum deduction allowed. Said another way, deductions need not be equal across an employer or covered business entity's workforce.

## **New Template Notices and Addendum**

As a result of the three-month delay to contributions, the DFML has issued guidance on its website regarding new notices. The DFML has also issued a [revised workplace poster](#) with updated deadlines, which must be displayed and placed in locations where it can be easily read. The DFML has indicated that translated versions of the revised workplace poster will be available soon.

Subject to the delay, employers and covered business entities are now required to provide written notice to covered individuals of their rights and obligations under the law by September 30, 2019. The newly issued template notices not only reflect the extended deadlines, they now include separate notices based on the number of covered individuals.

There is one form for notice to W-2 employees for [employers with 25 or more covered individuals](#) and one for [employers with fewer than 25 covered individuals](#). Similarly, there is one form for notice to 1099-MISC contractors for [covered business entities with 25 or more covered individuals](#) and a separate form for notice to 1099-MISC contractors for [covered business entities with fewer than 25 covered individuals](#).

The updated notices with regard to 1099-MISC contractors are significant in that they clarify inaccuracies in the old template 1099-MISC notice. These updated notices confirm that *only* covered entities need to notify 1099-MISC contractors of their rights under the law. However, covered entities and employers are *both* required to report the earnings of all 1099-MISC contractors to the DFML.

The DFML's website further states that entities that already provided written notices to their workforces before the recently announced three-month delay will need to provide their workforces with a rate update sheet explaining the updated program dates and contribution rates. There is [one sheet for entities with 25 or more covered individuals](#) and [another sheet for entities with fewer than 25 covered individuals](#). Covered individuals do not need to sign these sheets, but entities must keep a record of the sheets' distribution. Further, the DFML states that forms that have already been collected from W-2 employees or 1099-MISC contractors acknowledging or refusing to acknowledge receipt of the notice should be retained according to that entity's internal document retention policy, but those outdated forms should not be sent to the DFML.

## **Educational Sessions and Continuing Guidance**

The DFML is continuing to host public sessions to provide clarification on the PFML and recently announced three public question-and-answer sessions with DFML representatives. The three sessions will be held on the following dates:

- June 24, 2019, in Dartmouth, MA
- June 26, 2019, in Rockland, MA

- June 28, 2019, in Springfield, MA

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**Source URL:** <https://www.natlawreview.com/article/massachusetts-paid-family-and-medical-leave-final-regulations-updated-notices-and>