

# Employment Law Alert: Massachusetts Paid Family and Medical Leave Goes into Effect on January 1, 2021

By Dave Robinson on December 23, 2020



Given the tumultuous nature of 2020, Mass Paid Family and Medical Leave (PFML) may have not surprisingly flown under the radar for many employers. However, starting on January 1<sup>st</sup>, most of PFML goes into effect. RIW's prior client alerts summarize the **PFML** as well as **employer's obligations**. Further information published by the Department of Family and Medical Leave (DFML) for employers is also located [here](#).

## Here are some year-end tips to help get employers ready for PFML:

- Employers should review and update their employee handbook to make sure leave and paid time off policies are up to date and that employees are properly notified concerning PFML. Make sure all **posters** notifying employees concerning PFML are in place and all employees have signed an acknowledgement that they received notification of the PFML. All employee acknowledgements should be stored in a separate file (electronically or in hard copy) for ease of production in case of an audit. Further information concerning employee notification is located [here](#).
- If the Family and Medical Leave Act (FMLA) applies (i.e., companies that employ 50 or more employees within 75 miles), employers should make sure that the definition of the 12-month period under their FMLA policy aligns with PFML's definition. Under FMLA, the 12-month period can be the standard calendar year, a year that starts on an employee's date of employment, the date an employee's first FMLA leave begins or a rolling 12-month period measured backward from the date an employee uses any FMLA leave. Unlike the FMLA, PFML only calculates the 12-month period from the first Sunday of the week an employee first takes PFML leave. If the 12-month periods for FMLA and PFML do not align, an employee can possibly take unpaid time under FMLA after exhausting PFML because the FMLA's 12-month period could reset during the PFML period. Please note that all changes of the 12-month period under FMLA require 60 days' notice to employees.
- Irrespective of whether FMLA applies, all leave policies should explicitly state that the leaves will run concurrently to the extent permissible under law. Please note that due to varying availability of leaves, some leave may not apply and therefore not run concurrently. For example, an employee can exhaust all the leave under PFML and FMLA to care for a family member who is a covered service member (up to 26 weeks), and thereafter give birth and take up to 8 weeks of unpaid leave under the Massachusetts Parental Leave Act (MPLA). Because the leave taken under PFML and FMLA was not covered under MPLA, the employee could take the additional MPLA leave.
- Lastly, employers should institute written review and discipline policies, which require documentation supporting all employment decisions. PFML includes an extremely employee-friendly anti-retaliation provision, under which employers are liable for retaliation if an employee receives an adverse employment action (termination,

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suspension, failure to promote, etc.) during PFML leave or six months thereafter, unless the employer can demonstrate with clear and convincing evidence that the employer (1) has sufficient independent justification for taking such action and (2) would have in fact taken such action in the same manner and at the same time the action was taken. Given this heavy burden, employers must follow their policies and document their decisions in order to prevail against PFML retaliation claims. It is also critical that managers are trained and are fully versed in the implementation of these policies and procedures because they are the “front line” for the company concerning discipline and reviews.

*Have a question regarding MA PFML or other employment issues? **David Robinson** is a Shareholder and coordinates Ruberto, Israel & Weiner’s **Employment Practice Group** and is a member of the **Litigation Practice Group**. He can be reached at [dwr@riw.com](mailto:dwr@riw.com), 617-570-3562, or on Twitter at [@DWRobinsonesq](https://twitter.com/DWRobinsonesq).*

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