

Massachusetts Department of Family and Medical Leave Proposals Affecting Private Plan Exemptions

By Matthew D. Freeman, Brian E. Lewis, Matthew C. Chambers and Keerthi Sugumaran

May 19, 2020

The Massachusetts Department of Family and Medical Leave's (DFML) proposed amendments to existing regulations for the Massachusetts Paid Family and Medical Leave Act (PFMLA) include significant changes relating to the private or self-funded plan exemption. Employers offering approved private plans may be exempt from making PFMLA contributions. The start date for benefit availability under the PFMLA is January 1, 2021.

(For background on the PFMLA and the plan exemption, see our articles, [Massachusetts Department of Paid Family Leave Releases New Guidance](#) and [Massachusetts Department of Paid Family and Medical Leave Releases New Draft Regulations](#).)

Partial Exemptions

The proposed amendments would allow employers to apply for "partial exemptions," meaning, family leave only or medical leave only, as well as for both types of leave.

If an employer's partial exemption is approved, the employer need not make contributions to the state fund for the type of leave covered by the exemption (family or medical), but it must continue to make contributions for the other type of leave.

Importantly, the regulations also provide that, while employers can choose to cover one or both types of leave through a private plan, employers cannot apply for a private plan exemption on behalf of a portion of its workforce. All private plans must cover the employer's entire workforce.

Private Plan Application Process

The proposed amendments expressly require businesses to use the Massachusetts Department of Revenue's [MassTaxConnect](#) system to submit an application for an exemption. Employers applying for an exemption must establish an account if they do not have an existing account. The MassTaxConnect system will also be used by employers seeking review of a private plan exemption denial.

Employers can apply for an exemption once per quarter only. The plan will not go into effect until the first day of the quarter immediately following the plan's approval, at the earliest.

If the DFML denies the exemption, the employer can request supplementary review, but review is discretionary and not subject to further administrative appeal.

Exemptions are effective for up to a year and can be renewed annually. The proposed amendments allow the DFML to establish a longer or shorter term of approval. The DFML will provide 30 days' notice if it decides to reduce the term of approval.

Requirements for Valid Private Plans

The PFMLA and related regulations require private plans to provide the same or greater benefits as those offered under the PFMLA in order to qualify for an exemption. The proposed amendments supplement those requirements.

Under the proposed changes, private plan administrators must provide an internal appeals process for denied claims. The appeal process must give the employee at least 10 days to appeal the denial. It also must allow an extension of the appeal filing deadline if circumstances beyond the employee's control

Meet the Authors



[Matthew D. Freeman](#)

Principal
Boston 617-367-0025
Email



[Brian E. Lewis](#)

Principal
Boston 617-367-0025
Email



[Matthew C. Chambers](#)

Associate
Boston 617-367-0025
Email

prevented timely filing.

Employees must exhaust the internal appeals process before they can challenge the denial of benefits through a direct appeal to DFML. If the DFML requests application documentation in connection with the appeal, the employer or plan administrator must provide the documentation within five business days. Determinations of the DFML will be binding on employers and private plan administrators.

The proposed amendments provide that all employees who apply for benefits under the private plan must be provided with notice of their rights under both the private plan and under the PFMLA and its related regulations.

If an employer chooses to use a plan issued by an insurance carrier, the employer should ensure the carrier is a Massachusetts-licensed insurance company and the carrier has submitted its plan to the Massachusetts Division of Insurance for review. If the insurer is not licensed by Massachusetts or the plan has not been reviewed by the Division of Insurance, the employer may not qualify for an exemption.

Termination of a Private Plan

Under the proposed amendments, if an employer decides to terminate its private plan or fails to apply for renewal, the private plan will terminate officially on the first day of the quarter immediately following the date of termination or expiration.

Employers must continue to provide paid benefits to those employees who remain out on leave after the plan's termination if the leave began before the official termination date. If an employee is taking intermittent leave, the employer must continue to provide the paid benefit until the end of the employee's benefit year. If a plan is terminated due to failure to renew, the employer must provide the DFML with all prior wages and qualified earnings for the four quarters preceding the plan's termination.

The proposed changes provide that a company undergoing a dissolution, merger, or acquisition after the exemption has been approved, but before the renewal date, must provide the DFML 60 days' notice of the dissolution, merger, or acquisition. The company also must provide documentation that allows the DFML to discern the termination date of the private plan, the individuals affected, and the identity of the acquiring or affiliate organization, if any.

Jackson Lewis attorneys will continue to monitor developing changes and provide updates. Please reach out to a Jackson Lewis attorney if you have questions about applying for, administering, or terminating an exempt private plan.

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Keerthi Sugumaran

Associate
Boston 617-305-1216
Email