

Proposed Changes to Massachusetts Paid Family & Medical Leave Regulations

by Samuel J. Baldwin on September 22, 2022

The Massachusetts Department of Family and Medical Leave has proposed changes to the regulations governing the state's paid family and medical leave program. The proposed changes are intended to clarify the requirements related to maintaining health insurance benefits for employees on family or medical leave. While the proposed changes provide welcome guidance about how an employer can provide required health coverage to employees on leave, questions remain about when employer-provided health coverage may be terminated. The Department published a redline of the affected sections of the regulations, showing the proposed changes.

Background

The Massachusetts Paid Family and Medical Leave ("Mass. PFML") program provides paid family and medical leave benefits to current and some former employees of Massachusetts employers. The law generally applies to all Massachusetts employers, regardless of size, and requires that all employees are eligible for leave to address their own serious health condition, to bond with a new child, or to care for a family member with a serious health condition, military deployment, or injury suffered during military service. Employers and employees are required to make payroll contributions to the program, and when an employee qualifies for leave, benefits are paid to the employee by the state. Benefits are determined based on a percentage of an employee's typical wages, up to a cap set by the Department (\$1,084.31 per week in 2022).

Employers may opt out of the program by adopting their own paid family and medical leave program that meets specific requirements and applying to the state for an exemption. But all Massachusetts employers, whether they have obtained an exemption from the state PFML program or not, are subject to certain requirements. These include job protection for employees on paid family and medical leave, anti-retaliation provisions that preclude adverse actions against employees who take leave, and a requirement that employers continue to provide an employee with health coverage while the employee is on leave.

Proposed Changes

Earlier this year, the Department released proposed changes to the regulations related to the continued health coverage requirement. Currently, the Mass. PFML regulations provide that "[d]uring the duration of an employee's family or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions that

coverage would have been provided if the employee had continued working continuously for the duration of such leave.”

The proposed changes would revise and expand this provision to read as follows: “During the duration of an employee's family or medical leave, the employer shall continue to *provide for, contribute to, or otherwise maintain*” the employee's health plan coverage (*emphasis added*). They also explain that “otherwise maintaining” coverage is to be interpreted broadly to encompass any method that ensures an employee can maintain access to health coverage while on leave. The proposed changes would also add several examples of how an employer may “otherwise maintain” coverage, including:

- Continuing to pay the employer's portion of group health plan premiums. The employee may be required to pay the employee's portion of premiums while the employee is on leave.
- Providing COBRA continuation coverage (if applicable) and reimbursing the employee such that the amount the employee pays towards premiums is the same as the employee was paying when the employee was actively employed.

These proposed changes provide welcome detail about how health insurance may be provided to employees on paid family and medical leave.

Unresolved Questions

Important questions remain, however, related to an employer's obligation to provide health coverage to employees on paid family and medical leave. If an employee fails to pay their required share of premiums while on leave, may the employer terminate health plan coverage? How should an employer address health coverage for an employee whose employment terminates while on leave?

The regulations remain unclear about whether an employee's health coverage may be terminated if the employee's employment terminates while on leave. The following example illustrates one of the scenarios in which the regulations suggest an employee's employment may end while on paid family or medical leave:

A contract employee was hired for a specific term, which ends on September 30. On September 15, the employee goes out on paid family leave to bond with a new child for 12 weeks. The regulations suggest that the employer may terminate the employee's employment on September 30, pursuant to the employee's contract. But even if the employee's employment terminates, the employee's paid leave will continue, and the employee will be eligible to receive salary replacement benefits for the full 12 weeks.

Presumably, an employer is not required to extend the employment of an individual in these circumstances simply because the individual happens to be on leave when the contract ends. But what about the individual's health coverage? The regulations require continued health coverage for "the duration" of the employee's leave. If an employee's leave extends beyond the termination of employment, is the employer required to provide health coverage to a former employee? The proposed changes do not help resolve these questions.

Similar questions arise from an example added by the proposed changes acknowledging that an employee on paid family or medical leave may be transitioned to COBRA coverage, but requiring an employer to subsidize the employee's COBRA premiums. This may make sense where an employee on paid family or medical leave qualifies for COBRA coverage due to a reduction in hours but does not experience a termination of employment. It is not clear, however, whether this example is intended to require an employer to subsidize COBRA coverage in every situation where an employee on leave elects COBRA coverage, including situations – like the example above – where employment terminates and similarly situated individuals would not be entitled to subsidized COBRA premiums.

The Department will receive comments on the proposed changes at public hearings and during a public comment period, the dates of which are yet to be announced.

If you have any questions about how Mass. PFML requirements apply to your business, contact a member of [Verrill's Employee Benefits and Executive Compensation Group](#).



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