

# Massachusetts Paid Family and Medical Leave

## Advocacy Guide

Greater Boston Legal Services

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*This guide is intended to help Massachusetts advocates navigate PFML benefits based on current DFML practices. Nothing in this guide is an endorsement of current agency practices.*

Greater Boston Legal Services (GBLS) is the primary provider of basic civil legal assistance to approximately one-third of the state's low-income individuals. Its service area includes 32 cities and towns that constitute all of Suffolk and a significant portion of Middlesex, Norfolk, and Plymouth counties. The program's mission is to provide high-quality legal assistance in a wide range of poverty law matters including housing, elder, and family, welfare, health, disability, consumer, immigration and employment law. In addition, GBLS provides services in immigration cases on a statewide basis. GBLS's Workers' Rights Unit (WRU) represents clients in unemployment insurance appeals, wage-and-hour claims, Paid Family and Medical Leave matters, and tax controversies, as well as clients who have criminal records or other barriers to gaining jobs and job-related benefits. The WRU also represents individual and community-based organizations in systemic policy campaigns concerning UI, wages, and work-connected benefits such as earned sick time and Paid Family and Medical Leave and includes a focus on individuals in the Asian community.

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# Introduction: Paid Family and Medical Leave (PFML) Basics

## 1. What is PFML

PFML provides **job protection** and **pays benefits** when a worker needs time off work for a qualifying reason. PFML provides up to 26 weeks of paid leave each benefit year:

- 20 weeks of medical leave for a worker's serious health condition
- 12 weeks of family leave for a worker to care for a family member with a serious health condition or to bond after the birth, foster placement, or adoption of a new child during the child's first year
- 26 weeks to care for a family member injured while serving the armed forces
- 12 weeks to manage the affairs of a family member on active military duty

The benefit year runs for 12 calendar months from the Sunday before the first day of leave. 458 C.M.R. 2.02. A worker's benefit amount remains the same for the duration of the benefit year.

PFML protects a worker's job as soon as the worker notifies the employer that they need time off work for a qualifying reason. A qualifying reason means something that makes a worker eligible for family or medical leave. This can be the worker's own serious medical condition, a family member's serious medical condition, the birth, adoption or fostering of a new child, among others. 458 C.M.R. 2.02. In practice, a serious medical condition is any condition that a doctor certifies prevents the worker (or their family member) from working for more than three days and requires medical treatment. The worker must comply with the employer's reasonable requests for medical documentation. 458 C.M.R. 2.16(2). However, the job is protected whether or not the worker files an application for PFML benefits. 458 C.M.R. 2.02.

PFML pays 60-80% of a worker's usual wages. The program has a progressive wage replacement formula. This means lower wage workers have a larger percentage of their wages replaced than their higher earning counterparts. For a more detailed breakdown of the wage replacement formula, go to Question 9. The first week is an unpaid waiting week and the worker can use accrued sick time or vacation during this week. There is a new waiting week each time a worker uses continuous leave in a year and returns to work. The [online benefit calculator](#) is a good tool to estimate a worker's weekly benefit amount. As of November of 2023, workers can top-off the benefit using sick time or PTO up to 100% wage replacement, if the employer allows it.

Example: A worker takes six weeks of family bonding leave following the birth of his son on Thursday, October 5. His benefit year runs from Sunday, October 1 to Monday, September 30 of the following year. He returns to work after 6 weeks. He uses six more weeks of bonding leave in May and June of the following year. The worker will be paid PFML benefits for only 10 weeks total because he is subject to two waiting weeks. He may use up to 14 weeks of medical leave during the benefit year, because he's already used 12 bonding weeks from 26 total weeks available during his benefit year. On October 1 of the following year, his allotment of weeks resets to 26.

The benefit is flexible and can be used for continuous, reduced schedule, or intermittent time off. Continuous leave is a single time period of consecutive, uninterrupted days off work. A reduced or part time leave schedule is a reduced work schedule that is consistent from week to week. Intermittent or episodic leave is made up of multiple episodes of time off that can be irregular or unexpected. For family bonding leaves, employer approval is necessary for any leave schedule that deviates from one continuous 12 week leave. For more, see number 6 below.

## **2. Who gets PFML**

Almost all employees in the state and former employees for up to six months after their separation from employment, regardless of how they separated. To be financially eligible, the employee must have been paid a total of at least \$6,300 in the base period or alternate base period (see Section 17), and at least thirty times their weekly benefit amount (typically, at least 4-5 months of work).

The Department of Family and Medical Leave (DFML) bases eligibility on whether PFML contributions were remitted on behalf of the worker. While this is incorrect legally (see Sections 15 and 19), the easiest way to see if a worker may be eligible for PFML is to check their paystub for a deduction called "MA Medical," "MA FLI," or similar. DFML will currently deny workers paid by cash or 1099 tax form. These workers may sign up or "opt in" 6 months prior to their leave start date through MassTaxConnect, or appeal and argue that they are misclassified. Workers who wish to argue they are misclassified may contact GBLS for assistance, see Section 36 for more. For instructions and more information on "opting in" visit:

<https://www.mass.gov/info-details/opt-in-and-contribute-to-pfml-as-a-self-employed-individual>

There are no immigration checks for PFML. As long as the worker has deductions from her paystub, they can apply for and receive benefits. See M.G.L. c. 6A,



§ 16C. (If you run into difficulties, contact our office. For questions about the procedure, contact our office.)

Workers who are not eligible: Federal employees, municipal employees (like public school teachers), and employees of religious organizations. Cities and towns can opt their employees in, but none have done so to date.

### **3. How to get PFML benefits**

Workers must notify their employer 30 days before their leave starts or as soon as possible. A medical provider must fill out certification of serious health condition that prevents work or requires the worker to care for a family member with a serious health condition. (For bonding leave, workers can provide birth certificate or paperwork certifying the foster placement or adoption). Workers must apply within 90 days of their leave start date or risk losing benefits if they do not articulate a good cause reason for applying late.

In practice, DFML will approve the portion of leave that falls within 90 days. A late application can be appealed and fully approved if the worker has good cause for the delay, due to circumstances beyond their control. 458 C.M.R. 2.02. Common good-cause reasons are: employer failed to notify worker of the benefit, worker was unaware of benefit, medical provider took a very long time to grant an appointment or complete the form, medical condition kept worker from applying sooner, or worker was confused about eligibility because of other concurrent benefits like workers' compensation. GBLS has successfully gotten retroactive applications approved for leaves that began up to 2.5 years ago.

Applications can be filed online at [paidleave.mass.gov](https://paidleave.mass.gov) or over the phone at (833) 344-7365. Unemployed workers must apply over the phone. The online application is available in six languages (English, Spanish, Portuguese, Mandarin, Vietnamese, and Haitian Creole). The call center has staff that speaks English, Spanish, and Portuguese. Over 200 languages are available upon request for an interpreter.

Workers with multiple employers must file an application for each "current employer" from which they are taking leave. DFML considers a "current employer" to be any employer a worker has not formally separated from, even if it's a part time job they have not worked in several months. Recent job changers usually have to appeal the approval from the new job to correct the benefit amount and include wages from the prior job.

## 4. Timeline of PFML application



## Part 1: Before applying for benefits

### 5. What you need before you apply

- Document certifying the leave (usually medical certification or birth certificate). Available at <http://www.mass.gov/hcp-form>
- Back and front of valid photo ID (such as drivers license, state ID, US or foreign passport, work authorization card, etc.)
- Employer Identification Number (EIN) of the employer you are taking leave from. (This can be found on a W-2, or you can ask the employer for the number.)
- Bank account number and routing number (if choosing direct deposit. Payment is also available by paper check or debit card but direct deposit is significantly faster)

### 6. Getting the right certification

DFML accepts medical certifications signed by: Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in a state and within the scope of their practice as defined under the law of that state; Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are within the scope of their practice as defined under the law of that state; Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and equivalent health care providers in foreign countries. If a worker needs medical

treatment in another country, or they are caring for a family member in another country, they can receive PFML benefits.

Advocate with the worker's medical providers to obtain the time off work that they need. A serious health condition can include: mental health, elective surgery, migraines, back pain, medical treatment, or time to recover following medical treatment. Especially for maternity leave, the recovery time is historically subjective: many doctors are willing to certify 8, 10, 12, or 14 weeks to allow the new mother time to fully recover, address complications from the birth, or address new health issues that arise while caring for the baby, like mastitis or post-partum depression.

The most common use of PFML is "continuous leave," where the worker cannot work at all for one or more weeks in a row. This would apply to surgery, hospitalization, car or workplace accidents, bonding leave with a new child, and more.

Reduced schedule leave may be appropriate when a worker has a chronic condition that doesn't let them work as much as they normally work. For example, a worker that typically works 40 hours per week and develops back pain may be able to work 24 hours a week and take PFML 16 hours a week. In this case, the medical leave can last up to 50 weeks because the worker is only using 40% of a "PFML week" each week. Or, a worker who attends physical therapy or chemotherapy each Friday may work the other four days and take PFML for just one day a week under a reduced schedule leave. Another example is a worker who normally works 50 to 60 hours a week may get a medical certification limiting him to 40 hours a week, and then receive PFML benefits for 15 hours a week. Reduced schedule leave can also be used after a continuous leave to ease the worker back into their job. In this way, reduced schedule PFML is similar to a disability accommodation at work, but it has much stronger job protection because there is no employer defense of undue hardship.

Intermittent leave is for time off in uneven amounts or at unpredictable times. Common examples are: migraines, asthma, fibromyalgia, depression, and chronic pain. A medical provider can certify the condition for up to 12 months at a time. Parents can use intermittent leave to care for their children with complex medical issues or disabilities that require many medical appointments. Intermittent leave is sometimes called episodic leave. PFML payments will not be automatic for a worker with an approved intermittent leave because of its unpredictable nature. In order to get paid, the worker has to report the PFML hours taken to DFML over the phone or online. Note that if worker reports more leave than they are approved for, the "extra" leave will not be paid but *will* be deducted from their yearly leave allotment.

## **7. Communicate with the employer**

The law requires workers to provide notice to their employer of their need for time off work, the expected duration of time off work, and the reason (medical or family). The PFML application asks the date in which the worker told the employer. They do not need to use the words “PFML,” and it is okay if they didn’t specify. But usually it is best to tell the employer the worker plans to apply for PFML benefits so they know what to expect.

While verbal notice meets the legal requirement, it is always best to notify the employer in writing (email, text) so that there is evidence in case a problem arises. They do not have to give the employer any medical paperwork unless the employer asks for it. A doctor’s letter with the dates the worker needs off work is sufficient. (After a worker applies for PFML, the employer’s leave administrator (usually HR) will be able to see a copy of their certification of serious health condition. Workers may wish to give the employer a copy directly, but they do not have to.

The employer has to maintain your health insurance while a worker is on leave, but the worker has to continue to pay their portion of health insurance premiums. If they don’t, there may be a large bill waiting to be paid when they return to work. The easiest way to take care of this is to “top off” their PFML benefits with sick time or PTO so that the employer can deduct health insurance premiums from the top-off amount.

Note that unemployed workers applying for PFML within 26 weeks of separating from their job do not need to notify their former employer of their need for PFML benefits. 458 CMR 2.08 (2). If an employer fails to notify the worker in writing of PFML rights, within 30 days of hire, with a signed acknowledgement, including instructions to apply and the employer EIN, then the worker has no obligation to notify the employer of the need for PFML time off work or to give 30 days notice. G.L. c. 175M, § 4(b). Workers who, in their application, disclose they have not notified employer of their need for leave will likely be denied. They will have to appeal and provide their reason for not notifying the employer. See Section 6 below for more information on the appeals process.

## **8. Combining PFML with other benefits**

PFML runs concurrently with any other use of time off for a qualifying reason. Workers’ PFML allotment of time off gets exhausted when workers take time off for a disability accommodation, a workplace injury, unpaid FMLA, short term disability, or any

other time off associated with a qualifying condition, even if they do not apply for PFML benefits. So make sure they do apply to maximize benefits.

### **Vacation, Sick time, PTO**

The first week of PFML is the unpaid “waiting week.” G.L. c. 175M, § 3(a). Workers often use vacation, sick time, or PTO during this week.

DFML allows workers to receive the difference between their PFML benefits and their usual pay by using accrued vacation, sick time or PTO. This is called “topping off.” (Employers may or may not allow topping off, as long as they have a uniform policy that does not treat PFML differently than other similar circumstances.) PFML benefits are usually 80% of the average weekly wage (“AWW”), so the top off amount is usually 20%. For a worker who works 40 hours a week, topping off will usually cost 8 hours of PTO per week. For an exact calculation, use the [PFML benefit calculator](#) and subtract WBA from AWW. Or use the worker’s PFML approval notice, which contains the same information. For the number of PTO hours, divide by their hourly rate. DFML’s position is that they are not involved in the “topping off” process, this is between the worker and their employer. Employers cannot require workers to exhaust vacation, sick time, or PTO before or during PFML leave. G.L. c. 175M, § 2(h)(1)(iii).

### **Workers Compensation**

A worker injured at work is eligible for workers compensation paid by the employer’s accident insurance company. Workers comp and PFML run concurrently, meaning that the 26-week allotment of PFML is used up for any week in which the injured worker cannot work, regardless of whether the worker applies for PFML.

Workers comp usually pays 60% of wages. Any medical condition that qualifies for workers comp should also qualify for PFML. The PFML application will ask if the worker is receiving workers comp and they must report it. Workers comp is the first payor, so PFML will deduct the amount of workers comp and pay the difference (usually 20%). See G.L. c. 175M, § 3(c).

Workers compensation can be slow. In cases where employers are contesting the workers comp benefit and have not agreed to pay anything, the advantage of applying for PFML is that it will pay more and it will pay faster. Workers do not have to report pending workers comp if they have not received anything yet. They will be paid out the full PFML weekly benefit amount. DFML will place a lien against any future workers comp benefits whenever the Certification of Serious Health Condition indicates the condition is a job-related injury (question 11). The insurance company should pay

DFML directly. However, if they pay the worker, then the worker should mail a check for the same amount to DFML and report it.

**Report:** DFML Contact Center at (833) 344-7365

**Repay:** mail a check to DFML:

Department of Paid Family Medical Leave  
PO BOX 411605  
BOSTON MA 02241-1605.

In some cases, DFML may provide notice you can repay online at  
<https://www.masspays.com/EOL>

### **Unemployment Insurance (UI) benefits**

An unemployed worker may be eligible for PFML benefits for up to six months after separating from employment. G.L. c. 175M, § 1 (“Covered Individual”). Financial eligibility for unemployed workers is determined based on wages paid in the four complete calendar quarters prior to the date of separation, not the usual four complete quarters prior to the date of leave. Id. As long as the first day of PFML leave starts within 6 months of separation, the PFML leave may continue well past the 6-month limit. UI generally pays 50% of average weekly wage, whereas PFML generally pays 80% of average weekly wage. So, a former employee who can qualify for PFML should use the more generous benefit.

Example: A pregnant worker earned \$500 per week. She gets laid off when she is six months pregnant because the company closes. She receives three months of unemployment benefits, worth \$250 per week, until her doctor certifies her medical leave should begin. Then, she stops claiming UI and applies for PFML. Her UI claim will close automatically 3 weeks after she stops submitting weekly certifications. Her weekly benefit amount with PFML is \$400 per week. She can receive PFML for up to six months by combining up to 20 weeks of medical leave to recover from birth with up to 12 weeks of bonding leave to care for the baby up to maximum 26 weeks. When her PFML benefits run out, she can re-open her UI claim and continue receiving UI benefits for up to 3 more months, until she finds a new job.

**Practice Note:** It’s important to keep in mind that an unemployed worker’s PFML qualifying reason may make them ineligible for UI benefits. Generally, to collect UI a worker must be available for work, capable of working and searching for work. A Serious Medical Condition may make them incapable of work and thus ineligible for UI. Similarly, caring for a family member with a Serious Medical Condition may make them unavailable for work and thus ineligible for UI. In these cases, the worker should apply

for PFML and once their leave begins, stop their weekly UI certifications. The UI claim will close automatically after they fail to request/certify for benefits for 3 weeks. Then, once they are eligible for UI again, the worker can reopen the claim and if still eligible, continue claiming their remaining UI weeks.

### **Short term disability (STD)**

STD usually pays 60 to 67% of a worker's wages. In theory, PFML benefits are not reduced by the amount of STD payments, unless the aggregate would exceed the worker's usual pay or average weekly wage. G.L. c. 175M, § 3(c). That sounds good. But in practice, contractually all STD insurance policies require the worker to first apply for PFML, and then reduce STD payments by the amount of PFML benefits received. Because PFML pays a higher percentage of wages, this often results in STD payment of \$0. The only workers who may receive any STD payments are those who hit the PFML maximum benefit cap (\$1,170 in 2025).

Example: Worker earns \$110,000 per year. Her average weekly wage is \$2,116.00. Her STD benefit is 60% of that, which would normally be \$1,269.60. Her PFML weekly benefit amount is \$1,170. Because STD is reduced by PFML, she will receive \$99.60 per week for STD.

### **Social Security Disability Insurance (SSDI)**

A worker who cannot return to work at the end of the maximum 20 week PFML medical leave may be eligible for SSDI. If the worker is approved for SSDI for the same dates as PFML, the worker should call the DFML Call Center to report SSDI. PFML benefits are reduced dollar for dollar by any SSDI received. Because SSDI is much slower than PFML, this will likely lead to an overpayment and the worker should repay DFML the SSDI benefits they receive for the same weeks they already received PFML.

### **Massachusetts Parental Leave Act (MPLA)**

Massachusetts anti-discrimination law gives parents 8 weeks of job-protected unpaid time off work for each child. G.L. c. 149, § 105D. For example, a new father to twins can take 16 weeks off work to care for the children and cannot be fired for taking the time off work, even though PFML gives only 12 weeks max. These benefits run concurrently, so they cannot be added together.

### **Accommodations**

A worker may be entitled to reasonable accommodations before, during, or after taking a PFML leave.

**During leave:** In many cases of PFML medical leave, the worker's job is also protected as a reasonable accommodation for a disability under state and federal disability law. In the case of a temporary disability, where "there is reason to believe that a leave of absence will provide a period during which the employee will be able to recover and return to work," even an "indefinite unpaid leave of absence [is] [a] 'reasonable' accommodation" Hannah v. United Parcel Serv., Inc., 72 F.4th 630, 637 (4th Cir.), cert. denied, 144 S. Ct. 379, 217 L. Ed. 2d 205 (2023). See also Graves v. Finch Pruyn & Co., 457 F.3d 181, 185–86 (2d Cir. 2006); Humphrey v. Mem'l Hosps. Ass'n, 239 F.3d 1128, 1135–36 (9th Cir. 2001); Cehrs v. Ne. Ohio Alzheimer's Rsch. Ctr., 155 F.3d 775, 783 (6th Cir. 1998); Baucom v. Potter, 225 F. Supp. 2d 585, 592 (D. Md. 2002).

A reduced schedule PFML leave can be an effective way of getting an accommodation of reduced hours or no overtime at work. A worker that usually works 55 hours per week but can no longer work overtime due to health reasons can request PFML for 15 hours a week. The employer cannot deny the PFML leave in the same way they can deny a reasonable accommodation for "undue hardship" on the business. A reduced schedule leave of 40% or less can be renewed indefinitely because a 40% leave can last up to 50 weeks ( $20 \text{ weeks} / 0.4 = 50 \text{ weeks}$ , basically a full year).

**Returning from leave:** A worker who needs accommodations when returning from PFML should provide a doctor's letter with as much detail as possible. For example, reduced hours or a lifting restriction may be reasonable accommodations.

Many employers request a fitness for duty certification from the doctor before a worker can return to work. But to require this certification for workers returning from PFML leave, the employer "must provide an employee or covered contract worker with a list of the essential functions of their job within ten business days of the notice to the employer ... of the approval of leave by the Department and must indicate that the certification must address the employee or covered contract worker's ability to perform those essential functions." 458 C.M.R. 2.11(2), (3). In other words, it cannot be a surprise when the worker tries to return to work. An employer cannot delay or deny return to work if it failed to give the worker the required list and request on time. Federal FMLA has the same protection. 29 CFR § 825.312(e).

## **9. Predicting how much the weekly benefit amount will be**

The easiest way to predict the weekly benefit amount is to use DFML's online benefit calculator: <https://calculator.eol.mass.gov/pfml/yourbenefits/>. Always double-check the weekly benefit amount using the calculator or by hand calculation, because DFML often approves claims for a benefit amount that is too low.



To perform the hand calculation, first calculate average weekly wage. Average weekly wage is defined as:

“an amount equal to one twenty-sixth of the total wages reported for an individual in the two highest quarters of his base period; provided, that if wages reported include not more than two quarters in said base period, his weekly wage shall be deemed to be one thirteenth of the total reported for the highest quarter. If such weekly wage includes a fractional part of a dollar it shall be raised to the next highest dollar.” G.L. c. 175M, § 1; G.L. c. 151A, § 1(w).

**Example 1:** A worker has total quarterly wages for the last four completed calendar quarters of: \$0, \$5000, \$6,000, and \$8,000. One twenty-sixth of the two highest quarters is  $(\$6,000 + \$8,000) / 26 = \$538.46$ . AWW = \$539.00. (Average weekly wage is always rounded up to the whole next dollar).

**Example 2:** A worker has total quarterly wages for the last four completed calendar quarters of: \$0, \$0, \$10,000, and \$14,200. Because this worker only has earnings in two quarters, we take the highest and divide it by 13:  $(\$14,200 / 13) = \$1,092.30$ . AWW = \$1,093.00. (When there are only one or two quarters, AWW is the highest quarter divided by 13, rounded up).

Next, because of the progressive wage replacement covered in question 1, the weekly benefit amount is 80% of the wages up to half of the state average weekly wage (SAWW), and 50% of the wages above half of the SAWW. In 2025, the SAWW is \$1,829.13. The maximum weekly benefit amount is \$1,170.64, which is 64% of SAWW. G.L. c. 175M, s. 3(b)(2). Note that these numbers can change every year.

**Example 1:** AWW = \$539.00. Half of SAWW is \$914.57. Because AWW is less than \$914.57, it is replaced at 80%. WBA =  $\$539.00 * 0.8 = \$431.20$ .

**Example 2:** AWW = \$1,093.00. Half of SAWW is \$914.57. Because AWW is greater than \$914.57, it is replaced as follows: WBA =  $\$914.57 * 0.8 + (\$1,093.00 - \$914.57) * 0.5 = \$820.87$ .

## Part 2: Job Protection and Employer obligations

A worker cannot be fired because she took PFML leave. The law is very strong because it presumes that any negative action within six months of PFML leave is retaliation. In court, the employer would have to show “clear and convincing” evidence that it would have taken the same action at the same time, regardless of the use of

PFML. G.L. c. 175M, § 9(b). If the job fires a worker because they took PFML leave, the worker is entitled to reinstatement to the same job, lost wages for wrongful termination, emotional distress damages, costs, interest, and attorneys' fees.

Sometimes workers think they can never be fired while on PFML leave, but that is not true. If the employer has documented significant poor performance and is firing other workers with similar performance issues, that is legal. If the employer is laying off many workers because business is slow, and one of those workers is on PFML leave, that is legal.

## 10. For any qualifying absence

PFML protects a worker's job for any qualifying absence. A worker does not have to say the words "PFML," or apply for PFML benefits for the job to be protected. 458 C.M.R. 2.02 explains that "Job Protected Leave" means "The period of time described in 458 C.M.R. 2.16(1), immediately following the first date on which an employee commences the taking of any type of leave that is associated with a qualifying reason, regardless of whether an application for benefits has been submitted to the Department in connection therewith or whether that leave is paid or unpaid." Even if the employer *could* require the worker to apply for PFML to have the job protected, the worker has 90 days from the first day of leave to submit an application to DFML. G.L. c. 175M, § 5(a). So, the employer cannot practically or legally require an application for benefits to hold the job.

**Serious Health Condition.** PFML follows FMLA in determining if a worker has a "serious health condition," or qualifying medical absence. 29 CFR § 825.113, 114. A serious health condition is any of the following:

- Inpatient care: Overnight stay in a hospital or medical facility
- Incapacity for three consecutive calendar days **PLUS**
  - Treatment two or more times within 30 days **OR**
  - Treatment one time with a regimen of continuing treatment
- Any period of incapacity due to pregnancy, or for prenatal care.
- A chronic serious health condition that (i) Requires periodic visits for treatment by a health care provider; (ii) Continues over an extended period of time (including recurring episodes); and (iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but there is continuing medical supervision.
- Surgery after an accident or other injury

- A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**Family care.** When a family member has a serious health condition and requires care from the worker, such as bringing to appointments, helping with medications, or preparing food, that is PFML-eligible and job-protected time off. PFML defines family member much more broadly than FMLA. Family members include: the spouse, domestic partner, child, grandchild, sibling, parent, grandparent, parent of a spouse or domestic partner of the covered individual; or a person who stood in loco parentis to the covered individual when the covered individual was a minor child. G.L. c. 175M, § 1.

Family care may be in another country. In that case, the worker may need to bring a translated certification of serious health condition to the foreign medical provider to fill out and sign, then provide a translation back to English. DFML may also request a document showing the health care provider is certified in that country, such as a license, a medical stamp on a letter, or a letter on letterhead from a hospital. See [the appendices section](#) for translations of the Serious Health Condition form.

**Bonding leave.** The birthing parent and the non-birthing parent can take up to 12 weeks off in the first year of the child's life. For a newborn, the parent submits a copy of the hospital record of birth or birth certificate which names the parent.

An adoptive or foster parent can take up to 12 weeks off in the first year following the adoption or placement. The parent submits a certificate from the child's doctor or from an adoption or foster care agency involved in the placement or the Massachusetts Department of Children and Families that must confirm both the placement and the date of the placement. 458 C.M.R. 2.08(5)(d).

Bonding leave is a kind of family leave, so it counts against the annual allotment of 12 weeks. This means a worker cannot take 12 weeks to care for a spouse with a serious health condition and then take 12 more weeks to care for a new child, within a twelve month period. The MPLA may still be available for the worker, see Question 8 above. If the new child develops a serious health condition, the parent cannot take more than 12 weeks off in any 12-month period to care for and bond with the child.

## **11. Same or equivalent job**

At the end of PFML leave, a worker must be "restored to the employee's previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of leave." G.L. c. 175M, § 2(e).

A worker does not have a right to accrue seniority or vacation or other benefits while on leave. *Bodge v. Commonwealth*, 494 Mass. 623, 625 (2024) (interpreting “same... length-of-service credit and seniority as on the date of leave” to mean there is “no loss of accrued length-of-service credit and vacation and sick time” during PFML leave, but also no additional accrual.)

## 12. Treble damages on lost wages?

There is debate about whether courts will treble damages on lost wages in PFML cases. So far, no meritorious cases have reached a judgment. Some advocates say PFML treble damages are optional because the law says “the court *may*.” This contrasts to FMLA, where the law says “Any employer who violates section 2615 of this title *shall* be liable” for lost wages and liquidated damages equal to lost wages (double damages). 29 U.S. Code § 2617(a)(1).

However, other advocates point out that PFML says:

“The court **may**: (i) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violations of this section; (ii) reinstate the employee to the same position held before the violation or to an equivalent position; (iii) reinstate full fringe benefits and seniority rights to the employee; (iv) **compensate the employee for 3 times the lost wages, benefits and other remuneration and the interest thereon**; and (v) order payment by the employer of reasonable costs and attorneys' fees.” G.L. c. 175M, § 9(d).

A better way to read this is: once a court decides to issue back pay, it issues “3 times” the lost wages. The statute doesn't say “up to 3 times.” It says you “may” issue relief in several different forms — here's the menu: TROs, reinstatement, 3x lost wages, and attorneys' fees. This makes sense because there is no guidance on when to treble or if the court can double: if lost wages are due, they are trebled. (Credit to Emma Quinn-Judge for this argument).

## 13. Report employer failure to notify

Employers have to give a written notice of PFML rights within 30 days of hiring the worker. One common reason for workers to not apply for PFML, or delay taking time off, or not tell the employer about their leave is that the employer failed to tell the worker about PFML rights. This is very common with non-birthing parents who get one or two

weeks of vacation for the birth of a child, then go back to work because they don't know they have a right to more time off.

You can report an employer for failing to provide notice of PFML rights at this link: <https://www.mass.gov/forms/report-employer-pfml-notification-failure>. The employer will have to prove that workers signed an acknowledgement of PFML rights, or else pay a fine to the state. If an employer fails to notify the worker in writing of PFML rights, within 30 days of hire, with a signed acknowledgement, and including instructions to apply and the employer EIN, then the worker has no obligation to notify the employer of the need for PFML time off work, or to give 30 days notice. G.L. c. 175M, § 4(b). This is an important argument when the employer seeks to undermine PFML rights by saying the worker failed to give proper notice. For more on this, see Question 7 above.

## **14. Private Plans**

An employer may meet its obligations under the PFML statute by offering equivalent or better benefits and protections through a private insurance company or by self-insuring. G.L. c. 175M, § 11. Large employers that already offer short-term disability, paid parental leave, or similar benefits may find it is more cost-effective to have the same insurance company manage PFML benefits.

In practice, this adds an extra layer of complexity for the worker applying for PFML. Many large companies use third-party leave administrators to manage FMLA or STD leaves, so the worker receives instructions to contact the leave administrator. But the company may still participate in the public PFML plan, in which case the worker has to apply to DFML if they want the leave to be paid. And if the worker applies to DFML when the employer uses a private plan, the denial notice from DFML will not say which private plan or who to call. The DFML Call Center can refer to employers with a private plan as “employers with an exemption” or “exempt employers,” which is highly misleading. (Such employers apply for an “exemption” from making PFML payroll contributions to the Department of Revenue. 458 C.M.R. 2.07(1)). Note that as of August 2025 the DFML Call Center can identify for workers the approved private plan they have on file for their employer.

### **Applying for PFML leave with a private plan**

Each private plan has its own process and forms for applying for PFML leave. But, they must accept any certification form that would be accepted by DFML (including FMLA and DFML forms). Usually the employee has to call, fax forms, or create an

online account. HR should provide instructions upon request. A list of all private plans and contact information is in the appendices section.

Just like the public plan, a private plan must issue a decision to approve or deny within 14 days of receiving a complete application. G.L. c. 175M, § 8(b). However, the plan can send a request for information (RFI) if it does not have all the information it needs. The RFI will delay the decision because the application is not deemed “complete.”

### **Appealing PFML decisions with a private plan**

Private plans must provide an appeals process. 458 C.M.R. 2.07(2)(c). All notices and decisions from a private plan should include a right to appeal, including approval notices. 458 C.M.R. 2.07(2)(d). The worker must send a copy of her appeal to the employer that maintains the private plan. 458 C.M.R. 2.14(3). The worker needs to request a hearing if they want a hearing. 458 C.M.R. 2.14(4).

If a worker appeal is unsuccessful, the worker has a right to a second appeal to DFML to challenge the private plan decision. The private plan “final decision,” must notify the worker of the right to appeal to DFML. 458 C.M.R. 2.07(6). The worker can appeal the DFML decision to the district court.

In practice, very few private plans explain the right to appeal. Many private plans refuse to process applications of former employees or process the application as if it were FMLA or short term disability. Workers who are not satisfied with the private plan decision or who have been not been given the chance to apply should contact the private plan point person at DFML ([AnnMarie.Coughlin@mass.gov](mailto:AnnMarie.Coughlin@mass.gov)) or call or email DFML.

## **15. What happens if my employer doesn’t enroll me in the public PFML plan or an equivalent private plan?**

An employer that is not paying into the PFML trust fund when they should be paying in has to re-pay the value of the PFML benefits that DFML pays out, plus the retroactive payroll contributions for all workers for the time they were out of compliance at the current annual rate (0.88% of payroll in 2025). G.L. c. 175M, § 8(g). The same is true if the employer fails to maintain or renew the private plan after receiving a private plan approval from DFML, and effectively offers nothing. 458 C.M.R. 2.07(7)(f).

In both of these cases, the worker should apply to the public plan administered by DFML at [paidleave.mass.gov](http://paidleave.mass.gov) or by calling the call center. DFML will deny the application due to no wages on file or approved private plan. Then the worker must appeal, provide proof of wages, and explain that the employer did not comply with the

statute by making payroll contributions or maintaining the private plan. See G.L. c. 175M, § 7(c) (“An employer's bankruptcy or noncompliance with this chapter shall not interfere with a worker's ability to collect family and medical leave benefits under this chapter. Family or medical leave benefits paid from the trust fund to such a worker may be recovered through bankruptcy proceedings or from the non-complying employer. The director shall institute administrative and legal action to recover family or medical leave benefits paid through the trust fund”).

## Part 3: Applying for benefits

### 16. Tips for applying

**Online or over the phone.** An application can be submitted in six languages online at [paidleave.mass.gov](https://paidleave.mass.gov) or 200+ languages over the phone. The application is mobile-friendly. A former employee must apply over the phone. A worker who does not know the employer EIN can more easily apply over the phone. (In the online application, a worker who does not know the employer EIN can enter 00-0000000 and then answer additional questions about the employer. This usually results in a denial, which can be appealed and fixed by submitting proof of employment to help DFML find the correct employer.)

An advocate can add her phone number to an online account as a secondary method of verifying logins, so that the client does not have to be available every time she checks the account. At present, there is no advocates' portal or account. If a worker applies over the phone, they can later link their phone application to the online platform by clicking the right-hand side of the screen and inserting their NTN number.

**Documents.** By preparing all the documents in advance (front and back of photo ID, medical certification, W-2, banking information), you can minimize the chance of delayed or denied benefits. The dates in the application should exactly match the dates on the medical certification. For a worker with various names or aliases, DFML is expecting the application name to match the W-2 and medical certification. It is not a problem if the photo ID includes other names. For example, DFML will approve an application for “John Smith” if that is the name on the W-2 and/or medical certification, but the passport has a full name of “John Anthony Smith Collins.” If the first or last name has completely changed (for example, marriage or gender transition), DFML will want some proof that the applicant is the same person who earned the wages, which can be done thorough a mix of testimony and documentary evidence at hearing.



**Apply in advance.** DFML allows applications up to 60 days before the leave starts. This can be helpful because getting an approval letter before the leave starts gives a worker confidence to stop working. Also, the approval letter can be used to plan “topping off” with PTO in an amount equal to the difference between average weekly wage and weekly benefit amount. This feature is also helpful for unemployed workers switching between UI and PFML benefits, as they can know in advance exactly when to stop requesting weekly UI benefits. However, some early applications may be wrongly denied if the worker needs more wages to qualify for PFML, but will have enough wages earned by the leave start date. (Employers only report wages 4 times a year, January 31, April 30, July 31, and October 31, so DFML does not have a record of recent wages until those dates). For more details, see Part 6 (Appeals).

**Apply retroactively.** Workers have 90 days to apply for benefits without any risk. After that, DFML will only approve the portion of the leave that falls within 90 days of the application date and deny the portion of the leave that is older than 90 days. However, this denial can be appealed, and the worker can win (likely without a hearing, see Section 32 below) if they give a “good cause” reason, outside of their control, that delayed the application. 458 C.M.R. 2.02. Common good-cause reasons are: employer failed to notify worker of benefit, worker was unaware of benefit, medical provider took a very long time to grant an appointment or complete the form, or worker was confused about eligibility because of other concurrent benefits like workers’ compensation. GBLS has successfully gotten retroactive applications approved up to 2.5 years after the leave start date.

### **Maternity leave is a two-step application**

Maternity leave should include 6-14 weeks of medical recovery, followed by 12 weeks of bonding. The birthing parent must begin PFML leave by applying for pregnancy-related medical leave only, as certified by a doctor. They must appeal any denials and get an approval letter covering their medical leave for pregnancy only. Then, she can add 12 weeks of family bonding leave (subject to the maximum 26 weeks of leave in a benefit year) to the same application once baby is born using the birth certificate or the hospital registrar’s proof of birth. Workers are often confused by this two-step process. **It’s important they do not file two applications because there will be two unpaid waiting weeks.** There is a button in the online application to add bonding, or the call center can add it easily. Each year, thousands of new parents miss out on paid time off because they only use one of the two parts of maternity leave under PFML.

**Practice Note:** if the pregnant worker’s doctor does not specify in question 12 of the medical certification the worker needs some weeks off work for pregnancy or prenatal care, the medical leave dates may shift once that worker applies for bonding



leave based on the actual date the child was born which may lead to an overpayment. See section 37 for more details.

## 17. Eligibility

### Eligibility follows the worker

PFML eligibility can start on day 1 of a new job, as long as the worker has sufficient wages from other jobs in the base period to be financially eligible. A full-time, part-time, or seasonal employee of a Massachusetts business or the state government or agency is eligible for PFML benefits. A former employee is also eligible for the first 26 weeks after separation from employment. (The main categories of workers who are not eligible are municipal employees, federal employees, and independent contractors who have not opted in for PFML coverage. If the worker worked in a public-school building but was paid by a third-party contractor, they are eligible).

To be financially eligible for PFML benefits and job protection, a worker must meet two tests. First, they must have at least a minimum amount of total wages in the base period (\$6,300 in 2025). Second, the worker must have total base period wages greater than 30 times the weekly benefit rate. "Wages received from multiple employers or covered business entities within the base period can be aggregated to determine financial eligibility for leave." 458 C.M.R. 2.02.

Note: DFML applies a test that total wages in the base period must be greater than 30 times the PFML weekly benefit amount (WBA), which is a more difficult test than the statutory test. The statutory test is found at G.L. c. 151A, § 24(a), and requires a worker to have earned 30 times the weekly benefit *rate*. Weekly benefit rate is defined as 50% of the AWW, up to 57.5% of the SAWW. G.L. c. 151A, § 29(a). There is litigation pending on this difference.

Because the second test depends on quarterly wages and the worker may not have easy access to quarterly wages, it is usually easiest to simply apply for PFML. The approval or denial notice will show a table with all quarterly wages on file for the worker.

**Example 1 (30X WBA):** A worker has total quarterly wages for the last four completed calendar quarters of: \$0, \$5,000, \$6,000, and \$8,000. AWW = \$539.00. WBA = \$431.20. ( 30 \* \$431.20 ) = \$12,936. Total wages of \$19,000 are greater than 30X WBA, so DFML will find the worker is eligible.

**Example 2 (30X WBA):** A worker has total quarterly wages for the last four completed calendar quarters of: \$0, \$0, \$10,000, and \$14,200. AWW = \$1,093.00. WBA = \$820.87. ( 30 \* \$820.87 ) = \$24,626.10. Total wages of \$24,200 are less than 30X WBA, so DFML will find the worker is not financially eligible.

**Example 2 (30X Weekly Benefit Rate):** A worker has total quarterly wages for the last four completed calendar quarters of: \$0, \$0, \$10,000, and \$14,200. AWW = \$1,093.00. WBR = \$546.50.  $(30 * \$546.50) = \$16,395.00$ . Total wages of \$24,200 are greater than 30X WBA, so GBLS believes the worker should be financially eligible.

### **What is my base period?**

The standard base period is the last four completed calendar quarters preceding the benefit year. G.L. c. 175M, § 1; G.L. c. 151A, § 1(a). The benefit year is the 52 consecutive weeks starting on the Sunday preceding the first day of leave. G.L. c. 175M, § 1. If an applicant is not eligible using wages from the standard base period, or if the benefit amount would increase by at least 10%, the applicant may use wages from the alternate base period. The alternate base period is the last *three* completed calendar quarters preceding the PFML leave start date, plus the *incomplete* calendar quarter in which the leave starts. G.L. c. 151A, §1(a). This is the same for unemployment benefits.

**SBP Example:** a worker who takes PFML leave starting Wednesday, April 16, 2025 will have a benefit year starting Sunday, April 13, 2025. The base period is from April 1, 2024 to March 31, 2025 (the second quarter of 2024 through the first quarter of 2025).

**ABP Example:** If the leave starts on June 15, 2025, the alternate base period is from July 1, 2024 to June 14, 2025. The alternate base period is only used on appeal. If the worker believes they would be eligible or receive a benefit increase of at least 10%, they will have to appeal and provide proof of wages. The reason for this is that the employer does not report wages until after the calendar quarter is completed.

When an applicant applies before the leave start date, DFML uses a base period of the last four completed calendar quarters preceding the *application date*. 458 C.M.R. 2.02. This only matters when the application date is in a different calendar quarter than the leave start date. (This has no statutory basis, but it allows DFML to process the claim without waiting for the leave to start or for the quarter to end.) On appeal, DFML will use the standard base period (4 quarters preceding Sunday preceding leave start date) if the application-date base period resulted in a denial or if the applicant requests it.

The other scenario when DFML departs from the statutory definition of base period is when the application is filed, or the leave starts, in the first month of a new quarter (January, April, July, or October). Employers have 30 days from the end of the quarter to report wages, so DFML will not have wages reports for the most recently

completed quarter. To get around this, DFML will use the four most recently *reported* calendar *quarters*. However, for relatively new employees who need wages from the most recent quarter to meet the earnings requirements, this leads to frequent wrongful denials of benefits. This can be fixed on appeal, as described below.

**Example:** a worker who takes PFML leave starting Wednesday, April 16, 2025 will have a benefit year starting Sunday, April 13, 2025. The base period *should be* from April 1, 2024 to March 31, 2025 (the second quarter of 2024 through the first quarter of 2025). However, if the application is filed before the employer reports Q1 wages, then DFML will use a base period of January 1, 2024, to December 31, 2024. To use Q1 wages, the applicant would have to appeal. Usually, by the time the appeal is filed and processed, the employer has reported the wages for the recent quarter and the worker can be approved. The worker can also submit proof of recent wages directly to DFML during the appeal.

### **Bottom line on financial eligibility**

Always appeal a denial due to financial eligibility. The worker may be eligible after considering wages the employer has not yet reported from a recently completed calendar quarter, or after considering wages from the alternate base period. The worker may also be eligible under the less strict 30X WBR financial eligibility test, or if there are wages and employer failed to report them, or if the worker was misclassified and the employer failed to make payroll deductions. Use the PFML benefit calculator to estimate eligibility: <https://calculator.eol.mass.gov/pfml/yourbenefits/>

### **Do I need a valid work authorization to apply for PFML?**

No. As long as the worker has PFML deductions from her paystub, she can apply for and receive benefits without any issue. See M.G.L. c. 6A, § 16C. There are no immigration checks. These benefits are entirely funded and administered by the Commonwealth of Massachusetts, and there is no federal involvement. (If you run into difficulties or have questions, contact our office.)

When an application is filed, DFML checks whether there are reported wages and PFML trust fund contributions matching the employer EIN and worker SSN (or ITIN) listed in the application. If there is a match, then DFML checks whether there are enough wages to be financially eligible. If there is no match, or if there are not enough wages, DFML will deny the application and the worker will have to appeal and provide proof of wages earned under their name.

## 18. Certification documents

Medical leave must be certified by a health care professional caring for the worker. Family leave must be certified by the health care professional caring for the family member of the worker.

Bonding leave for a biological child is certified by a hospital birth record or a state birth certificate. Bonding leave for foster placement or adoption is certified with a document from DCF, a placement agency, or a health care provider showing the **placement** and the **date of placement**.

DFML also requires proof of identity. The document must have a photo (front and back must be uploaded) and be valid (unexpired). DFML accepts a driver's license, state ID card, passport (US or foreign), work authorization card, and other documents listed here:

<https://www.mass.gov/info-details/required-documents-for-your-paid-family-and-medical-leave-pfml-application>

## 19. Misclassified and “Mislocalized” workers

At present, DFML automatically denies all applications where the employer failed to remit PFML trust fund contributions. This means employees that have been misclassified as independent contractors by their employers will be denied benefits. The same goes for “mislocalized” workers, those whose employers reported their wages to another state, even though they should have been reported to Massachusetts. These terms and their legal terms are covered in more detail in Section 36 below.

The first option for these workers is to appeal the denial, submit proof of earnings, and argue that, pursuant to G.L. c. 175M, § 1, G.L. c. 151A, § 2 and G.L. c. 151A, § 3, the worker was an employee with a Massachusetts employer, and the employer should have been remitting PFML trust fund contributions. DFML currently defers to the employer's classification of its workers and its decision to report wages to a state other than Massachusetts. Workers who wish to challenge their misclassification or mislocalization should contact GBLS.

The second option is for the misclassified worker to opt in to PFML coverage by voluntarily paying both the employer and employee contributions to the Department of Revenue (DOR) and notifying DFML of his intent to opt in to PFML. This is a cumbersome process described at these two links:

- DFML Opt in process:  
<https://www.mass.gov/info-details/paid-family-and-medical-leave-coverage-for-self-employed-individuals>

- DOR Opt In process:  
<https://www.mass.gov/info-details/opt-in-and-contribute-to-pfml-as-a-self-employed-individual>

## **20. Unemployed workers and former employees**

Employees are eligible for PFML benefits for up to 6 months after separating from employment. It does not matter if they were fired, laid off, or quit. These workers have a unique base period. Normally, the base period of wages for financial eligibility is the last four completed calendar quarters prior to the first day of leave. However, G.L. c. 175M, § 1 says that for former employees, eligibility is determined “at the time of the former employee’s separation from employment.” That means the base period will be the last four completed calendar quarters prior to separation from employment. (If DFML gets this wrong on the approval notice, appeal and ask for a base period correction.)

To apply for benefits, former employees must call the DFML call center using their former employer’s EIN. The online portal is only available to current employees. Once they apply over the phone, unemployed workers can link their application to the online portal by clicking the prompt to do so on the right-hand side of the screen.

DFML will not approve an application filed using a former employer’s EIN if the worker is currently employed.

## **21. Who is not eligible for PFML?**

First, any employment excluded from unemployment benefits is also excluded from PFML. These exclusions are found in G.L. c 151A § 6:

- work for the United States government
- work for a school, college, or university, by a student who is enrolled and is regularly attending classes
- work for a hospital or a nurses' training school by a student nurse who is regularly attending classes
- work for a foreign government
- work as an insurance agent or real estate broker when paid only by commission
- work distributing newspapers by a minor
- work for a church or organization operated primarily for religious purposes
- work for a state or federally-funded work training program
- work for a rehabilitation facility by individuals with mental or physical disabilities
- work by an incarcerated person

- work for a seasonal camp by a full-time student

Second, municipal employees are excluded, unless the “municipality, district, political subdivision or authority” opts in to PFML benefits for its employees. To date, no local governments have opted in. So, the following employees are excluded:

- public school teachers, administrators, paraprofessionals, and custodians
- local public works employees
- city hall or town hall staff

Finally, properly classified independent contractors or self-employed individuals are excluded (unless they opt in individually).

## **22. Blocked applications or Call Center refusals**

Some applicants are not able to submit an application online due to software errors. This most commonly happens with applications where the employer EIN is not known. The easiest work around blocked online applications is to apply over the phone. (The call center does not require the applicant to know the EIN. For unknown EIN in the online application, the applicant can use 00-0000000 and then answer additional questions about employer name and address. This usually results in a denial, but it can easily be fixed on appeal by providing proof of earnings).

Some applicants are told by the call center they cannot apply if the application is more than 90 days late. This is unlawful and the applicant should ask to speak to a supervisor, or hang up and try to apply again.

Some applicants are told by the call center they should apply online. Ask to speak to a supervisor or say that it is your right to apply over the phone until they agree to fill out the application with you.

Some applicants who apply for bonding leave are told they cannot apply until the child is born. This is not true. Workers can apply for leave using the due date as certified by the birthing parent’s doctor. However, they will have to mail or upload proof of the birth (hospital birth record; child’s birth certificate; statement from the child’s health care provider with the child’s date of birth; statement from the parent’s health care provider with the child’s date of birth).

If you face any of these barriers, keep a record and contact GBLS. For blocked applications online, save a screenshot. For blocked phone applications, make a note of the date, time, and phone number you are calling from.

## **23. Request For More Information (RFI)**

Instead of denying an application, DFML will often request more information. This happens when they do not receive certification documents or identity documents, or if there is a problem with the documents. If the RFI is not clear, call the call center. The RFI letter says workers have 14 days to respond, but in practice DFML allows 30 days for a response before denying the application.

## **24. Is my benefit amount correct?**

Weekly Benefit Amount (WBA) is between 65% and 80% of usual earnings. If workers are approved for a WBA that seems too low, you can appeal the approval. The scenarios below are common examples of DFML calculating the wrong benefit amount.

### **More than one current employer**

An applicant must submit a separate application for each job from which they are taking leave. Each application will only pay benefits based on wages from that employer. DFML calls these employers “concurrent employers.” Even if the job is part-time and they have not worked there in months, as long as you are technically still employed, that counts as a current employer and the worker must submit a separate application to get the right WBA.

### **Former employers in the past year**

DFML allows recent job-changers to use wages from a former employer to bump up the benefit amount. However, the application does not collect enough information for DFML to consistently or automatically provide this bump up. If workers appeal the weekly benefit amount and notify the appeals department that they have been at the current job for less than 26 weeks of the leave start date, then DFML will use wages from the former employer to raise the WBA.

DFML does not allow use of wages from former employers to bump up the benefit amount when the worker has been with their current employment for 26 weeks or longer. This is an active area of litigation, because the statute says that a worker’s Weekly Benefit Amount should be based on “total wages reported for the individual in the two highest quarters of the base period.” Total means all. DFML’s 26-week exclusion rule has no statutory basis.

### **Lag in wage reporting**

Employers have 30 days from the end of a calendar quarter to report wages to DFML. These reports are due on January 31, April 30, July 31, and October 31. This means that for a leave that starts in January, April, July, or October, DFML most likely will not have access to wages from the most recent calendar quarter at the time you apply for benefits. So, the benefit amount may be wrong.

Benefits are based on earnings in the two highest-earning completed calendar quarters in the year preceding your leave start date (unless the worker applies and asks the Alternate Base Period be used, see Question 17 above). If one of a worker's two highest-earning quarters is the most recent quarter, you can appeal the benefit amount. Then, submit proof of wages (such as a paystub from the end of March, June, September, or December). If they don't have a paystub, workers can ask the Appeals department to check if the employer has reported the wages yet.

### **Missing Wages**

Sometimes employers fail to report wages to DFML. Out of state Employers may report the wages to another state in error. Employers may also mistakenly report the wages under an SSN with a typo, or an ITIN the worker is no longer using. The last page of the approval or denial notice has a table of all wages on file for that worker. If they earned wages that are not shown in the table, workers can appeal the benefit amount or denial and provide proof of the wages.

Missing wages are common for misclassified and mislocalized workers. If a worker is legally an employee of a Massachusetts Employer, but the employer misclassifies them as an independent contractor or as their work being localized elsewhere, then the worker will have no wages on file and will have to appeal, provide proof of earnings, and argue that they are really a Massachusetts employee and the employer should have been paying PFML contributions (See Section 19). Workers who wish to challenge their misclassification and mislocalization should contact GBLS.

### **Alternate Base Period**

A worker may use the alternate base period to increase her benefit amount as explained in Section 17 above. The alternate base period is the last three completed calendar quarters, plus the incomplete calendar quarter in which the leave starts. If using wages from the incomplete calendar quarter would increase benefits by at least 10%, then DFML allows it. The employer will not have yet reported these wages, so the worker has to appeal and provide proof of the earnings (such as the last paystub from right before the PFML leave starts).



The most common use of the Alternate Base Period is to make an ineligible worker financially eligible for benefits. This is often the case for workers who have not been in the Massachusetts workforce for very long. If the worker is not financially eligible for benefits using wages from the last four completed calendar quarters (standard base period), they can appeal and use wages from the alternate base period to become financially eligible.

## Part 4: During Leave

### **25. Communicating with the employer during leave**

The worker should proactively communicate with the employer during leave when they are getting ready to return to work, or when they need additional time off work. The worker should respond to reasonable communications from the employer.

An employer may request certain medical proof during a leave. An employer can request re-certification of a medical condition when there is a request to extend leave, or of an intermittent medical leave that has lasted for more than six months. 458 C.M.R. 2.10(4)(j). If certain conditions are met, an employer may also require a doctor's letter clearing the worker to return to work and delay the return to work until they receive such a letter. This is called a "fitness for duty" certification. To require the certification, the employer must first (1) notify the worker within 10 days of the initial approval of PFML leave that it will be requesting the "fitness for duty" certification before returning to work, (2) list all of the worker's essential job functions so that the medical provider can confirm the worker is able to resume all functions, and (3) apply this requirement uniformly to all similarly-situated workers. 458 C.M.R. 2.11.

### **26. Extending PFML leave**

To request an extension of PFML leave, the worker must submit a "change request" in the approved application, not a new application. The worker must provide a doctor's letter on letterhead or a new medical certification that states the reason for, and the dates of, the extension. 458 C.M.R. 2.10(4)(b). The worker must also give notice to their employer as soon as possible. The general rule is the worker should provide 14 days' notice of the need to extend leave, or as soon as possible. 458 C.M.R. 2.10(4)(a). DFML allows extension requests any time after the leave has been approved, until 30 days after the leave has ended. To request an extension after 30 days, file an appeal of the approved claim and request to change the end date of the leave.

(DFML does not enforce the regulation that extensions must be requested 14 days prior to the end of the leave, because doctors often wait to see how the recovery is progressing and are reluctant to extend the leave until the very end.)

## Part 5: Returning from Leave

Workers are not required to return to work at the end of a leave. Employers cannot penalize workers in any way for failing to return to work. (This contrasts with FMLA, where a worker may be required to re-pay all employer-paid health insurance costs from during the leave if the worker chooses not to return at the end of the leave).

### 27. Health insurance

Employers are required to maintain the same health insurance plan for the worker during the leave. G.L. c. 175M, § 2(f). However, the worker generally still has to pay their portion of the monthly insurance cost. 458 C.M.R. 2.16(1). If a worker does not make arrangements with HR to make these payments during the leave, they may face a large bill for unpaid premiums when they return to work. The easiest way to avoid the large bill is to use a small amount of PTO each week to “top off” PFML benefits and arrange for HR to deduct health insurance premiums from this PTO payment.

### 28. Other Employment Benefits

A worker does not have a right to accrue seniority or vacation or other benefits while on leave. *Bodge v. Commonwealth*, 494 Mass. 623, 625 (2024) (interpreting “same... length-of-service credit and seniority as on the date of leave” to mean there is “no loss of accrued length-of-service credit and vacation and sick time” during PFML leave, but also no additional accrual.)

### 29. Reinstatement

The worker must be reinstated to the “previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of leave.” G.L. c. 175M, § 2(e). Employers must reinstate all other employment benefits upon return, including but not limited to: group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits, and pensions. 458 C.M.R. 2.02 (“Employment benefits”).

The SJC has clarified that the law does not require that workers continue to accrue vacation or seniority during leave. In effect, a worker’s seniority *relative to other workers* may decline in proportion to the amount of leave taken. See *Bodge v. Commonwealth*, 494 Mass. 623 (2024). Said another way, the PFML leave period “need

not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.” 458 C.M.R. 2.16(1).

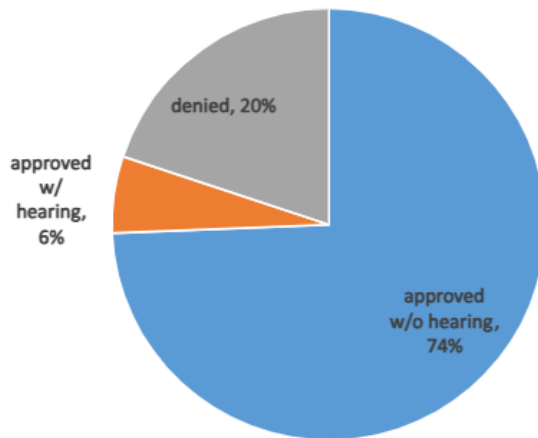
Some people believe they cannot be terminated while on PFML leave, or upon returning from leave, but that is not true. An employer can lay off a worker on PFML leave if they have also laid off similarly situated workers. G.L. c. 175M, § 2(e). An employer can terminate a worker on PFML leave if they would have terminated the worker regardless of the use of PFML leave. G.L. c. 175M, § 9(b). However, in court, the burden is on the employer to prove by “clear and convincing evidence” that “the employer had sufficient independent justification for taking such action and would have in fact taken such action in the same manner and at the same time the action was taken, regardless of the employee's use of leave.” *Id.* This special burden on the employer and presumption of retaliation starts on the day the worker requests leave and runs until six months after the end of the PFML leave. *Id.* DFML does not enforce the job protection aspect of the law. The worker has to bring an action in Superior Court against their employer to do so.

## Part 6: Benefit Appeals Process

### **30. You have a good chance of winning your appeal**

DFML approves approximately 85% of all applications. However, data from 2023 shows that more than 20,000 applications were approved on appeal after being initially denied. 74% of all appeals are approved without a hearing. In this case, the appeals department will review the initial decision and contact the applicant to provide more information (via phone or mail). An additional 6% of appeals are approved after a hearing.

## Outcome of Appeals (2023)



### 31. Requesting an appeal

An appeal can be requested over the phone, online, or via mail. The worker can appeal an approval (to request modification) or a denial (to request approval). The worker has 10 calendar days to appeal, starting from the date they receive the decision. The “reason for appeal” can be left blank, it can be “I disagree with this decision,” or can state the factual or legal argument about why the person should be eligible or the decision should be modified.

The online account “appeal” button disappears after one appeal is filed. If more than one appeal is necessary, such as when a claim is denied and then approved for the wrong dates, the second appeal can be made via mail, calling the DFML call center or by submitting an appeal intake form at:

<https://www.mass.gov/forms/appeal-intake-form> Advocates can also email DFML’s appeal manager at [Daniel.R.DeCotis@mass.gov](mailto:Daniel.R.DeCotis@mass.gov).

It is often helpful to request the “appeal case folder” from DFML’s [public records request form](#) or by filling out DFML’s File Request Form, available at: <https://www.mass.gov/forms/dfml-case-file-request-form>. (Only the applicant can do this.) The appeal case folder will contain all documents used to reach the decision, such as answers from the initial application, the quarterly wages reported by the employer to DOR and the Department of Unemployment Assistance (“DUA”), the employer questionnaire response, records of other income such as workers compensation, copies of certification or identity documents, the notes of the call center and or adjudicator summarizing facts or conclusions, etc. It is especially helpful to get the Appeal Case

Folder if the denial notice is too vague to directly rebut in the “reason for appeal” field, and the applicant is genuinely confused about why they were denied.

DFML allows late appeals for good cause, defined as “due to circumstances beyond the party’s control.” This determination is at the total discretion of the appeals department. In practice, good cause at DFML is a lenient, flexible standard based in fairness.

Good cause for late appeal has been granted in the past when there was a language barrier, a health issue that delayed appeal, a lack of information about the specific reason for the denial (e.g. denial notice stating “employer provided disqualifying information”), where employer told the worker they were not eligible thereby discouraging appeal, when the worker was delayed in obtaining the documents necessary to win an appeal (such as corrected medical certification or valid photo ID or proof of wages), where the appeal button disappeared from the online account, where the worker did not know about the alternate base period, where the worker did not understand how financial eligibility was determined, that there is a lag in wage reporting, or how benefits were calculated, among others.

## **32. Redeterminations**

DFML resolves about 75% of appeals through redetermination. This is an informal process without a hearing. To maximize the chances of redetermination, advocates should try to figure out exactly why the decision was made and what information is needed to fix it. The appeals department will often try to call the worker to get information or request documents. The worker can upload documents online with their appeal or after their appeal. The appeals department may also allow documents to be emailed to the review examiner assigned to the case. For difficulties with the redetermination process, you can contact: [daniel.decotis@mass.gov](mailto:daniel.decotis@mass.gov) (DFML appeals department manager).

## **33. Common denials that can be resolved by redetermination**

### **Late application denial or partial approval of dates**

In general, applicants have 90 days from the start of PFML leave to apply for benefits. If the application is submitted late, then DFML will approve only the portion of leave that falls within 90 days of the application date. If the application was filed more than 90 days after the end of PFML leave, the entire application will be denied.

Always appeal a late application denial. GBLS has won appeals for applications that were filed up to 2.5 years late. The appeal should explain why the application was late. It must be for “circumstances beyond the party’s control.” 458 C.M.R. 2.02 (“Good Cause”). Past examples of good cause for late application include: employer did not tell worker about PFML, employer said they would not be eligible, worker did not know about PFML, worker did not know PFML could be received at the same time as workers comp, worker applied for unemployment because they did not know about PFML (and got denied unemployment due to incapacity), worker did not have a doctor at the time of the accident or start of leave, it took a long time to get a doctor’s appointment to certify the condition, worker did not have a printer to print the certification form, worker submitted general medical records because they did not know there was a special PFML certification form (see below about documentation), worker was unemployed and did not know an unemployed worker retains eligibility for PFML for six months after losing their job.

### **Documentation denials**

Notify the appeals department of when you believe the worker will get the updated document (medical certification or ID), and they can postpone the hearing and allow time to upload the updated document. Once uploaded, they will try to redetermine the case before re-scheduling the hearing. Hearings can be postponed for months to allow time for documents to be fixed or obtained.

One of the most common denials is lack of [Certification of Serious Health Condition](#) (CSHC) or missing information in the CSHC. It can be time-consuming to get a health care provider to correct the certification. **Tip: the doctor can write a letter with clinic or hospital letterhead that states the missing information.** Many times, it is faster to get a letter than to have the doctor update the 4-page CSHC form.

Common mistakes include:

- **Questions 14-16:** Must put an end date for incapacity. When health care providers are not sure how long the incapacity will last, they sometimes write “TBD” or leave the end date blank. Advocate with the worker’s provider that they **must put an end date**. The end date can be updated in the future.
- **Question 10:** Must state job functions the worker cannot perform. This question requires the patient to describe their job to the health care provider and list the job functions the illness is preventing them from doing.
- **Questions 17-24:** Must contain all healthcare provider information. For doctors in other countries, DFML also requires a letter on hospital letterhead, a copy of the

provider's license, a letter stamped with the provider's official stamp, or some other document showing the provider is licensed.

Some claims are also denied if the photo ID is blurry, black-and-white, expired, if only the front or back is uploaded or it does not meet some other criteria. For example, passports must show the signature, which is sometimes on the page above the photo page. Photo ID must be in color. Acceptable IDs include: driver's license, state ID, federal ID such as Permanent Resident or Work Authorization card, passport (US or foreign), tribal ID card, or liquor license. For alternative documents, see DFML's [ID verification page](#).

### **Benefit reduction due to other income**

If there is an error in the application or the employer response about whether any other income is being paid during the leave, then the PFML benefits may be reduced. For workers with more than one concurrent employer who are receiving workers comp benefits, DFML often deducts the workers comp from both applications in error. Workers should appeal and explain what other income is being received for what dates or point to which application the workers comp is already being deducted from. For example, if the worker uses 4 weeks of PTO at the start of a 12 week leave, DFML may accidentally reduce benefits to \$0 for all 12 weeks. Usually, after the worker provides information in the appeal, DFML can fix the issue.

### **Benefit allotment was exhausted**

PFML medical leave can last up to 20 weeks and PFML family leave can last up to 12 weeks each benefit year. The maximum combined leave is 26 weeks each benefit year. The "benefit year" starts on the Sunday prior to the first day of any leave for a qualifying reason and lasts for 52 weeks. G.L. c. 175M, § 1. If the worker or the employer report prior use of leave for a qualifying reason in the past 12 months, then the worker's PFML allotment will be reduced.

Sometimes there is a misunderstanding. For example, a worker who takes a vacation for 2 weeks to visit her parents is not taking PFML leave. But if the employer knows the parents are sick, they may report it as prior use of family leave. Or a worker may accidentally report past illness as "medical leave." However, without hospitalization or in-patient treatment, it is very unlikely that the illness was a "serious medical condition," so it was probably not a "qualifying reason" for PFML. Usually, these misunderstandings can be cleared up by the worker appealing, asking why the benefit allotment was reduced, and then giving more information.

In other cases, the leave allotment reduction is correct. For example, any past use of workers comp will count against the PFML leave allotment. If worker didn't know this, consider a retroactive application for that time. Or, if the worker cares for a sick family member and then has a baby in the same benefit year, they will receive less "bonding leave" as "family leave" used to care for the sick family member comes out of the same 12-week allotment as "bonding leave" for a new child.

### **Employer-provided information**

The most frustrating denial notice says "You are not eligible for Paid Family and Medical Leave (PFML) benefits because your employer provided information indicating that your application for family or medical leave benefits should be denied." Always appeal immediately! You can leave the appeal reason blank or say "the denial notice does not explain why I was denied, so I cannot tell you why it is wrong. I just disagree."

To find out what the employer wrote, request the "appeal case folder" from DFML's [public records request form](#). Then, workers can contact the call center and provide their version of events, and ask them to share with appeals or ask appeals to call the worker.

Usually, the information the employer provides is false or irrelevant. For example, the employer might say the worker didn't tell them about needing PFML leave until 1 day before the PFML leave started. DFML will deny benefits. However, the benefits should be approved if:

- The worker actually provided 30 days of notice G.L. c. 175M, § 4(b).
- The worker had a good reason for providing 1-day notice (like a car accident or other sudden medical need). G.L. c. 175M, §4(b) ("or shall provide notice as soon as practicable if the delay is for reasons beyond the employee's control.")
- The worker did not receive written instructions about PFML from the employer at the time of hire. G.L. c. 175M, § 4(b) ("If an employer fails to provide notice of this chapter as required under subsection (a), the employee's notice requirement shall be waived.")

### **Private plan denial or incorrect approval**

A worker who disagrees with a decision by a private plan must appeal to the private plan and send a copy of the appeal to the employer that maintains the private plan. 458 C.M.R. 2.07(2)(c); 458 C.M.R. 2.14(3). In practice, private plans are very informal and



may fix a claim with a phone call. In other cases, the private plan may simply not process the appeal or refuse to process the claim all together.

An appeal to a private plan should be in writing, with a date. After making a good-faith effort to appeal the private plan decision, the applicant can appeal to DFML. There is no formal channel to appeal to DFML, so the worker can try the following:

1. Call the DFML call center and request an appeal of the private plan decision. Explain that the worker already tried to appeal the decision to the private plan.
2. Fax or mail an appeal to the DFML appeals department and explain that the worker already tried to appeal the decision to the private plan, and why the worker believes the decision was wrong. Include a copy of the written appeal to the private plan, showing the date it was sent.

Department of Family and Medical Leave  
P.O. Box 838  
Lawrence, MA 01842  
Fax: 617-855-6180

3. Email [AnnMarie.Coughlin@mass.gov](mailto:AnnMarie.Coughlin@mass.gov) (DFML private plan point person) and explain that the worker already tried to appeal the decision to the private plan, and why the worker believes the decision was wrong. Include a copy of the written appeal to the private plan, showing the date it was sent.

Contact information for all DFML approved private plans as of August of 2025 is included in the appendices section of this Guide. If a worker doesn't know what private plans covers them, they should ask the Call Center or their current/former employer.

## **34. Preparing for Hearing**

If an appeal cannot be resolved informally through redetermination, a hearing will be scheduled. The worker will receive an email and a letter with information to join the hearing via Webex video call or telephone. (All hearings have both options). The worker should plan to be alone in a quiet place for the hearing. Hearings are normally scheduled for 30 to 60 minutes. DFML has created a helpful guide for hearings available at:

<https://www.mass.gov/info-details/the-department-of-family-and-medical-leave-dfml-virtual-hearings-guide>

It is best to upload documents before the hearing, but workers can also request more time during the hearing to upload documents. Usually the review examiner will allow a few days to a week. The review examiner may also give workers an email address to submit documents. For difficulties with the hearing process, you can contact [daniel.decotis@mass.gov](mailto:daniel.decotis@mass.gov) (DFML appeals department manager).

## **35. Common denials that can be resolved at hearing**

### **Not Financially Eligible**

There are many reasons why an eligible applicant may be found “not financially eligible” at the initial decision. This can be fixed on appeal, but it usually requires proof of wages and a hearing to explain the work history and proof of wages.

The relevant wages for being financially eligible are: all wages from the past 4 completed calendar quarters AND wages from the most recent incomplete calendar quarter in which the leave starts. This is basically the last 15 months. To show quarterly earnings, send DFML the last paystub from March, June, September, and December. Or, show other payment records (like bank statements or deposited checks) that are detailed enough to see monthly earnings. You can also submit proof of annual earnings like W-2's and 1099's.

### **Scenario 1: Not financially eligible due to missing wages**

DFML is often missing wages from the most recent completed calendar quarter. This happens whenever the application is filed before the employer reports those wages. Workers and Advocates can tell this is the problem if the wage chart on the last page of the denial notice is missing the most recent calendar quarter. Appeal and ask DFML to use wages once the employer reports them. You can also upload the worker's paystub from the most recently completed calendar quarter (paystub from right before March 31, June 30, September 30, December 31). DFML will usually fix this without a hearing.

A less-common reason that wages are missing is the employer failed to report them. If the employer fails to report to DFML, DFML will check with DUA before denying the application. In practice, this happens when the employer is not paying the required payroll contributions. Submit the worker's W-2 and paystubs and be ready to explain their work history at the hearing. DFML will usually approve this kind of claim and then charge the employer back-taxes.

Another reason wages can be missing is the employer is reporting wages and paying payroll taxes to the wrong state. We call this mislocalization. This is common if the worker works in MA, but the employer is based in a neighboring state (CT, NH, RI,

VT). The worker must submit proof that their work was performed or localized in MA. As of August 2025, it is unlikely that DFML will approve this appeal, and so a court appeal will be necessary. See more information below and contact GBLS for potential representation.

### **Scenario 2: Alternate base period**

If a worker is not financially eligible using all the methods above, then appeal and ask DFML to use wages from the alternate base period. The worker must upload the paystub showing their work right before the PFML leave started. DFML will be able to calculate the wages earned in the incomplete calendar quarter by subtracting the YTD earnings of the most recently completed calendar quarter. These wages might make the worker eligible. To check using the PFML benefit calculator, enter the wages from the last 3 completed calendar quarters and the recent wages from the partial quarter in the 4<sup>th</sup> box.

### **Scenario 3: Worker applies with an ITIN**

A worker who files taxes with an ITIN has their payroll taxes reported under an SSN. So, when they apply for PFML with an ITIN, there are no PFML payroll taxes in the DOR database. The worker can appeal and submit proof of wages. It is also helpful to submit a copy of an MA state tax return showing the W-2 wages from the SSN are included under the tax filer's name, address, and ITIN. This will require a hearing to discuss employment history and to verify that the wages were truly earned by the applicant.

## **36. Problems with claims that are not usually resolved at hearing and need to be appealed to court**

While many cases can be resolved through a redetermination or appeal hearing, some cases may have to be appealed to court. A worker who disagrees with a hearing decision may file an appeal to court within 30 days of receiving the hearing decision. G.L. c. 175M, § 8(d). The appeal may be filed in the district court within the district in which the covered individual lives, or is or was last employed, or has a usual place of business. Id. In such cases, the Department of Family and Medical Leave is the defendant. Id. Please contact GBLS for possible assistance with the issues described below.

Workers can find the appropriate district court by typing their address (or the address where they work or worked) on the following website:

<https://www.mass.gov/orgs/district-court/locations>.

### **Misclassification**

In some cases, workers who should be treated as employees eligible for PFML benefits are “misclassified” by their employers. When an employer says a worker is not an employee (or calls them self-employed or an independent contractor) it will not make PFML contributions on their behalf or report their wages to DOR or DUA. When this happens, DFML will have no record of the wages paid by this employer. Therefore, DFML will deny the worker benefits (or may approve based on other jobs for a lower weekly benefit amount than they should).

On appeal, DFML goes with whatever classification the employer decided (as of May 2025). If the employer decided the employee was not an employee and did not make contributions or report wages, then DFML will deny the appeal.

The correct legal standard is that any “service” performed by anyone for anyone else “shall be deemed to be employment” “unless and until” the alleged employer proves all three of the following from G.L. c. 151A, § 2, known as the ABC Test:

- A. The worker “has been and will continue to be free from control and direction” by the alleged employer.
- B. The worker performs the service “outside the usual course of the business” or “outside of all the places of business of the enterprise for which the service is performed.”
- C. The worker is “customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.”

In other words, the employer has to prove that the worker is NOT an employee, and PFML benefits should be approved “unless and until” the employer proves that. Practically speaking, the employee will still have to prove they performed services and that they were paid enough money to be financially eligible for PFML benefits (for example, being paid at least \$6,300 in the past year, for PFML leaves starting in 2025).

Misclassified workers who wish to challenge their financial eligibility denials by arguing they should be classified as employees may contact GBLS for possible assistance.

### **Wages reported to a different state (Mislocalization)**

To determine financial eligibility, DFML looks at wages reported to the MA DFML and the MA DUA. If the employer reported the wages to another state, DFML will not see the wages and will deny the claim. This happens most often when the company is based in a neighboring state and most of its workforce is not in MA, so they treat everyone as if they worked in the neighboring state. We call this mislocalization and it is common with construction jobs, traveling sales jobs, or other jobs where the headquarters has little connection to where the worker actually performs the work on a daily basis.

To determine whether the worker's wages should have been reported in Massachusetts, the PFML statute incorporates a test from the unemployment insurance statute, G.L. c. 151A, § 3. The standards from this provision are also found in DFML's regulations defining what workers and businesses are covered as "Massachusetts covered individuals" and "Massachusetts employers," respectively. 458 C.M.R. 2.01(2).

At the hearing, the worker must show that the work was "localized in Massachusetts," 458 C.M.R. 2.01(2)(a), or that it was not localized in any state, but part of the work was performed in MA, 458 C.M.R. 2.01(2)(b).

Under (2)(a), work is considered "localized in Massachusetts" if it is entirely performed within Massachusetts. It is also localized in MA if there is some work in other states, but that work is "incidental to the individual's service in Massachusetts," such as temporary, transitory, or isolated work in other states.

Under (2)(b), if the work is not localized in any state (meaning it doesn't fit (2)(a) because there is significant work in more than one state), then it can be considered work in MA if the individual's "base of operations" is in MA or the management's "place from which the service is directed and controlled" is in MA. It can also be considered based in MA if the "base of operations" or "place from which the service is directed and controlled" is not in any state, but the individual lives in MA.

The worker should submit records of where they worked jobs, such as schedules, work assignments, paystubs showing state income taxes reported, or any other records. The worker can also submit records of when or how often they had to go to the headquarters or any offices outside of MA. The worker can give testimony about where they worked or bring witnesses.

As of August 2025, DFML does not apply these statutory and regulatory provisions, and instead defers to where the employer reported wages. Workers who wish to challenge their employer's reporting to another state may contact GBLS for possible assistance.

Alternatively, these workers may be able to get benefits approved if their employer is willing to retroactively report wages and make contributions on their behalf to

Massachusetts. Then, the worker can appeal the denial and notify DFML that the employer has recently reported the wages to MA retroactively.

### **Wrong weekly benefit amount**

DFML often calculates the weekly benefit amount wrong when there was more than one job in the “base period” year before the PFML leave starts. DFML calculates PFML benefits separately for each employer, based on the “average weekly wage” from that employer. 458 C.M.R. 2.02 (“average weekly wage”). That means it requires a separate application for each current employer. It does not allow or approve applications filed against a former employer if there is a current employer. So, for example, a worker who had two jobs for a full year but lost one of those jobs shortly before taking PFML leave, the regulations and internal policies say the worker can only get benefits based on the current job.

At the hearing, the worker should always argue that benefits should be based on “total wages reported for the individual in the two highest quarters of his base period.” G.L. c. 151A, §1(w). Total means all. That is what the UI statute says, and PFML adopts the definition of average weekly wage from the UI statute. G.L. c. 175M, § 1. The worker should also include information in the appeal about when each job started and ended.

It is sometimes possible to get multiple employers included in the weekly benefit amount with or without a hearing. In other cases, DFML will refuse to include all wages.

**Example 1:** If the current employer reported wages in 2 calendar quarters before PFML leave, then DFML assumes the work lasted more than 26 weeks. This is often a false assumption. The worker can provide the start date at the current employer and show it is within 26 weeks (182 days) of when the leave started. This will usually get approved before or after a hearing.

**Example 2:** If the separation from the former employer was less than 26 weeks before PFML leave started, the worker should report the separation date. Then, the worker can argue that a “recent former employer” should be included in the benefit calculation. The DFML appeals department is not very consistent in how it handles these cases, but it may get approved. (Note that if there is no current employer, the worker is eligible as an unemployed worker under G.L. c. 175M s. 1: “covered individual” - “separated from employment” for less than 26 weeks. In that case, the wages from the former employers will probably be included on appeal.)

**Example 3:** If the worker changed jobs more than 26 weeks before taking PFML leave, DFML is very resistant to including the wages of the former employer. This will

require a second appeal to court to argue about the meaning of “total wages.” There is litigation pending on this issue as of August 2025.

### **37. Overpayments**

DFML began sending overpayment notices in the summer of 2024. As of May 2025, the only collections action they take is when the entire overpayment can be re-paid through 50% benefit reductions of a currently approved PFML leave. This is fairly rare.

The most common overpayment we have seen is when a pregnant worker is approved for PFML leave based on a medical certification, and then the birth certificate shows the birth was more than 14 days after the start of the medical certification. In that case, DFML automatically shifts the leave start and end dates forward and issues an overpayment for the 2-3 weeks of pre-natal medical leave. This is especially common if the doctor wrote a medical leave start date before the due date, but failed to check the box for “prenatal medical leave.” This auto-date-shift can be appealed and fixed by insisting the medical certification is clear that pre-natal leave is needed, or by obtaining a doctor’s letter clarifying that the worker was advised to stop working on the original leave start date. If the appeals department approves the appeal, the overpayment will be cancelled.

Overpayments are also common when a worker returns to work early and fails to notify DFML right away. Sometimes, an overpayment will occur when a worker who has recently changed jobs applies for leave with the former employer. That can usually be resolved by filing a new application with the current employer.

The normal way to voluntarily repay an overpayment is:

**Report:** DFML Contact Center at (833) 344-7365

**Repay:** mail a check to DFML:

Department of Paid Family Medical Leave  
PO BOX 411605  
BOSTON MA 02241-1605.

In some cases, DFML may provide notice you can repay online at  
<https://www.masspays.com/EOL>

#### **Defenses to repayment**

As of August, 2025 there is no waiver process available to workers who collected PFML in error. However, the PFML regulations give applicants a strong defense to

repayment. 458 C.M.R. 2.15 states: “If the Department finds that an individual received benefits on the basis of a false statement, it may require the individual to repay to the Trust Fund any benefits received.” That statement follows the standard that a false statement was willful “if the individual:

- (1) furnishes information that the individual knew, or reasonably should have known, to be incorrect;
- (2) fails to furnish information that the individual knew or reasonably should have known to be material; or
- (3) accepts a payment that the individual knew, or reasonably should have known that the individual was not entitled to receive.

There is no application of the “willfully false statement” standard anywhere in the statute or regs. This implies that the requirement to repay benefits received “on the basis of a false statement” only applies if the statement was willful. Otherwise, there would be no need to articulate the “willful” standard before the repayment standard. Of the common overpayment scenarios, only the failure to report an early return to work seems to meet the “willful” standard (prong 2).