

Massachusetts

# Paid Family and Medical Leave Emergency Regulations FAQ

On December 21, 2020, the Massachusetts Department of Family and Medical Leave (DFML) announced Emergency Regulations that impact the Massachusetts Paid Family and Medical Leave (MA PFML) program. The regulations, which became effective immediately, primarily apply to acute care hospitals, but may also apply to other employers that have been impacted by COVID-19.

## What do the emergency regulations allow?

The emergency regulations allow acute care hospitals to extend eligibility for bonding claims in 2020 to any time in 2021, until December 31, 2021. This regulation relaxes the general rule, which limits eligibility for bonding claims during the first 12 months. For example, if an employee gave birth to a child in February 2020, they would typically be eligible bonding leave until February 2021. Per the emergency regulations, they may be eligible for bonding leave until December 31, 2021.

## Do the emergency regulations for child bonding cover natural births only, or do they also apply if an employee has or will adopt or foster a child?

All child bonding leaves available under the MA PFML law, including leaves following birth, adoption, or foster care placement, are part of these emergency regulations.

## Where can I find a copy of the emergency regulations?

A copy of the regulations can be found on the state's website, available [here](#).

## When does the extension of child bonding benefits expire?

All child bonding leave subject to the extension must be taken before December 31, 2021.

## Do the emergency regulations apply to all MA PFML absences?

No. It applies only to child bonding leave. It does not apply to military exigency leave, military caregiver leave, or any other qualifying leave of absence under the MA PFML.

## Are these emergency regulations limited to acute care hospitals or can they apply to any employer?

Although the regulations apply to acute care hospitals, they may apply to other employers. The regulations provide that if there is an unmanageable risk of disruption to operations that presents a risk to public health and safety or is otherwise contrary to the public interest, other businesses that are not acute care hospitals may submit a written request to the Director of the MA Department of Family and Medical Leave to extend child bonding leave in the manner described in the regulations. The regulations provide the Director with the discretion to grant or deny such requests after considering likely effects on public health and safety and the public interest.

## Can an employer force an employee to postpone their child bonding benefit?

No. Employers subject to these regulations are not allowed to require their employees to delay their use of child bonding leave. The decision to request the extension lies with the employee. However, employees cannot unilaterally extend their child bonding leave – the employer has discretion to grant or deny the employee's extension request.

## How can an employer using the state program for MA PFML request more information or request approval to follow the emergency regulations for extending child bonding leave?

Employers using the state run program should contact the MA Department of Family and Medical Leave at (833) 344-7365 to ask questions about benefits and/or eligibility.

## If my customer, which is not an acute care hospital, has purchased an MA PFML product from MetLife, how can they request approval for the child bonding extension provided under these regulations?

They can reach out to their MetLife Service representative or account team to inquire about the benefit extension request.

## Does this extension change the maximum amount of time available to an individual under the new MA PFML program?

No. Eligible workers may take up to 12 weeks of family leave and up to 20 weeks of medical leave and but may not take more than 26 weeks of PFML, total, in a benefit year. These emergency regulations simply shift the time for taking child bonding leave to address potential staffing issues due to the COVID-19 pandemic.

## What issues should an employer (which is not an acute care hospital) consider when deciding whether to request approval to become subject to the requirements of these emergency regulations?

- Consider whether your staffing shortages align with the purpose of the emergency regulations. In other words, will the new mandated MA PFML benefit add an unmanageable reduction in staffing in early 2021 caused by the one-time need to accommodate accrued eligibility for family leave for bonding with an individual's child based on children born, adopted, or placed in foster care in 2020?
- Since all leave benefits must be taken before December 31, 2021 per the regulations, could the extension shift staffing shortages from 1Q into 4Q because the employee will need to use the benefit or lose it?
- Employers should discuss the pros and cons of the potential extension with their legal counsel.

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