



FMLA

# Massachusetts

## Federal vs. Massachusetts Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
<b>Employers Covered</b>	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, Massachusetts has laws providing (1) parental leave; (2) paid family medical leave; (3) small necessities leave (4) earned sick time; and (5) pregnancy accommodation leave.</p> <p><b>Parental leave:</b> Employers with six or more employees.</p> <p><b>Paid family medical leave:</b> All employers.</p> <p><b>Small necessities leave:</b> Same as the federal FMLA.</p> <p><b>Earned sick time:</b> All employers.</p> <p><b>Pregnancy accommodation:</b> Employers with six or more employees.</p>
<b>Employees Eligible</b>	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p><b>Parental leave:</b> Employees who have completed the initial probationary period (not to exceed three months), or, if there is no probationary period, have been employed full-time by the same employer for at least three consecutive months.</p> <p><b>Paid family medical leave:</b> All W-2 workers, and some 1099-MISC workers, who work in Massachusetts.</p>

		<p><b>Small necessities leave:</b> Same as the federal FMLA.</p> <p><b>Earned sick time:</b> All employees working in Massachusetts who have completed 90 days of employment. Employees accrue paid or unpaid sick time based on their employer size.</p> <p><b>Pregnancy accommodation:</b> Female employees who require reasonable accommodation due to pregnancy or a related condition. A related condition includes, but is not limited to, lactation or the need to express milk for a nursing child.</p>
<p><b>Leave Amount</b></p>	<p>Generally, up to a total of 12 weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p><b>Parental leave:</b> Up to eight weeks for the birth or adoption of a child. Leave must be shared by parents working for the same employer, for a total of eight weeks combined.</p> <p><b>Paid family medical leave:</b></p> <ul style="list-style-type: none"> <li>• <b>12 weeks'</b> paid family leave (<b>26 weeks</b> to care for a service member)</li> <li>• <b>20 weeks'</b> paid medical leave</li> <li>• <b>26 weeks'</b> combined paid family/medical leave</li> </ul> <p><b>Small necessities leave:</b> A total of 24 hours during any 12-month period, in addition to leave available under the federal FMLA.</p> <p><b>Earned sick time:</b></p> <ul style="list-style-type: none"> <li>• <b>Employers with 11 or more employees</b> must provide up to 40 hours of <b>paid leave</b> per calendar year.</li> <li>• <b>Employers with fewer than 11 employees</b> must provide up to 40 hours of <b>unpaid leave</b> per calendar year.</li> </ul> <p>Employees must accrue at least one hour of sick leave time for every 30 hours worked.</p> <p>Employees must be permitted to carry over up to 40 hours of accrued but unused sick leave time into the next calendar year. The</p>

		<p>law does not require employers to allow employees to use more than 40 hours of sick time in a calendar year.</p> <p><b>Pregnancy accommodation:</b> Reasonable time off to recover from childbirth.</p>
<p><b>Type of Leave</b></p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> <li>• Birth of employee’s newborn child;</li> <li>• Placement of child with employee for adoption or foster care;</li> <li>• Providing care for employee's parent, child or spouse with serious health condition;</li> <li>• Employee’s own serious health condition;</li> <li>• Any qualifying exigency when employee’s spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or</li> <li>• Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness.</li> </ul>	<p><b>Parental leave:</b> Paid or unpaid leave (at employer’s discretion) for:</p> <ul style="list-style-type: none"> <li>• The birth or adoption of a child under the age of 18 (or under age 23 if the child is mentally or physically disabled); and</li> <li>• The placement of a child pursuant to a court order.</li> </ul> <p><b>Paid family medical leave:</b></p> <p><u>Paid family leave</u> may be used for:</p> <ul style="list-style-type: none"> <li>• The first 12 months following the birth/placement of a child;</li> <li>• To care for a family member with a serious health condition;</li> <li>• For a qualifying exigency related to service of an active duty family member;</li> <li>• To care for a covered service member family member with a serious injury or illness.</li> </ul> <p>“Family member” includes the employee’s spouse/domestic partner, child (includes <i>in loco parentis</i> relationships, among others), parent (including in-laws and parents of domestic partners), grandchildren, grandparents and siblings.</p> <p><u>Paid medical leave</u> may be used for the employee’s own serious health condition.</p> <p><b>Small necessities leave:</b> In addition to federal FMLA leave, unpaid leave is permitted to:</p> <ul style="list-style-type: none"> <li>• Participate in school activities directly related to the educational advancement of a son or daughter;</li> <li>• Accompany a son or daughter to routine medical or dental appointments; and</li> </ul>

		<ul style="list-style-type: none"> <li>• Accompany an elderly relative to routine medical, dental or other appointments for professional services related to the elder’s care.</li> </ul> <p>An “elderly relative” is an individual who is at least 60 years old and who is related to the employee by blood or marriage, including a parent.</p> <p><b>Earned sick time:</b> Employee may use accrued sick leave time, paid or unpaid, to:</p> <ul style="list-style-type: none"> <li>• Care for a physical or mental illness, injury or medical condition affecting the employee or his or her child, spouse, parent or parent-in-law;</li> <li>• Attend routine medical appointments of the employee or his or her child, spouse, parent or parent-in-law; or</li> <li>• Address the effects of domestic violence on the employee or his or her dependent child.</li> </ul> <p><b>Pregnancy accommodation:</b> Time off to recover from childbirth, with or without pay. Employers must also consider a request for a modified work schedule as a reasonable accommodation for pregnant workers, absent undue hardship.</p> <p>Employers cannot require employees to take a leave of absence due to pregnancy if another reasonable accommodation can be provided to enable the employee to perform essential job functions and remain working.</p>
<p><b>Serious Health Condition/Serious Injury or Illness</b></p>	<p><b>Serious health condition:</b> Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> <li>• A health condition lasting more than three consecutive full</li> </ul>	<p><b>Serious health condition:</b> For Massachusetts paid family and medical leave, in general, serious health condition refers to an illness, injury, impairment or physical or mental condition that involves (1) inpatient care in a hospital, hospice or residential medical care facility; or (2) continuing treatment by a health care provider.</p> <p><b>Serious injury or illness:</b> Up to 26 weeks of paid family leave may be used per year to care for a family member who is a current member of the Armed Forces,</p>

	<p>calendar days and involving a certain level of treatment;</p> <ul style="list-style-type: none"> <li>• A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective;</li> <li>• Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or</li> <li>• Any incapacity related to pregnancy or for prenatal care.</li> </ul> <p><b>Serious injury or illness:</b> In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself</p>	<p>including the National Guard and Reserves, who is:</p> <ul style="list-style-type: none"> <li>• Undergoing medical treatment, recuperation, or therapy for a serious health condition that was received or aggravated while they were deployed in a foreign country;</li> <li>• In outpatient status for a serious health condition that was received or aggravated while they were deployed in a foreign country;</li> <li>• On the temporary disability retired list for a serious injury or illness that happened while deployed in a foreign country; or</li> <li>• On the temporary disability retired list for a serious injury or illness that existed before the beginning of the member's active duty, and was aggravated by service while deployed in a foreign country.</li> </ul>
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	either before or after the member became a veteran.	
<b>Health Care Provider</b>	Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.	<p><b>Earned sick time:</b> Same as the federal FMLA.</p> <p><b>Pregnancy accommodation:</b> An "appropriate health care or rehabilitation professional" includes, but is not limited to, a medical doctor, including a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health professional authorized to perform specified mental health services consistent with the law.</p> <p>No specific provision for parental leave or family medical leave.</p> <p><b>Paid family medical leave:</b> "Health care provider" means an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or any other individual determined by the Department of Paid Family and Medical Leave to be capable of providing health care services.</p>
<b>Intermittent Leave</b>	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>	<p><b>Parental leave:</b> No provision</p> <p><b>Small necessities leave:</b> Leave may be taken intermittently or on a reduced leave schedule.</p> <p><b>Paid family medical leave:</b> Intermittent leave may be taken for child bonding if the employer agrees, for the employee's or family member's serious health condition if medically necessary, and for a qualifying exigency related to service of an active duty family member.</p> <p>Intermittent leave must be taken in increments consistent with the established policies of the employer for other forms of leave; however, leave will not be paid in increments of less than 15 minutes.</p>

		<p>Workers may not apply for payment for intermittent leave until they have eight hours of accumulated leave time, unless more than 30 calendar days have elapsed since the initial taking of leave.</p> <p><b>Earned sick time:</b> Permitted in the smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for absences or use of other time.</p> <p><b>Pregnancy accommodation:</b> No specific provision. Employers must consider providing pregnant workers with modified work schedules as a reasonable accommodation, absent undue hardship.</p>
<p><b>Substitution of Paid Leave</b></p>	<p>Employees may elect, or employers may require, accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer’s normal paid leave policies.</p>	<p><b>Parental leave:</b> Leave cannot affect the employee’s right to receive vacation time, sick leave, etc., for which he or she was eligible at the date of his or her leave.</p> <p><b>Small necessities leave:</b> An employee may elect or an employer may require the employee to substitute any of his or her accrued paid vacation leave, personal leave or medical or sick leave.</p> <p><b>Paid family medical leave:</b> Employees may choose to use accrued paid leave or leave from an extended illness leave program provided by an employer instead of paid family medical leave. The accrued leave in that case runs concurrently with any available paid family medical leave.</p> <p>Employers that pay workers during a period of family or medical leave in an amount at least equal to the paid family medical leave program benefit are entitled to reimbursement by the Department of Family and Medical Leave out of any benefits due to the worker, <b>if</b> the employer payments were made from:</p> <ul style="list-style-type: none"> <li>• A temporary disability policy or program of the employer;</li> <li>• A paid family or medical leave policy of the employer; or</li> <li>• An extended illness leave bank.</li> </ul>

		<p>Employers may not be reimbursed for payment of accrued paid leave.</p> <p>Employees may “top off” their paid family and medical leave compensation with any accrued paid leave provided under an employer policy, as long as their total weekly pay during leave does not exceed their average weekly wage.</p> <p>Paid family medical leave runs concurrently with FMLA leave and Massachusetts parental leave. Employers may apply to meet their paid family and/or medical leave obligations through a private plan that provides the same rights, protections and benefits as the paid family and medical leave law.</p> <p><b>Earned sick time:</b> Employers required to provide earned paid sick time that provide their employees paid time off under a paid time off, vacation or other paid leave policy that makes available an amount of paid time off sufficient to meet the accrual requirements of the Earned Sick Time law that may be used for the same purposes and under the same conditions as earned paid sick time under the law are not required to provide additional earned paid sick time.</p> <p><b>Pregnancy accommodation:</b> No specific provision.</p>
<p><b>Reinstatement Rights</b></p>	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p><b>Parental leave:</b> Must be restored to previous position or a similar position with the same status, pay, length of service credit and seniority as of the date of his or her leave (except where other similar employees are laid off during the parental leave). Period of parental leave is not required to be included in determining the employee’s benefits, rights and advantages incident to employment. If the employer agrees to provide parental leave for longer than eight weeks, the employer may not deny the employee re-employment rights unless the employer clearly informs the employee, in writing, prior to the commencement of, and prior to any subsequent extension of parental leave,</p>



		<p>that taking longer than eight weeks of leave will result in denial of reinstatement or the loss of other rights and benefits.</p> <p><b>Paid family medical leave:</b> Must be restored to previous position or equivalent, with the same status, pay, employment benefits, length of service credit and seniority as of the date of leave. Employee's right to accrue vacation, sick leave, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs cannot be affected by the taking of paid family or medical leave.</p> <p><b>Small necessities leave:</b> Same as the federal FMLA.</p> <p><b>Earned sick time:</b> An employer may not take use of earned sick time by an employee as a negative factor in any employment action such as evaluation, promotion, disciplinary action or termination, or otherwise subject an employee to discipline for the use of earned sick time.</p> <p><b>Pregnancy accommodation:</b> Employers are prohibited from taking adverse action against a pregnant employee who requests or uses a reasonable accommodation. This includes failing to reinstate the employee to her original employment status or equivalent position with equivalent pay, seniority, retirement, fringe benefits and other applicable service credits when the need for reasonable accommodation ends.</p>
<p><b>Key Employee Exception to Reinstatement Rights</b></p>	<p>Limited exception for salaried employees if among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met.</p>	<p><b>Parental leave:</b> No provision.</p> <p><b>Small necessities leave:</b> Same as the federal FMLA.</p> <p><b>Paid family medical leave:</b> No provision.</p> <p><b>Earned sick time:</b> No provision.</p> <p><b>Pregnancy accommodation:</b> No provision.</p>
<p><b>Maintenance of Health Benefits During Leave</b></p>	<p>Health insurance must be continued under same conditions as prior to leave.</p>	<p><b>Parental leave:</b> Leave cannot affect the employee's right to receive benefits, plans or programs, etc., for which he or she was</p>

		<p>eligible at the date of his or her leave; however, the employer is not required to pay the cost of any benefits, plans or programs during the period of leave, unless the employer pays the cost of these benefits, plans or programs for employees on non-parental leaves of absence.</p> <p><b>Paid family medical leave:</b> Employers are required to maintain the employee’s health plan benefits during leave on the same terms and conditions as though the employee had not taken leave.</p> <p><b>Small necessities leave:</b> Same as the federal FMLA.</p> <p><b>Earned sick time:</b> No provision.</p> <p><b>Pregnancy accommodation:</b> No specific provision.</p>
<p><b>Leave Requests</b></p>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p><b>Parental leave:</b> Employee must give at least two weeks’ notice to his or her employer of the anticipated date of departure and intention to return.</p> <p><b>Paid family medical leave:</b> Employees must provide at least 30 days’ notice of the intent to take leave. Notice should include the anticipated start date and length of leave, and the employee’s anticipated return date. If the employee cannot provide 30 days’ advance notice due to reasons beyond his or her control, the employee must notify the employer as soon as practicable. The employee notice requirement is waived if an employer fails to comply with its notice requirements.</p> <p><b>Small necessities leave:</b> If leave is foreseeable, the employee must provide at least seven days’ notice before the beginning of leave. If not foreseeable, the employee must provide notice as soon as possible.</p> <p><b>Earned sick time:</b> When possible, and when the need for leave is foreseeable, the law requires employees to make a good faith effort to provide advance notice of leave to their employers.</p> <p><b>Pregnancy accommodation:</b> The employee and employer are to engage in a</p>

		<p>timely, good faith and interactive process to determine effective reasonable accommodations to enable the employee to perform essential job functions. No specific employee notice requirement.</p>
<p><b>Certification Requirement</b></p>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member’s active duty or call to active duty in the Armed Forces.</p> <p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p><b>Parental leave:</b> No provision.</p> <p><b>Small necessities leave:</b> Employer may require that request for leave be supported by certification.</p> <p><b>Paid family medical leave:</b> A completed <a href="#">certification form</a> is needed for employee applications for:</p> <ul style="list-style-type: none"> <li>• Medical leave due to the employee’s own serious health condition;</li> <li>• Family leave to care for a family member with a serious health condition that relates to military service; and</li> <li>• Family leave to care for a family member with a serious health condition.</li> </ul> <p>The certification form must be completed by the employee requesting leave and the health care provider.</p> <p><b>Earned sick time:</b> An employer may require medical documentation or certification for the need to use earned sick leave time if the employee is absent for more than 24 consecutive work hours. Any reasonable documentation signed by a health care provider indicating the need for earned sick time must be accepted by the employer.</p> <p>An employer may not require that the documentation explain the nature of the illness or details of the domestic violence.</p>

		<p>An employer may not delay or deny sick leave time if this certification is not received.</p> <p><b>Pregnancy accommodation:</b> Employers may require documentation from an appropriate health care or rehabilitation professional for certain accommodation requests. However, employers may <b>not</b> require documentation for any of the following accommodations:</p> <ul style="list-style-type: none"> <li>• More frequent restroom, food and water breaks;</li> <li>• Seating; and</li> <li>• Limits on lifting over 20 pounds.</li> </ul>
<b>Executive, Administrative, and Professional Employees</b>	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	<p><b>Parental leave:</b> No provision</p> <p><b>Paid family medical leave:</b> No specific provision.</p> <p><b>Small necessities leave:</b> Same as the federal FMLA.</p> <p><b>Earned sick time:</b> Employees who are exempt from the overtime provisions of the FLSA shall be assumed to work 40 hours per workweek for the purposes of earned sick time accrual, unless their normal workweek is less than 40 hours. In this case, earned sick time is based on that normal workweek.</p> <p><b>Pregnancy accommodation:</b> No specific provision.</p>
<b>Other</b>		<p>Registered domestic partners must be treated the same as spouses for most purposes under Massachusetts law, including for employee leave purposes.</p>
<b>Statutes</b>	29 USC 2601	<p>M.G.L.A. 149 § 105D (parental leave); M.G.L.A. 175M (paid family medical leave); M.G.L.A. 149 § 52D (small necessities leave); M.G.L.A. 149 § 148C (earned sick time); M.G.L.A. 151B § 4 (1E) (pregnancy accommodation)</p>

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