

Department of Family and Medical Leave Finalizes Revised Paid Family and Medical Leave Regulations

The Department of Family and Medical Leave (DFML) has recently concluded its public hearing and comment period with respect to 458 CMR 2.00. The final version of the regulations has been submitted to the Secretary of State and is anticipated to be published on July 24, 2020.

The DFML is providing this unofficial version of the final regulation for your convenience. Below is a brief synopsis of some of the changes from the May proposed draft regulations and the final version.

- Changed titles of 2.08, 2.09, 2.12 and 2.16 in Index Section and Actual Section Headings
- Accrued Paid Leave - Expanded definition.
- Active Duty - Changed definition to require foreign deployment as a condition precedent.
- Average Weekly Wage - Clarified definition to address multiple employers.
- Average Working Week – New definition.
- Base Period – Clarified definition.
- Continuing Treatment by a Health Care Provider - Added allowance for telehealth in section (a)(3).
- Continuing Treatment by a Health Care Provider - Deleted reference to Substance Abuse in section (g).
- Extended Illness Leave Bank – New definition.
- Financial Eligibility Test - Expanded definition to address calculations where there are multiple employers.
- Former Member of Armed Services – Deleted reference to exclusion for dishonorable discharge.
- Intermittent Leave – Changed to allow usage in 15-minute increments consistent with employer policies provided, however, that payment by the Department will not be made in requests of less than 8 hours.
- Job Protected Leave – Clarified that use of a disability policy of an employer, a paid leave policy of an employer and Extended Illness Leave Bank program of an employer will begin job protected leave and such time will run concurrently with the DFML benefits.
- Section 2.06(8) - Clarified reference to Horace Mann Charter Schools.
- Section 2.07(1)(c) – Clarified eligibility for covered individuals to require coverage under a private plan.

- Section 2.07(1)(c)(2) – Extended timeline that Department can notify an employer of a change in the term of an approved exemption from 30 to 60 days.
- Section 2.07(2)(e) -Clarified criteria for financial eligibility and leave benefits under a private plan.
- Section 2.07(8)(b) – Clarified coverage where an employer terminates a private plan or leaves the state plan for a private plan or transfers among private plans.
- Section 2.07(c) – Clarifies that covered individuals can begin to file applications for benefits with the Department on the first day of the first quarter following an employer's termination of a private plan.
- Section 2.07(8)(e) – Addresses coverage of former employees and how applications for benefits are filed depending on whether covered individual is employed or unemployed at the time of filing.
- Section 2.08(10) – New section to address substance abuse.
- Section 2.10(1) – Clarifies that each request for intermittent leave shall require recertification consistent with new definition of intermittent leave.
- Section 2.10(2) – Obliges covered individual to notify the Department within 7 days of a change in circumstances affecting benefits.
- Section 2.12(2) – Clarifies that benefit determinations will be based on wages earned with a specific employer.
- Section 2.12(4) – Deleted references to allowing the Department to limit benefits based on benefits or wages received from other employers.
- Section 2.12(4) - Clarifies that leave in the case of multiple employers does not need to be taken at the same time.
- 2.12(6) – Deleted reference to leave allotment for avoidance of confusion.
- 2.12(6)(b) and (c) – Deleted references to allowing the Department to reduce benefits where the covered individual has other benefits under another employer's private plan or for wages earned from other employment.
- 2.12(6)(d)(3) – Added a new subsection to allow the Department to consider other wages earned by a covered employee as a possible reduction.
- 2.12(7) – Clarified that 7-day waiting period commences job protected leave period.
- 2.12(8)(a) and (c) – Clarified the affect on use of time provided by employer towards DFML benefits.
- 2.12(9) – Clarified situations in which employer is entitled to reimbursement.

The website provides three versions of the proposed regulations in order to facilitate your review of the final changes. First, the original version of the draft regulations posted in May can be found

[here](#). The redline version showing changes between the May version and the current version can be accessed [here](#). Lastly, the clean version of the draft final regulations can be located using this [link](#).