

## Massachusetts Department of Paid Family and Medical Leave Revises Guidance on Topping Off Benefits With Accrued Paid Leave

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~~MASSACHUSETTS DEPARTMENT OF FAMILY AND MEDICAL LEAVE (DFML) HAS ANNOUNCED THAT STARTING NOVEMBER 1, 2023, EMPLOYEES WHO APPLY FOR PFML BENEFITS DIRECTLY THROUGH THE STATE PROGRAM WILL BE ABLE TO SUPPLEMENT OR “TOP OFF” THEIR PFML BENEFITS WITH THEIR EMPLOYER-PROVIDED ACCRUED PAID LEAVE, SUCH AS PTO.~~

### Quick Hits

- The Massachusetts Department of Family and Medical Leave has announced that starting November 1, 2023, employees who apply for PFML benefits directly through the state program will be able to supplement or “top off” their PFML benefits with their employer-provided accrued paid leave, such as PTO.
- Previously, the DFML did not allow employees to top off their PFML benefits paid by the state while simultaneously receiving PFML benefits, unless their employer provided PFML benefits through an exempt private plan.
- Massachusetts PFML applications that were filed with the DFML before November 1, 2023, are not eligible to be topped off with employer-provided accrued paid leave, but any applications submitted to the DFML on or after November 1, 2023, are eligible for these top-offs.

This is a change from past guidance by the DFML, which had previously not allowed employees to top off their benefits while simultaneously

receiving PFML benefits, unless their employer provided PFML benefits through an exempt private plan.

If an employee “tops off” the employee’s PFML benefits, it means the employee is supplementing the employee’s weekly PFML benefits with available accrued paid leave provided by the employer up to the employee’s individual average weekly wage (IAWW). As explained by the DFML, the IAWW is calculated by the DFML, and it constitutes “the average amount [the employee] earned per week in the two quarters when [the employee] earned the most money (or the one quarter with the most money if the employee only worked in two or fewer quarters).” An employer’s registered DFML leave administrator can determine an employee’s IAWW and weekly PFML benefit rate by accessing the employee’s approval notice provided by the DFML.

The DFML’s [new guidance](#) states that employers and employees do not need to (and should not) report any topping-off of benefits to the DFML; employers are responsible for managing any payments made to employees on top of their IAWW, and the DFML will not get involved with managing any potential overpayments to employees resulting from these top-offs. The DFML further states that employers should tell their employees that they have the option to use their accrued PTO to supplement their PFML benefits during any leaves up to their IAWW.

PFML applications that were filed before November 1, 2023, are not eligible for top-offs, but any applications submitted on or after November 1, 2023, are eligible to have state PFML benefits topped off with employer-provided accrued paid leave. Finally, the DFML confirmed that employers with private plans still need to allow employees to top off their benefits if they have available paid time off.

In light of this new guidance from the DFML, employers may want to consider revising existing policy guidance around topping-off or supplementing PFML benefits.

## Staying Informed

Employers can access the [DFML website](#), which includes links to the DFML's regulations, notices, and other guidance.

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