



# 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 leave laws regarding (1) parental leave; (2) family medical leave; (3) earned sick time; and (4) pregnancy accommodation leave.*</p> <p><b>Parental leave:</b> Employers with six or more employees.</p> <p><b>Family medical 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. This leave requirement becomes effective for covered employers <b>on April 1, 2018.</b></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>Family medical 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</p>



		<p>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>Family medical 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 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</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>health condition;</p> <ul style="list-style-type: none"> <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>Family medical 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> <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,</p>	<p>No specific provision</p>

	<p>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 calendar days and involving a certain level of treatment;</li> <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</p>	
--	--	--

	<p>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 either before or after the member became a veteran.</p>	
<b>Health Care Provider</b>	<p>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>	<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>
<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>Family medical leave:</b> Leave may be taken intermittently or on a reduced leave schedule.</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</p>

		<p>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>Family medical 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>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 make 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, 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>Family medical 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>Family medical leave:</b> Same as the federal FMLA</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 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>Family medical 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>Family medical 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 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>Family medical leave:</b> Employer may require that request for leave be supported by certification.</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</p>

		<p>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>Family medical 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>Mass. Gen. Laws ch. 149, §105D (parental leave); § 149-52D (family medical leave); M.G.L.A. 149 § 148C (earned sick time); M.G.L.A. 151B § 4 (1E) (pregnancy accommodation)</p>

\* **Effective April 1, 2018**, Massachusetts [expanded](#) its fair employment requirements for pregnant employees. These requirements are summarized in the chart above under pregnancy accommodation leave.

**Massachusetts Commission Against Discrimination**

Boston Office  
 One Ashburton Place  
 Sixth Floor, Room 601  
 Boston, MA 02108  
 Phone: (617) 994-6000  
[www.mass.gov/mcad/index.html](http://www.mass.gov/mcad/index.html)