

**XXX CMR: Executive Office of Labor and Workforce Development
CMR xx.00 Department of Family and Medical Leave**

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Section xx.01 Purpose, Scope and Other General Provisions

- (1) **Purpose.** These regulations are promulgated to clarify procedures, practices, and policies in the administration and enforcement of the Family and Medical Leave Law, M.G.L. c. 175M.
- (2) **Scope.** XXX CMR xx.00 applies to employers and covered business entities subject to M.G.L. c. 175M, and to covered individuals, including employees and self-employed individuals who elect coverage, who are eligible for family and medical leave benefits pursuant to the provisions of M.G.L. c. 175M.
- (3) **Interaction with State and Federal Leave Laws.** Leave taken under M.G.L. c. 175M shall run concurrently with leave taken under the Commonwealth’s Parental Leave Act (section 105D of M.G.L. c. 149) and under the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 *et seq.*), as amended, when the leave is for a qualified purpose under the Parental Leave Act or the Family Medical Leave Act. Employees who take leave under M.G.L. c. 175M while ineligible for leave under the Family Medical Leave Act or section 105D of M.G.L. c. 149 may thereafter take leave under the Family Medical Leave Act or section 105D of M.G.L. c. 149 in the same benefit year only to the extent they remain eligible for concurrent leaves under M.G.L. c. 175M.
- (4) **Use of Electronic Communications.** Any written communication required or permitted under M.G.L. c. 175M or under these regulations shall be made and transmitted in the manner and form prescribed by the director, which may include by means of electronic communication. The director shall establish procedures allowing the use of the United States Postal Service

(regular mail) for persons lacking reasonable access to, or the ability to use, electronic communication.

Section xx.02 Definitions

For the purposes of these regulations, the following words shall have the following meanings, unless the context clearly requires otherwise. Terms defined under the Federal Family Medical Leave Act of 1993, as amended, and its implementing regulations shall be treated as persuasive, supplementary authority when those definitions are not facially inconsistent with the terms adopted in M.G.L. c. 175M and hereunder.

“Average weekly wage”, shall have the same meaning as provided in subsection (w) of section 1 of M.G.L. chapter 151A; provided, however, that “average weekly wage” shall be calculated using earnings from the base period, as that term is defined in subsection (a) of said section 1 of said M.G.L. chapter 151A; and provided further, that in the case of a self-employed individual, “average weekly wage” shall mean one twenty-sixth of the total earnings of the self-employed individual from the 2 highest quarters of the 12 months preceding such individual’s application for benefits under M.G.L. c. 175M.

“Base period”, shall have the same meaning as that term is defined in subsection (a) of said section 1 of said M.G.L. c. 151A.

“Benefit year”, the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that job-protected leave under M.G.L. c. 175M commences for the covered individual.

“Child”, a biological, adopted or foster child, a stepchild or legal ward, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor child.

“Contributions”, the payments made by an employer, a covered business entity, an employee or a self-employed individual to the Family and Employment Security Trust Fund, as required by this chapter.

“Covered business entity”, a business or trade that contracts with self-employed individuals for services and is required to report the payment for services to such individuals on IRS Form 1099-MISC for more than 50 per cent of its workforce.

“Covered individual”, either: (i) an employee who meets the financial eligibility requirements of subsection (a) of section 24 of chapter 151A, provided that all such employment has been with an employer in the commonwealth; (ii) a self-employed individual who has: (A) elected coverage under subsection (j) of section 2 of this chapter and (B) reported earnings to the department of revenue from self-employment that meet the financial eligibility requirements of subsection (a) of section 24 of chapter 151A, as if the individual were an employee; or (iii) a former employee who has: (A) met the financial eligibility requirements of subsection (a) of section 24 of chapter 151A at the time of the former employee’s separation from employment,

provided that all such employment has been with an employer in the commonwealth; and (B) been separated from employment for not more than 26 weeks at the start of the former employee’s family or medical leave.

“Covered servicemember”, either: (i) a member of the Armed Forces, as defined in section 7 of chapter 4, including a member of the National Guard or Reserves, who is (A) undergoing medical treatment, recuperation or therapy; (B) otherwise in outpatient status; or (C) is otherwise on the temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces; or (ii) a former member of the Armed Forces, including a former member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces and manifested before or after the member was discharged or released from service.

“Department”, the department of family and medical leave established in section 8 of M.G.L. c. 175M.

“Director”, the director of the department of family and medical leave.

“Domestic partner”, a person not less than 18 years of age who: (i) is dependent upon the covered individual for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors including, but not limited to: (A) common ownership of real or personal property; (B) common householding; (C) children in common; (D) signs of intent to marry; (E) shared budgeting; and (F) the length of the personal relationship with the covered individual; or (ii) has registered as the domestic partner of the covered individual with any registry of domestic partnerships maintained by the employer of either party, or in any state, county, city, town or village in the United States.

“Earnings from Self-employment”, or “Income from Self-Employment,”, shall have the same meaning as “net earnings from self-employment”, as defined in section 1402(a) of the Internal Revenue Code as amended and in effect for the taxable year, and the implementing regulations thereunder.

“Employee”, shall have the same meaning as provided in clause (h) of section 1 of M.G.L. c. 151A; provided, however, that notwithstanding said clause (h) or any other special or general law to the contrary, “employee” shall include a family child care provider, as defined in subsection (a) of section 17 of M.G.L. c. 15D.

“Employer”, shall have the same meaning as provided in subsection (i) of section 1 of M.G.L. c. 151A; provided, however, that an individual employer shall be determined by the Federal Employer Identification Number; provided further, that the department of early education and care shall be deemed the employer of family child care providers, as defined in subsection (a) of

section 17 of M.G.L. chapter 15D; provided further, that the PCA quality home care workforce council established in section 71 of M.G.L. chapter 118E shall be the employer of personal care attendants, as defined in section 70 of said M.G.L. chapter 118E; provided further, that any employer not subject to M.G.L. chapter 175M may become a covered employer under M.G.L. chapter 175M by notifying the department of family and medical leave and completing the procedure established in sections xx.03 and xx.04; and provided further, that a municipality, district, political subdivision or its instrumentalities shall not be subject to M.G.L. c. 175M unless it adopts M.G.L. c. 175M under section 10 of M.G.L. c. 175M.

“Employment”, shall have the same meaning as provided by clause (k) of section 1 of M.G.L. c. 151A.

“Employment benefits”, all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions.

“Family leave”, leave taken to care for a family member with a serious health condition, to bond with a child during the first twelve months after the child’s birth, adoption, or foster care placement, to care for a family member who is a covered servicemember, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces.

“Family leave benefits”, wage replacement paid pursuant to section 3 of M.G.L. c. 175M and provided in accordance with section 2 of M.G.L. c. 175M to a covered individual while the covered individual is on family leave.

“Family member”, the spouse, domestic partner, child, parent or parent of a spouse or domestic partner of the covered individual; a person who stood in loco parentis to the covered individual when the covered individual was a minor child; or a grandchild, grandparent or sibling of the covered individual.

“Grandparent”, a parent of the covered individual’s parents.

“Health care provider”, an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or any other individual determined by the department to be capable of providing health care services.

“Medical leave”, leave taken by a covered individual with a serious health condition.

“Medical leave benefits”, wage replacement paid pursuant to section 3 of M.G.L. c. 175M and provided in accordance with section 2 of M.G.L. c. 175M to a covered individual while the covered individual is on medical leave.

“Parent”, the biological, adoptive, step- or foster mother or father of the covered individual.

“Qualifying exigency”, a need arising out of a covered individual’s family member’s active duty service or notice of an impending call or order to active duty in the Armed Forces, including, but not limited to, providing for the care or other needs of the military member’s child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment or making arrangements following the death of the military member.

“Qualifying reason”, any of the following reasons for which a covered individual is eligible for family or medical leave benefits: to bond with a child during the first twelve months after the child’s birth, adoption, or foster care placement; to care for a family member’s serious health condition; to care for a family member who is a covered servicemember; a qualifying exigency arising out of a family member’s active duty or impending call to active duty in the Armed Forces; or the covered individual’s own serious health condition that incapacitates the individual from performing the functions of his or her job.

“Self-employed individual”, a sole proprietor, member of a limited liability company or limited liability partnership or an individual whose net profit or loss from a business is required to be reported to the department of revenue; provided, however, that such individual resides in the commonwealth.

“Serious health condition”, an illness, injury, impairment or physical or mental condition that involves (i) inpatient care in a hospital, hospice or residential medical facility; or (ii) continuing treatment by a health care provider.

“Sibling”, the biological, adoptive, step- brother or sister of a covered individual.

“State average weekly wage”, the average weekly wage in the commonwealth as calculated under subsection (a) of section 29 of M.G.L. c. 151A and determined by the commissioner of unemployment assistance.

“Trust fund”, the Family and Employment Security Trust Fund established in section 7 of M.G.L. c. 175M.

“Wages”, shall have the same meaning as provided in clause (s) of section 1 of M.G.L. c. 151A.

“Weekly benefit amount”, the amount of wage replacement paid to a covered individual on a weekly basis while the covered individual is on family or medical leave, as provided in section 3 of M.G.L. c. 175M.

Section xx.03 Registration and Filing

(1) **Registration.** An employer, a self-employed individual who elects coverage under section xx.05, and a covered business entity shall file earnings reports and remit contributions owed under section xx.04, below, through the Department of Revenue’s MassTax Connect system. Employers and covered business entities that do not have pre-existing accounts on the

MassTaxConnect system shall register and establish an account in order to make filings and remit contributions required under M.G.L. c. 175M and these regulations.

(2) **Quarterly Filing.** Following the end of each calendar quarter, an employer, a self-employed individual electing coverage, and a covered business entity shall file a report through the MassTaxConnect system. The report shall contain the following information for each employee: name, social security number, wages paid or other earnings. The report shall contain the following information for each employer, self-employed individual, or covered business entity: the federal employer identification number and the identification number such employer, covered business entity, or self-employed individual is required to include on a withholding tax return filed pursuant to M.G.L. c. 62B.

If an employer or covered business entity made payments to individuals for services during the calendar quarter that are required to be reported on IRS Form 1099-MISC, the employer must also report the names and social security numbers of those individuals, and the amounts of such payments made.

(4) **Veracity/False Statements.** Without limitation, any employer or covered business entity that makes a false statement or representation or willfully withholds a material fact with regard to any of the information required by section xx.03 may be subject to penalties under M.G.L. c. 62C, section 73.

Section xx.04 Contributions

(1) Generally.

(a) Contributions are the payments made by an employer, a covered business entity, an employee or a self-employed individual to the Family and Employment Security Trust Fund established in section 7 of M.G.L. c. 175M.

(b) Beginning on July 1, 2019, the initial contribution rate will be 0.63 per cent of all wages or other qualifying earnings or payments. Annually, not later than October 1, the director will set the contribution rate for the upcoming calendar year, as required by section 7(e) of M.G.L. c. 175M.

(c) Contributions shall not be required for employees' wages or other qualifying earnings or payments above the contribution and base limit established annually by the federal Social Security Administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. 430.

(d) An employer employing an average of fewer than 25 employees in the commonwealth shall not be required to pay the employer portion of premiums for family and medical leave, as defined in subsection 4(b), below.

(e) An employer or a covered business entity with a workforce that is more than 50 per cent self-employed individuals for whom the employer shall report the payment for

services to such individual on Internal Revenue Service form 1099-MISC shall treat those self-employed individuals as employees for the purposes of determining the employer's or covered business entity's number of employees.

(2) **Employee and Workforce Count.** An employer or covered business entity shall determine the average number of employees and members of its workforce by counting the number of employees, including full time, part-time, seasonal, and temporary employees, on the payroll during each pay period and dividing by the number of pay periods. The employer or covered business entity shall determine its workforce count based on the previous calendar year. If an employer or covered business entity contracted with individuals for services during pay period and is required to report the payment to such individuals on IRS Form 1099-MISC, those individuals must be included in the count.

(3) **Allocation of Contribution Rate between Family Leave and Medical Leave.** The total contribution rate shall be allocated between the family leave contribution rate and the medical leave contribution rate. The rate allocation will be based on the department's estimate of the anticipated costs of benefits and administration of the program. When the department deems it necessary to do so, but no more than once a year, it may change the allocation of rates.

(4) **Allowable Deductions from Employees.** In accordance with applicable laws and regulations, including the required notice under section 4(a) of M.G.L. c. 175M, an employer may deduct up to certain defined percentages of the medical leave and family leave contributions directly from wages or other qualifying payments made to the employee or individual.

The employer's or covered business entity's portion of the contribution is that part of the full contribution amount not deducted from wages paid or qualifying payments made to the employee or individual with whom it contracted for services. The employer or covered business entity is in all instances responsible for the remainder of any contribution not lawfully deducted from the employee or individual.

(a) **Medical Leave Contribution:** an employer or covered business entity may deduct from an employee's wages or from qualifying payments made to an individual with whom it contracted for services up to 40 percent of the medical leave contribution required for that employee or individual.

(b) **Family Leave Contribution:** an employer or covered business entity may deduct from an employee's wages or from qualifying payments made to an individual with whom it contracted for services up to 100 percent of the family leave contribution required for that employee or individual.

(5) **Remitting Contributions.** Based on the quarterly report filed by an employer, self-employed individual or covered business entity, the department will calculate the total quarterly contribution amount owed. Contributions owed must be remitted within 30 days after the end of the calendar quarter.

(6) **Penalty.** An employer or covered business entity who fails or refuses to make required contributions shall be assessed 0.63 percent of its total annual payroll for each year it so failed to comply, or fraction thereof, in addition to the total amount of benefits paid to covered individuals for whom it failed to make contributions.

Section xx.05 Self-Employed Individual

(1) A self-employed individual may elect coverage under M.G.L. c. 175M and become a covered individual for an initial period of not less than three years.

(2) To elect coverage a self-employed individual shall file with the department a Self-Employed Notice of Election and thereafter register, file, and begin making contributions to the Family and Employment Security Trust Fund pursuant to sections xx.03 and xx.04, above.

(3) The election shall be effective on the date the Self-Employed Notice of Election is accepted by the department, but a self-employed individual who elects coverage shall not be eligible for benefits until the individual has remitted the required contributions for at least two out of four completed calendar quarters.

(4) A self-employed individual who elects coverage shall be responsible for the full contribution amount, based on that individual's income from self-employment. If a self-employed individual elects coverage and fails to remit contributions owed for at least three years, the self-employed individual will be disqualified from electing coverage thereafter.

Section xx.06 Application for Exemption

(1) **Application.** An employer or covered business entity may apply to the department for approval to meet its obligations under M.G.L. c. 175M through a private plan. Applications for such exemptions from the public plan will be accepted by the department on a rolling basis and approvals will be effective for one year. Exemptions may be renewed annually. An employer or covered business entity may apply for exemptions from medical leave coverage, family leave coverage, or both.

(2) **Requirements for Exemption.** To be approved for an exemption, an employer's or covered business entity's private plan must confer all of the same rights, protections and benefits provided to employees under M.G.L. c. 175M, including but not limited to all of the requirements specified in section 11 of M.G.L. c. 175M.

(3) **Review.** In the event that a private plan exemption meets or exceeds the requirements for exemption, yet is denied an exemption due to an apparent error, an employer or covered business entity may re-submit the same plan for supplementary review by the department.

(4) Employee and Covered Individual Rights.

(a) An employee or other eligible individual who is denied family or medical leave benefits by a private plan shall have a right to appeal the denial before the department and

in the district court as provided by Section xx.14 and subsection (d) of section 8 of M.G.L. c. 175M.

(b) An employee covered by a private plan approved under this section shall retain all applicable rights under subsections (e) and (f) of section 2 of M.G.L. c. 175M and under section 9 of M.G.L. c. 175M.

(c) A covered business entity that provides benefits to employees through an approved private plan must provide the same benefits to eligible individuals with whom it contracts for services under the approved private plan or must make contributions pursuant to section xx.04 for those individuals.

(5) Audits, Withdrawal of Approval, and Penalties.

(a) The department may audit any private plan maintained by an employer or covered business entity.

(b) The department may withdraw approval for a private plan when terms or conditions of the plan have been changed or violated. Causes termination of plan approval shall include, but not be limited to the following: (i) failure to pay benefits; (ii) failure to pay benefits timely and in a manner consistent with the public plan; (iii) failure to maintain an adequate security deposit; (iv) misuse of private plan trust funds; (v) failure to submit reports that may be required by the department; or (vi) failure to comply with M.G.L. c. 175M or these regulations or both. An employer must notify the department in writing at least 30 days before any proposed changes to the terms or conditions of an approved private plan.

(c) An employee covered by a private plan approved under this section shall retain all applicable rights under subsections (e) and (f) of section 2 and under section 9 of M.G.L. c. 175M.

(d) An employer or covered business entity who fails or refuses to make required contributions shall be assessed 0.63 percent of its total annual payroll for each year it so failed to comply, or fraction thereof, in addition to the total amount of benefits paid to covered individuals for whom it failed to make contributions.

Section xx.07 Claim for Benefits

(1) **Process for filing.** An individual must file a claim for family leave or medical leave benefits using forms prescribed by the department.

(2) **Notice.**

(a) Except as otherwise provided, an individual filing a claim for benefits must provide the individual's employer with: (i) at least 30 days' notice of the anticipated start date of the leave, (ii) the anticipated length of the leave, (iii) the type of leave, and (iv) the

individual's expected return date. If, for reasons beyond the individual's control, the individual cannot provide 30 days' notice then the individual shall provide notice as soon as is practicable.

(b) The department shall notify the employer, if applicable, not more than five business days after an employee has filed a claim for benefits under M.G.L. c. 175M, and shall facilitate the disclosure and exchange of relevant information or records regarding the claim. The department's notice to an employer shall contain: (i) the employee's name, (ii) the type of leave at issue, (iii) the expected duration of the leave, (iv) whether the request is for continuous or intermittent leave, and (v) any other information relevant to verification of the claim.

(3) **Consent.** An individual filing a claim for benefits must provide the department with consent to share information regarding the claim, including with the individual's employer and/or health care provider, and other information necessary for the department to process the individual's claim for benefits.

(4) **Claim.** When filed, a claim for benefits must include all information necessary for the department's review and processing, including but not limited to:

- (a) Identifying information, such as Social Security number;
- (b) Employer name and identification number (which is included on the notice the employer is required to post for the benefit of employees and covered individuals);
- (c) The nature of the leave, such as for family leave or medical leave;
- (d) The expected duration of the leave;
- (e) Whether the leave will be continuous or intermittent;
- (f) The date notice was provided to the employer;
- (g) Any denied, granted, or pending requests for leave for a qualifying reason from the employer during the benefit year;
- (h) Evidence of family relationship if the leave involves family leave or leave relating to active duty military service by a family member;
- (i) Completed certification as required in subsection 5, below;
- (j) If a claim is filed more than 90 calendar days after the start of leave, the covered individual may receive reduced benefits in the discretion of the director.

(5) **Certifications.** All claims for benefits shall be supported by a certification evidencing that the leave serves a covered purpose, as required by section 5 of M.G.L. c. 175M.

(a) Medical Leave. The certification must be from a health care provider and must contain, at a minimum: (i) a statement that the covered individual has a serious health condition, (ii) the date on which the serious health condition commenced, (iii) the probable duration of the serious health condition, and (iv) other information required by the department, including a certification by the health care provider that the individual is unable to work due to the serious health condition, and information regarding the need for intermittent leave, if applicable. In the event that a serious health condition of the covered individual prevents the covered individual from providing the required certification within 90 days, the department will allow for a good cause exemption to permit delayed notification under subsection 4(j), above.

(b) Family Leave to care for a family member with a serious health condition. The certification must include information provided by the family member's health care provider, and must contain, at a minimum: (i) a statement confirming the relationship between the covered individual and the family member; and from the family member's health care provider (ii) a statement that the family member has a serious health condition, (iii) the date on which the family member's serious health condition commenced, (iv) the probable duration of the family member's serious health condition, (v) a statement that the covered individual is needed to care for the family member, and (vi) an estimate regarding the frequency and the anticipated duration of time that the covered individual is needed to care for the family member.

(c) Family Leave for the birth of a child. The certification must be (i) the child's birth certificate, (ii) a statement from the child's health care provider stating the child's birth date, or (iii) a statement from the health care provider of the person who gave birth stating the child's birth date. The leave period for which benefits are requested may only include dates within 12 months of the child's birth date.

(d) Family Leave for the placement of child for adoption or foster care. The certificate must be from the child's health care provider or from an adoption or foster care agency involved in the placement or the department of children and families and must confirm both the placement and the date of the placement. The leave period for which benefits are requested must be for dates within 12 months of the placement date. To the extent that the status of a covered individual as an adoptive or foster parent changes while an application for benefits is pending or while the covered individual is receiving benefits, the covered individual shall within 5 business days of such change in status provide written notice to the department. The department of children and families may confirm in writing the status of the covered individual as an adoptive or foster parent while an application for benefits is pending or while a covered individual is receiving benefits.

(e) Family Leave for a qualifying exigency arising out of the fact that a family member is on active military duty or has been notified of an impending call or order to active duty in the Armed Forces. The certificate must contain (i) a copy of the family member's active duty orders, (ii) a letter of Impending Activation from the family member's Commanding Officer, (iii) other documentation in circumstances where, for good cause shown, the applicant is unable to produce the documentation specified in (i) or (ii), and (iv) a

statement of the family relationship between the servicemember and the family member requesting benefits.

(f) Family Leave to care for a family member who is a covered servicemember. The certificate from the family member's health care provider must contain, at a minimum: (i) the date on which the covered servicemember's serious health condition commenced, (ii) the probable duration of the condition, (iii) a statement that the covered individual is needed to care for the family member, (iv) an estimate of the amount of time the covered individual will be needed to care for the family member, (v) an attestation by health care provider and the covered individual that the health condition is connected to the servicemember's military service, and (vi) other information or documentation that may be required by the department. The family member requesting benefits also needs to state the family relationship with the covered servicemember.

(6) Information from Employer or Covered Business Entity. Upon request, an employer will have five calendar days to provide to the department information or records relevant to a claim for benefits, including the following:

- (a) Wages and/or earnings for the past 12 months;
- (b) A description of the employee's or covered individual's position;
- (c) Whether the employee or covered individual currently works a full- or part-time schedule;
- (d) Weekly hours worked;
- (e) Prior requests/approvals for a qualifying reason;
- (f) Amount of paid leave already taken for a qualifying reason during the current benefit year;
- (g) A description of the employer's or covered business entity's own paid leave policies and whether the employee or covered individual has received paid leave during the current benefit year and whether the employee will receive any paid leave benefits from the employer or covered business entity during the requested leave period at issue;
- (h) Any other relevant information or records related to the claim, including evidence of a fraudulent claim.

(7) Time standards. The time standards for the department's processing of applications for paid leave benefits are as follows:

- (a) The department shall notify applicants for benefits of their eligibility or ineligibility for paid leave benefits under M.G.L. c. 175M within 14 calendar days of receiving a claim under M.G.L. c. 175M.

(b) The department shall commence payment of leave benefits not less than 14 calendar days after the eligibility determination, unless that determination occurs more than 14 calendar days before the onset of eligibility in which case the department shall commence payment of leave benefits as soon as eligibility begins.

Section xx.08 Approval of Payment for Benefits

- (1) The department will provide contemporaneous notice to the individual and to the employer of the approval or denial of a claim for paid benefits.
- (2) The approval for payment of benefits notice will include:
 - (a) The reason for the approved leave benefits;
 - (b) The duration of the approved leave benefits;
 - (c) For intermittent leaves, the frequency and duration of the leave benefits;
 - (d) The expiration of the approved leave benefits.
- (3) An employee or covered individual who has been approved for leave benefits must still comply with any attendance and call in procedures established by the employer or covered business entity.
- (4) An employee or covered individual approved for intermittent leave benefits must work with the employer or covered business entity to make an effort to take leave so as not to unduly disrupt the employer's operation.
- (5) Nothing in M.G.L c. 175M or these regulations shall limit an employer's or covered business entity's ability to communicate with an employee or covered individual who is approved for leave benefits.
- (6) An employee who takes leave on an intermittent or reduced leave schedule and who fails to work during the times agreed to between the employer and the employee may be subject to discipline. An employee who fails to return to work or to the employee's regular work schedule following the expiration of the leave period may be subject to employer discipline.

Section xx.09 Amendment or Extension of Benefits

- (1) **Amendment of Benefits.** Following an approval of a claim for benefits, if there is a change in relevant circumstances that would justify an extension, reduction, or other modification of the period of leave or the amount of benefits, both the employee or covered individual and the

employer or covered business entity have an affirmative obligation to inform the department using the forms prescribed by the department.

(2) **Extension of Benefits.** If a covered individual requires an extension of benefits, the covered individual must file a claim for an extension using the forms prescribed by the department.

(a) A claim for an extension must be filed 14 calendar days prior to the expiration of the original approved leave.

(b) A claim for an extension must include all information required by the department, including the following:

(i) The reason for the extension;

(ii) The requested duration of the extended leave;

(iii) The date of the notice for the request for extension that was provided to the employer;

(iv) A newly completed health care certification for individual or family leave that otherwise satisfies the requirements of section xx.07(5), above.

(c) The department will notify the employer of a request for an extension not more than five business days following its receipt of a completed request form. The department will provide to the employer:

(i) The requested duration for the extension;

(ii) Whether the newly requested leave is continuous or intermittent;

(iii) And any other information or record the department deems relevant to verifying and otherwise processing the claim.

(d) The covered business entity or employer shall, within five calendar days from the date of the notice, provide to the department all relevant information or records requested by the department, which may include the following:

(i) Any additional requests or approvals of leave taken by the covered individual for a qualifying reason during the benefit year;

(ii) Any amount of paid leave benefits received by the employee or covered individual for a qualifying reason for benefit year;

(iii) Any other relevant information or records related to the claim, including but not limited to, evidence of a fraudulent claim.

(e) The initial seven day waiting period for benefits, referenced in section xx.12(5), below, will not be required for an approved extension of benefits.

(f) Any extension of a claim will be limited to any period of leave the employee remains eligible for in the benefit year.

(g) Requests for extensions will be subject to the claim approval process in section xx.07.

(h) The department will provide contemporaneous notice to the individual and to the employer of the department's approval or denial of the extension request.

Section xx.10 Eligibility for Benefits

(1) Beginning January 1, 2021, covered individuals are eligible for up to 26 total weeks, in the aggregate, of family and medical leave under M.G.L. c. 175M in a benefit year.

(2) Beginning January 1, 2021, covered individuals are eligible for up to 12 weeks of family leave in a benefit year for the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces.

(3) Beginning January 1, 2021, covered individuals are eligible for up to 26 weeks of family leave in a benefit year in order to care for a family member who is a covered servicemember.

(4) Beginning January 1, 2021, covered individuals are eligible for up to 20 weeks of medical leave in a benefit year if they have a serious health condition that incapacitates them from work.

(5) Beginning July 1, 2021, covered individuals are eligible for up to 12 weeks of family leave to care for a family member with a serious health condition.

Section xx.11 Intermittent Leave

(1) **Generally.** An employee may take family or medical leave on an intermittent basis, as follows:

(a) For family leave to bond with a child during the first twelve months after the child's birth, adoption, or foster care placement, intermittent leave may be taken only if the employer and employee agree to it.

(b) For family leave to care for a family member's serious health condition; to care for a family member who is a covered servicemember, or for or the employee's own serious health condition, intermittent leave may be taken if it is medically necessary.

(c) For family leave due to a qualifying exigency arising out of a family member's active duty or impending call to active duty in the Armed Forces, intermittent leave may be taken.

(d) Self-employed individuals who have elected coverage and former employees may take intermittently.

(2) **Impact on Leave Allotments.** Taking leave intermittently or on a reduced schedule pursuant to this section and section 2(c)2 of M.G.L. c. 175M shall result in a proportionate reduction in the employee's available allotment of leave.

(3) **Weekly Benefit.** As described in section xx.12, a covered individual who takes leave on an intermittent or reduced schedule shall receive a weekly benefit amount that is reduced in direct proportion to the intermittent or reduced leave schedule.

Section xx.12 Weekly Benefit Amount

The weekly benefit amount for employees, covered individuals, and self-employed individuals on family or medical leave is calculated on the individual's average weekly wage, which is determined by the individual's earnings in the base period as reported to the department of revenue pursuant to section xx.03.

(1) **Calculation.** Subject to the limitations described in xx.08(2)-(4), an individual's weekly benefit amount shall be calculated as follows:

(a) The portion of an individual's average weekly wage that is equal to or less than 50 per cent of the state average weekly wage shall be replaced at a rate of 80 per cent; and

(b) The portion of an individual's average weekly wage that is more than 50 percent of the state average weekly wage shall be replaced at a rate of 50 per cent.

(2) **Maximum.** The initial maximum weekly benefit amount is \$850. Thereafter, the maximum weekly benefit amount for any individual shall be 64 percent of the state average weekly wage. Annually, not later than October 1 of each year, the department shall establish a maximum weekly benefit amount at a level that is 64 per cent of the then-applicable state average weekly wage. The adjusted maximum weekly benefit amount shall take effect on January 1 of the year following such calculation.

(3) **Pro-rated benefit.** For a covered individual who takes leave on an intermittent or reduced leave schedule, the weekly benefit amount calculated pursuant to paragraph (1) shall be reduced in direct proportion to the intermittent or reduced leave schedule.

(4) **Reductions.** The weekly benefit amount for a period shall be reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on family or medical leave:

(a) Any government program or law, including but not limited to workers' compensation under M.G.L. c. 152, other than for permanent partial disability incurred prior to the family or medical leave claim, or under other state or federal temporary or permanent disability benefits law, or

(b) A permanent disability policy or program of an employer.

(5) **Initial Seven Day Wait period.** No family or medical leave benefits are payable during the first seven calendar days of an approved initial claim for benefits. The initial seven day waiting period for paid leave benefits will count against the total available period of leave in a calendar year.

Section xx.13 Attestations and False Statements

Individuals applying for benefits shall attest to the truthfulness of all statements and submissions made to the department. An individual shall not be eligible to receive family or medical leave benefits if the department finds by a preponderance of the evidence that the individual willfully made a false statement or representation or willfully withheld a material fact in order to obtain the benefits.

In determining whether an individual willfully made false statements, the department will consider the nature and cause of the false statement and the capacity of the particular individual to recognize the error resulting in the false statement, such as the individual's age and intelligence as well as any physical, mental, educational, or linguistic limitation, including lack of facility with the English language. A good faith mistake of fact by the individual in the filing of a claim for benefits does not constitute willfulness. A false statement shall be considered willful if the individual (a) furnishes information that the individual knew, or reasonably should have known, to be incorrect; or (b) fails to furnish information that the claimant knew or reasonably should have known to be material; or (c) accepts a payment that the claimant knew, or reasonably should have known was incorrect.

If the department finds that an individual received benefits on the basis of a false statement, it may require the individual to repay to the Trust Fund any benefits received.

Section xx.14 Claim Denials and Appeals

(1) The department will provide contemporaneous notice to the individual and the employer of the approval or denial of a claim for paid leave benefits.

(2) An individual may appeal a denial of family or medical leave benefits to the department. An approved private plan's denial of a claim for family or medical leave benefits shall be subject to appeal pursuant to this section and section 8(d) of M.G.L. chapter 175M.

(3) The request for an appeal shall be filed within 10 calendar days of the party's receipt of notice of the determination. The department may extend the 10-day filing period where an individual establishes to the satisfaction of the department that circumstances beyond the individual's control prevented the filing of a request for an appeal within the prescribed 10 day filing period.

(4) When requesting an appeal, an individual may request a hearing. The conduct of a hearing regarding an appeal of a denial of benefits shall be in accordance with the procedures prescribed

by M.G.L. c. 151A, section 39(b). The department will issue a written decision affirming, modifying, or revoking the initial determination within 30 days of the hearing.

(5) After the department makes a decision on the appeal, an individual aggrieved by the department's decision may appeal the decision to the district court for the county in the commonwealth where the individual resides or was last employed. Such court action must be commenced within 30 days of the date the department's final decision is received by the individual.

(6) When a notice of a determination or a decision by the department is transmitted by means of an electronic communication, it shall be presumed received on the date it is sent, except that any notice transmitted after 5:00 p.m. or on a state or federal holiday, Saturday, or Sunday, shall be presumed received on the next business day. When notice of a determination or a decision is sent by regular mail, it shall be presumed received three days after it is mailed, except that if the third day falls on a state or federal holiday, Saturday, or Sunday, the notice shall be presumed received on the next business day. However the notice is transmitted, the presumption may be rebutted by substantial and credible evidence satisfactory to the department that the notice was actually received on an earlier or later date. A request for an appeal shall be deemed filed on the postmark date if sent by regular mail and otherwise when actually received by the department. A request received after 5:00 p.m. shall be deemed filed on the next business day.

Section xx.15 Job Protection, Prohibition on Retaliation

(1) **Job Protection.** An employee who has taken family or medical leave under M.G.L. c. 175M shall be restored to the employee's previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of leave. An employer shall not be required to restore an employee who has taken family or medical leave under M.G.L. c. 175M to the previous or to an equivalent position if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave; provided, however, that the employee who has taken leave shall retain any preferential consideration for another position to which the employee was entitled as of the date of leave.

Taking family or medical leave under M.G.L. c. 175M shall not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit or other employment benefits, plans or programs. During the duration of an employee's family or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave.

(2) **Retaliation.** It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee for exercising any right to

which such employee is entitled under M.G.L. c. 175M or with the purpose of interfering with the exercise of any right to which such employee is entitled under M.G.L. c. 175M.

It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee who has filed a complaint or instituted or caused to be instituted a proceeding under or related to this section, has testified or is about to testify in an inquiry or proceeding or has given or is about to give information connected to any inquiry or proceeding relating to this section.

(3) **Presumption.** Any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of (a) an employee which occurs any time during a leave taken by an employee under M.G.L. c. 175M, or during the six month period following an employee's leave or restoration to a position pursuant to this section, or (b) an employee who has participated in proceedings or inquiries pursuant to this section within six months of the termination of proceedings shall be presumed to be retaliation under this section. Such presumption shall be rebutted only by clear and convincing evidence that such employer's action was not retaliation against the employee and that the employer had sufficient independent justification for taking such action and would have in fact taken such action in the same manner and at the same time the action was taken, regardless of the employee's use of leave, restoration to a position or participation in proceedings or inquiries as described in this subsection. An employer found to have threatened, coerced or taken reprisal against any employee pursuant to this subsection shall rescind any adverse alteration in the terms of employment for such employee and shall offer reinstatement to any terminated employee and shall also be liable in an action brought pursuant to paragraph (4).

(4) **Civil Actions.** An employee or former employee aggrieved by a violation of section 9 or subsections (e) and (f) of section 2 of M.G.L. c. 175M may, not more than three years after the violation occurs, institute a civil action in the superior court. A party to the action shall be entitled to a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs and shall be in addition to any legal or equitable relief provided in section 9 of M.G.L. c. 175M. The court may issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violations of section 9 of M.G.L. c. 175M; reinstate the employee to the same position held before the violation or to an equivalent position; reinstate full fringe benefits and seniority rights to the employee; compensate the employee for 3 times the lost wages, benefits and other remuneration and the interest thereon; and order payment by the employer of reasonable costs and attorneys' fees.

Section xx.16: Severability

If any provision of XXX CMR xx.00 or the application of any provision of a regulation to any person or circumstance is finally held invalid by a court of competent jurisdiction, the validity of the remainder of XXX CMR xx.00 shall not be affected.

REGULATORY AUTHORITY

XXX CMR xx.00: M.G.L. c. 175M

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