

## **PAID FAMILY AND MEDICAL LEAVE LAW (PFMLL) POLICY**

### **Statement of Policy**

Harvard University (“Harvard” or the “University”) will provide job-protected paid family and medical leave to eligible employees in accordance with the Massachusetts Paid Family Medical Leave Law (“PFMLL”) and applicable regulations. This Policy sets forth the eligibility requirements for leave, the conditions for using leave, the process for requesting leave, protections to employees who apply for and/or use leave, and other related provisions.

This Policy addresses how PFMLL leave will interact with other leaves, including those taken under the federal Family and Medical Leave Act (“FMLA”), applicable collective bargaining agreements, and other University policies. Nothing in this Policy diminishes employees’ entitlement to leave pursuant to any other applicable policy or agreement, nor does this Policy restrict Harvard’s individual Schools, units, or departments from establishing or maintaining policies providing additional family or medical leave.

### **To Whom the Policy Applies**

This policy applies to all employees—including full-time, part-time, permanent, on call, per diem, temporary and seasonal employees—who perform services within Massachusetts. This Policy also applies to such unemployed former employees for twenty-six (26) weeks after separation or until re-employed, whichever comes first.

This Policy does not apply to: (a) existing or former employees who do not perform services within Massachusetts, (b) independent contractors, (c) exempt student workers, (d) H-2A visa holders, or (e) any other categories of workers who are exempted under the Massachusetts Family and Medical Leave Law, M.G.L. c. 175M.

### **Definitions**

For the purposes of this Policy, the following terms shall have the following meanings:

**Average Weekly Wage:** An amount equal to one twenty-sixth of the total wages earned by the employee at Harvard in the two highest quarters of the 12 months preceding the start of leave taken under this Policy.

**Benefit Year:** The period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that an employee takes leave under this Policy.

**Child:** The biological child, adopted child, foster child, step child, a child to whom the employee stood *in loco parentis* when the person was a minor child, or a child of whom the employee had legal guardianship regardless of age or dependency status.

**Covered Servicemember:** An existing or former member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability

retired list for a serious injury or illness that was incurred or aggravated by service in the line of duty on active duty in the Armed Forces.

DFML: The Massachusetts Department of Family and Medical Leave.

Family Member: The spouse, domestic partner, child, parent, or parent of a spouse or domestic partner of the employee; a person who stood *in loco parentis* to the employee when the employee was a minor child; or a grandchild, grandparent, or sibling of the employee.

Harvard: President and Fellows of Harvard College.

Healthcare Provider: A person licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery, or osteopathy or other persons determined by the DFML to be capable of providing healthcare services.

PFMLL: The Massachusetts Family and Medical Leave Law, M.G.L. c. 175M.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves (a) inpatient care in a hospital, hospice, or residential medical facility; or (b) continuing treatment by a healthcare provider. The term serious health condition includes any period of incapacity due to pregnancy or for prenatal care. The term serious health condition does not include cosmetic treatments unless inpatient hospital care is required or unless complications develop.

State Average Weekly Wage: The average weekly wage for the Commonwealth of Massachusetts as determined by the Deputy Director of the Division of Employment and Training.

### **Types and Amounts of PFMLL Leave**

Eligible employees can receive paid leave for the following reasons:

Medical Leave: Beginning January 1, 2021, employees may take up to 20 weeks of paid Medical Leave in a benefit year due to the employee's own serious health condition that incapacitates the employee from performing the essential functions of the employee's job.

Family Leave: Employees may take paid Family Leave for the following reasons:

1. Beginning July 1, 2021, employees may take paid Family Leave to care for a family member with a serious health condition.
2. Beginning January 1, 2021, employees may take paid Family Leave to bond with a child during the first 12 months after the child's birth, or the first 12 months after adoption or foster placement of a child.

3. Beginning January 1, 2021, employees may take paid Family Leave to provide care to a family member who is a covered servicemember.
4. Beginning January 1, 2021, employees may take paid Family Leave because of any 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. Qualifying exigencies include such things as providing for the care or other needs of the military member's child or other family members, making financial or legal arrangements, attending counseling, 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.

The total amount of paid Family Leave that an employee may take in a benefit year is 12 weeks; provided, however, that an employee may take up to 26 weeks of paid Family Leave in a benefit year to provide care for a family member who is a covered servicemember.

Total Leave: Employees may take up to 26 weeks, in the aggregate, of paid leave per benefit year for the purposes listed above.

Counting Leave: Leave allotments are based on the number of hours or days an employee works. When the employee works variable hours, the amount of leave that the employee uses is determined on a pro rata or proportional basis. If an employee's schedule varies from week to week, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period will be used.

Interplay with other types of leave or approved time off: If an employee takes leave that is associated with a qualifying reason under this Policy and is also eligible for leave or approved time off under any other Harvard policy or collective bargaining agreement (including but not limited to Family and Medical Leave Act (FMLA), parental leave, short and long term disability, vacation time, sick time, personal time, PTO, or any other type of approved absence from work), such absence shall run concurrently with leave under this Policy, regardless of whether the employee applies for benefits under this Policy.

### **Amount of pay employees receive while on PFMLL leave**

Weekly wage replacement benefit: An employee who is taking paid leave under this Policy will receive a minimum weekly wage replacement benefit as follows: (a) that portion of the employee's average weekly wage at Harvard that is equal to or less than 50% of the state average weekly wage shall be replaced at a rate of 80%; and (b) that portion of the employee's average weekly wage that is more than 50% of the state average weekly wage shall be replaced at a rate of 50%. The maximum benefit for any employee shall be 64% of the state average weekly wage.

Reductions: The weekly benefit amount shall be reduced by the amount of wages or wage replacement benefits that an employee on PFMLL leave receives from any government program or law, including unemployment or workers' compensation benefits, other than for permanent partial disability incurred prior to the PFMLL leave claim; or under any other state or federal temporary or permanent disability benefits law; or through a permanent disability policy or program offered by Harvard. Harvard will not seek to offset any amount against benefits owed to an employee except as specifically authorized by the PFMLL.

Initial Seven-Day Waiting Period: No wage replacement benefits are payable during the first seven calendar days of leave; however, the employee may utilize accrued sick, vacation, or other accrued paid leave during this time. Whether or not accrued paid time is used, the initial seven-day waiting period will count against the total available period of leave in a benefit year. If an employee takes Medical Leave that is supported by documentation from a healthcare provider during pregnancy or recovery from childbirth and such Medical Leave is immediately followed by Family Leave, the seven-day waiting period shall not apply to the Family Leave.

Use of Accrued Paid Time Benefits: Employees on PFMLL leave may choose (but are not required) to use accrued sick time, vacation time, and/or other accrued paid leave provided by Harvard rather than receive the wage replacement benefits provided for in this Policy. Employees must comply with Harvard's normal policies for use of accrued paid time off. If an employee chooses to use accrued paid leave, such leave will run concurrently with the leave periods under this Policy.

Supplemental benefits: Employees may be eligible to receive additional wage replacement benefits under other Harvard policies and benefit programs and collective bargaining agreements. In such cases, the employee will receive the greater of the various benefits that are available for the covered reasons. In no case may the total payment received by the employee exceed the compensation that the employee would have received if they had been working.

### **Contributions by employees for PFMLL leave benefits**

For certain positions, Harvard may require employees to make contributions, in the form of payroll withholdings, to help fund the wage replacement benefits provided for under this Policy. Each employee will receive an individualized notice regarding the amount of any required contributions, at least 60 days before Harvard begins taking such contributions. Such contributions will not exceed the contribution rate set by the Director of the DFML, as permitted under the PFMLL.

### **Requesting PFMLL Leave**

Harvard has selected Lincoln Financial Group ("Lincoln") to serve as a third-party administrator for PFMLL leave. Employees can make requests for PFMLL leave to Lincoln via [www.MyLincolnPortal.com](http://www.MyLincolnPortal.com). Absences can also be initiated by calling the

Harvard-dedicated intake line at 1-844-600-3978. Human Resources and/or Faculty Affairs may also submit requests to Lincoln on behalf of employees by telephone or online.

Employees must provide at least 30 calendar days' notice of the anticipated start date of the leave, the anticipated length of the leave, the type of leave, and the employee's expected return date. If, for reasons beyond the employee's control, the employee cannot provide 30 days' notice, then the employee must provide notice as soon as is practicable.

When requesting leave, the employee must comply with the usual and customary notice and procedural requirements for requesting time off applicable to the employee's position, absent unusual circumstances. If an employee fails to do so, protected leave may be delayed or denied.

Employees seeking PFMLL leave must submit a certification evidencing that the leave is for a qualifying reason, using the Certification Forms available from Lincoln. The specific Certification Form required will depend on the type of leave requested.

When requesting leave, employees must provide all information necessary for Lincoln to review and process the request, including identifying information, the nature of the leave, the starting date and expected duration, whether the leave will be continuous or intermittent, the date notice was provided, a statement regarding the employee's family relationship for relevant types of leave, a completed Certification as required above, and additional specific information requested by Lincoln where reasonably necessary to review and process the claim.

When requesting leave or leave extensions, the employee must attest to the truthfulness of all statements and submissions made. An individual who willfully makes false statements may be denied benefits under this Policy. Willfully making false statements includes furnishing information that the individual reasonably should have known to be incorrect, failing to furnish information that the individual should reasonably have known to be material, or accepting benefits that the individual should reasonably have known that the individual was not entitled to receive.

When requesting leave for planned medical treatment, the employee must consult with Harvard and make a reasonable effort to schedule the treatment so as not to disrupt unduly Harvard's operations, subject to the approval of the healthcare provider.

If a claim for benefits is made but does not include all required information and more than 90 calendar days have passed since the start of the employee's period of leave, the individual may receive reduced benefits.

### **Approval of PFMLL Leave**

Employees requesting leave under this Policy will be notified within 14 calendar days regarding whether they are approved or denied, or if additional information or documentation is needed to review and process the claim.

Notice regarding approval of leave shall include: (a) the reason for the approved leave benefits, (b) the duration of the approved leave benefits, (c) for intermittent leave, the frequency and duration of the leave benefits, and (d) the expiration of the approved leave benefits.

Notice regarding denial of leave shall include information about the employee's right to appeal under this Policy as well as the rights afforded the employee pursuant to the PFMLL and applicable regulations.

Harvard shall commence payment of leave benefits not less than 14 calendar days after approving a request, unless that determination occurs more than 14 days before the onset of eligibility, in which case payment of benefits will commence as soon as eligibility begins.

Leave benefits shall be paid in accordance with Harvard's usual payroll practices applicable to the employee receiving benefits.

When a leave of absence request is considered under this Policy, all presumptions shall be made in favor of the availability of leave and the payment of leave benefits.

### **Appeals of a Denial of PFMLL Leave**

Employees shall have up to ten calendar days to file an internal appeal of a denial of PFMLL leave. The ten-day period may be extended where the employee establishes that circumstances beyond their control prevented the filing of a request for an appeal within ten calendar days. Appeals must be in writing and must include: (a) a detailed explanation of why the employee believes that the denial was in error, and (b) copies of any available supporting documentation. All appeals under this Policy should be submitted in accordance with Lincoln's appeals process.

Employees will be informed in writing of the outcome of the internal appeal and of their rights under the PFMLL and applicable regulations.

Employees also have a right to appeal to the DFML. Employees are required to participate in the internal appeal process prior to exercising their right to appeal with the DFML.

### **Health Benefits During PFMLL Leave**

During the duration of a current employee's PFMLL leave, Harvard shall continue to provide for and contribute to the employee's employment-related health insurance benefits, at the level and under the conditions that coverage would have been provided if the employee had continued working continuously for the duration of such leave. This provision shall not apply to former employees. Current employees will be required to remit their portion of the premiums in accordance with the procedures applicable to other types of leave.

### **Reinstatement following PFMLL Leave**

Upon return from PFMLL leave, a current employee 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 the leave. This provision shall not apply to persons who were former employees as of the date they went out on leave.

Upon reinstatement, the taking of leave under this Policy 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.

Employees should refer to the policies and/or collective bargaining agreements applicable to their position for more information about whether leave periods under this Policy are treated as credited service for purposes of accrual, vesting, and eligibility to participate in other benefit programs, such as sick and vacation time.

The employee will not be restored to the employee's 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 the leave.

Employees who are hired for a specific term or only to perform work on a discrete project shall not be reinstated if the employment term or project is over and Harvard would not otherwise have continued to employ the employee.

### **Fitness for Duty Certificates**

Current employees who are approved for leave due to their own serious health condition will be provided, within ten business days of approval of their leave, with a list of the essential functions of their job. Such employees will be required, on returning from leave, to present a certification from their healthcare provider that they are able to perform those essential functions. If an employee fails to provide such certification, the employee will not be entitled to reinstatement to their position.

An employee who does not provide a fitness for duty certification following the period of approved leave shall not be entitled to an extension of benefits unless the employee has affirmatively notified Lincoln of the change in circumstances within seven calendar days of such change.

### **Extensions of Leave, Amendments of Leave, and Changed Circumstances**

If an employee seeks an extension of benefits, the employee must request an extension fourteen calendar days prior to the expiration of the original approved leave by providing an updated Certification of Health Care Provider Form to Lincoln. Employees must also

notify their Harvard contact(s) of the need for an extension. A late filed request for extension may be allowed for good cause shown. A request for extension must include the reason for the extension, the requested duration of the extended leave, and must be accompanied by a newly completed Certification form.

The initial seven calendar day waiting period for benefits shall not apply to an approved extension of benefits.

Any extension of a leave shall be limited to the period of PFMLL leave for which the employee remains eligible in the benefit year under this Policy.

If an employee fails to return from PFMLL leave at the expiration of the leave period, and has not requested an extension as provided above, the employee may be subject to discipline.

If following an approval of leave, 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, the employee has an affirmative obligation to notify Lincoln within seven calendar days of such change using forms prescribed by Lincoln.

Lincoln may seek a medical recertification of an employee's serious health condition following expiration of the initial period of incapacity cited in the healthcare certification.

### **Reduced Work Schedule/Intermittent PFMLL Leave**

Former employees may take any type of PFMLL leave intermittently or on a reduced leave schedule.

Current employees may take qualifying exigency leave intermittently or on a reduced leave schedule.

Current employees may take Family Leave or Medical Leave intermittently or on a reduced leave schedule when medically necessary. The employee shall advise Harvard, on request, why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee shall attempt to work out a schedule for such leave that meets the employee's needs without unduly disrupting Harvard's operations, subject to the approval of the healthcare provider.

Current employees may take leave for new child bonding intermittently or on a reduced leave schedule only if the employee and Harvard mutually agree.

Employees may take intermittent leave in increments of not less than fifteen minutes.

Taking leave intermittently or on a reduced leave schedule shall result in a proportionate reduction in the employee's available allotment of leave. For employees taking intermittent PFMLL leave, the weekly wage replacement benefit amount shall be prorated.



Where the employee is taking leave on an intermittent or reduced schedule basis, the waiting period shall be seven consecutive calendar days, starting from the first instance of leave, not the aggregate accumulation of seven days of leave.

An employee who is approved for and takes leave on an intermittent or reduced leave schedule and who fails to work during the times or on the schedule to which they agreed may be subject to discipline.

Where intermittent leave has extended for a period of more than the initial period cited in the healthcare certification or more than six months from the date of approval by Harvard, Harvard may seek a medical recertification of the employee's serious health condition.

For employees taking intermittent leave, a fitness for duty certification may be required once every 30 days if reasonable safety concerns exist regarding the employee's ability to perform their duties.

### **Employee Protections Under the PFMLL**

Harvard shall not retaliate or threaten 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 due to the employee's use of leave or other benefits under this Policy or the employee's exercising any other right under the PFMLL. Employees similarly shall not be subject to retaliation or threats of retaliation for filing a complaint or instituting or causing to be instituted a proceeding under or related to the PFMLL, or for testifying in an inquiry or proceeding or giving information connected to any inquiry or proceeding relating to the PFMLL.

Nothing in this section shall limit Harvard's ability to reasonably communicate with an employee who is approved for leave benefits under this Policy. Similarly, this section shall not limit the obligation of employees who are approved for leave benefits to comply with the reasonable attendance and call-in procedures established for their position.

Nothing in this Policy shall diminish any greater rights that an employee may have under any Harvard policy, law, or collective bargaining agreement that provides for greater or additional rights to leave than those provided in this Policy. Nothing in this Policy shall curtail the privileges or remedies of any employee under a collective bargaining agreement or employment contract.

Harvard will comply with the posting and notice requirements of the PFMLL.

## **Policy Amendments**

Harvard will promptly update this Policy and its claims practices to comply with any changes, amendments, or regulatory clarifications of provisions of the PFMLL. Harvard may amend or terminate this Policy at other times in its discretion. If Harvard terminates this Policy for any reason, it will comply with the requirements for transferring coverage to another compliant PFMLL fully insured private plan or comply with requirements for beginning or resuming participation in the state plan. If coverage under this Policy is terminated or modified, Harvard shall provide written notice to the DFML and employees no later than 30 calendar days prior to the effective date of such change. If coverage under this Policy is terminated for any reason, Harvard will continue to pay benefits on any claims for leave that commenced prior to the effective date of the termination of the Policy. Harvard shall comply with any other requirements associated with termination and modification of plans as established by the DFML.