

## Employment Alert

### Starting November 1, Massachusetts Employees Can “Top Off” Paid Family and Medical Leave Benefits

October 2023

Under a recently enacted change in Massachusetts’ Paid Family and Medical Leave (PFML) law, beginning November 1, 2023, employees receiving PFML benefits will be permitted to supplement, or “top off,” their weekly benefit using accrued paid leave, such as PTO, vacation and/or sick time. Currently, employees receive a weekly benefit amount from the state Department of Family and Medical Leave (DFML) that is less than their average weekly wage, but employees have not been permitted to use accrued paid leave to increase the amount of their weekly benefit.

Employees who apply for PFML benefits on or after November 1, 2023 will be permitted to use accrued paid leave to supplement the PFML benefits they receive from DFML. Employees will be allowed to opt to use accrued paid leave to supplement their PFML benefit up to a combined weekly sum equal to the amount of their Individual Average Weekly Wage (IAWW). The DFML calculates each employee’s IAWW from the amount the employee earned in the last four completed calendar quarters before the start of the employee’s benefit year. The IAWW is the average amount the employee earned per week in the two quarters when the employee earned the most money (or the one quarter with the most money if the employee only worked in two or fewer quarters).

Employers do not need to report topping off of benefits to DFML. Employers and employees have shared responsibility for ensuring that the combined sum of PFML benefits and top-off payments does not result in total payment exceeding the employee’s IAWW.

Importantly, while employers must now offer this option to employees, employees cannot be required to use their accrued paid leave while they are receiving PFML benefits. Employees must be able to choose whether to use their accrued paid leave to supplement their PFML benefit amount or to save their accrued paid leave for other uses.

Employers should amend their leave policies as needed in order to implement this change. DFML has published helpful guidance for employers to refer to in managing issues related to topping off of PFML benefits. If you have any questions about this change, please contact a member of the Davis Malm employment practice.

## Reminder: Recent NLRB Ruling in Stericycle, Inc. Likely Requires Revision of Employee Handbooks

As we explained in our [September 13, 2023 e-alert](#), the NLRB recently issued a strongly employee-friendly decision that makes presumptively unlawful any employment policy that is considered to have a chilling effect on protected activity under Section 7 of the National Labor Relations Act. Employers are likely to have in place employee conduct, social media, electronic use, confidentiality and non-disparagement policies, among others, that are unlawful under the new standard. Employers should engage as soon as possible with their counsel to carefully evaluate all workplace rules, policies, and procedures to make revisions as needed.

### CONTACT

For further information about anything contained in this alert or questions related to Massachusetts employment laws, please contact a member of our [Employment Law Practice](#).