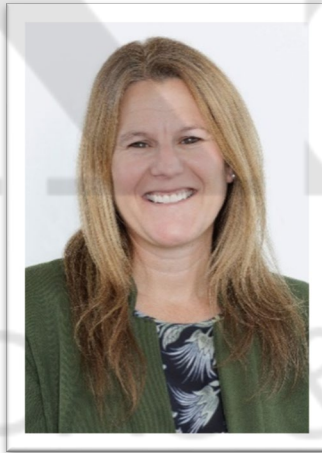




Demystifying Employee Leaves of Absence

Today's Presenters

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Agenda

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- ❑ Overview of Most Common Types of Leaves of Absence
 - ❑ Federal Family and Medical Leave Act
 - ❑ Massachusetts Paid Family and Medical Leave Act
 - ❑ Massachusetts Parental Leave Act
- ❑ Intermittent and Reduced Schedule Leave
- ❑ Other Job-Protected Leaves of Absence
- ❑ Leaves of Absence as Reasonable Accommodation under the ADA
- ❑ Intersection Between Performance and Medical Issues
- ❑ Q&A

Leaves of Absence Overview

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- ❑ Employees take job-protected leaves of absence for various reasons:
 - ❑ Parental/bonding leave
 - ❑ Own serious health condition
 - ❑ Serious health condition of family member
- ❑ Applicable laws relating to leaves of absence:
 - ❑ FMLA
 - ❑ PFMLA
 - ❑ Massachusetts Parental Leave Act
 - ❑ ADA
 - ❑ Other

Leave under Massachusetts PFMLA

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- ❑ General information
- ❑ Administration of PFMLA
- ❑ Employer notice requirements
 - ❑ <https://www.mass.gov/info-details/pfml-workplace-poster-notice-and-rate-sheets-for-massachusetts-employers>
- ❑ Employees qualify if they establish:
 - ❑ the financial eligibility requirements
 - ❑ a qualifying reason for leave
- ❑ **Practice Tip:** Create template to use for each employee who takes leave, including all pertinent information

Leave under Massachusetts PFMLA

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- ❑ Financial eligibility requirements:
 - ❑ Employee must meet the minimum earnings requirement annually established by the Department of Unemployment Assistance (in 2026, at least \$6300) during the last 4 completed calendar quarters.
 - and
 - ❑ Employee must have earned at least 30x the benefit amount that they are eligible for.

Leave under Massachusetts PFMLA

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- ❑ The DFML uses the employee's base period earnings to determine the employee's individual average weekly wage (IAWW).
- ❑ IAWW: Average amount employee earned/week during the highest earning 2 quarters within the last 4 completed calendar quarters prior to the benefit year.
- ❑ Base period: The last 4 quarters employee completed and was paid prior to the start of your benefit year.
- ❑ In 2026, the maximum weekly benefit amount is \$1230.39.

“Top Off”

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- ❑ November 1, 2023 change: Employees receiving PFML benefits may supplement (or “top off”) their PFML benefits to 100% of their wages with any available accrued paid leave (sick time, vacation, PTO, personal time, etc.).
- ❑ For employees who choose to supplement their PFML benefits in this way, the combined weekly sum of PFML benefits and employer-provided paid leave benefits cannot exceed the employee’s IAWW.
- ❑ Employers are responsible for monitoring and ensuring that the combined weekly sum of employer-provided paid leave benefits and PFML benefits does not exceed an employee’s IAWW.

Leave under Massachusetts PFMLA

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Qualifying Reasons for Leave

- ❑ Employees may be eligible for:
 - ❑ Up to 26 weeks in a **benefit year**, with maximums of:
 - ❑ Up to 12 weeks of family leave
 - ❑ Bonding leave
 - ❑ Leave to care for family member with serious health condition
 - ❑ Up to 20 weeks of leave for an employee's serious health condition

PFMLA: Intermittent and Reduced Schedule Leave

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- ❑ Intermittent Leave:
 - ❑ Generally
 - ❑ Challenges of intermittent leave
 - ❑ Employee must discuss schedule with employer
- ❑ Reduced Schedule Leave
 - ❑ Reduction in hours, consistent from one week to the next
- ❑ For bonding leave, employer must approve intermittent/reduced schedule leave.

PFMLA – Important Considerations for Schools

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- ❑ Considerations when dealing with private insurance providers
- ❑ Calculating PFML: Summer, school vacations are *not* included
- ❑ Coverage Issues – Student-facing positions
 - ❑ Classroom teachers
 - ❑ Late arrivals
- ❑ **Intermittent leave:**
 - ❑ Employee must work with Employer to reach mutually-agreeable intermittent or reduced work schedule. 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 agreed to with the employer may be subject to employer discipline. 458 CMR 2.13(2)
 - ❑ Employer is not required to allow remote work for intermittent schedule (absent ADA interactive process, e.g., leave for a family member's medical condition).

PFMLA – Presumption of Retaliation

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- ❑ Any negative change in seniority, status, employment benefits, pay or terms or conditions of employment during a job-protected leave or the **six-month** period following the leave = **automatic presumption of retaliation**.
- ❑ 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”
- ❑ Standard is high but not insurmountable.

Leave under FMLA

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- ❑ Applies where employer has at least 50 employees
- ❑ Employees may be eligible for:
 - ❑ Up to 12 weeks of unpaid leave in a benefit year
 - ❑ Leave for: Bonding, to care for family member with serious health condition, for employee's own serious health condition
 - ❑ Must meet eligibility requirements: 12 months/52 weeks at employer and 1250 hours worked in the preceding 52 weeks
- ❑ Typically where an employee qualifies for leave under the PFML, FMLA leave will run concurrently
- ❑ **Practice Tip:** Ensure that policies clearly state that this leave shall run concurrently with other applicable leaves.

Leave under Massachusetts Parental Leave Act

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- ❑ 8 weeks of unpaid leave to parent, regardless of gender, after the birth or adoption of a child.
- ❑ Employee must have been employed for at least 90 days
- ❑ Applies to employers with 6+ employees.
- ❑ Where both parents work for the employer, they are only entitled to 8 total weeks of leave.
- ❑ Where an employee qualifies for PFML/FMLA, this leave runs concurrently.
- ❑ **Practice Tip:** Ensure that policies clearly state that this leave shall run concurrently with other applicable leaves.
- ❑ *Example:* This could apply where new employee does not qualify for PFML/FMLA, e.g., has no recent work history and does not meet monetary threshold.

Other Job-Protected Leaves

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❑ Domestic Violence Leave

- ❑ For employees that have 50+ employees, qualifying employees are entitled to certain leave when an employee or an employee's family member has been a victim of abusive behavior.
- ❑ Qualifying employees are permitted to take 15 days off in any 12-month period, which may be paid or unpaid.
- ❑ Leave must be directly connected to the abusive behavior (e.g., to obtain a restraining order, receiving medical treatment, etc).

❑ Small Necessities Leave

- ❑ Employees who qualify for FMLA leave may take up to 24 hours in a 12-month period for certain purposes, including the following:
 - ❑ The employee's child's medical appointments;
 - ❑ The employee's elderly relative's medical appointments or other appointments related to the elder's care, such as interviewing at nursing homes.

Reasonable Accommodations under the ADA - Overview

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- ❑ Reasonable accommodation (RA): Change in a job or the way it is performed that enables disabled employee to perform essential functions of the job.
- ❑ Upon receiving RA request, engage in “**interactive process**” to determine whether there is a RA that will enable employee to perform the job’s essential functions without causing employer an undue hardship.
- ❑ RAs come in different forms, such as:
 - ❑ accommodation to workplace conditions or modification of job duties (e.g., structured schedule; late arrival; remote work; allowed to attend weekly appointments; weekly meetings with supervisor; accommodations for physical disability) or
 - ❑ a leave of absence.

Leave of Absence as a Reasonable Accommodation

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- ❑ In certain circumstances, a **leave of absence** may constitute a RA under the ADA.
- ❑ Employer must evaluate whether to grant leave of absence as a RA when:
 - ❑ Employee does not qualify for FMLA/PFMLA
 - ❑ Employee exhausts leave under FMLA/PFMLA and requests extended leave of absence.

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Leave of Absence as a Reasonable Accommodation

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- ❑ Process to follow in evaluating request for leave of absence as RA:
 - ❑ Employee requests extended leave
 - ❑ Employer requests that Employee provide information from healthcare professional, including:
 - ❑ Employee's limitations due to disability (not the disability itself)
 - ❑ Suggested RAs (any alternatives to a leave)
 - ❑ How long the RA will be necessary
 - ❑ **Not just a doctor's note**
 - ❑ **Practice Tip:** Create template forms with template letter to provider that requests information that will allow the School to evaluate the RA request.
 - ❑ Employee provides Employer with requested information

Leave of Absence as a Reasonable Accommodation

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- ❑ Employer evaluates information received and reviews:
 - ❑ Document Alternative RAs
 - ❑ Length of requested leave (indefinite? ambiguous?)
 - ❑ Length of prior leave
 - ❑ The importance of interactive process

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Undue Hardship

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- ❑ Consider whether RA will impose an undue hardship on the employer
 - ❑ significant difficulty or expense, looking at resources and circumstances of employer relative to the cost/difficulty of providing a specific RA
 - ❑ Refers to financial difficulty and to accommodations that are unduly extensive, substantial, disruptive
 - ❑ Nature of school operations is relevant.
 - ❑ Open ended leaves generally not considered reasonable

Undue Hardship/EEOC Guidance

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- ❑ Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on **an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.**

Analysis of Undue Hardship – EEOC Guidance

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- ❑ A determination of undue hardship should be based on several factors, including:
 - ❑ the nature and cost of the accommodation needed;
 - ❑ . . . the effect on expenses and resources of the facility;
 - ❑ the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
 - ❑ the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
 - ❑ the impact of the accommodation on the operation of the facility.”

Beyond PFML/FMLA - Schools

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- ❑ A FT classroom Teacher is on PFML. Leave expires and Teacher requests:
 - ❑ Example 1: Part-time work as a reasonable accommodation
 - ❑ Example 2: Remote work as a reasonable accommodation
 - ❑ Example 3: Indefinite leave
 - ❑ Example 4: 11am late start each day

Beyond PFML/FMLA:

Reasonable Accommodations – Schools

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- ❑ PT schedule as reasonable accommodation for FT teacher position (Incutto v. Newton Public Schools (D. Mass. Apr. 4, 2019). Court determined at summary judgment stage that whether FT presence was an “essential function” of the job was a question for the jury.
- ❑ Sarkisian v. Austin Preparatory School, (D. Mass. 2022).
 - ❑ In person attendance is an essential function of the role of teacher.
 - ❑ School is under no obligation to accommodate an employee by exempting the employee from having to perform an essential job function.
- ❑ See also, Schwartz v. Middletown City School District, (S.D. N.Y. Oct. 15, 2025) (Plaintiff/Teacher failed to meet burden of showing that school’s denial of request to work remotely violated ADA).
- ❑ **Practice Tip:** Be clear in job descriptions that **in-person, full-time** work is an essential job function.

Example: What should you do?

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- ❑ Employer has agreed to a one-month extension of the employee's leave under the ADA.
- ❑ Employee reaches out to HR a few days before the leave expires, and asks for another month.
- ❑ What should you do?
- ❑ What should you not do?
- ❑ Should your decision vary depending on whether the employee has performance issues?
- ❑ Different considerations since employer already provided one extension?

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Intersection Between Performance & Medical Issues

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When Performance/Medical Issues Intersect

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- ❑ Where employee concurrently has performance and medical issues, employer should proceed cautiously to avoid taking action that could be interpreted as discriminating on basis of disability.
- ❑ Ensure that if employer takes disciplinary action against employee in face of both performance and medical issues, that the evidence is clear that discipline is due to performance (not disability or protected leave).
- ❑ Intersection of performance/medical issues typically arises where employee takes job protected leave

Example

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- ❑ Assume the following:
 - ❑ Employee has ongoing performance issues over a lengthy period
 - ❑ Employee subsequently informs employer that needs to take job protected leave due to illness
 - ❑ Employee subsequently on leave for several months
- ❑ Consider which one of the following scenarios has most significant liability risk

Example (continued)

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Scenario 1

- ❑ Organization has little or no documentation of performance issues before employee takes leave; may or may not have engaged in some brief conversations with employee about them, but no documentation, no warnings (verbal or written).
- ❑ Employee returns, undocumented performance issues continue.
- ❑ 4 weeks pass. Organization wants to terminate employee – says supervisors can no longer work with this employee given ongoing performance issues and inability to get anything done.

Scenario 2

- ❑ Prior to employee's leave, organization repeatedly documents performance issues over a lengthy period, places employee on performance improvement plan, tries to work with employee to improve performance. Issues are well-documented.
- ❑ Employee returns, performance issues continue.
- ❑ 4 weeks pass. Organization wants to terminate employee – says supervisors can no longer work with this employee given ongoing performance issues and inability to get anything done.

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Questions?

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