

## Managing PFML Topping Off Requirements

Under MA Paid Family and Medical Leave (PFML) law, employees have the option of “topping off” their PFML benefits with their accrued vacation pay, sick pay, personal days, or other paid leave provided under an employer policy. This significant change took effect for employees who apply for leave on or after November 1, 2023. The changes also apply to organizations that have a private plan exemption. The following serves as a tool for managing the PFML Topping Off Requirements.

### Basic Definitions

The table below provides two important definitions you must know to manage the Topping Off Requirements.

Term	Definition
Topping Off	Topping off is a mechanism for employees to supplement their weekly PFML benefit with their employer-provided accrued paid time off benefits (e.g., vacation, sick, personal, PTO, and other paid leave provided under an employer policy). The amount employees can top off is capped. The sum of an employee’s weekly PFML benefit plus the top off amount cannot exceed the employee’s Individual Average Weekly Wage (IAWW).
Individual Average Weekly Wage (IAWW)	An employee’s IAWW, calculated by DFML, is based on the last four calendar quarters before the start of the employee’s benefit year. Specifically, the IAWW is the average earned per week in the two quarters the employee earned the most money. However, if the employee worked two or fewer quarters, the IAWW is the average earned per week in the one quarter the employee earned the most. In the case of an employee with multiple employers, the IAWW is calculated for each employer separately. <b>Important to note:</b> The IAWW is an average; it is not based on an employee’s current weekly wage.

### Determining If an Employee Is Eligible for Topping Off

Employees are eligible to top off their PFML benefits if they apply for leave on or after November 1, 2023. The table below provides examples of different scenarios and eligibility for topping off.

Scenario	Eligibility for Topping Off
Ongoing leave for which the employee applied before 11/1/2023	NOT eligible
Leave that started on or after 11/1/2023, however, the employee applied for the leave before 11/1/2023	NOT eligible
Employee applied for leave on or after 11/1/2023	ELIGIBLE
Employee applied for leave on or after 11/1/2023, however, the leave was retroactive to dates before 11/1/2023	ELIGIBLE
Employee applied for retroactive leave on or after 11/1/2023, however, the employee already used their paid time off for full salary replacement	Employee can still file for PFML benefits, however, the employer is responsible for managing the payments exceeding the IAWW and the employee is responsible for collaborating with the employer regarding repayments.

### Determining Time Off Benefits an Employee Can Use for Topping Off

DFML updated its guidance in December 2023 to clarify that employees cannot top off PFML benefits with paid time off that normally would not be available for the type of leave being taken, provided the employer’s policy does not discriminate against an employee for exercising their rights under the PFML program. The table below provides examples of different scenarios and whether an employee can use the paid time off for topping off PFML benefits.

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Scenario	Can employees use the paid time off for topping off their PFML benefits?
Employer paid sick leave is not normally available for family bonding leave.	No
Employer PTO is unlimited allowing employees to use their accrued PTO for any reason.	Yes
Employees receive holiday pay while on PFML and the policy allows employees to use the holiday for topping off PFML benefits.	Yes
Under the employer vacation policy, employees can use vacation to cover sick time if the employee has exhausted their paid sick time.	Maybe (More information needed, for example, reason for leave, whether employee exhausted sick time, etc.)

### Checklist for Operationalizing Topping Off Requirements

Use the checklist below as a guide for operationalizing the top off requirements.

What to Operationalize	
<input type="checkbox"/>	<b>Audit Time Off Programs:</b> Audit programs to determine what benefits employees can use to top off PFML benefits.
<input type="checkbox"/>	<b>Inform Employees:</b> Inform employees about their option to use their available paid time off to top off their PFML benefits.
<input type="checkbox"/>	<b>Calculating Top Off Amounts:</b> To calculate the top off amount for each employee, the formula is: $IAWW - PFML\ Benefit = Top\ Off\ Amount$ . Both the employee's IAWW and approved PFML benefit can be found in the Notice of Approval of Application on the DFML Employer Application Website.
<input type="checkbox"/>	<b>Monitoring and Tracking Top Off Amounts:</b> The employer is responsible for monitoring and tracking top off amounts to ensure they do not exceed an employee's IAWW. Top off amounts are not reportable to the DFML by either the employer or employee. The top off process is strictly between the employer and employee.
<input type="checkbox"/>	<b>Managing Repayments of Top Off Overages:</b> The employer is responsible for managing payments that exceed an employee's IAWW and employees are responsible for working with the employer to repay any overages.
<input type="checkbox"/>	<b>Work with Your Payroll Provider:</b> Coordinate with your Payroll Provider to set up a process for paying employees top off amounts and for tracking payments and making any adjustments to paid time off balances, including adjustments for repayments of overages.

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