



New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

MEMORANDUM

DATE: May 24, 2019
TO: Executive Committee
FROM: Tom Nies, Executive Director
SUBJECT: **Massachusetts Family and Medical Leave Act**

The State of Massachusetts recently passed a law that provides paid Family and Medical leave to employees of businesses in the Commonwealth. While we are not required to participate because of our status as a government agency (for the purposes of state insurance programs), the Executive Committee may want to approve participation.

At present, Council staff are eligible for paid time off under the following programs:

- Annual leave, accrued at different rates determined by the time of service;
- Sick leave, which can be used for an illness, pregnancy, childbirth, medical appointments, etc. for the member or the member's immediate family (spouse, child or parent).
- Short-term disability, when the employee is unable to work. Reimbursement covers up to 11 weeks at 2/3 of the base salary. Childbirth qualifies for short-term disability.
- Long-term disability, which covers up to 60 pct of salary, available 90 days after an illness or injury.

Unlike at least two other Councils, we do not have a paid parental leave policy. We do allow liberal use of sick and vacation time, and short-term disability, for the first four months after childbirth or adoption.

The Massachusetts plan would provide the following additional benefits. These benefits are also available to Massachusetts-resident independent contractors who receive a 1099 from the Council. Generally, these benefits become available to employees and contractors in 2021:

- Up to 20 weeks of paid medical leave in a benefit year
- Up to 12 weeks of paid family leave for birth, adoption, or foster care placement, or qualifying exigency arising from a family member or active US military duty,
- 26 weeks of paid family leave to care for a family member is a covered service member with a serious health condition

- Up to up to 12 weeks of paid family leave in a benefit year for care for a family member with a serious health condition

The maximum benefit amount is limited to 64 percent of the state's average weekly wage. At present, this is \$850 per week. Table 1 compares current Council time-off benefits to those provided with the state plan.

Participation in the state program would initially cost about \$6,300 per year. Costs will increase if the number of employees exceeds 25, or the number of Massachusetts-resident 1099 independent contractors increases substantially. The Council is allowed to have part of the cost taken as a payroll tax from employees. We do anticipate that costs will increase in the future, but we do not know by how much. It is unclear if we can withdraw from the program if it gets too expensive.

The primary benefits of the program are:

- 1) It covers a broader array of employee family, medical and parental needs than the Council's existing Short-term and Long-term disability program, and current sick leave policy.
- 2) It provides benefits for a longer duration, albeit at a reduced amount. Under some circumstances and limitations, it can be combined with Short Term Disability to more closely replace the employee's income.
- 3) It is a relatively inexpensive benefit (currently) even if the Council pays for 100% of the employee share, and if needed, employer share if the Council staff increases to 25 or there is an increase in 1099 Massachusetts based 1099 contractors
- 4) However, once adopting the State's approach there are no "take backs", and the rates could escalate. It is not clear if we can withdraw from the program in the future.
- 5) Employees would not have to use earned Sick or Annual Leave time to ensure income continuation during qualifying absences.
- 6) If we don't adopt the program, the Council may be perceived negatively as an employer.

Table 1.

Benefit provided by	Council Sick Leave	Council's Disability Policy Benefit Coverage	Federal FMLA Job Protected Leave (unpaid)	Massachusetts PFMLA Benefit Coverage (Job Protected and paid)			
Need arising from							
Employee's medical illness	✓	✓ 11 weeks @ 66% of weekly wage	✓ 12 weeks Unpaid	✓ 20 weeks paid			
Birth of an Employee's Child – Maternal	✓	✓ 6 or 8 weeks @ 66% of weekly wage		✓ 12 weeks paid and may be additive to Short term disability policy benefit			
Birth of an Employee's child – Parental Leave	✓						
Adoption or Foster Care Placement	✓						
Employee's Family Member Illness including Child	✓						
Spouse	✓						
Parent	✓						
Domestic Partner	✓						
Spouse's Parent	✓						
Spouse's Child	✓						
Employee or Employee's Spouse or Domestic Partner's Grand parent							✓ 12 weeks paid
Grand child							
Sibling							
A person who served in loco parentis to an employee when the employee was a minor							