



COMMONWEALTH  
PAYROLL & HR

# The Paid Family and Medical Leave Law

**Ari Kristan & Liz Monnin-Browder**  
Hirsch Roberts Weinstein LLP

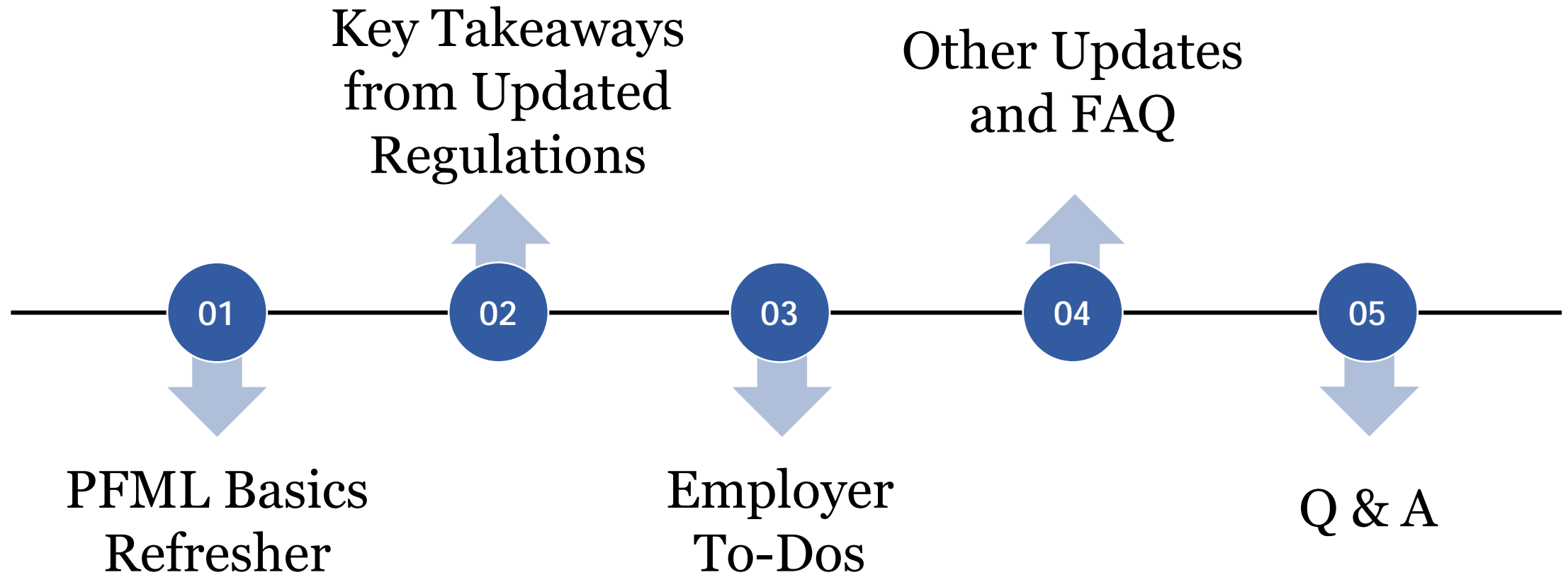
October 22, 2020



HIRSCH  
ROBERTS  
WEINSTEIN LLP



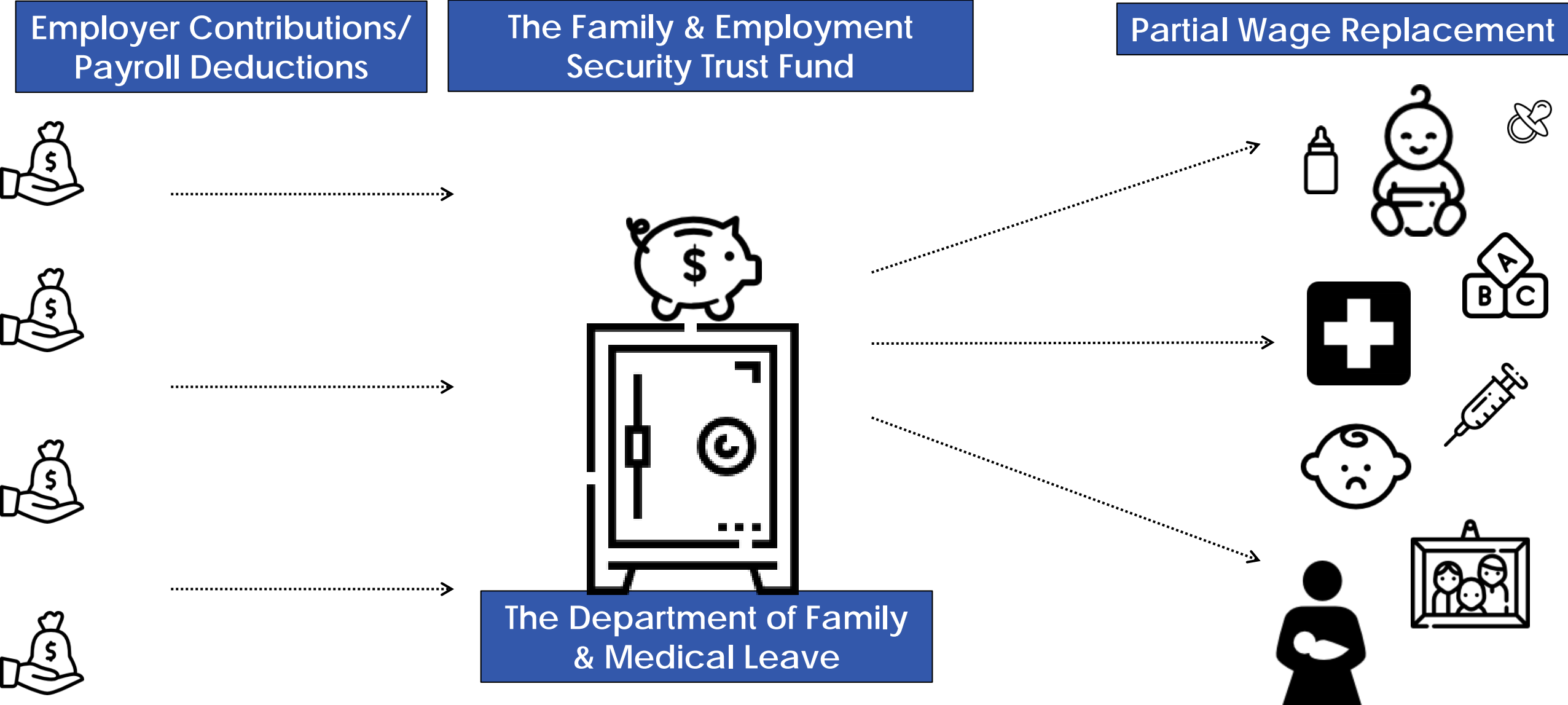
# Agenda





# PFML Basics Refresher

# Massachusetts's Paid Leave Law



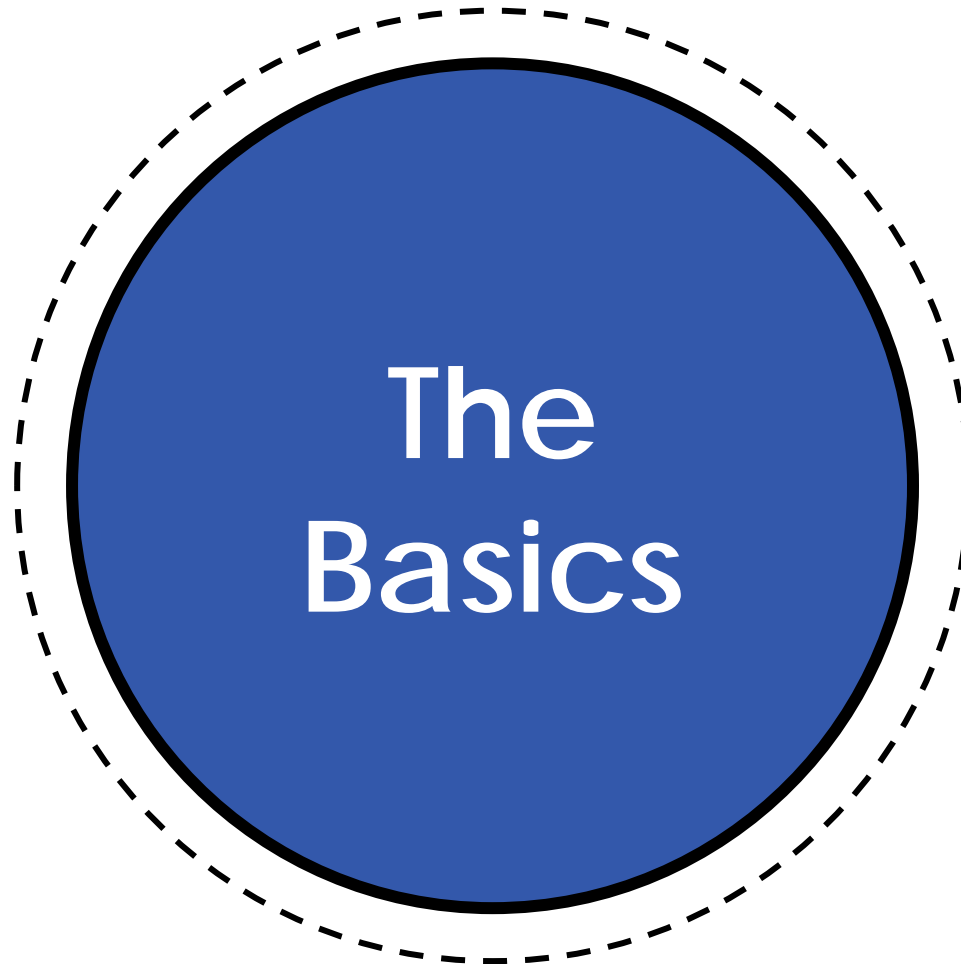
# Massachusetts's Paid Leave Law

UI standard governs  
financial eligibility

12 weeks paid  
family leave

20 weeks paid  
medical leave

26 weeks paid military  
caregiver leave



26-week combined  
leave cap

Partial wage  
replacement

Regulations finalized  
July 24, 2020

Job protection

A blue stethoscope is positioned on the right side of the image, resting on a blue fabric surface. A large white circular overlay is on the left, containing text. In the background, a medical form is partially visible with fields for 'Address:', 'Relation:', and 'Address:'.

# Qualifying Purpose: Medical Leave – 20 Weeks

“[A]n illness, injury, impairment or physical or mental condition that involves (i) inpatient care in a hospital, hospice or residential medical facility; or (ii) continuing treatment by a health care provider.”

# Qualifying Purpose: Family Leave



## 12 WEEKS OF FAMILY LEAVE AVAILABLE:

- To bond with a child for the first 12 months after the child's birth, adoption, or foster care placement
- To care for a family member with a serious health condition
- Due to a “qualifying exigency” related to a family member's military service



## 26 WEEKS OF FAMILY LEAVE AVAILABLE:

- To care for a family member who suffered a serious illness while on active duty



# Covered Family Members

Spouse,  
Child,  
Parent (including in loco  
parentis),  
Parent-in-law,  
Grandchild,  
Grandparent,  
Sibling,  
Domestic partner



# Employee Eligibility

- Former employees separated from employment in last 26 weeks may qualify for benefits, provided they also meet the previously mentioned wage eligibility requirements upon separation
- Self-employed individuals who elect coverage and make contributions to trust fund qualify
- Independent contractors are eligible where they make up more than 50% of the workforce

# Employee Eligibility: Unemployment Insurance Financial Standard Governs

■ ■ ■ ■ ▶ In the past 4 completed calendar quarters prior to claim, the employee must have:



Earned wages equal to 30 times weekly benefit rate; and



Meet minimum earnings requirement

Currently the maximum benefit is \$850



# Private Plan Alternative

- ➔ Must confer the same rights, protections, and benefits under the law
- ➔ Must be approved by the Department of Family and Medical Leave
- ➔ May have private plan for both family and medical or just one type of leave

# Important Upcoming Dates



January 1, 2021



Benefits available for bonding with a new child, servicemember-related events, and serious personal health conditions



July 1, 2021



Benefits available for the care of a family member with a serious health condition



# What's New? – Key Takeaways from Updated Regulations

# A New Definition for Accrued Paid Leave

## Includes

Sick leave,  
Annual leave,  
Vacation leave,  
Personal time,  
Compensatory time,  
PTO

## Excludes

Temporary disability  
policy or program  
**and** paid family or  
medical leave policy

# Interaction Between PFML and Accrued Paid Leave

- 👉 Employees NOT allowed to supplement PFML leave with Accrued Paid Leave
- 👉 If employee receives Accrued Paid Leave they are NOT eligible for PFML benefits
- 👉 Employers are NOT eligible for reimbursement of Accrued Paid Leave, even if used for PFML-qualifying purpose

**But remember** – Accrued Paid Leave does not include disability. May provide incentive to retool benefits program





# Revisions to Retaliation Provisions

- Six-month presumption following leave that negative job action constitutes retaliation UNLESS the employer can show by “clear and convincing evidence” that the action was not retaliation

- Updated Regulations – application of “preexisting employment rule or policy shall be deemed to be clear and convincing evidence”



# Emphasis on Written Policies

▶ The Updated Regulations provide flexibility to employers in certain areas, but only if there is a uniformly applied pre-existing policy

Fitness for duty  
certificates

Increments of  
intermittent  
leave

Employee  
communication  
requirements

Substance use  
on the job

# Treatment of Leave Provided Prior to January 1, 2021



Employees are entitled to full PFML allotments on January 1, 2021



Time taken prior to that date is not counted against PFML allotments



# More Guidance to Come?



Sample Policy



Sample Forms



Additional Guidance  
on Administration /  
Appeals



# What's Next? – Employer To-Dos



Review existing leave-related benefits and assess changes to maximize the employee's ability to receive and supplement PFMLL benefits and the employer's ability to receive reimbursement for paid leave benefits

# Implement or Update Workplace Rules and Policies So They Better Align with the PFMLL




Fitness for duty requirements

Increments of intermittent leave


Employee communication requirements

Substance use on the job




For unionized workforces,  
propose and bargain over any  
needed changes to existing  
collective bargaining  
agreements and/or union-  
sponsored benefit programs





Establish procedures for coordinating the various types of paid time off to which workers are eligible under federal and state law (PFMLL, FMLA, sick time, Mass. Parental Leave law, etc.), company policy, and/or employment contracts





# Consider Whether to Align PFMLL and FMLA Benefit Years



“Rolling look-back” method available under FMLA is not available under PFMLL



PFMLL benefit year “looks forward” – e.g., 52 weeks starting from the Sunday immediately prior to first day of leave

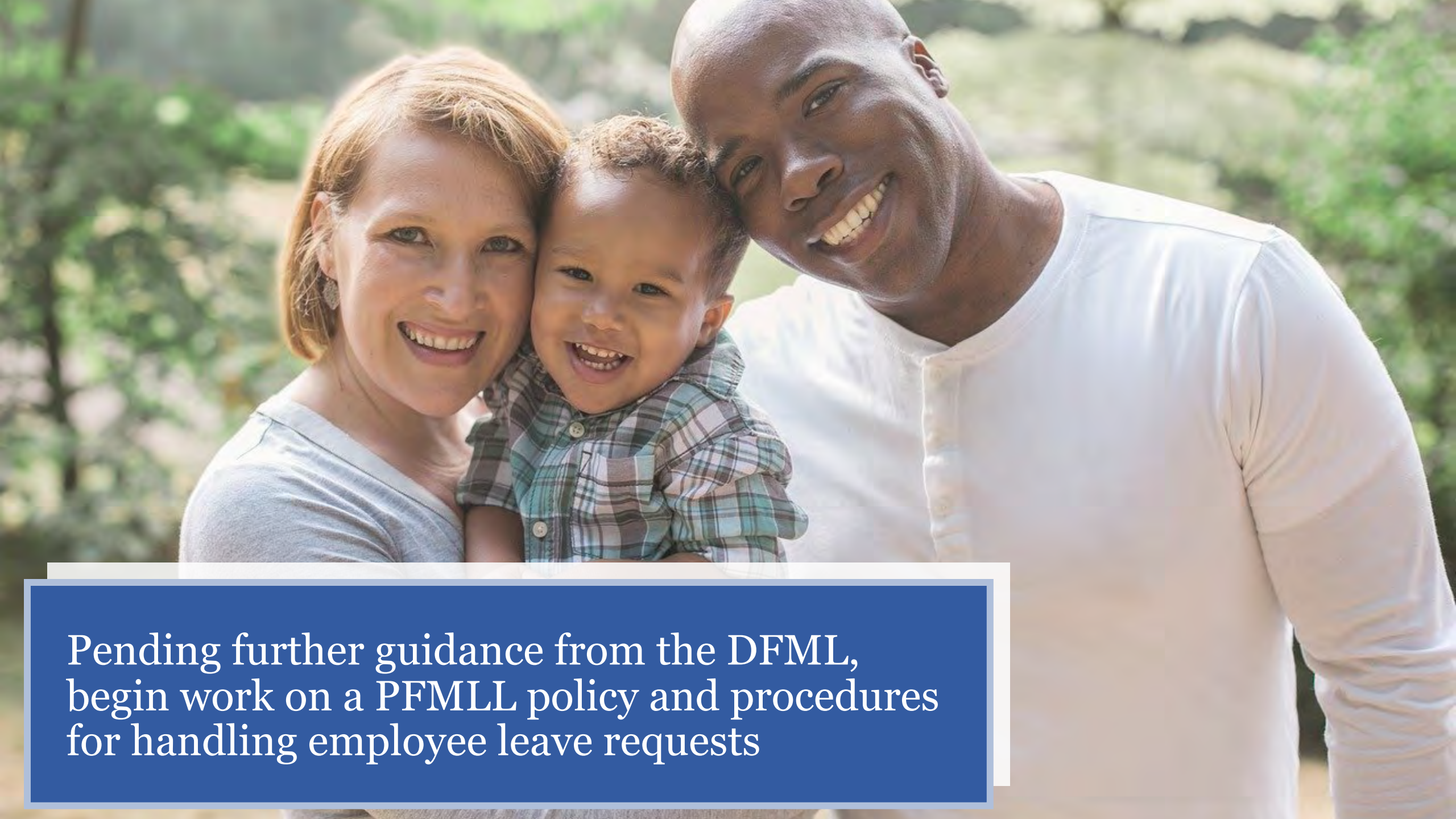


If decide to align FMLA/PFMLL benefit years:


- Must give employees 60 days’ notice prior to change
- Transition must afford employees the greatest benefit



Train Human Resources  
and senior management  
team members on PFMLL  
implementation procedures



Pending further guidance from the DFML,  
begin work on a PFMLL policy and procedures  
for handling employee leave requests



Implement clear,  
consistent workplace  
rules to help defend  
against retaliation  
claims



# Other Updates and Frequently Asked Questions



**“Soft Launch” for  
Bonding Leave Claims  
on December 1, 2020**

# Tax Treatment of PFMLL Contributions and Benefits?

- DFML requested guidance from the IRS, and state PFML tax issues are on IRS's list of priorities
- DFML anticipates that the IRS will conclude that employee contributions should be withheld from after-tax wages
- Until there is a definitive rule on tax treatment, DFML urges businesses and individuals to consult with their own tax advisors



Q & A





**Ari Kristan**

**[akristan@hrwlawyers.com](mailto:akristan@hrwlawyers.com)**

**617-348-4365**



**Liz Monnin-Browder**

**[emonnin-browder@hrwlawyers.com](mailto:emonnin-browder@hrwlawyers.com)**

**617-348-4349**