



**Massachusetts Bay  
Transportation Authority**

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# **Paid Family Medical Leave Law**

**Overview of Impact to MBTA**

**July 22, 2019**



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## Overview of New PFML Law: Summary

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### **SUMMARY OF THE LAW**

The 2018 Paid Family Medical Leave Law (“PFML”) establishes mandatory and comprehensive paid family and medical leave benefits for employees in Massachusetts beginning on January 1, 2021. Covered employees in Massachusetts will be eligible for up to 26 weeks of paid medical and family leave during a 52-week “rolling period”.

Leave benefits will be administered and adjudicated by the newly established Department of Family and Medical Leave (“DFML”) and funded by mandatory employer and employee contributions to the Family and Employment Security Trust Fund. The start date of the contributions was planned for July 1, 2019 and is now delayed until October 1, 2019.

Benefits for leave to care for a family member with a serious health condition will not be available to employees until July 1, 2021.

Source: MBTA Internal Data



## Overview of New PFML Law: Comparison to FMLA

	FMLA	PFML
<b>Notice to Employees</b>	Employees are notified upon employment. Policy available on MBTA Intranet and in HR. Posters on display in all work locations.	Notices to employees will be mailing date TBD. Notice includes information regarding the process to apply for and access paid leave. The notice will inform employees of the payroll deduction and the start date of the deductions (TBD). Notices will also be posted in all work locations.
<b>Eligibility</b>	Employees must be employed for at least 12 months and have worked a minimum of 1,250 hours during the 12 months preceding the leave.	An individual must have earned at least 30 times the weekly PFML benefit in the prior 12 months. According to guidance issued by DFML, this means that individuals must have approximately 15 weeks of earnings to qualify and have earned at least \$4,700.
<b>Amount of Leave Available</b>	<p>Total of 12 weeks Family and Medical leave in the aggregate</p> <p>Military Caregiver Leave: 26 weeks during a single 12-month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member</p>	<p>Total of 26 weeks Family and Medical leave in the aggregate</p> <p>12 weeks leave for family                  20 weeks leave for employee’s own serious health condition                  26 weeks leave for caring for a covered service member                  (Leave taken simultaneously – up to 70 more days)</p>

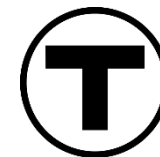
Source: MBTA Internal Data



## Overview of New PFML Law: Comparison to FMLA

	FMLA	PFML
<b>Definition of “Family Members”</b>	Spouse, son, daughter, or parent	Spouse, domestic partner, child, parent, or parent of spouse or domestic partner of the covered individual; a grandchild, grandparent, or sibling of the covered individual
<b>Reinstatement Rights</b>	Entitlement to reinstatement to same or equivalent position. No requirement to restoration if employee would not otherwise have been employed at the time reinstatement is requested, e.g., would have been laid-off in the interim, or if a “key employee.”	Entitlement to reinstatement to same or equivalent position. No requirement to restore the employee if other employees of equal service and status in the same or equivalent positions have been laid off; however, employee shall retain any preferential consideration for a position that employee had as of the date of the leave.
<b>Former Employees</b>	Not entitled to FMLA	May qualify for the state benefit if they meet the financial eligibility test at the time of their separation from employment and if employment ended within 26 weeks of the start of the leave.

Source: MBTA Internal Data



## Overview of New PFML Law: Comparison to FMLA

	FMLA	PFML
<b>Benefit Year</b>	May use calendar year or other more favorable benefit year measure	Requires employers to measure the benefit year going forward for 52 weeks from the Sunday immediately preceding the date that a covered individual first uses protected leave
<b>Required Use of PTO</b>	An employer may require an employee to use any paid sick time, vacation time, or PTO while taking FMLA leave.	Employers may not require employees to use PTO prior to or during leave under the PFML.
<b>Employer Control</b>	Employer administers the leave, including determining whether medical certifications are complete and sufficient, requesting that an employee recertify, or referring them for a second opinion.	The employer maintains control over approving PFML leave. However, DFML has the sole right to grant the PFML benefit. The employer must also provide information to the DFML when an application is filed.
<b>Adverse Employment Actions</b>	No presumption of retaliation	Rebuttable presumption of retaliation if an employee suffers an adverse employment action within six months of his/her leave

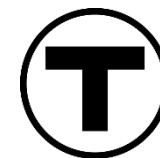
Source: MBTA Internal Data



## Potential Impact: Annual Administrative Costs

Department	Type of expense	Estimated Costs
Treasury/ Controller Department	Trust Contribution: mandatory 00.75 of wages Employer Share: .375 – chargeback to MBTA Employee Share: .375 – payroll deduction	Total: \$3.5 Million
HR Benefits & Recruitment staff impact	Human Resources: includes notice to employees, staff to field inquiries on law, recruitment costs for additional staff assumed, and additional training	\$300,000 initial costs \$200,000 ongoing costs
HR/Finance/Legal /Procurement	Private Plan Option Costs Surety Bond (required in law) Costs of leave program Costs of for increased legal claims (retaliation)	To be determined

Source: MBTA Internal Data



## Potential Impact: Annual Administrative Costs

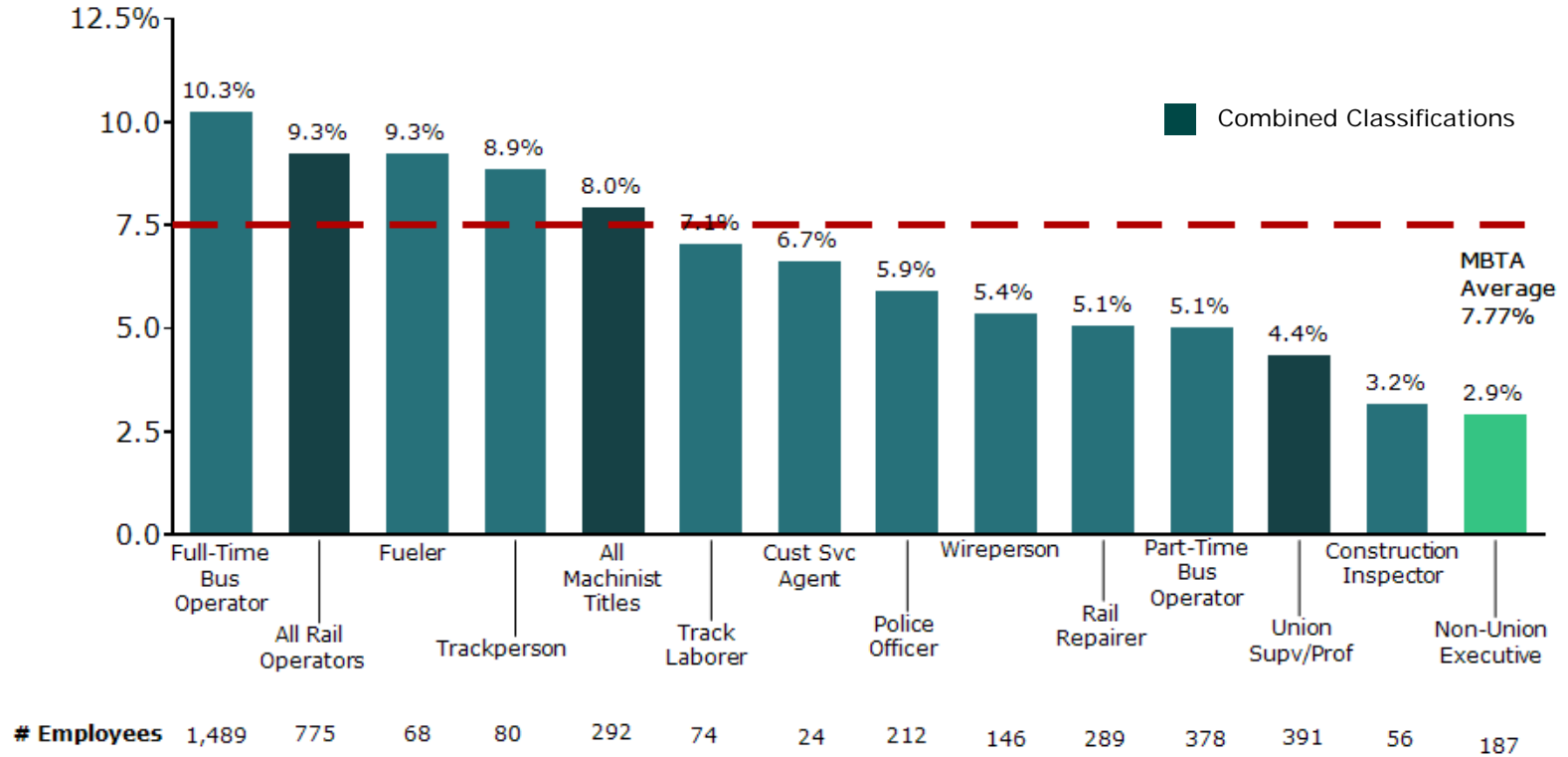
Impact	Summary	Estimated Costs
<b>Presumption of Retaliation</b>	Provides additional opportunity after arbitration and MCAD	FY18 Grievances: 786 (616 individual employees) FY18 Disciplinary Actions: 2,057 (1,317 individual employees)
<b>Leave Management</b>	Additional volume in leave case management	Currently spend \$1M+ annually with outside vendor WorkPartners and internal HR staff – certification, re-certification, 2 <sup>nd</sup> and 3 <sup>rd</sup> opinions, etc.
<b>Expanded Access to Leave</b>	Anticipated growth in leave will impact dropped trips and OT and/or new hires	FY18 FMLA Total Spend: \$10M+ 1,800+ employees with Active FMLA Claim Average length non-intermittent leave: 5 weeks

Source: MBTA Internal Data



## Current Status: 2019 Q1 update – Absenteeism by Job Class

MBTA Unscheduled Absence % (CY2019 - Q1)



Source: MBTA Internal Data

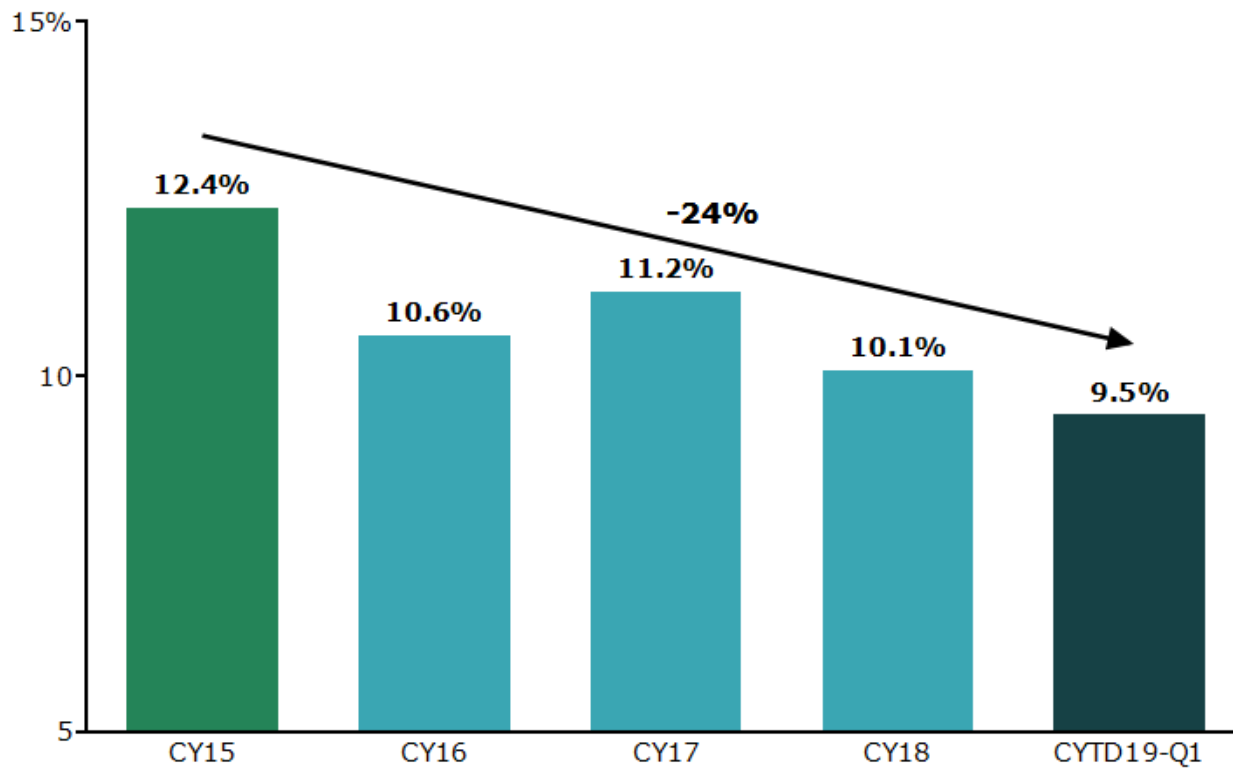
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## Current Status: Declining trend of unscheduled absence rate for Transportation Operators CY15 to CYTD19-Q1

Unscheduled Absence %  
- Transportation Operators

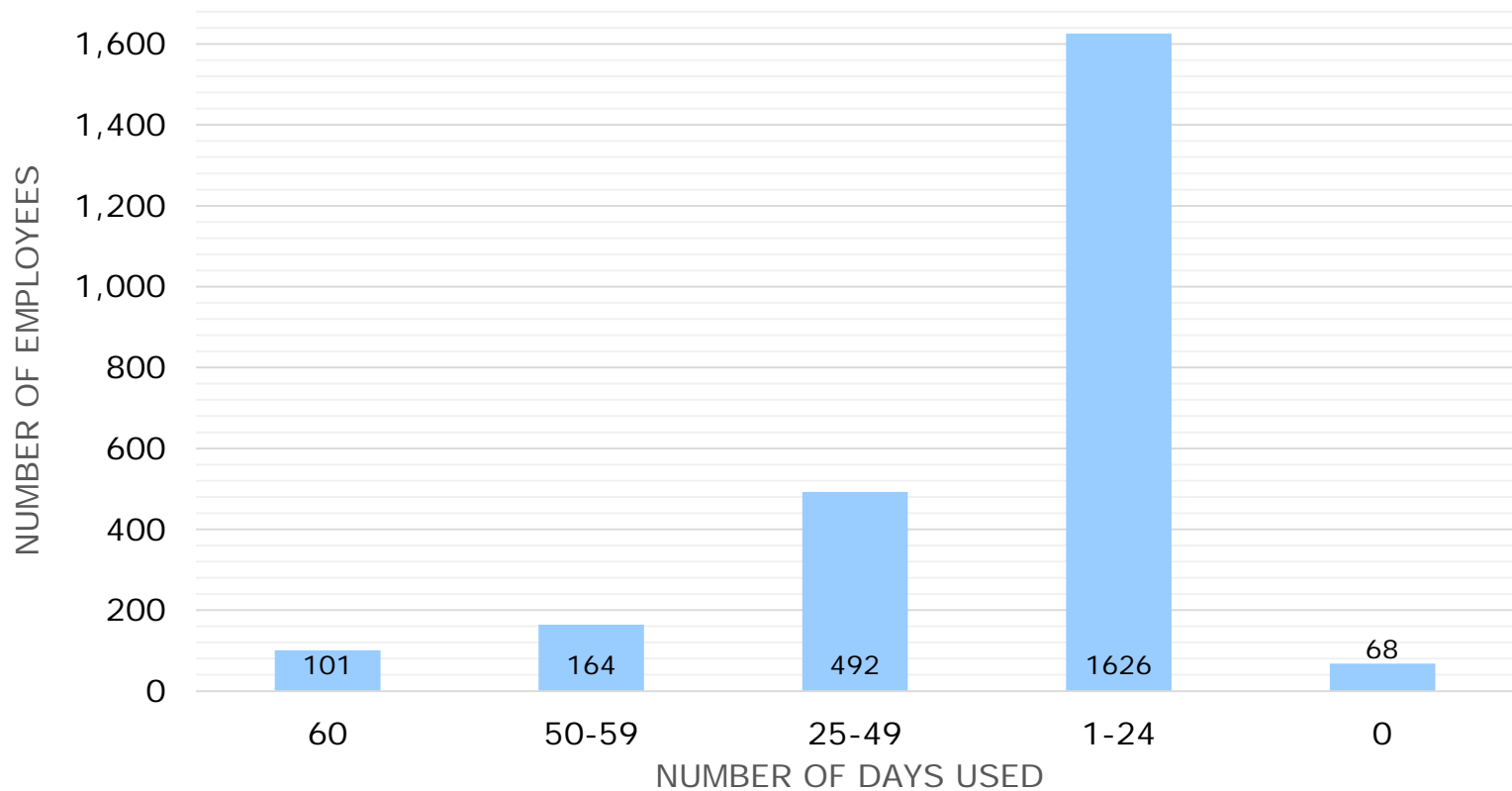


Source: Internal MBTA data

Note: Transportation Operators include the titles of FT & PT Bus Operators and all Rail Operators



## FMLA Utilization for Leaves approved between July 1, 2017 and June 30, 2018

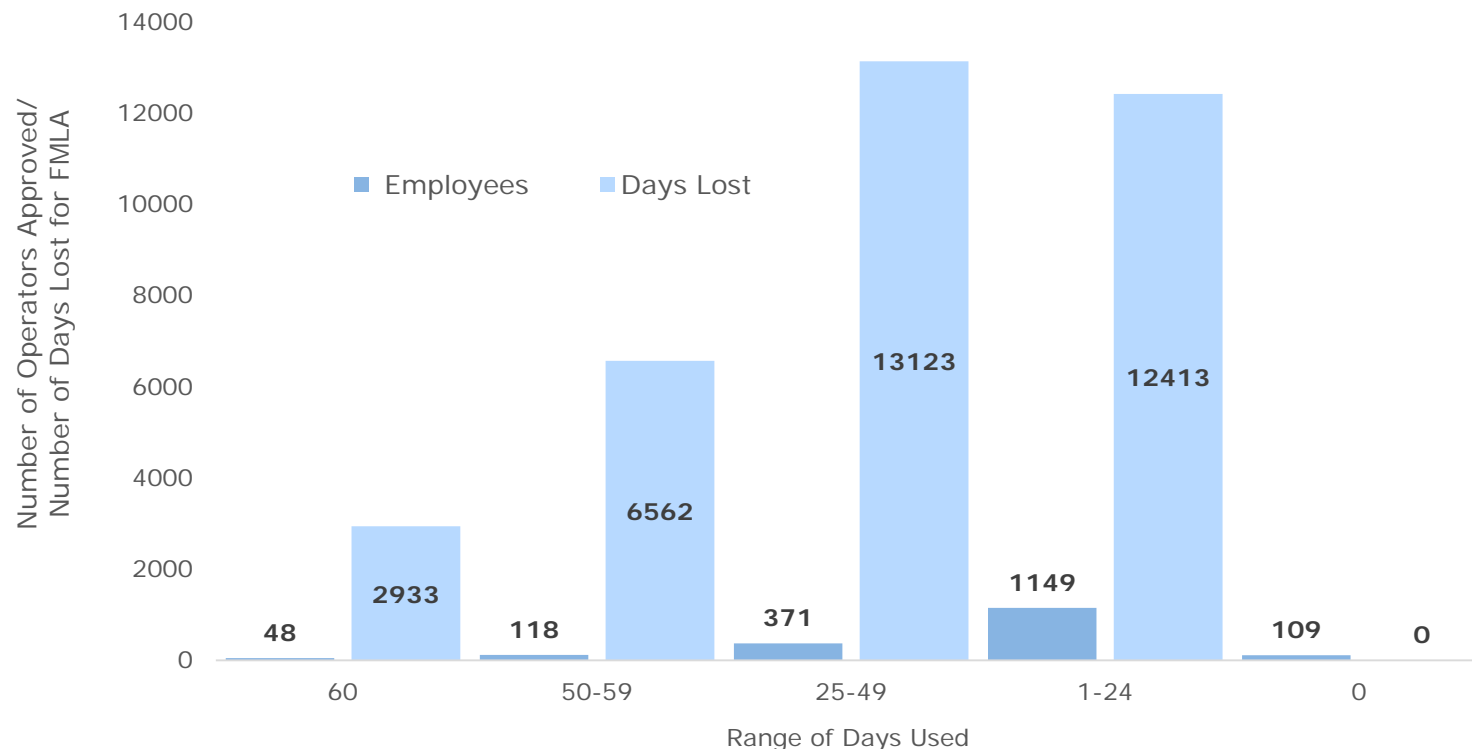


\*Recertification of employees occurs annually on a rolling basis

Source: MBTA Internal Data



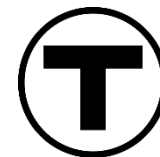
## Actual FMLA Utilization by Operators (Bus & Rail) between July 1, 2017 and June 30, 2018



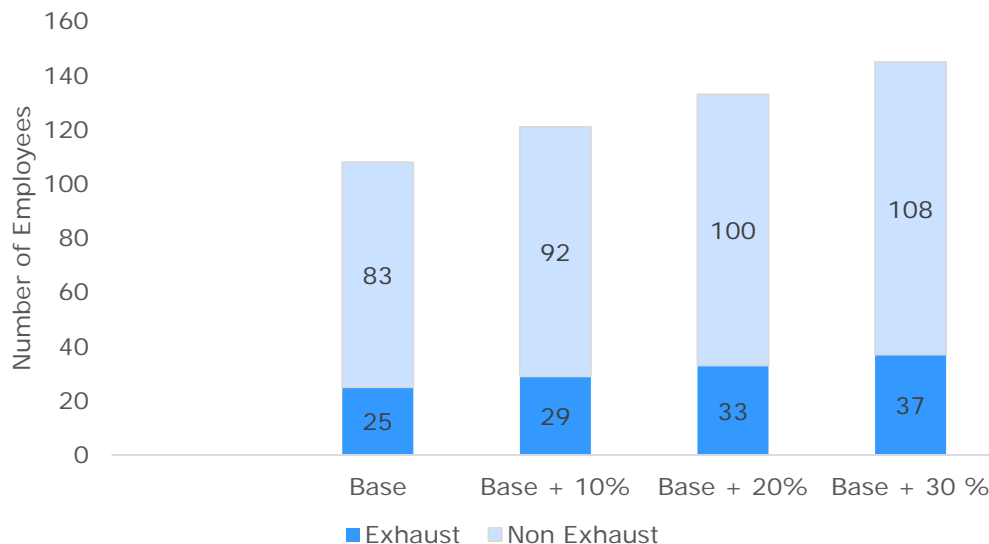
Approximately 8% of the employees fall into the 60 or 50-59 days of usage ranges; however, they account for 27% of all usage.

Currently, there are approximately 3,000 Operators (including Inspectors) who make up this employee population (as of 6/5/19 it was 3,017).

Source: MBTA Internal Data



## Operations: Potential Scenarios on Bus & Rail Operator Headcount



**Base Assumption:** 50% of employees who exhaust or nearly exhaust all available time under FMLA will continue to exhaust all available time under PFML. Also, since PFML is now a paid benefit and eligibility has expanded, there will be a **75%** increase in usage among employees who do not exhaust all available time.

Bus and Rail Operators had 35,032 lost work days as a result of FMLA leave usage in FY18. (Data from Work Partners, the MBTA's Third Party Benefit Administrator)

The number of new employees needed was calculated on the assumption that employees work 230 days per year.

The financial impact was calculated on the assumption that a new employee cost \$125,000 when base pay and benefits are considered.

Source: MBTA Internal Data



## Operations: Potential Scenarios on Bus & Rail Operator Headcount

Assumption	Exhaustion of all Available Time			Usage by Employees who do not Exhaust Time			Total Impacts		
	Add. Lost Days	New Operators Needed	Financial Impact	Add. Lost Days	New Operators Needed	Financial Impact	Add. Lost Days	New Operators Needed	Financial Impact
<b>Base</b>	<b>5810</b>	<b>25</b>	<b>\$3,125,000</b>	<b>19152</b>	<b>83</b>	<b>\$10,375,000</b>	<b>24962</b>	<b>108</b>	<b>\$13,500,000</b>
Base + 10%	6745	29	\$3,625,000	21067	92	\$11,500,000	27812	121	\$15,125,000
Base + 20%	7680	33	\$4,125,000	22982	100	\$12,500,000	30662	133	\$16,625,000
Base + 30 %	8615	37	\$4,625,000	24898	108	\$13,500,000	33513	145	\$18,125,000

**Base Assumption:** 50% of employees who exhaust or nearly exhaust all available time under FMLA will continue to exhaust all available time under PFML. Also, since PFML is now a paid benefit and eligibility has expanded, there will be a **75%** increase in usage among employees who do not exhaust all available time.

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Source: MBTA Internal Data



## Operations: Potential Scenarios on Core Service with No New Hires

Assumption	Total Additional Days Lost	% Increase in Lost Days	Potential Additional Dropped Trips
Base	24,962	71.3%	9,793
Base + 10%	27,812	79.4%	10,911
Base + 20%	30,662	87.5%	12,029
Base + 30 %	33,513	95.7%	13,147

**Base Assumption: 50%** All employees who exhaust or nearly exhaust all available time under FMLA will continue to exhaust all available time under PFML. Also, since PFML is now a paid benefit and eligibility has expanded, there will be a **75%** increase in usage among employees who do not exhaust all available time.

Bus and Rail Operators had 35,032 lost work days as a result of FMLA leave usage in FY18. (Data from Work Partners, the MBTA's Third Party Benefit Administrator)

During the 12-month period from April 2018 through April 2019 there were 13,743 dropped trips associated with absences due to employees on FMLA Leave.

The Potential Additional Dropped Trips and/or increase in OT assumes no additional hires. Additional hires will mitigate this impact.

Source: MBTA Internal Data