



MA PFML, FLSA Updates, and 10 Traps for the Unwary Employer

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Agenda



Paid Family & Medical Leave Act



FLSA Updates



Traps for the Unwary Employer



Questions?

Paid Family and Medical Leave Act



MASSACHUSETTS NEW PAID LEAVE LAW

Employer Contributions / Payroll Deductions



The Family & Employment Security Trust Fund



The Department of Family & Medical Leave

Partial Wage Replacement

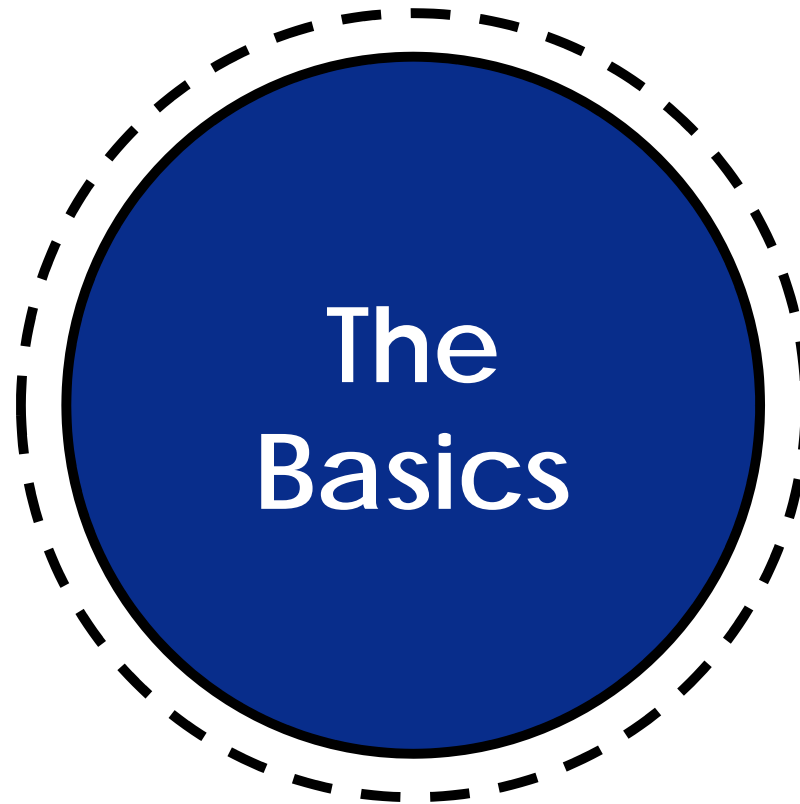


MASSACHUSETTS'S NEW PAID LEAVE LAW

UI standard governs
financial eligibility

12 weeks paid
family leave

20 weeks paid
medical leave



26-week combined
leave cap

Partial wage
replacement

26 weeks paid military
caregiver leave

Job protection



TIMING (AS OF JUNE 18, 2019)

	September 30, 2019	Employers must hang workplace poster
	September 30, 2019	Employers must notify their employees
	October 1, 2019	Employers begin collecting contributions
	December 20, 2019	Deadline to apply for private exemption for first quarter
	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

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*

(*presently \$4,700 in the past 4 completed quarters)

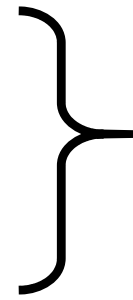
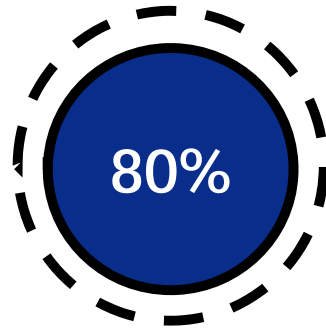
EMPLOYEE ELIGIBILITY:

- 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

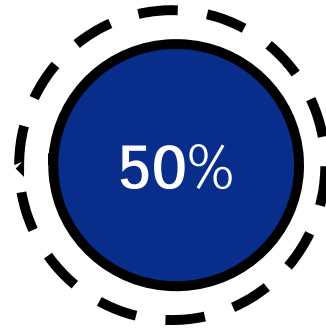


BENEFIT AMOUNT

Currently the maximum benefit is \$850



80% of their wages
(up to 50% of the state
average weekly wage)



50% of their wages
beyond that amount

SAMPLE PFML BENEFIT CALCULATIONS

State Average Weekly Wage (SAWW) October 2018:	\$1,383.41
50% of the SAWW	\$691.71
Initial Maximum Weekly Benefit Amount (Cap)	\$850.00

Annual Wage Amount	Employee Weekly Wage	Total Benefit	% of PFML EE Weekly Wage Replacement
\$26,000	\$500	\$400	80.0%
\$66,818	\$1,284.96	\$850	66.1%
\$104,000	\$2,000	\$850	42.5%
\$202,800	\$3,900	\$850	21.8%

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

MEASURING THE LEAVE YEAR



52-weeks beginning on the Sunday preceding the first day of leave



Like the “measure forward” method under the FMLA



Not the “rolling” method under the FMLA (which measures backwards)



Not the calendar year

SOME ADDITIONAL DETAILS

- ✓ Intermittent leave available on prorated basis except for births, adoptions, or foster care placements
- ✓ 7-day waiting period applicable to all but pregnancy-related disability followed by family leave
- ✓ Written notice and posting requirements for employer (with significant penalties for noncompliance)
- ✓ 30-day notice of need for leave by employee unless impracticable

COORDINATION WITH EXISTING EMPLOYER POLICIES

- Paid leave provided “at the same or higher rate” by employer counts against employee’s leave allotment
- Law provides for reimbursement from trust fund for employers that make paid leave payments pursuant to company policy
- Policies requiring employee to first exhaust available PTO are not permissible
- Paid leave runs concurrent with FMLA leave and the MA Parental Leave Act

JOB PROTECTION & HEALTHCARE CONTINUATION



Job restoration
“to the employee’s
previous position
or to an
equivalent
position” upon
return from leave



Healthcare
continuation during
leave, with
employer
contribution
unaffected by
leave status





Anti-retaliation
provision protects
employees who
exercise right
to leave

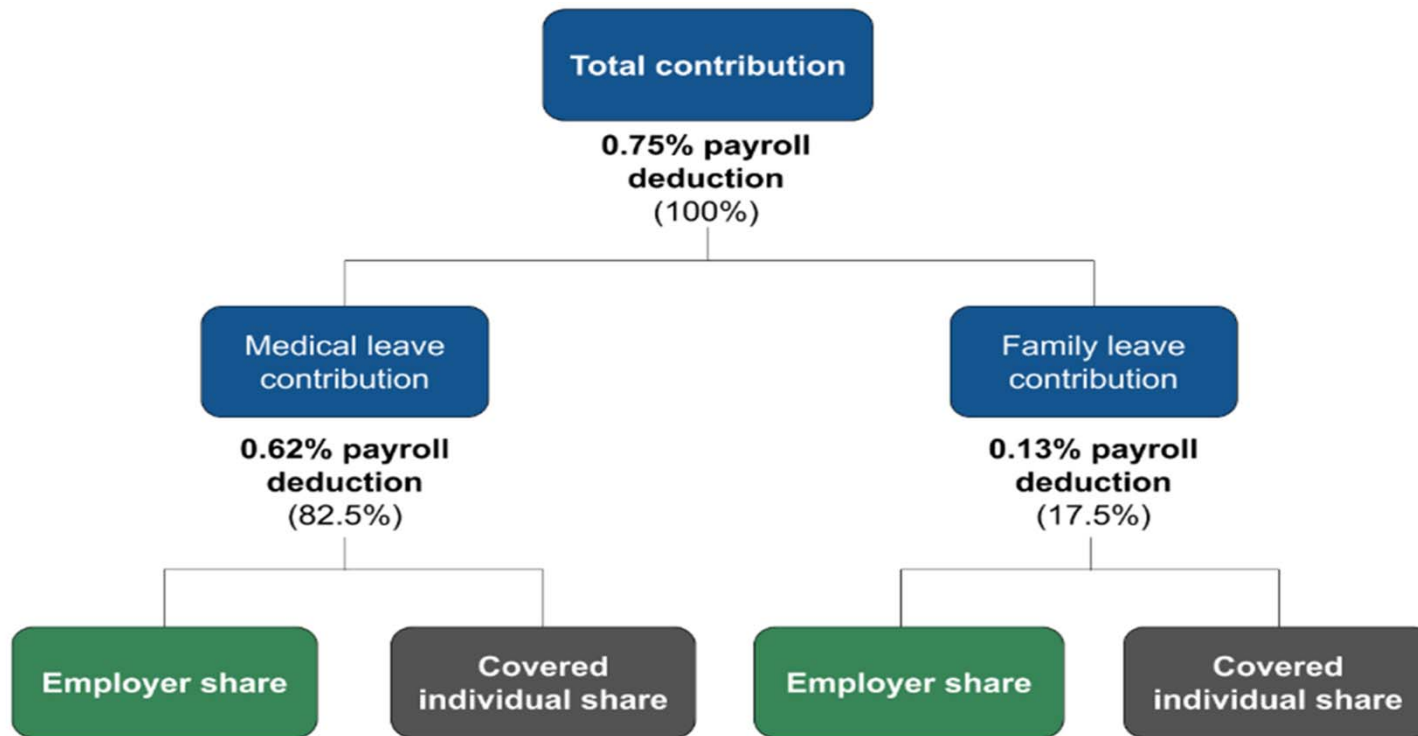


Any “negative
change” in terms or
conditions of
employment in
6 months following
leave, participation in
proceedings, or
inquiries, presumed
to be retaliation

SO, WHO IS PAYING?

- ▶ 0.75% contribution rate split into employer portion and employee portion
- ▶ Premium split:
 - ▶  Medical Leave: 60% employer / 40% employee
 - ▶  Family Leave: 100% employee
- ▶ Employers with less than 25 employees exempt from employer portion
- ▶ Employee portion taken through wage deductions
- ▶ Independent contractors count as employees where they make up more than 50% of the workforce

Contribution rate split for employers with 25 or more employees





NOTICE REQUIREMENTS

- ✓ **Notice for existing workers due September 30, 2019**
- ✓ **Must be provided to both employees and individuals who receive 1099-MISC**
- ✓ **For existing workers, notice can be provided electronically**
- ✓ **Must get acknowledgement or refusal from employee**

For more info about the PFMLA,
please visit:

www.Mass.Gov/orgs/departments-of-family-and-medical-leave



FLSA Updates



EXEMPT VS. NONEXEMPT EMPLOYEES

→ White Collar Exemptions

Employees employed in a bona fide executive, administrative, professional, or outside sales capacity are exempt from the FLSA's minimum wage and overtime requirements.

29 U.S.C. Section § 213(a)(1)

→ Exempt = Not subject to FLSA overtime requirements

→ Nonexempt = subject to FLSA overtime requirements

PROPOSE SALARY THRESHOLD RAISE

The DOL has now issued a proposal to raise the salary threshold to \$679 per week (\$35,308 annually)

Minimum for highly compensated employees increased from \$100,000 to \$147,414

The DOL has not proposed any changes to the duties test





NEXT STEPS FOR EMPLOYERS

↪ Review of Exempt/Non-Exempt

↪ For Exempt:
-Plan for salary increase to \$679 per week OR
-Get ready to track hours worked and to pay overtime if more than 40

A group of business professionals, including a man with a beard and a woman, are gathered around a table in a meeting. They are looking at a laptop screen and discussing it. The scene is dimly lit, with a focus on the people and the laptop.

TOP 10 TIPS FOR MANAGING

- 10 Get help
- 9 Act in haste, litigate in leisure
- 8 Keep your management hat on at all times
- 7 Do not make exceptions that become the rules
- 6 Nothing is off the record

A group of people in a meeting looking at a laptop screen. The image is a background for the text. It shows a man with a beard pointing at a laptop screen while others look on. The scene is dimly lit, suggesting an office or meeting room.

TOP 10 TIPS FOR MANAGING

- 5 Be patient, but do not procrastinate
- 4 Do not make promises you cannot or will not keep
- 3 Honesty is the best policy
- 2 Bad news should never be a surprise

A group of people in a meeting looking at a laptop screen. The scene is dimly lit, with a focus on the laptop and the hands of the participants. The text 'TOP 10 TIPS FOR MANAGING' is overlaid in blue, underlined, at the top left. The first tip, '1 Treat employees with fairness and respect', is overlaid in black text in the center.

TOP 10 TIPS FOR MANAGING

1 Treat employees with fairness and respect

Traps for the Unwary Employer



Question 1

It is okay to utilize a time clock and a payroll system that rounds the employee's start and finish times (e.g., a punch-in time of 8:58AM becomes 9:00AM).

TRUE

Question 2

Comp time is an acceptable substitute for overtime so long as the employee agrees to it in writing.

FALSE



Question 3

An employer may lawfully require an employee to work through lunch in an emergency.

IT DEPENDS

A photograph of a person standing on a set of wooden stairs. The person is wearing a grey, textured coat, black pants, and black boots. They are carrying a brown leather bag with a strap over their shoulder. The stairs are made of light-colored wood and lead upwards. The background is a light blue wall with horizontal lines.

Question 4

If Joan works 40 hours a week in her exempt position and occasionally works an hourly position on the weekend, she must be paid overtime for the weekend hours that exceed 40.

FALSE, UNLESS...



Question 5

An employer may discipline employees for discussing their salaries if the company handbook states that employee salaries must be kept confidential.

FALSE

A woman with long dark hair, wearing a light blue blazer over a pink top and a dark patterned bag, is shown from the side, talking on a mobile phone. The image is partially obscured by a white box with a blue border containing the word 'FALSE'.

Question 6

If a terminated employee fails to return their keys, cell phone, or other company property the employer may withhold the value of those items from the employee's final paycheck.

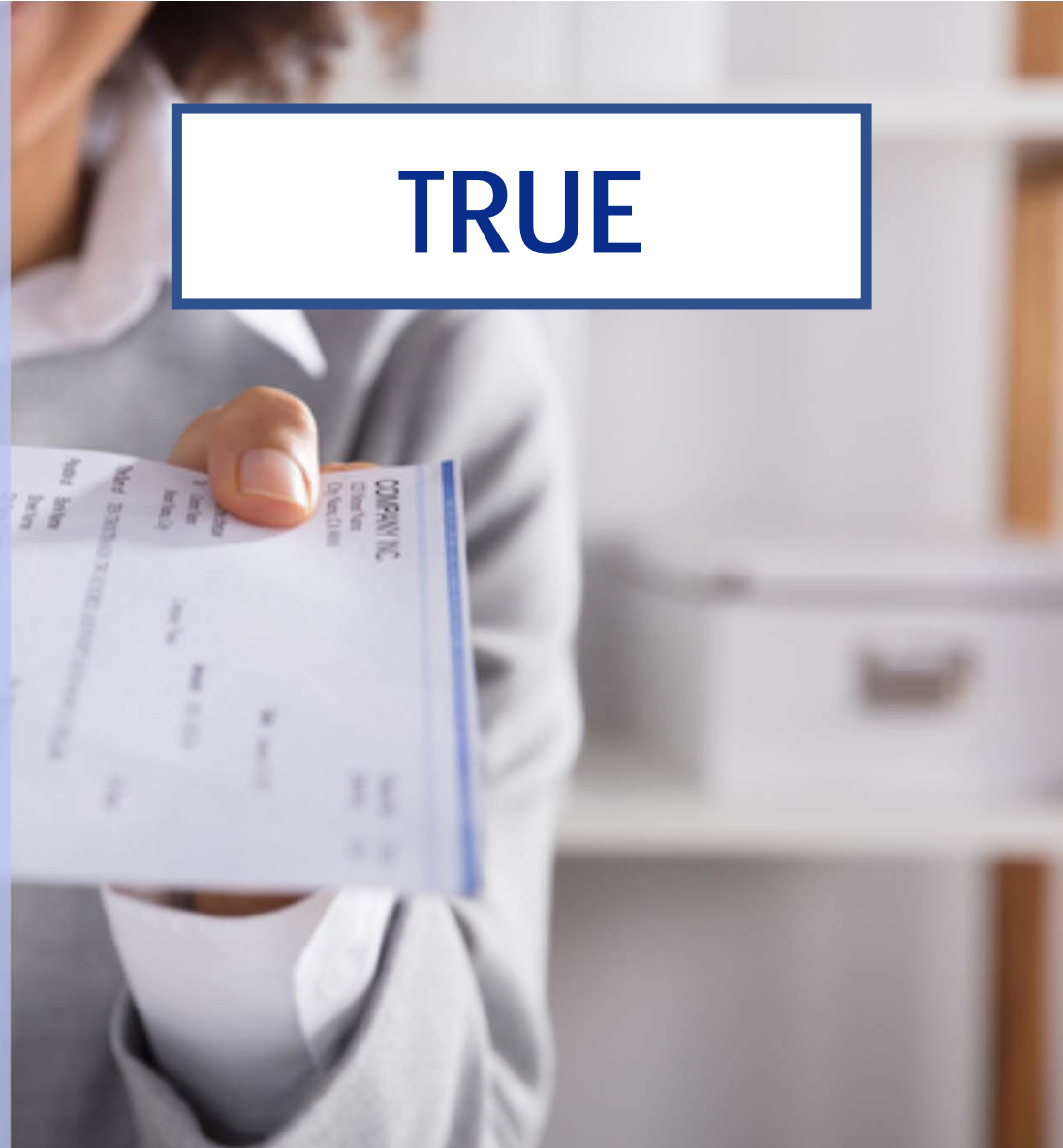
FALSE

A silhouette of a person in a dark suit standing with their back to the camera, looking out a window with horizontal blinds. The person's hands are in their pockets. The window blinds are partially open, allowing some light to filter through.

Question 7

An employer may make salary deductions for partial day FMLA absences without threatening an employee's exempt status.

TRUE



Question 8

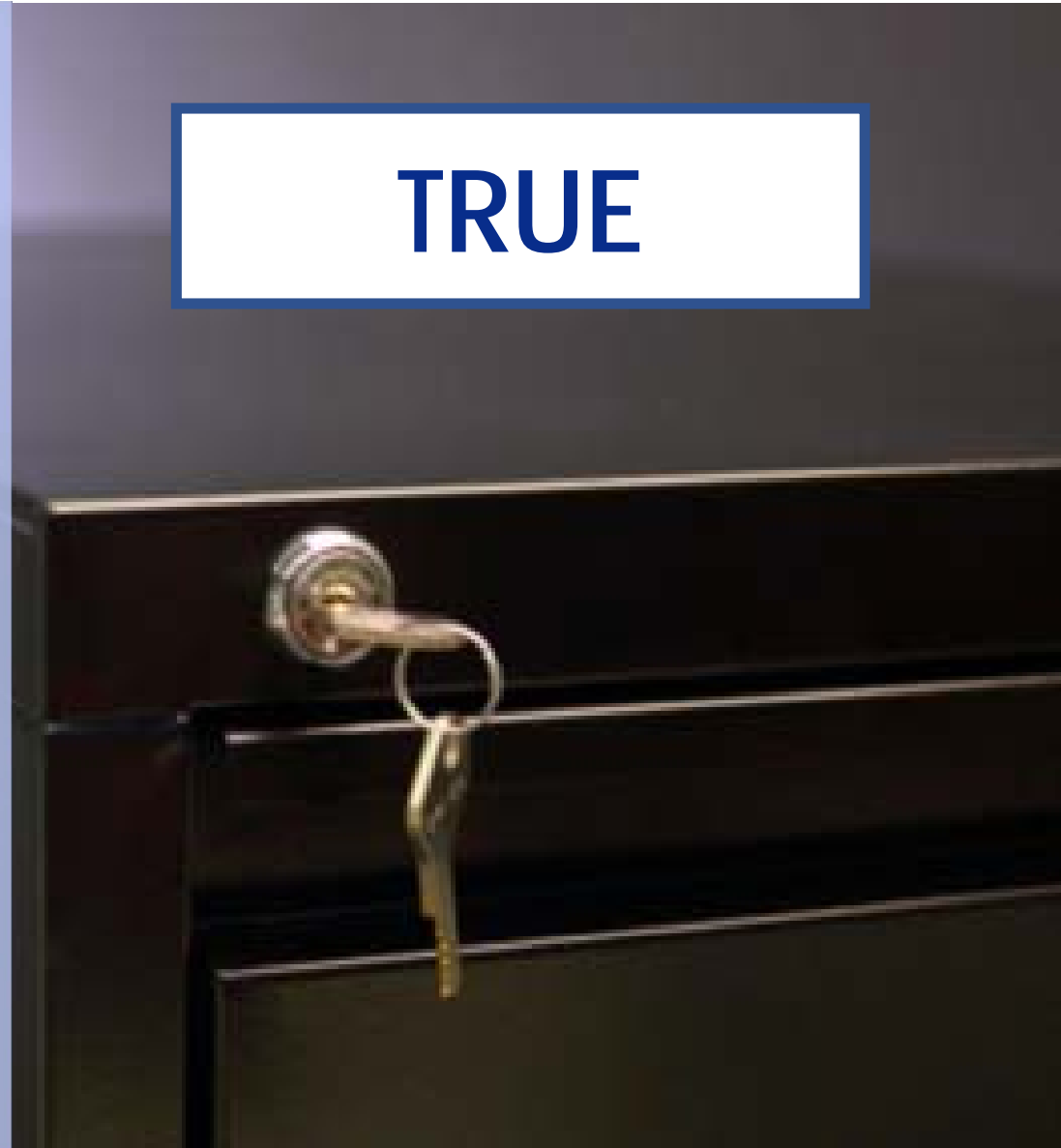
Accrued but unused vacation is considered “wages earned” and must be paid by an employer on the day the employer fires the employee.

TRUE

Question 9

A supervisor may go into an absent employee's locked company desk if the reason is business-related.

TRUE



The background of the slide is a photograph. On the left, a man in a light blue shirt is shown from the chest up, covering his mouth with both hands. He has a distressed or shocked expression. On the right, a woman with long brown hair, wearing a white and blue striped shirt, is visible from the chest up, looking towards the left. The overall scene suggests a workplace incident or a moment of emotional distress.

Question 10

TRUE

You can be held personally liable for sexual harassment committed by someone else in the company.

BONUS QUESTION

You cannot require employees to speak only English while on the job, unless it is job related.

TRUE

VERDAD

C'EST VRAI

How Did You Do on the Quiz?



Let's find out

10 correct = you get to be Karin Brosnahan for one week while she takes a much-needed vacation!

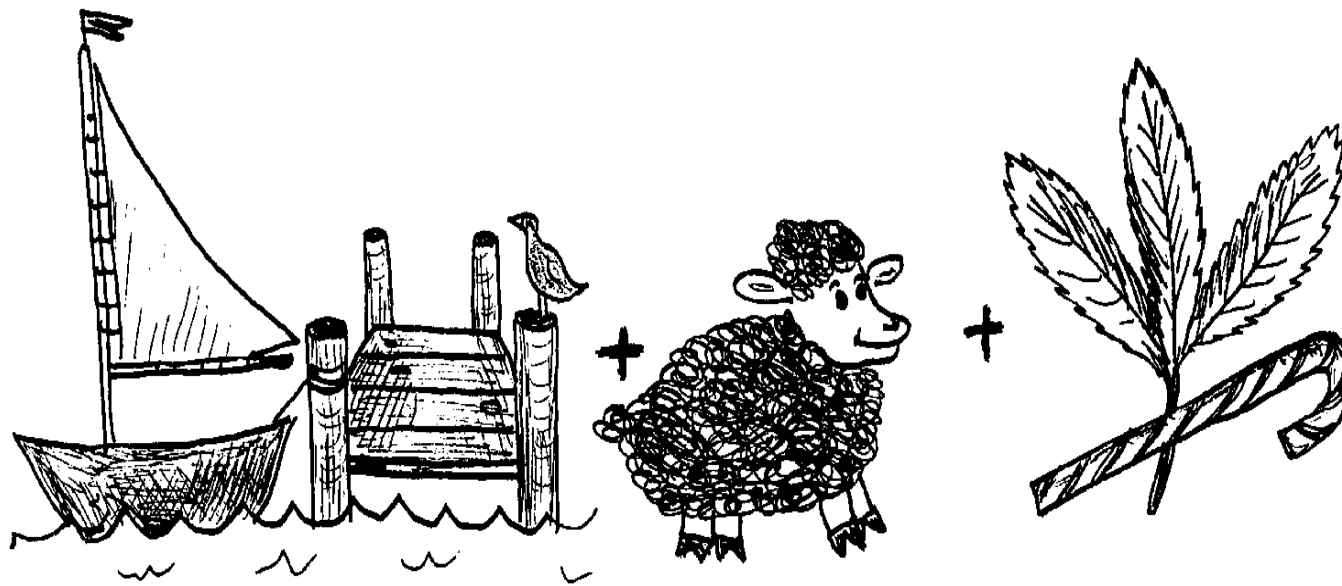
7 or over = you are almost there!

4-6 = you could have guessed and gotten this many right!

3 or less = you may want to put your assets in someone else's name!

Tally your points

**THE ANSWER TO AVOIDING LIABILITY: KNOW
THE RULES, TREAT YOUR EMPLOYEES FAIRLY
AND...**



Questions?





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