

Employment Law Alert: Massachusetts Paid Family and Medical Leave Act

A Primer to the Massachusetts Paid Family and Medical Leave Law

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April 25, 2019

The Massachusetts Paid Family and Medical Leave Act (the “PFML”) represents a sweeping change to the landscape of employee benefits laws that affect Massachusetts employers. Under the PFML, as of January 2021, millions of Massachusetts workers will become eligible for up to 26 weeks of job-protected, *paid* family and medical leave, on an annual basis, through a public-sponsored insurance program. A new payroll tax, divided between employers and employees, will fund the program.

Although the PFML does not go into full effect until 2021, the law contains certain compliance requirements that require employer action as early as May 2019. Given the scope and complexity of the PFML, Massachusetts employers are prudent to prepare now.

The following is an overview of the elements of the PFML that require employer compliance.

Overview

The PFML establishes a publically-administered, paid family and medical leave benefits program in Massachusetts (the “Program”). Commencing in 2021, Massachusetts workers who qualify for the Program – which includes all employees who otherwise meet the financial eligibility requirements for unemployment insurance – are eligible for:

- up to 12 weeks per year of *family leave* in a benefit year for the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces;
- up to 20 weeks per year of *medical leave* in a benefit year if they have a serious health condition that incapacitates them from work
- up to 26 weeks per year of *family leave* in a benefit year to care for a family member who is a covered service member undergoing medical treatment or otherwise addressing consequences of a serious health condition relating to the family member’s military service.
- up to 12 weeks per year of *family leave* in a benefit year to care for a family member with a serious health condition.

Under the PFML, an employee’s total leave entitlement for a particular benefit year is limited to 26 weeks. With certain limitations, such leave may be taken on an intermittent or reduced schedule basis.

Workers who qualify for PFML leave are entitled to certain insurance payments, distributed

from a state-administered Family and Employment Security Trust Fund (the “Fund”), and financed through payroll tax contributions (as discussed further below).

In addition to such paid insurance benefits, workers who qualify for PFML leave are entitled to the following job protections:

- The employer *must* continue to provide for and contribute to the employee’s employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave.
- The taking of family or medical leave *may not* affect the employee’s right to accrue vacation time, sick leave, bonuses, advancement, seniority, length of service credit, or other employment benefits, plans or programs.
- An employer *may not* compel an employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave under the PFML. (*Although PFML leave runs concurrently with leave taken under the Massachusetts Parental Leave Act and the federal Family and Medical Leave Act.*)
- An employee who has taken family or medical leave under the law must be restored to the employee’s previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit and seniority as of the date of leave.
- It is unlawful under the PFML for any employer to discriminate or retaliate against an employee for exercising any right to which such employee is entitled under the paid family and medical leave law.

The Program is administered by a newly-formed Massachusetts Department of Family and Medical Leave (the “Department”). Regulations enforcing the PFML are scheduled for publication before July 2019.

Funding the Program – New Payroll Tax Contribution Requirements

In order to “pre-finance” the Program, on **July 1, 2019**, employers must begin to make contributions to the Fund, through payroll deductions, at the following rates:

Contribution Allocation	Percent of Annual Earnings
Medical Leave Contribution Rate	0.52% on the first \$132,900 of an employee’s annual earnings
Family Leave Contribution Rate	0.11% on the first \$132,900 of an employee’s annual earnings
TOTAL CONTRIBUTION RATE	0.63% on the first \$132,900 of an employee’s annual earnings

These contribution rates are indexed for 2019, and subject to change in following years.

Employers with *25 or more employees* must remit the entire 0.63% contribution to the Fund. Such employers may deduct 100% of the family leave contribution, and 40% of the medical leave contribution from the employee’s wages (the “Employee Share”). The employer must pay the remaining 60% of the medical leave contribution (the “Employer Share”). These contribution rates are indexed for 2019, and subject to change in following years.

Employers with *less than 25 employees* are not obligated to pay the Employer Share. Such employers need only remit the Employee Share to the Fund, all of which may be deducted from the wages of the employee.

The PFML contains specific provisions that limit the ability of employers to structure their workforces to avoid the contribution requirements under the law. Most notably, under certain circumstances, employers may be required to treat their independent contractors as “employees” for purposes of the law, and to make Employer Share contributions for their independent contractors.

The Department has published a calculation tool [here](#) to help employers determine their contribution obligations under the law.

Written Information and Notice Obligations

The PFML requires that employers provide clear and advance notice, to their workforces, of the rights provided under the law, including, by **May 31, 2019**.

- Employers must provide their employees and independent contractors with “written information” concerning available PFML benefits, in a form consistent with Department standards. Thereafter, such written information notices must be provided to each new employee, within 30 days of commencement of employment, and to each new independent contractor, upon engagement. Delivery of this written notice may be provided electronically. The written notice will only be considered to have been made when an employee provides a written acknowledgement of receipt of the information or a signed statement indicating the employee’s refusal to sign an acknowledgement.
- Employers must post in a conspicuous place on each of its premises a workplace poster, prepared or approved by the Department, that provides notice of benefits under the PFML. The required workplace poster notice must be in English and each language other than English which is the primary language of 5 or more employees or independent contractors of that workplace, if such poster is available from the Department.

The Department has published template workplace posters and written information notices [here](#). Failure to provide these required notifications may result in fines of up to \$300 per violation.

Exemptions

Employers that offer a private leave plan, with the same or greater benefits provided under PFML, may apply for an exemption from the Program. Exemption applications will be accepted by the Department, beginning **April 21, 2019**, on a rolling basis. Employers may apply for exemptions from medical leave coverage, family leave coverage, or both. If the Department approves an exemption request, the Department will require the employer to submit a copy of the plan to the Department for audit. Exemptions be effective for one year, and may be renewed annually.

Next Steps for Employers

Employers should be actively preparing for compliance with the PFML. Written notice and payroll contribution deadlines are right around the corner.

For more information on the PFML, please contact **Matthew Mitchell**.