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MASSACHUSETTS ISSUES REVISED REGULATIONS AND AGENCY GUIDANCE IN PREPARATION FOR PAID FAMILY AND MEDICAL LEAVE LAW TAKING EFFECT

UPDATE AS OF JUNE 17, 2019

Massachusetts lawmakers have extended by three months the implementation date for the Massachusetts Paid Family and Medical Leave (PFML) program. The start date for required payroll withholdings has been extended to **October 1, 2019** (a three month delay from the previous deadline of July 1, 2019), with employers having to remit contributions on a quarterly basis starting on **January 31, 2020**. The delay will not reduce the total contributions employers will pay into the PFML trust fund because the contribution rate will increase from 0.63% to 0.75% of wages. The deadline to notify employees of their rights and obligations under the PFML was also delayed three months (until **September 30, 2019**), and the Department of Family and Medical Leave is expected to issue an updated employee notice in the coming weeks. The deadline to apply for a private plan exemption was also extended to **December 20, 2019**.

On July 1, 2019, the Massachusetts Paid Family and Medical Leave (PFML) law will go into effect.

The Massachusetts Department of Family and Medical Leave (DFML) has recently published draft regulations and guidance that clarify several of the law's requirements and set deadlines for employers in preparation for the law taking effect. The [draft regulations](#) and [employer guidance](#), as well as a [fact sheet](#) for employers, are available on the DFML's website. The regulations are subject to another round of revisions after a public comment period and will become effective on July 1.

THE BOTTOM LINE

Massachusetts employers should prepare for the state's Paid Family and Medical Leave program taking effect by reviewing the updated draft regulations and agency guidance clarifying various issues under the law. In the short term, employers should particularly note the June 30, 2019 deadline to notify employees of the new law and the July 1, 2019 deadline to begin deducting contributions.

PFML OVERVIEW

Under the new law, the DFML will administer an insurance program funded by payroll contributions from employers and covered individuals.

Beginning in 2021, eligible employees will be allowed up to 20 weeks of paid medical leave and up to 12 weeks of paid family leave, but only up to 26 weeks of combined paid

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family and medical leave per benefit year. Employees will be able to use such leave under largely similar circumstances for which employees may currently take federal FMLA leave (i.e., the employee's own or a family member's serious medical condition, or the birth or adoption of the employee's child), although the Massachusetts law will be broader in certain ways (for example, unlike under the FMLA, employees will be eligible for benefits regardless of length of service or hours worked).

PAYROLL DEDUCTIONS

Although employees will not be entitled to benefits under the new law until 2021, employers must start deducting contributions from the wages of covered individuals on **July 1, 2019**. Employers must thereafter report employee wages to the DFML through the Department of Revenue's MassTaxConnect, and quarterly remit the contributions they collect, starting October 31, 2019. An employer must remit 0.63% (0.52% for medical leave, 0.11% for family leave) of the first \$132,900 of gross wages or other payments made to each covered individual. Employers with fewer than 25 covered individuals in Massachusetts can deduct the entire contribution from wages, whereas those with 25 or more employees must contribute 60% of the 0.52% of wages for medical leave (large employers may deduct from employees' wages the remaining 40% of the medical leave

contribution and the entire family leave contribution).

For purposes of determining an employer's number of "covered individuals," the law counts:

- 1) All the employer's W-2 employees; and
- 2) If independent contractors make up over 50% of the employer's total workforce, all the employer's contractors.

The DFML has created a [calculator tool](#) to help employers estimate their required contributions.

NOTICE OBLIGATIONS

The DFML has required Massachusetts employers to notify their workforce about the state's PFML program by **June 30, 2019**. The required notification includes:

- 1) Displaying a mandatory poster in the workplace at each location within the state;
- 2) Giving written notice (which may be provided electronically) to current employees and independent contractors, and to new employees within 30 days of hiring; and
- 3) Collecting signed acknowledgements from all employees and contractors.

The DFML has posted the [mandatory poster](#) on its website, as well as templates for the written notice to

employees and contractors; employers may use the templates or create their own written notice, as long as the notice contains certain required information.

Employers can find the DFML's templates and other information about the notice requirements [here](#).

PRIVATE PLAN EXEMPTION

Employers that already offer their employees paid leave benefits through a private insurance plan can currently apply through the MassTaxConnect portal for an annual exemption to the requirement to remit funds to the PFML trust fund. Such applications will be granted if the DFML determines that the benefits offered to employees under the private plan are equal to or greater than the benefits provided by the PFML.

Employers may apply for exemptions from medical leave coverage, family leave coverage or both. Employers should take note that employees who are denied benefits under a private plan can appeal that denial to the DFML or a court. The DFML began accepting exemption applications on a rolling basis on April 29, 2019, and all applications for 2019 must be submitted by **September 20, 2019**.

More information regarding the exemption requirements and application process can be found [here](#).

UPDATES IN REVISED REGULATIONS

The newest version of the regulations published by the DFML on March 29, 2019 clarified several other issues that employers should note, including:

>> **Fitness for Duty** – Under the new regulations, an employer may require certain conditions and certifications before an employee who has taken leave due to their own serious health condition can return to work, as long as it maintains a uniform policy, implements it equally to all similarly-situated employees and tailors the required certification to a list of essential job functions it provides to the employee within 5 days of the employee giving notice of leave.

>> **Intermittent Time Off** – The new regulations provide that employees may take PFML on an intermittent or reduced schedule basis under various scenarios.

>> **Clarified Scope of Coverage** – The new regulations better define the distinction between in-state and out-of-state employers, stating that an employer is covered when “the service is localized in the commonwealth” (meaning it is performed entirely or primarily in Massachusetts), or when some part of the service is performed in Massachusetts and the employee or contractor in question operates in, is directed or controlled from, or resides in Massachusetts.

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