

Massachusetts Law Now Provides For Paid Family and Medical Leave Benefits, Funded by New Tax

Massachusetts has enacted a statute providing paid family and medical leave (PFML) benefits to employees. This program will be funded by premiums paid by employees, employers, and the self-employed. This Client Advisory provides a brief summary of PFML, with recently revised dates. If you are a covered employer, you will have **notice obligations and withholding obligations beginning October 1, 2019.**

Benefits

PFML provides employees with paid *medical* leave for up to 20 weeks, and paid *family* leave for up to 12 weeks. Paid medical leave coverage is for serious personal health conditions. Paid family leave covers bonding with a newborn, or adopted/ foster child, caring for a family member with a serious health condition, or managing family affairs when a family member is on active duty. An individual may take a maximum of 26 weeks of combined leave per year. The weekly benefit amount is calculated as a percentage of an individual's earnings but is capped at \$850 per week. Individuals need approximately 15 weeks or more of earnings and have earned at least \$4,700 in the 12 month period before applying to receive benefits.

Who is Covered

Employees (i.e., individuals who are issued a Form W-2) who work in Massachusetts are covered, even if they do not reside in the Commonwealth. This includes full time, part time, and seasonal employees. Independent contractors (i.e., individuals who are issued a 1099-MISC) are covered if they live and perform services as an individual in Massachusetts. Entities engaging contractors are required to

withhold contributions for them only if the contractors make up more than 50% of an company's total Massachusetts workforce of employees and contractors combined. Self-employed individuals can opt into coverage. Local government employees are covered only if their employer chooses to opt in.

Contribution Rates For Employees

For employee contributions, \$0.38 will be deducted for every \$100 an employee earns. This consists of \$0.13 for his or her family leave contribution and \$0.25 for the medical leave contribution. Earnings subject to the contribution rates are capped at \$132,900 annually for each individual.

Contribution Rates For Employers

Calculating employer contributions is slightly more complex and depends on the employer's workforce. Employers with more than 25 covered individuals will be required to remit contributions to the Department of Family and Medical Leave (DFML) equivalent to .75% of the gross wages or other payments to all covered individuals in their workforce. That is distributed as .62% for medical leave and .13% for family leave. For family leave, up to 100% of the contribution can be deducted from a covered individual's wages. For medical leave, up to 40% of the contribution can be deducted from a covered individual's wages, and the employer is responsible for contributing the remaining 60%. Employers with fewer than 25 covered workers still must remit contributions on behalf of their workers, but are exempt from paying the employer's share. Self-employed individuals who elect to participate are responsible for paying the full .75% contribution rate for family and medical leave.

Exemptions

Employers already providing paid leave benefits may be eligible for an exemption. The coverage provided must be equal to or greater than that provided under PFML. Even if covered by a private paid leave plan, employees will retain the same protections provided under PFML. Employers may apply for exemption from the medical leave contribution, family leave contribution, or both. The benefits offered under the private plan do not need to begin until January 2021. Applications for exemptions must be submitted by December 20, 2019.

Self-insured employers seeking an exemption from PFML contributions must provide proof of bonds. Employers must provide minimum leave benefits and a surety bond based on their workforce size to be exempt. Bond forms for self-insurers will be provided by DFML at a later date, therefore, employers may complete applications without proof of bond coverage for now.

Notice Requirement

Employers must display a PFML workplace poster, available online, in a highly visible location. Additionally, employers are required to notify covered employees in writing about the program. Written notice of available benefits must be provided, in the employees' primary language, to: (1) newly employed workers within their first 30 days of employment, and (2) contractors after entering into a contract for services. If contractors make up less than 50% of an employer's workforce, employers are not required to inform them of the benefits, but are still encouraged to do so. These requirements apply to all employees or self-employed individuals

who are employed or contracted with on or after October 1, 2019. Written notice may be provided electronically, and must include an opportunity for an employee to acknowledge or decline to acknowledge receipt of the information. Employers must collect signed acknowledgements of receipt from each covered individual. Failure to inform employees may result in a fine.

Key Dates

Some of the original compliance dates under the new law have been revised. Current guidance from the Commonwealth is using the following dates:

- ◆ September 30, 2019: Employers and Covered Business Entities are required to provide written notice to their current workforce
- ◆ October 1, 2019: Payroll withholdings begin
- ◆ December 20, 2019: Exemption applications due
- ◆ January 31, 2020: Contributions are due for the period from October through December 2019
- ◆ January 1, 2021: Most benefits become available. Full medical leave benefits are available. Family leave benefits are limited to: bonding with an adopted/foster child or newborn and to address needs relating to a family member who is a covered service member of the armed forces
- ◆ July 1, 2021: All benefits become available. This includes family leave for caring for a family member with a serious health condition

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the new leave law, please contact Joe LaFerrera at (617) 350-6800, or email him at joe.laferrera@gesmer.com.



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