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Effective November 1, 2023, the Massachusetts Paid Family and Medical Leave Program Will Allow Employees to "Top-Off" Benefits Using Paid Time Off

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Effective November 1, 2023, the Massachusetts Paid Family and Medical Leave Program ("PFML") will allow employees to supplement their benefits with accrued paid leave (i.e. sick, vacation, personal or other forms of paid time off). This means that for all PFML leave applications filed after November 1, 2023, all employees will have the option to "top-off" their PFML benefits with available accrued paid leave, so that employees can receive up to 100% of their wages during their PFML leave. This change comes as part of a recent amendment to M.G.L. c. 175M, § 3, in a bill signed on October 16, 2023 (the "Amendment").

The change is significant because it removes prior limitations on employees' use of accrued paid leave. Previously, employees were not permitted to use accrued paid leave to "top-off" their PFML benefit and could only use accrued paid leave during the brief seven-day unpaid waiting period before PFML benefits began. Employees were also required to use their accrued paid leave in one "block" of time at the beginning or end of the PFML.

Following the Amendment, employees will have the option to "top-off" their PFML benefits with accrued paid leave or save their accrued paid leave to use later. Employees still cannot be required to use accrued paid leave either before or while on PFML.

With the Amendment, employers who offer a private benefit plan are now required to provide employees the option to "top-off" their benefits. This means that employers who offer a private plan that does not allow use of accrued paid leave must amend their plan to comply with the Amendment.

In addition to the Amendment, the Department of Paid Family and Medical Leave (the "Department") released new contribution rates and weekly benefits effective January 1, 2024. For employers with 25 or more employees, the total contribution rate will increase from .68% to .88% of eligible wages. For employers with fewer than 25 employees, the total contribution rate will increase from .318% to .46%.

It is expected further guidance on the impact of the Amendment will be forthcoming from

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the Department.

If you have specific questions about how the Amendment may impact your company, please contact, J. Allen Holland, Frank Gaeta or Ashley Berger.

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