

May 30, 2019 | Business, Corporate & Securities, Employment & Employee Benefits, Insights

Massachusetts Paid Family and Medical Leave Act Set to Take Effect

By: Rich May

Introduction

In June of 2018, Massachusetts enacted the Massachusetts Paid Family and Medical Leave law ("MPFML" or the "Act"), which provides paid family and medical leave benefits to workers in the Commonwealth. The MPFML program will be funded by premiums paid by workers and certain employers through payroll deductions, beginning on **July 1, 2019**. Depending on the makeup of the employer's workforce, the employer may be responsible for remitting contributions for both Massachusetts W-2 employees and Massachusetts 1099-MISC contractors.

While the Act's benefits will not be available until **January 1, 2021**, employers should be aware that their compliance obligations commence much earlier, on **June 30, 2019**. An overview of the Act and important information regarding employer compliance is detailed below.

WHICH EMPLOYERS MUST COMPLY WITH THE ACT?

With limited exceptions, if you employ Massachusetts workers, you will be required to comply with the Act. A single employee entity may elect to pay contributions to get coverage under the Act, but participation is voluntary. Also, cities, towns, districts, and political subdivisions or their instrumentalities are exempt unless they opt in.

WHICH INDIVIDUALS ARE ELIGIBLE FOR BENEFITS?

- Massachusetts W2 employees will always count as covered individuals.
- Massachusetts 1099-MISC contractors count toward your total number of covered individuals only if they make up more than 50 percent of your total Massachusetts workforce (W2 employees and 1099-MISC contractors combined).



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HOW MUCH DO I OWE FOR EACH COVERED INDIVIDUAL?

The premium will be 0.63% of gross wages per covered individual up to the social security wage base ($132,900 in 2019), with 0.52% for the medical leave contribution and 0.11% for the family leave contribution. (Annually, but not later than October 1, the newly-created Massachusetts Department of Family and Medical Leave (the 'Department') will set the contribution rate for the upcoming year.)

If the employer's workforce included an average of 25 or more covered individuals last year, the employer is required to pay 60% of the medical leave contribution and may deduct the rest from the covered individual's wages. (The Act does not require any employer to pay any percentage of the family leave contribution.) The employer may elect to cover some or all of the employee portion of the family and medical premiums.

Employers may estimate their total required (or elective) contribution burden using the Department's provided online calculator, located here.

WHAT TYPE OF PAID LEAVE MAY COVERED INDIVIDUALS TAKE?

Starting **January 1, 2021**, covered individuals may take:

– Up to 12 weeks of Family Leave to bond with their child within the first 12 months after birth, adoption or foster care placement, or manage family affairs in qualifying circumstances when a covered service member is on active duty in the military;

– Up to 20 weeks of Medical Leave to tend to the individual's own serious health condition; and

– Up to 26 weeks of Family Leave to care for a family member who is a covered service member.

Starting **July 1, 2021**, covered individuals may take:

– Up to 12 weeks of Family Leave to tend to a family member's serious health condition.

Serious health conditions include any illness, injury, impairment or physical or mental condition leading to inpatient care in a hospital, hospice or residential medical facility, or continuing treatment by a health care provider.

Eligible individuals may take no more than a combined total of 26 weeks of Family and Medical Leave per benefit year.

IS THERE AN EXEMPTION AVAILABLE FOR EMPLOYERS CURRENTLY OFFERING SUCH BENEFITS?

Yes. Employers that offer benefit plans which meet or exceed the Act's benefits may apply for an exemption from one or both of the leave contributions. To qualify for an exemption, an employer must offer family and medical leave benefits that are at least as generous as what is required under the Act, and the employer must post a bond. (If the employer

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receives this exemption, its employees and will not be covered by the MPFML program.) Further information provided by the Commonwealth regarding this exemption is available here.

WHAT MUST COVERED INDIVIDUALS DO TO TAKE LEAVE UNDER THE ACT?

Covered individuals must apply to the Department for benefits and provide their employers with at least 30 days' notice (or as soon as practicable if outside of the individuals' control) of the anticipated start date, the type of leave to be taken, and the anticipated duration and return date.

Employers will be notified by the Department within five business days of a claim's filing. The Department will notify covered individuals whether or not their claim is approved within 14 days of its filing, and if approved, will commence payment of benefits within 14 calendar days of such approval.

WHAT SHOULD EMPLOYERS BE AWARE OF WHEN CONSIDERING TERMINATION OF AN EMPLOYEE WHO TAKES LEAVE?

The Act prohibits retaliation against covered individuals for taking leave. Absent a sufficient independent justification, covered individuals must be reinstated to their previous or an equivalent position upon return from leave under the Act, and afforded the same status, pay, benefits and seniority. Adverse actions taken against any such individual with six months of their leave will lead to a rebuttable presumption of retaliation. Employers and covered business entities must rebut this presumption by meeting the difficult standard of clear and convincing evidence of a sufficient independent justification. Caution is advised during this six month period, unless a compelling and sufficiently documented justification for the adverse action exists.

WHAT ARE THE ACT'S OTHER KEY TAKEAWAYS?

- Benefit amounts are determined by the Department, and based on the covered individual's average weekly earnings. Fifty percent of a covered individual's average weekly earnings are paid up to the average state weekly earning amount, and 20% of the individual's earnings over such amount, up to an overall maximum of 64% of the average state weekly earnings, which is currently $850.
- The Act's benefits run concurrently with any leave taken other under applicable state and federal laws, when the benefits are taken for a qualified reason under those laws.
- Covered individuals have a three year window to file civil suits against their employers for violations of the Act, and may be entitled to reinstatement, treble damages for lost wages, accrued interest and attorney's fees.

WHAT DEADLINES MUST EMPLOYERS BE AWARE OF?

June 30, 2019

– Workplace Notice: Employers must conspicuously post this notice, or a notice in a form approved by the Department, in English and any other language primarily spoken by five or more employees.

– Written Notices and Acknowledgments: Employers must also provide a detailed written notice (such as the samples available here) to, and obtain written acknowledgment or a denial thereof from, their current covered individuals. The same notice and acknowledgment must be provided to and obtained from all new covered individuals within 30 days of hiring.

July 1, 2019

– Payroll Deductions Begin; Final Regulations Issued

September 20, 2019

– Deadline to Apply for an Exemption from first quarter employer and covered individual contributions.

October 31, 2019

– First Quarter Contributions Due

January 1, 2021

– Majority of Benefits Available to Covered Individuals

July 1, 2021

– All Benefits Available to Covered Individuals

Recommended Next Steps

Massachusetts employers should begin to review the obligations and deadlines above and prepare to meet their notice and notification obligations ahead of the applicable deadlines. Additionally, employers who wish to pursue exemptions should consider filing applications to that effect, as the Department of Family and Medical Leave is now accepting applications. Employers should also reach out to their payroll service provider ahead of the July 1st contribution commencement date and inform them of any 1099-MISC contractors who need to have contributions withheld. Employers making significant use of 1099-MISC contractors need to pay special attention to their obligations and the potential need to withhold from payments to these individuals.

Any employers, employees or 1099-MISC contractors who have outstanding questions regarding their rights and/or obligations under the MPFML program should consult with a Rich May attorney in order to ensure a full understanding of the requisite provisions of the new law and regulations, as well as full compliance therewith.

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is not legal advice. Any specific questions about these topics should be directed to attorneys J. Allen Holland or Frank N. Gaeta.

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