

Updates to Paid Family Medical Leave Act – MA Issues Regulations for Public Comment

Recently, the Massachusetts Department of Family and Medical Leave (the “Department”) published draft regulations for public comment (the “Regulations”) on the new Paid Family Medical Leave law (“PFML”). Under the PFML, starting in January 2021, many Massachusetts workers will be entitled to paid medical leave of up to 20 weeks for the covered individual’s own health condition and family leave of up to 12 weeks. Employees will be paid for this leave by the Commonwealth, from a fund to which Massachusetts employers contribute via payroll deductions. Employers’ contribution obligations will begin on July 1, 2019, and employers will be able to begin applying for exemptions from those contribution obligations on April 29, 2019. Moreover, employers are required on or before May 31, 2019 to provide written notice to their current workforce of PFML benefits, contribution rates, and other provisions of the law.

Massachusetts employers are responsible for collecting and submitting contributions, which will operate similarly to Massachusetts state unemployment contributions, if:

- The employer has W-2 employees in Massachusetts;
- More than 50% of the employer’s workers are contractors for whom the employer reports payments on 1099 forms; or
- An individual is self-employed and has opted in.

The current contribution rate, which is subject to change in future years, is 0.63% of wages or payments made for contract services up to the amount of the Social Security wage base (\$132,900 for 2019). The 0.63% is allocated between family leave (0.11%) and medical leave (0.52%). The law allows for employers to deduct part of the required contributions from employees’ wages. Specifically, employers are permitted to deduct up to 100% of the family leave portion and up to 40% of the medical leave portion, which would leave the employer responsible for approximately 50% of the total 0.63% contribution. Employers with fewer than 25 workers do not have to pay this employer share.

By May 31, 2019, employers are required to provide written notice to their current workforce of the PFML, including the contribution rates. The Department has provided a template poster in multiple languages, which can be found [here](#), because employers must provide the poster in English and in each language which is the primary language of 5 or more individuals in its workforce. On the poster, employers must indicate to employees the amount of the contribution rates and what portion of the contribution rates will be paid by the employee and employer. Employers must also indicate if the employer is exempt from the PFML.

Employers may begin applying for private plan exemptions when the application becomes available on April 29, 2019. To qualify for an exemption, an employer must provide paid leave with benefits that are at least as generous as those provided under the PFML. Employers may apply for an exemption from the medical leave contribution, the family leave contribution or both.

CONTINUED

Although employees will not be entitled to paid leave under the PFML until 2021, employers must understand the benefits available under the PMFL now in order to determine if the employer may qualify for an exemption. Beginning on January 1, 2021, qualifying employees may be entitled to: (1) up to 12 weeks of paid 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; (2) up to 20 weeks of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work; and (3) 26 weeks of paid 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. Beginning on July 21, 2021, employees may be entitled to up to 12 weeks of paid family leave in a benefit year to care for a family member with a serious health condition.

Employees may be eligible for a total of 26 weeks of paid family and paid medical leave combined in any single year. Employees' leave under the PMFL will run concurrently with other leaves, including FMLA and employer-provided leave. An employee's weekly benefit amount will be based on the employee's earnings, with a maximum benefit of \$850 per week. Short-term disability benefits do not reduce the amount a covered individual receives, unless the total amount would exceed the covered individual's weekly wages.

In summary, by May 31, 2019, employers must provide the required PMFL notice to their employees. Furthermore, by July 1, 2019, employers should be prepared to:

- Report wages paid (quarterly reporting of gross wages beginning in October 2019);
- Determine contribution amounts for employees and employers; and
- Make required deductions.

In addition to the invitation for public comment on the Regulations, the Department is holding two public hearings on the Regulations in May 2019. The Department anticipates promulgating the final regulations in advance of the July 1, 2019 deadline.

Employers with questions about the PFML and how to ensure compliance should contact Choate's Labor and Employment Practice Group for guidance.

FOR MORE INFORMATION

If you have questions about these developments, please contact one of the following Labor, Employment and Benefits attorneys.

Greg Keating

617-248-5065 | gkeating@choate.com

Alison Reif

617-248-5157 | areif@choate.com

Lyndsey Kruzer

617-248-4790 | lkruzer@choate.com

Wells Miller

617-248-4838 | wmiller@choate.com