Massachusetts New Paid Family Medical Leave Law: What You Need To Know

In 2018, Massachusetts passed the new Paid Family Medical Leave law ("PFML"). Earlier this year, the Massachusetts Department of Family and Medical Leave (the "Department"), which is charged with enforcing and administering the PFML, promulgated regulations and revised regulations (the "Regulations"). Several important deadlines for employers are approaching under these Regulations.

Under the PFML, (1) effective January 1, 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 paid family leave of up to 12 weeks related to the birth, adoption, or foster care placement of a child; and (2) effective July 1, 2021, covered workers will also be entitled to up to 12 weeks of paid family leave to care for a family member with a serious health condition. 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 October 1, 2019, and employers will be able to apply for exemptions from those contribution obligations through December 20, 2019. Moreover, employers are required on or before September 30, 2019 to post a notice in their workplace and to provide a separate written notice to their current workforce of PFML benefits, contribution rates, and other provisions of the law.

For employers with 25 or more covered employees, the current contribution rate, which is subject to change in future years, is 0.75% of wages or payments made for contract services up to the amount of the Social Security wage base ($132,900 for 2019). The 0.75% is allocated between family leave (0.13%) and medical leave (0.62%). 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 0.372%, or approximately half of the total 0.75% contribution. Notably, employers are permitted to deduct differing percentages from different groups of covered employees, as long as they do not deduct more than the maximum percentages under the PFML and its Regulations.

The current rate for employers with fewer than 25 covered workers is 0.378% of wages or payments made, subject to the same cap. These small employers may elect to pay some or all of the 0.378% or may elect to deduct the full amount from employees' wages or payments.

On or before September 30, 2019 employers must provide employees with notice of the PFML and of the rates and contributions for 2019. 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. In addition, the Department has provided template notices for:

- Employers with 25 or more employees
- Employers with fewer than 25 employees

Employers must complete the form in order to inform their workforce of the allocation of the upcoming deductions. Importantly, an employer must give each member of its workforce the opportunity to acknowledge or decline to acknowledge receipt of this notice.

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Because the required dates under the Regulations have changed over time, some employers provided notice at an earlier time. For all employers who provided notice prior to June 14, 2019, new notice must be provided in order to inform workers of the new deadlines and contribution rates.

Employers may apply for private plan exemptions through December 20, 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. An employer applying for an exemption will need to submit an application along with a copy of its private plan for the Department to review. The employer will also have to provide proof of bond coverage. If the Department denies the exemption, the employer may request a follow-up review. Employers can submit a private plan application on a quarterly basis. Employers using a private plan are required to keep well-maintained records related to the private plan. If the employer does not do so and the Department requests those records, the employer risks losing its private plan approval.

Employers with questions about PFML, the new deadlines, 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.

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