

Massachusetts Paid Family and Medical Leave: What Lies Ahead



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The Massachusetts Family and Medical Leave law (MAFML) (M.G.L. ch. 175M), was enacted in 2018, imposing significant responsibilities on Massachusetts employers. The initial measures will take effect on July 1, 2019, and the rest will be phased in over the next few years. Massachusetts joins five other states (i.e., California, New Jersey, New York, Rhode Island, and Washington) as well as Washington, D.C. in requiring paid family and medical leave.

Most notably, the MAFML will create a statewide program to provide eligible employees up to 12 weeks of paid family leave and up to 20 weeks of paid medical leave for their own medical needs. Employers may opt out of the state program if they provide benefits through a private plan that match or exceed those provided by the state program. The private plan must be approved by the Department of Family and Medical Leave (the Department), a newly created department within the Executive Office of Labor and Workforce Development. This paid family and medical leave is job-protected leave. Accordingly, after returning from leave, employees must be restored to the same or equivalent positions.

The MAFML has two related mandates: leave and compensation. *Significantly, all employers (regardless of employee headcount) are required to provide family and medical leave to eligible employees.* With respect to the employer contribution to compensation while on leave, there are headcount thresholds built into the program as detailed below.

The Department issued draft regulations on January 23 and will be holding a number

of listening sessions to gather input from the public. There will be a listening session in Boston on January 30. The Department is expected to publish the proposed regulations for public comment and hearing by March 29, 2019. We anticipate that changes to the draft and proposed regulations will be made before the Department finalizes the regulations on or before July 1, 2019.

In the meantime, the most significant provisions of the MAFML are summarized below.

Effective July 1, 2019

Employers will be subject to the MAFML's posting, notice, and fund contribution requirements.

- **Posting:** Employers will be required to post in a conspicuous place on each of its premises a workplace notice prepared or approved by the Department.
- **Written Notice:** In addition, employers will be required to provide all new employees, within 30 days of their hire, with the written information provided or approved by the Department in the employee's primary language, containing specific information as required by the law (e.g., the availability of family and medical leave benefits; the employee's contribution amount and obligations; instructions on how to file a claim, etc.).
- **Employer and Employee Contribution:** Paid leave will be funded by a payroll tax of 0.63% on the first \$128,400 of an individual's annual earnings (to be adjusted annually), which will be paid into the Family and Employment Security Trust Fund (the Fund). For employers with fewer than 25 employees, the employees will pay 100% of this contribution. For employers with 25 or more employees, employers and employees will share the cost of the contribution based on a formula to be determined each year.

Effective January 1, 2021

Virtually all employers will be required to allow eligible employees to take family and/or medical leave in accordance with the MAFML.

- **Eligibility:** To be eligible for family and medical leave, an employee must meet the financial eligibility requirements for receiving unemployment compensation under Massachusetts law.
- **Length of Leave:** Eligible employees can take leave in a benefit year as follows:
 - Up to 20 weeks of medical leave to care for their own serious health condition. Such leave may be taken intermittently or on a reduced leave schedule by an employee when medically necessary.
 - Up to 12 weeks of family leave: (a) to bond with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the employee; or (b) because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending

call or order to active duty in the Armed Forces. Leave to bond with a child after the birth or placement for adoption or foster care shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise. Leave for qualifying exigency may be taken intermittently or on a reduced leave schedule by an employee.

- Up to 26 weeks of family leave to care for a family member who is a covered service member. Such leave may be taken intermittently or on a reduced leave schedule by an employee when medically necessary.
- Effective July 1, 2021, up to 12 weeks of family medical leave to care for a family member with a serious health condition. Such leave may be taken intermittently or on a reduced leave schedule by an employee when medically necessary.

Importantly, if an employee needs to be out of work for more than one covered reason in a benefit year, an employer can limit the total leave taken in one benefit year to 26 weeks in the aggregate.

- **Compensation:** The MAFML sets forth the formula for calculating the weekly benefit amount for an employee while on leave under the MAFML, with the maximum weekly benefit amount set at \$850 per week (adjusted annually to remain at 64% of the state average weekly wage).
- **Benefit Continuation:** During the family or medical leave, employers are required to continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of such leave.

Significantly, taking family or medical leave must not affect an employee's right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of-service credit, or other employment benefits, plans, or programs.

Effective January 1, 2023

Retaliation against an employee for exercising rights under the MAFML will be prohibited. The MAFML creates a rebuttable presumption of retaliation for "any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment" of an employee that occurs any time during a leave taken by an employee or during the six-month period following an employee's leave or restoration to a position.

Employees will have a private right of action with a three-year statute of limitations for violation of the MAFML. Damage may include compensation for three times any lost wages, reasonable costs and attorneys' fees, and job reinstatement.

Next Steps

There are a number of steps employers should take now to get ready for this complex law:

- Review the draft regulations and consider attending a listening session.
- Monitor updates by the Department, including posters, written notice, proposed regulations, and any guidance.
- On or before July 1, 2019, be sure to display the required poster in the workplace, provide applicants/employees with notice as required, and begin making contributions to the Fund.
- Consider reviewing your current paid family/medical leave and other leave policies (e.g., the federal Family and Medical Leave, the Massachusetts Parental Leave) to identify any potential changes to address the new leave law and corresponding regulations and procedures.
- For multistate employers, consider how to address leave policies for non-Mass. employees.
- Consider any impact this new leave law may have on your workforce (e.g., assuming that more employees will take leave once the benefits are available, how will you manage workload while employees are on leave?).

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