

Massachusetts Issues Draft Regulations for Paid Family and Medical Leave Law

Friday, February 15, 2019

Last month the Massachusetts Department of Family and Medical Leave (DFML) released draft regulations intended to implement the Paid Family and Medical Leave Law (PFML). The PFML is a part of the “Grand Bargain Legislation” that Governor Baker signed into law last summer.

Under the PFML, beginning on January 1, 2021, eligible workers may take paid leave as follows:

- Up to 26 total weeks, in total, of family and medical leave in a given benefit year
- Up to 20 weeks of medical leave in a benefit year for the employee’s own serious health condition
- Up to 12 weeks of family leave after the birth, adoption, or placement in foster care of a child
- Up to 12 weeks of family leave in a benefit year because of exigencies related to a family member who is on active duty or has been called to active duty in the Armed Forces
- Up to 26 weeks of family leave in a benefit year to care for a family member who is a covered service member

Beginning July 1, 2021, eligible employees may also take up to 12 weeks of paid family leave to care for a member of the employee’s family with a serious health condition.

The draft regulations announced by the DFML in many respects encompass the detailed statutory scheme set forth in the PFML itself. But the regulations also illuminate how the DFML proposes to implement the wide-ranging objectives of the new law. For example:

- The paid leave mandated by the PFML will be funded by a new payroll tax imposed at a rate of .63% on the first \$128,400 of an employee’s annual earnings. Employers are responsible for remitting these amounts to the state on a quarterly basis, beginning July 1, 2019. Employers with 25 or more employees in the Commonwealth may deduct up to 40% of the contribution required for medical leave, and up to 100% of the contribution required for family leave, from the employee’s pay. Employers with fewer than 25 employees are not required to pay the employer portion of these contributions.
- Leave taken under the PFML will run concurrently with leave taken under the federal Family and Medical Leave Act and the Massachusetts Parental Leave Act when the leave qualifies under any of those laws.
- Employees seeking benefits must submit a claim form provided by the Department and provide appropriate documentation in support of the request. By making a claim, the employee consents to disclose health information to his or her employer and agrees that the Department may request information from the employer in connection with the claim.
- Benefit amounts for eligible employees will be based on their average weekly wage. Initially, benefits will be no greater than \$850 per week. The regulations provide that this cap will be adjusted annually in light of the average weekly wage of Massachusetts employees statewide.



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- Employees who take leave under the PFML must be restored to the same position, or to an equivalent position, with the same benefits and seniority, at the conclusion of the leave. It is unlawful to retaliate against employees who take PFML leave. In fact, the draft regulations specify that any adverse change to an employee's terms of employment after taking PFML leave will be presumed to reflect retaliation.

As noted, the regulations discussed above are only drafts. The Department will convene a series of public "listening sessions" over the next several weeks in order to solicit input for the proposed final regulations, which will be published no later than March 31, 2019. After a period for public comment, the regulations will be finalized by July 1, 2019.

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