

Massachusetts Paid Family and Medical Leave: What Employers Need to Know Before July 1, 2019

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Last year, Massachusetts Governor Charlie Baker signed into law what has been referred to as the “grand bargain” legislation. When it was enacted, we covered [some of the law’s key provisions](#) that would have a significant impact on Massachusetts employers, including the phase-in of paid family and medical leave under the Massachusetts Paid Family and Medical Leave Act (PFML). Since then, the Massachusetts Department of Family and Medical Leave (DFML), [a new agency](#), has been established under the PFML to manage paid leave in the Commonwealth. The DFML has issued draft regulations, with the final version of the regulations to be issued by July 1, 2019. Covered employers should be prepared to begin making contributions to the paid leave trust fund starting on July 1, 2019.

Massachusetts Paid Family and Medical Leave: A Brief Summary

The PFML will allow eligible employees access to paid leave benefits. The law requires employers with 25 or more employees to make contributions toward these leave benefits. Employers with fewer than 25 covered individuals must submit contributions on behalf of their workers to cover a portion of the PFML contributions, but they are not required to pay the employer share. The circumstances under which employees may access those benefits largely track the circumstances for which employees may take leave under the federal Family and Medical Leave Act (FMLA), such as when caring for a serious medical condition or after the birth or adoption of a child, although Massachusetts’s law is broader in certain respects (e.g., employees will be eligible for benefits regardless of their length of service or hours worked). Paid medical leave is capped at 20 weeks per benefit year, and paid family leave is capped at 12 weeks per year. The combined amount of family and medical leave that an individual may take in a benefit year is capped at 26 weeks and will run concurrently with the FMLA. Further details and requirements concerning leave under the PFML will be laid out in the soon-to-be finalized regulations.

The DFML Issues Draft Regulations

On January 23, 2019, the newly created DFML issued draft regulations. Following several public listening sessions held by the DFML in early 2019, the agency reissued revised draft regulations on March 29, 2019. The revised draft regulations are [currently open for public comment and hearing](#), and the DFML will hold at least two public hearings beginning in May. The final version of the regulations is scheduled to be published by July 1, 2019.

While the proposed regulations are lengthy and detailed, several points bear emphasis, particularly as the regulations—or something fairly similar—will likely become effective in July 2019:

- The DFML will process applications for PFML benefits, and under this system, an initial application will go to the state agency, not the employer. The employer will receive notice of an application from the DFML “not



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more” than 5 business days after an application is filed, and the employer will be expected to submit information to the DFML (such as wage information, job description, hours, prior requests for leave and the amount of paid leave provided, etc.) within 5 business days. The DFML will approve applications within 14 calendar days. There is no provision for employer appeals of DFML approvals, although employers may seek to amend an approved claim if there is “a change in relevant circumstances” that would “justify” amendment.

- Employers, covered business entities, and any self-employed individual who has elected coverage will be required to file an employment and wage detail report and payment for their contributions through the MassTaxConnect system quarterly. The Massachusetts Department of Revenue will establish a deadline for filing these reports.

Key Dates

- April 29, 2019 : Application period for employer exemptions begins
- July 1, 2019: Final regulations to be issued by this date
- July 1, 2019: Employers must provide [notice](#) to workforce
- July 1, 2019: Employers begin deducting contributions
- October 31, 2019: Contributions due for July through September 2019
- January 1, 2021: Most benefits available
- July 1, 2021: All benefits available

Deductions

Although employees will not have access to paid leave benefits until 2021, on July 1, 2019, employers must begin deducting contributions from wages and payments made to covered individuals. Employers must also remit contributions collected from July through September to the Family and Employment Security Trust Fund by October 31, 2019. The DFML has created a [calculator](#) to help employers estimate the amount of contributions they will need to submit to the fund, although the DFML states that the estimates given are non-final approximations that the DFML does not consider binding.

Notice Obligations

Starting on July 1, 2019, “[e]ach employer and covered business entity” must begin providing notice to their workforces regarding the PFML’s benefits. The DFML website has provided the [poster](#), which must be displayed and placed in locations where it can be easily read. The DFML also requires that the poster be displayed in English as well as in every other language that is the primary language of five or more individuals in an employer’s workforce if such poster translations are available from the department. In addition, an employer is required to provide notice to employees not more than 30 days from the beginning date of the employee’s employment. Failure to comply with notice requirements may result in monetary penalties.

Applications for Exemption

If employers are already providing paid leave to their employees, starting on April 29, 2019, they may begin to submit approved-plan applications through MassTaxConnect to determine if they may be exempt from collecting and remitting payments to the Family and Employment Security Trust Fund. To qualify for annual exemption, an employer’s private plan must provide the same or better benefits than those available under the new law. Note that employers with fewer than 25 employees are not required to pay the employer portion of the leave premiums.

Steps for Employers

In anticipation of these upcoming changes, employers may want to evaluate their current leave policies to ensure compliance with the new law. Moreover, given that the DFML will determine whether employees are eligible for benefits, employers may wish to consider whether it is cost effective to provide paid leave benefits instead. Ogletree Deakins will continue to monitor developments with respect to the PFML and provide updates on the law and its final regulations.

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