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Massachusetts Paid Family and Medical Leave Requirements Come Into Focus

Recent weeks have seen a flurry of activity concerning the Massachusetts Paid Family and Medical Leave law. Just as the final regulations have been published, employers' deadlines for complying with specific parts of the law have been delayed.

As previously reported, the Massachusetts Paid Family and Medical Leave (PFML) law was enacted last year. The deadline extensions are as follows:

- Employers' deadline to notify covered employees of their rights under the PFML law has been extended to September 30, 2019.
- Employers' deadline to begin PFML withholdings from wages has been extended to October 1, 2019. As a result, the contribution rate has increased from 0.63% to 0.75% of employees' qualified earnings.
- For employers who already offer paid leave benefits that are at least as generous as those required under the PFML law, the deadline to apply for exemptions from making contributions has been extended to December 20, 2019.

The new regulations, which were published on June 18, should help employers understand what is required under the PFML law. Among other issues, the regulations address the following:

- Leave taken under the PFML law will run concurrently with leave taken under the Massachusetts Parental Leave Act or the federal Family and Medical Leave Act.
- Employers may apply to the Department of Family and Medical Leave for an exemption from the public plan and its funding requirements, but to be approved an employer's private plan must confer all the same rights, protections and benefits provided under the statute.
- Beginning January 1, 2021, employees will be eligible for a total of up to 26 weeks of family and medical leave in a benefit year, including up to 12 weeks of family leave for the birth, adoption or foster care placement of a child; up to 12 weeks of family leave 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; up to 26 weeks of family leave to care for a family member who is a covered service member; up to 20 weeks of medical leave if the employee has a serious health condition that incapacitates the employee from working; and up to 12 weeks of family leave to care for a family member with a serious health condition.
- An employee who has taken family or medical leave under the statute must be restored to the employee's previous position or to an equivalent position, with the same status, pay, benefits, length-of-service credit and seniority as of the date of leave.
- During an employee's family or medical leave, the employer must 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 had the employee worked continuously for the duration of the leave.
- Employers may not retaliate against employees for exercising any rights under the PFML law or for filing a complaint or instituting a proceeding under the law.

- There is a presumption that any negative change in an employee's seniority, status, employment benefits, pay, or other terms or conditions of employment during a covered leave or within six months following a covered leave constitutes prohibited retaliation. To rebut that presumption, an employer must show by clear and convincing evidence that its action was not retaliation and that the employer had independent justification for taking the action and would have taken the same action regardless of the employee's use of leave.

As the various provisions of the PFML law continue to take effect, employers should review their policies and practices to ensure they are in compliance.

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