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Massachusetts Releases Final Paid Family and Medical Leave Regulations

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This week, the Massachusetts Department of Family and Medical Leave released final regulations for the commonwealth's Paid Family and Medical Leave Law. While the final regulations largely follow earlier draft versions, they do provide some additional clarifications. Employers should factor these into their compliance strategies as they consider how best to integrate the new benefit into existing leave programs.

Background

Last year, Massachusetts Governor Charlie Baker signed into law a bill creating a family and medical leave program that will require employers with at least one employee working in the commonwealth to provide paid leave benefits through a state-administered program. Beginning in 2021, Massachusetts workers generally will be entitled to up to 12 weeks of paid family leave and up to 20 weeks of paid medical leave in a benefit year, with a combined maximum of 26 weeks of paid leave in any such year. (See our July 25, 2018 *For Your Information*.) Benefits under the PFMLL will be funded through a payroll tax, now slated to begin on October 1, 2019. (See our June 17, 2019 *FYI Alert*.)

Among other things, the PFMLL created the Massachusetts Department of Family and Medical Leave (DFML) and required it to finalize implementing regulations by July 1, 2019. On January 23, 2019, the DFML released draft regulations for the administration and enforcement of the commonwealth's PFMLL program. (See our February 28, 2019 *For Your Information*.) The DFML released updated draft regulations on March 29, 2019.

Final regulations

On June 18, 2019, the DFML released final PFMLL regulations.

Key changes and clarifications

The final regulations, like the earlier draft versions, track many of the law's requirements but also provide some notable changes and clarifications. Those are highlighted below.

Contributions

The regulations confirm the October 1, 2019 start date for required PFMLL contributions and an initial contribution rate of 0.75% of employee qualifying earnings, up to the social security maximum (currently $132,900).

Payroll deductions. The regulations confirm that employers may deduct different percentage amounts from different groups of workers (e.g., exempt/non-exempt) up to the PFMLL maximum.

Overpayments and refunds. The regulations clarify that the DFML will refund overpayments of contributions.

Penalties. The regulations provide that the DFML may waive or modify an employer's PFMLL penalties for failing to make required contributions if good cause is shown.

Covered employees

The regulations clarify that the Massachusetts unemployment law's exclusions from the definition of "employment" also apply to the PMFLL. Excluded from coverage under the PMFLL would, for example, be services performed by students in the employ of a school, college or university in which they are enrolled, or student nurses in the employ of a hospital.

Intermittent leave

The regulations clarify that employers may require intermittent leave be taken in increments no smaller than a designated minimum period. The minimum period cannot exceed four hours.

They also clarify that the waiting period for intermittent or reduced schedule leave is the first seven calendar days — not the accumulation of seven days of leave in total.

Reinstatement

The regulations exempt employers from reinstating employees who are hired for a specific term or discrete project if the term or project ends while the employee is on leave, provided the employer would not otherwise have continued the individual's employment.

Private plans

Retroactive contributions. The regulations clarify that an employer may be responsible for retroactive contributions to the Family and Employment Security Trust Fund if it received a private plan exemption but subsequently failed to maintain or renew the exemption prior to January 1, 2021. It is unclear whether employers that fail to renew a private plan exemption after that date will similarly be responsible for retroactive contributions.

Applications. The regulations limit an employer's application for a private plan exemption to once per quarter.

Recordkeeping. The regulations require employers with approved private plans to maintain any records relating to the plan — including for PFML benefits claims under the plan — for a three-year period.

New notice forms and addendum

Earlier this week, the DFML separately provided information on the timing and amount of required contributions into the Family and Employment Security Trust Fund to fund the paid leaves. The DFML also posted two versions of updated employee notice forms — one for use by employers with at least 25 covered workers and one for smaller employers. It also announced the need for employers that already distributed required employee notices to provide an addendum explaining updated program dates and contribution rates. The DFML indicated that it will provide an addendum template in the near future. (See our June 17, 2019 *FYI Alert*.)

In closing

Employers will want to factor the regulations into their compliance strategies and consider how best to integrate the new entitlement into their leave programs, employment policies, and payroll practices.

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