

Massachusetts Set to Become the State to Offer the Most Far-Reaching Paid Family Leave Program in the Country

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The Massachusetts legislature passed significant legislation (An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday), which includes a number of important provisions impacting employers in Massachusetts, including paid family leave and an increase in the state's minimum wage.

Six other states—California, Hawaii, New Jersey, New York, Rhode Island, and Washington—as well as Washington, DC, also have passed laws that provide employees with paid family and medical leave. The new Massachusetts law, however, is arguably the most generous of the bunch. The law's key provisions are outlined below.

FAMILY AND MEDICAL LEAVE —EFFECTIVE JANUARY 1, 2019

The law establishes a Department of Family and Medical Leave within the Executive Office of Labor and Workforce Development. This new department will be responsible for administering the paid leave program. The law phases in mandated paid family and medical leave over three years with the following key provisions:

- All Massachusetts employers must contribute to the Family and Employment Security Trust Fund at an initial contribution rate of 0.63 percent of each employee's wages. For employers with 25 or more employees in Massachusetts, while the employer must remit the full contribution to the Trust Fund, an employer may deduct up to 40 percent of the contribution from an employee's wages for medical leave; for family leave, the employer may deduct up to 100 percent of the contribution from the employee's wages. Employers with fewer than 25 employees in Massachusetts are not required to pay any portion of the contribution for family and medical leave.
- The law provides for a seven-day waiting period before family or medical leave benefits are to be paid to employees; however, an employee can use accrued sick or vacation (or other) paid leave during this time.
- Beginning on January 1, 2021, employees will be entitled to up to 12 weeks of paid family leave per benefit year, and up to 20 weeks for the employee's own serious health condition. The law sets a maximum aggregate of 26 weeks of paid leave per benefit year.
- Employees on paid leave receive wage replacement from the state Trust Fund equal to 80 percent of their wages up to 50 percent of the state average weekly wage, and then 50 percent of their wages above that amount, up to a cap of \$850/week. The Director of the Department may adjust the maximum weekly benefit amount annually to 64 percent of the state average weekly wage, effective on January 1 of the year following.
- Paid "medical leave" will be available to any employee with a "serious health condition."



- Paid "family leave" will be available for the following reasons:
 - to care for a family member with a serious health condition;
 - to bond with the employee's child during the first 12 months after birth or the first 12 months after the placement of the child for adoption or foster care;
 - 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; or
 - in order to care for a family member who is a covered service member with a serious injury or illness incurred or aggravated in the line of duty.
- An employer must restore an employee who has taken family or medical leave to the employee's previous position or to "an equivalent position" with the same status, pay, employment benefits, length of service credit, and seniority as of the date of leave (except in the event that other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions).
- The law adopts many of the same definitions as the federal Family and Medical Leave Act (FMLA), but provides broader coverage in various respects:
 - Unlike FMLA, all employees will be eligible for paid family or medical leave, regardless of length of service with the employer or hours worked.
 - Unlike FMLA, all employers regardless of size are subject to the law's coverage.
 - Under the Massachusetts law, "family member" also includes an employee's domestic partner, grandchildren, grandparents, and siblings, as well as the parents of a spouse or domestic partner.
 - "Serious health condition" is defined more broadly under Massachusetts law as an illness, injury, impairment, or physical or mental condition that involves (i) inpatient care in a hospital, hospice, or residential medical facility; or (ii) continuing treatment by a health care provider.
- Employees must provide employers at least 30 days' notice of the anticipated starting date of the leave, the anticipated length of the leave and the expected date of return, or shall provide notice as soon as practicable if the delay is for reasons beyond the employee's control.
- Employers may apply to the Department for approval to opt out of the state program if they have a program that offers benefits greater than or equal to what an employee would receive in the state program.
- Employers will be required to post a notice of benefits available in a conspicuous location at each of their premises. The notice, which must be prepared or approved by the Department, is required to be in English and any other language that is the primary language of five or more employees or self-employed individuals in any workplace, unless such a such notice is not available from the Department.
- Employers must issue to each employee within 30 days after the employee's start date written information provided or approved by the Department in the employee's primary language explaining the available benefits, the employee's and the employer's contribution amounts and

obligations, instructions how to file a claim for family and medical leave benefits, and other related information.

Although employers will not be responsible for paying for the leave benefits provided by this new enactment, employers will need to make appropriate adjustments to their payroll systems, as well as to their employee handbooks and leave policies, and should become familiar with the law's various notice requirements. Employers should be prepared to adopt these necessary changes in advance of the law's July 1, 2019 effective date. Employers should also be prepared to answer likely questions from employees regarding the details of the new law, their rights to benefits, the amount of such benefits, the purpose of the new payroll taxes, and how the new program will interact with other leave laws and company policies.

MINIMUM WAGE AND PREMIUM PAY - EFFECTIVE JANUARY 1, 2019

The law gradually raises the state minimum wage over five years from the current \$11 per hour to \$15 per hour. It also gradually increases the alternative minimum "service rate" for eligible tipped employees from \$3.75 per hour to \$6.75 per hour over the same time period. Additionally, the law phases out over five years the time-and-a-half premium pay requirement for retail employees working on Sundays and holidays, decreasing it ultimately to straight time. Retail work on Sundays and certain holidays, however, will remain voluntary, and refusal to work on those dates cannot result in discrimination, dismissal, discharge, reduction in hours, or any other diminution in an employee's position.

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