



COMPLIANCE SERVICES Alert



July 5, 2018

Massachusetts to require paid family leave

At the end of June 2018, Massachusetts Governor Charlie Baker signed into law paid family and medical leave for Massachusetts workers. Massachusetts is the latest in a slew of states requiring employers to grant paid leave to employees, but it is not likely to be the last.

Summary

The new law requires up to 12 weeks of paid family leave, up to 20 weeks of paid medical leave for an employee with a serious health condition and up to 26 weeks to care for a covered service member.

“Serious health condition” is defined similarly to the federal Family and Medical Leave Act (FMLA) as, “An illness, injury, impairment, or physical or mental condition that involves: inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.” In contrast, the definition of family member as it relates to “family leave” is broader than it is under the FMLA. This is described in more detail below.

New payroll contributions to fund the paid leave will begin July 1, 2019. The fund will start paying some benefits Jan. 1, 2021, and full implementation of the new benefits will be in effect by July 1, 2021. Unlike the federal FMLA rules, the Massachusetts rules will apply to smaller employers with at least one employee working in the state.

The details

Key provisions of the law include:

- New state agency: A new state agency, the Department of Family and Medical Leave, is tasked with implementing the law over a three-year period and issuing proposed regulations by March 31, 2019.

- New payroll tax: Beginning July 2019, a new payroll tax shared between the employee and employer that is equivalent to .63 percent of the employee's wages will be deducted to fund the paid leave. Employers with 25 or more employees in Massachusetts may deduct the entire amount of the payroll tax from an employee's wages for family leave and up to 40 percent of the payroll tax for medical leave. Massachusetts regulators will need to address the administrative issues associated with the funding split.
- Employee eligibility: To be eligible for paid family and medical leave, an employee must be eligible to receive unemployment compensation under Massachusetts law. Based on current requirements, the employee does not have to be full time but must have been paid wages of at least \$4,700 during the last four calendar quarters.
- Eligible leave: Like FMLA, family leave is available for the employee to bond with a newborn or adopted child, to care for a family member (defined below) with a serious medical condition, to care for a family member injured in military service or for a qualifying exigency due to a family member called to active military service. Similarly, this is job-protected leave.
- Medical leave: The Massachusetts law permits up to 20 weeks of paid leave for a person's own medical condition. This period is eight weeks longer than comparable federal leave under the FMLA.
- Family members: Any of the employee's family members with a serious health condition will qualify the employee for family leave. Family members include the employee's spouse, domestic partner, child, parent or parent of a spouse or domestic partner; a person who acted as a parent to the employee when the employee was a minor child; or a grandchild, grandparent or sibling. The Massachusetts definition of family member is far broader than the comparable definition under the federal FMLA.
- Benefit amount: After a seven-day waiting period, employees on paid leave will be entitled 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 an \$850 weekly cap (indexed).
- Waiting period: During the seven-day waiting period, employees may use accrued sick leave, vacation pay or other paid leave. However, the seven-day waiting period is waived for bonding for mothers who received short-term disability pay related to the birth of a child.
- Maximum amount of leave: An employee cannot take more than 26 weeks of paid leave during any benefit year, defined as the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day job-protected leave begins.
- Private plans: Massachusetts employers can opt out of the state program if they have an employer-sponsored private plan that provides the same or more generous benefits.
- Reduction in benefits: The state-paid benefit is reduced by other paid benefits that meet the following requirements:
 - Are paid through any government program or law, including worker's compensation, other than for a permanent disability that was incurred prior to the family or medical leave.
 - Are paid under other state or federal temporary or permanent disability law.
 - Are paid through a permanent disability policy or program of an employer.
- Exception for wage replacement: Benefits are not reduced by wage replacement received under an employer's temporary disability policy or an employer's paid family or medical leave policy. However, if the total wages exceed the employee's average weekly wage, Massachusetts benefits would be offset by the overpayment.
- Notice requirements: Under the law, employers will be required to post a notice and provide notice of benefits to all new employees within 30 days of date of hire.
- Timing: Employer and employee contributions must begin on July 1, 2019. Beginning Jan. 1, 2021, employees will be able to use paid family leave for child bonding after birth, adoption or foster

placement; for a qualifying exigency of an active duty family member; or for caring for family who is a covered service member. Also beginning Jan. 1, 2021, employees will be able to use paid medical leave for their own serious health conditions. Beginning July 1, 2021, employees will be able to use paid family leave to care for a family member with a serious health condition.

Next steps

Final regulations must be issued by July 1, 2019, which is the date contributions begin. Regulations should provide additional clarity on implementation of the new requirement. In the meantime, employers should discuss the requirement with payroll vendors and review employer policies that may impact pay under the new law.

This law will raise a host of familiar issues to multistate employers who are constantly faced with a barrage of new state leave requirements. In this case, the Massachusetts law has unique provisions not commonly found in similar state laws. For multistate employers, it will be critical to review implications of the law sooner rather than later.

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