

The New Paid Family and Medical Leave Act: Here's What You Need to Know . . . and Fast.

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It's called the "Grand Bargain" and was signed by Governor Charlie Baker into law in June 2018. The new Paid Family and Medical Leave Act ("PFML Act"), M.G.L. c. 175M, creates a statewide program for eligible employees to receive up to 12 weeks of paid family leave and up to 20 weeks of paid medical leave, with a maximum of 26 total family and medical leave weeks in a benefit year.



The leave program is funded through a state wide trust fund created by premiums paid by employees, employers and the self-employed. It applies to all employers with more than one employee, although employers with private paid family and medical leave benefits and protections that provide equivalent or greater benefits than the PFML Act may apply for an exemption from the law.

Critical Dates:

First and foremost, it is critical to be aware of the impending deadlines. Although the new law initially required certain deadlines which began as early as May 31, 2019, the Massachusetts Department of Family and Medical Leave ("DFML") granted a brief reprieve of those deadlines in early May 2019.

Currently, employers are required to notify their current employees and certain independent contractors by June 30, 2019 of the new law. Failure to do so may result in a \$50 per employee fine for the first offense and a \$300 per employee fine for subsequent violations.

Employers seeking an exemption from remitting first quarter PFML contributions based on their equivalent private leave programs now have until September 20, 2019 to apply for *and obtain* DFML approval for the exemption. This extension, however, only applies to first quarter contribution exemptions and *only to*

employers with approved requests. An employer who does not apply for an exemption or whose application for exemption is denied must still begin contributions on July 1, 2019.

Employees will be eligible to take PFML leave for most covered conditions on January 1, 2021, and for all conditions by July 1, 2021.

How the Program is Funded:

A state-wide Trust Fund will provide funding for the leave. Contributions to the Trust Fund will be made by employers who are required to establish withholding from payroll contributions. Initially the contribution rate will be .63% of all employee wages or other qualifying earnings. An employer is required to make the payroll deduction from all employee wages and amounts paid to IRS Form 1099 Independent Contractor workers if they make up more than 50% of the employer's company workforce. Of this .63% contribution, .52% is allocated to fund medical leave benefits and .11% is allocated to fund family leave benefits.

Employers with fewer than 25 employees may deduct the entire .63% contribution from the employees' wages. Employers with 25 or more employees, however, must bear a portion of the medical leave contribution. Those employers may deduct the full family leave contribution of .11% from employees' wages, but no more than 40% of the .52% medical leave contribution from the employees' wages.

Key Provisions:

The PFML applies to all non-governmental employers and employees without any minimum requirements as to period of employment or work hours. It also applies to independent contractors if more than 50% of an employer's company workforce consists of such IRS Form 1099 contractors.

To receive benefits, an employee must have cumulatively received wages from all employers during the 12-month period prior to their application that equals or exceeds 30 times the employee's weekly benefit amount, and equals or exceeds

\$4,700. Former employees remain eligible for PFML if their leave start date begins within 26 weeks after termination of their employment.

Beginning in 2021, covered employees will be eligible to take up to 26 total weeks of paid leave in a benefit year as follows:

- Up to 12 weeks of family leave for the birth, adoption, or foster care placement of a child; to care for a family member with a serious health condition, or because of a qualifying exigency arising out of a family member's active military duty orders.
- Up to 20 weeks of medical leave for the individual's own serious health condition.
- Up to 26 weeks of family leave to care for a family member with a serious injury or illness incurred or aggravated in the line of military duty.

The weekly benefit amount will be based on a formula that considers the employee's own average weekly wage and average weekly wages throughout the state. The initial maximum benefit will be capped at \$850 per week.

PFML will run concurrently with other types of statutory leave such as the program created by the Federal government entitled Family Medical Leave Act ("FMLA") and Massachusetts parental leave. It may be taken intermittently except for bonding with a child following the birth, adoption or foster care placement. If the leave is foreseeable, an employee must provide at least 30 days-notice before beginning or returning from the leave. Employers are not required to allow employees to continue accruing vacation or sick time during a PFML absence.

The PFML provides employees with job protection during their leave. Upon return, an employee must be restored to the same or an equivalent position with the same status, pay, benefits, length of service credit and seniority.

Actions For You:

It is essential that employers are prepared for the rapidly approaching implementation of the new PFML Act. You must act immediately to properly notify your employees and all applicable independent contractors in writing of the new law by no later than June 30, 2019.

You also must begin making the required contributions to the Trust Fund by July 1, 2019, unless your company has applied for *and received* an exemption. You have until September 20, 2019 to apply for and receive an exemption, but if denied, you are responsible for contributions beginning on July 1, 2019.

Contributions for the first quarter are due to be remitted to the Commonwealth by October 31, 2019. Employers must register with the Mass Tax Connect system to remit contributions and file quarterly reports.

It is crucial that your company is fully educated about the new law and remains alert for the final PFML regulations. Please contact Attorney Kimberly Alley at Perkins & Anctil, P.C. if you need assistance with drafting notices or otherwise ensuring your company's compliance with the new PFML Act.