

Massachusetts Legislature Passes Compromise Bill Increasing Minimum Wage, Establishing Paid Family and Medical Leave

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On June 20, 2018, the Massachusetts legislature passed [House Bill 4640](#), “An Act Relative to Minimum Wage, Paid Family Medical Leave, and the Sales Tax Holiday.” The bill increases minimum wage, eliminates premium Sunday pay for retail workers, and establishes a state paid family and medical leave insurance program. The bill also creates an annual state tax holiday on a designated weekend in August. Under pressure from Governor Charlie Baker to reach a compromise in order to divert looming ballot questions on these issues in November, the bill passed both branches in one day. Although the text of the bill should be reviewed in full if and when the bill is signed into law, employers should take note of the major changes identified below.

Minimum Wage Increase

The bill, which increases minimum wage for both regular minimum wage employees and tipped minimum wage employees, establishes two incremental minimum wage increase schedules. If signed into law, the first of the wage increases for both regular and tipped employees would go into effect on January 1, 2019. Thereafter, the minimum wages for regular and tipped employees would gradually increase on January 1 of each year, with the final increase going into effect on January 1, 2023. Employers should note the following regarding the minimum wage increases for regular and tipped employees:

Regular Minimum Wage Employees

- Minimum wage for regular employees, currently \$11.00 per hour, would gradually increase to \$15.00 per hour over the years 2019 to 2023.
- On January 1, 2019, the minimum wage for regular employees would increase from \$11.00 to \$12.00 per hour (the largest incremental increase over the course of the schedule).

- Between January 1, 2020 and January 1, 2023, minimum wage for regular employees would increase between \$0.75 and \$0.25 per year.

Tipped Minimum Wage Employees

- Minimum wage for tipped employees, currently \$3.75 per hour, would gradually increase to \$6.75 per hour over the years 2019 to 2023.
- On January 1, 2019, the minimum wage for tipped employees would increase from \$3.75 to \$4.35 per hour.
- Between January 1, 2020 and January 1, 2023, minimum wage for tipped employees would increase \$0.60 per year.

Elimination of Premium Sunday Pay for Retail Workers

Wages of retail workers would also be impacted by the bill. Currently, Massachusetts law mandates that retail workers be paid premium wages of time-and-a-half their regular rate on Sundays. The new bill would gradually decrease the premium Sunday pay rate over the next five years, until it is eliminated on January 1, 2023. The first incremental decrease, which would go into effect January 1, 2019, decreases the premium Sunday rate to one and four-tenths of the employee's regular rate.

Massachusetts Paid Family and Medical Leave Program

The bill also establishes a job protected and paid family and medical leave program, which would go into effect on January 1, 2021. Importantly, unlike the federal Family and Medical Leave Act of 1993 (the "FMLA"), the bill does not require that an employer employ a threshold minimum number of employees to trigger coverage. The only carve-out for smaller employers is that employers with fewer than 25 employees would not be required to pay the employer portion of the payroll tax, contributed to by employers and employees, which would fund the program. Although the legislation contains a number of nuanced provisions, employers should initially take note of the following:

- Leave taken under the Massachusetts Paid Family and Medical Leave Program would run concurrently with leave taken under the FMLA (where applicable).
- Employees would be eligible for up to 12 weeks of paid family leave in a benefit year (leave time equal to that offered under the FMLA).
- Employees would be eligible for up to 26 weeks of paid family leave in a benefit year if the leave is taken to care for a covered servicemember (leave time equal to

that offered under the FMLA).

- Employees would be eligible for up to 20 weeks of paid medical leave (leave time greater than the 12 weeks offered under the FMLA).
- Employees would not be permitted to take more than 26 weeks of combined paid family and medical leave in the same benefit year (a 52 week period).
- During leave, after the first 7 calendar days, employees would be paid a percentage of their salary, the calculation of which varies depending on the employee's average weekly wage compared to the state average weekly wage. An employee will only be paid up to a maximum of \$850.00 per week. The maximum rate is to be recalculated each year.

The bill currently awaits Governor Baker's signature. However, in anticipation of the bill being signed, employers should work with counsel to ensure compliance with all aspects of the new legislation. Proskauer will continue to provide updates regarding the status of the legislation and to help Massachusetts employers prepare if (or more likely, when) the bill becomes law.

Thanks to summer associate Madison Bader for her assistance in preparing this post.

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