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Massachusetts Releases Draft Regulations For Paid Family and Medical Leave Law

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On January 23, 2019, Massachusetts released draft regulations on the Paid Family and Medical Leave ("PFML") Law, signed into law last summer (as previously discussed here) and set to begin taking effect this upcoming July. The Department of Family and Medical Leave released these draft regulations for public comment only, with the deadline for publication of official regulations set for March 31, 2019. The draft regulations are not yet binding on employers, but they provide valuable insights to employers working to ensure eventual compliance with the new law.

As discussed previously, the PFML Law increases minimum wage, eliminates premium Sunday pay for retail workers, and establishes a state paid family and medical leave insurance program. The draft regulations make notable additions and clarifications to the law, per the following examples:

- **Concurrency**: Any PFML taken runs concurrently with leave taken under Massachusetts' Parental Leave Law and the federal Family and Medical Leave Act if the leave is for a qualified purpose under those laws.
- **Employer Contributions**: Employees' eligibility for benefits begins on January 1, 2021. However, starting July 1, 2019, employers must begin making an initial contribution at a rate of 0.63% of each employee's wages or earnings, up to the first $128,400 earned by that employee. That percentage is subject to change annually. Employers are allowed to deduct directly from employees' wages up to 40% for medical leave contributions and up to 100% for family leave contributions. Contributions are owed quarterly, within 30 days after the end of the calendar quarter.
- **Small Employers**: Employers with fewer than 25 employees in the Commonwealth are not required to pay the employer portion of premiums. However, *all* employers having at least one employee in the Commonwealth must otherwise comply with the requirements of the PFML (i.e. the minimum wage increase, the elimination of Sunday pay, and the provision of family and medical leave in accordance with the law). Employers with their own PFML plans may apply for an exemption from the

PFML. In order to receive an exemption, the employer plan must afford the same rights, protections, and benefits as the PFML Law.

- **Intermittent Leave**: Employees may take PFML on an intermittent basis in certain circumstances, such as leave to care for a family member.
- **Benefit Accrual**: An employee's use of PFML cannot affect the employee's accrual of vacation time, sick leave, bonuses, advancement, seniority, or other employment benefits, plans, or programs. Importantly, any negative changes regarding these categories while the employee is on leave or for 6 months thereafter shall be presumed to be retaliatory.
- **Retaliation**: It is unlawful to retaliate against an employee for utilizing PFML.

As noted above, these regulations are not yet final. Employers should continue to monitor this space for forthcoming updates and should anticipate reviewing the final regulations (which should be promulgated no later than March 31, 2019) in full with the assistance of counsel, in order to ensure compliance with the PFML throughout its gradual roll-out over the next few years.

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