Proskauer

Final Massachusetts Paid Family and Medical Leave Regulations Published and Other PFML Updates

Law and the Workplace on **June 20, 2019**

The Massachusetts Department of Family and Medical Leave ("DFML") has posted the much-anticipated final regulations regarding Massachusetts' Paid Family and Medical Leave law ("PFML"). The final regulations come on the heels of Massachusetts lawmakers' recent extension of key PFML compliance dates. While the final regulations are materially unchanged from the previous draft issued March 29th, the following substantive additions and clarifications are worth noting:

- **Private Plan Clarifications:** The bulk of the revisions to the draft regulations concern clarifications regarding employers' rights and obligations when their own private leave plan satisfies the requirements for exemption from the PPFML contribution requirements. First, employers with approved private plans must retain information and records related to their plans, including any documentation related to employees' claims for benefits. They must retain all such records for three years and furnish them to the DFML upon request. Second, there are penalties for employers who fail to maintain or renew approved-private plans prior to January 1, 2021. Third, the regulations provide instructions for employers when an employer does not renew their private plan, including notifying covered individuals and the DFML of their intent not to renew.
- **Intermittent Leave:** Employers are allowed to require that any intermittent PFML be taken in certain minimum increments, but the required minimum must not be greater than four consecutive hours. For example, an employer may require that an employee use PFML time off in minimum increments of two hours at a time, but not five hours.
- **Deduction Percentages Among Different Groups of Employees:** Employers may choose to deduct different percentages from different groups of covered individuals for purposes of making contributions, provided that no deductions exceed the maximum deduction allowed. In other words, there is not a strict requirement that deductions be equal across the entirety of an employer's workforce.

- **Change of Contribution Rates:** The regulations reflect the change in the total combined contribution rate pursuant to thePFML extension, now increasing from 0.63% to 0.75% of employee qualified earnings.

Separately, the DFML has also posted new template notices that employers can use to fulfill the requirement of informing their workforce of their PFML rights, benefits, and obligations before September 30, 2019. Revised notices to Massachusetts W-2 employees are available on the DFML's website here, and notices to Massachusetts 1099-MISC contractors are available here. Notably, in each instance, the Commonwealth has provided template notices for employers with twenty-five or more covered individuals *and* for employers with less than twenty-five covered individuals. Previous templates did not make such a distinction.

As a reminder, despite the recent extension of compliance dates, deadlines are nonetheless quickly approaching, including the deadlines to notify covered workforces, to begin withholding contributions, and to submit an application for an exemption . Employers are encouraged to reach out to counsel for further guidance.

View Original

Related Professionals

- **Mark W. Batten**
  Partner