

MA PFMLA Update: MA Passes Extension Law; Department Issues New Regulations

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The past few days saw two major updates to the Massachusetts Paid Family and Medical Leave Act (PFMLA) of which employers should be aware: a three-month extension of various deadlines for employer compliance and the issuance of final regulations under the Act Department of Family and Medical Leave (the “Department”).

As we reported last week, the Governor and Legislature agreed to extend the start date for contributions from July 1, 2019 until October 1, 2019. The Legislature passed such a bill, and the Governor signed it into law on Friday, June 14, 2019. The new law not only extends the start date for contributions, but also extends the deadline by which employers must notify their workforce of the new PFMLA law from June 30 to September 30, 2019, and the deadline by which employers must apply for an exemption from contributions until December 20, 2019. The new law also increases the contribution percentage from 0.63% of average weekly wages to 0.75% to make up for the lost quarter of contributions and ensure the trust will be fully funded before benefits start in January 2021.

Then, on Tuesday, June 18, 2019, the Department published the final version of its regulations on the PFMLA. These regulations both confirm much of the Department’s prior informal guidance and provide additional clarity where gaps existed. Among the most significant updates and changes are:

- The regulations confirm that private plans do not need to provide benefits until January 1, 2021 to qualify for an exemption. If a private plan receives an exemption but then is not renewed or maintained through January 1, 2021, the employer may be responsible for retroactive contributions to the trust fund. Such retroactive contributions cannot be charged against the workforce.
- The regulations limit employers and covered business entities to one exemption application per quarter.
- The regulations impose a 3-year records retention requirement for companies with approved private plans, and also require 30 days’ notice to workers before terminating a plan.
- The regulations provide additional detail on intermittent and reduced leaves, clarifying that intermittent or reduced leave is permitted when medically necessary due to a worker’s or family member’s medical condition, when the company and worker agree to an intermittent or reduced schedule for parental leave, and at all times for military exigency leave. Employers may also require employees to take intermittent leave in certain increments as long as the minimum increment is not greater than four hours.
- The regulations provide additional information on the geographic coverage of the Act. An individual is covered under the Act if their service is “localized” in Massachusetts, which means that all or mostly all of their service is performed in Massachusetts, with the exception of incidental, isolated, or transitory work done in other states. Individuals may also be covered under the Act where their service is not localized in any state, but their base of operations or the place from which their service is directed and controlled is in Massachusetts. If their base of operations or place from which their service is directed and controlled is not in any state where they provide services, then they will be covered if they live in Massachusetts.
- The regulations confirm that leave periods do not need to be treated as credited service for purposes of benefit accrual, vesting, and other eligibility to participate in benefit plans.
- The regulations allow employers to require employees to comply with their existing processes for requesting leave, and to deny leave to employees who do not comply with those processes.

While the regulations provide some much needed clarity on the law, areas of confusion remain. For instance, the regulations do not specify whether exempt plans must provide benefits to recently-unemployed workers. Additionally, the Department has not yet provided

a form for bonds for exempt plans, nor has it received guidance from the IRS on the federal tax treatment of PFMLA contributions, deductions, and benefits. Based on these and other continuing questions, we expect further guidance from the Department may follow. Fortunately, employers have some additional time to think about these developments and evaluate the options available to them. We will continue to keep you updated as these issues evolve.

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