

Department of Family and Medical Leave Issues Guidance on New Paid Family and Medical Leave Act

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On March 26, 2019, the Massachusetts Department of Family and Medical Leave issued a guide for employers on complying with the new Paid Family and Medical Leave Act (PFMLA). (Our alert on the 2018 passage of PFMLA can be found [here](#).) As the guide makes clear, employers will need to begin taking steps to comply with PFMLA as early as July 1, 2019, even though paid leave benefits will not be available until January 2021 at the earliest. This new guide provides some useful explanation of employers' compliance obligations as we wait for the final PFMLA regulations, which were supposed to be released by March 29, 2019.

First: the guide addresses PFMLA mandatory posters and employee notices. The Department has prepared a mandatory workplace poster that explains which employees are eligible for leave, what benefits they can receive, what happens when an employer offers a private benefit plan, and also describes the anti-retaliation and anti-discrimination provisions of the law. **Employers must post this poster** in a conspicuous place at each of their Massachusetts locations **on or before July 1, 2019**.

Starting on July 1, 2019, employers also must notify employees and independent contractors in writing of their PFMLA benefits. The Department has not provided a template notice yet, but instead has listed separate sets of criteria that notices to employees and independent contractors must satisfy. Notices to employees must explain the available leave benefits, and must contain:

1. the employee's contribution amount and obligations
2. the employer's contribution amount and obligations
3. the employer's name, mailing address, and employer identification number assigned by the Department
4. instructions on how to file a claim for benefits
5. contact information for the Department, including its mailing address, email address, and telephone number

Notices to independent contractors providing services must contain this information as well, except they must also receive an explanation of the procedures for self-employed individuals to receive coverage under PFMLA and the individual contribution amounts and obligations they would have if they received coverage. Companies must also obtain a signed written statement acknowledging receipt of the notice. Failure to provide these notices can result in a fine: \$50 per individual for a first violation, and \$300 per individual for a subsequent violation.

Second: the guide explains how employers should prepare to make the required deductions from employee payroll, remit any employer contributions, and report required information on the workforce. All employers will need to start making deductions from wages (or, in the case of covered independent contractors, from payments made for services provided) on July 1, 2019. Employers with 25 or more covered individuals in their workforce must also make an employer contribution. The Department has provided an online calculator to help employers determine what deductions from employee payroll (or independent contractor service payments) and what employer contributions they will need to make. Employers must remit these funds to the Department on a quarterly basis, starting on October 31, 2019. They will also need to file quarterly reports then as well. As with other areas of the PFMLA, the Department has yet to provide formal guidance on what these reports will require, but its new guide indicates that employers should plan to submit names, social security numbers, and wages or payments for services made to each covered individual, as well as its own federal employer identification number.

Third: the guide provides additional information on the process for applying for a private plan exemption to the PFMLA. Employers who already provide paid family and medical leave can apply to the Department for an exemption from PFMLA so that they do not have to submit payroll deductions or pay employer contributions. To qualify, the employer must have a private leave policy that provides at least as many benefits as available under PFMLA, which are themselves fairly extensive: 12 weeks of paid family leave in most circumstances, 20 weeks of paid medical leave when the employee is unable to work because of a serious health condition, and 26 weeks of paid leave to care for a family member with a serious health condition resulting from active military service. Weekly benefits paid must be at least 80% of an employee's pay up to 50% the average weekly wage, then an additional 50% of any wages beyond that amount, with total benefits capped at \$850 per week. The application process opens April 29 and is available through MassTaxConnect.

While the Department's PFMLA regulations have yet to be finalized, employers should begin preparing for these new requirements now. In addition to preparing to comply with posting and notice requirements, employers will need to make sure their MassTaxConnect account is set up for submission of deductions and contributions, set up their internal systems for processing these payments, determine whether they are required to make contributions, and assess whether any independent contractors who provide them services would be covered by PFMLA. Employers also should consider applying for an exemption if they qualify.

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