Paid Family and Medical Leave Comes to Massachusetts

BY TIMOTHY P. VAN DYCK AND CHELSIE A. VOKES • NOVEMBER 21, 2018

Massachusetts enacted legislation this past summer (Acts 2018, c. 121, the "Act") creating its first state-administered Paid Family and Medical Leave Program (the "Program"). Employers of all sizes are required to participate in the Program, except for certain public entities, which may opt in. Employers must begin making contributions to the Program in 2019 and benefits under the Program will begin to be disbursed to employees in 2021.

A new state agency, the Department of Family and Medical Leave (the "Department"), will develop the details of implementation through regulations, which must be published and circulated for public comment and hearing no later than March 31, 2019.

In the meantime, employers should familiarize themselves with the major features of the Program described in the Act, which are summarized below.

EMPLOYEE LEAVE BENEFITS

Under the Program, employees are entitled to job-protected, paid leave for up to 12 weeks per year to care for a sick family member or child, up to 20 weeks per year to attend to the individual's own serious health condition, and up to 26 weeks per year to deal with an emergency related to the deployment of a family member for military service. Each employee may take a maximum of 26 weeks of leave under the Program each year. Employees may take their leave on an intermittent or reduced schedule basis, except for family leave taken for the purpose of bonding with a child. Program benefits need not be provided during the first seven days of leave, during which time the employee may, but cannot be required to, use accrued sick or vacation time.

MANDATORY EMPLOYER CONTRIBUTIONS

The Act creates a new state trust fund to finance the Program (the "Trust"). Covered employers must make annual contributions to the Trust through a payroll tax. Employers must make their first contribution on July 1, 2019 in the amount of 0.63% of each employee's wages (amount to be adjusted annually), up to the maximum wage base tied to the federal Social Security Administration's annually-calculated contribution and benefit base (for 2018, the SSA wage base is $128,400, meaning that the per-employee contribution cap under the Program would be $808.92). Employers must remit the entire amount of the contribution to the Trust, though employers with less than 25 employees need only remit the deductions from employees' wages and will not be required to pay an employer-share contribution. Although employer contributions begin in 2019, benefits under the Program will not be distributed until January of 2021 (except for benefits to care for a sick family member or child, which will not be distributed until July 1, 2021).

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IMPACT ON EXISTING LEAVE

Leave provided under Massachusetts' Parental Leave Law or the Federal Family and Medical Leave Act may run concurrently with leave taken under the Program. Disability or family care leave provided in a collective bargaining agreement or employer policy (collectively, "private benefits") may also be provided "concurrently or otherwise coordinated with" payments or leave available under the Program, but only if the private benefits equal or exceed the benefits available under the Program and employers notify
employees that the private benefits will run concurrently.

Employers will also have the option to "opt out" of the Program entirely, but only if the benefits that they provide meet or exceed the Program's requirements and the Department approves their private program.

ANTI-RETALIATION REQUIREMENTS

During leave, employers must continue to provide and contribute to the employee's health insurance and other employment-related benefits, if any, at the level and on the same conditions as if the employee were working continuously throughout the leave period.

Employers may not retaliate against employees for their use of the Program. "Any negative changes in seniority, status, employment benefits, pay, or other terms or conditions of employment of an employee" during or within six months after return from leave will be presumed retaliation.

NOTICE REQUIREMENTS

Beginning on July 1, 2019, employers must post a notice of rights in the workplace and provide new employees or independent contractors with written notice of their rights under the Program within 30 days of hire or engagement, which the party receiving the written notice must confirm in writing.

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