Client Alert: Important and Time-Sensitive Massachusetts Paid Family and Medical Leave Updates; Proposed Amendments to PFML Regulations; Looking Back at FY22

BY TRACY THOMAS BOLAND • NOVEMBER 22, 2022

Important updates to the Massachusetts Paid Family and Medical Leave law ("MA PFML") are going into effect January 1, 2023. Employers should take steps now to ensure that their payroll systems reflect the revised contribution rates detailed below and provide their current employees with notice of these changes by **December 2, 2022**. Additionally, the Department of Family and Medical Leave ("DFML") has proposed amendments to the MA PFML regulations to clarify employers' obligations to maintain health insurance for employees during their MA PFML leave period. Finally, the DFML issued its annual report for the first full year of the MA PFML program.

REVISED CONTRIBUTION RATES AND BENEFIT CHANGES FOR 2023 AND EMPLOYEE NOTICES

Maximum weekly benefits under the MA PFML are increasing from $1,084.31 to $1,129.82 per week. While the maximum weekly benefit amount will *increase*, contribution rates will *decrease*.

- For employers with 25 or more covered individuals, the employer contribution rate will be lowered from 0.68% to 0.63% of eligible employee wages (comprised of 0.52% for medical leave and 0.11% for family leave).
- The employer contribution rate for employers with fewer than 25 covered individuals will decrease from 0.344% to 0.318% (comprised of 0.208% for medical leave and 0.11% for family leave).

There will be no changes to the proportions of MA PFML contributions. That is, all employers can still withhold up to 100% of family leave contributions from covered individuals, employers with 25 or more covered individuals may withhold up to 40% of medical leave contributions, and employers with less than 25 covered individuals may withhold up to 100% of the medical leave contribution. Employers should be prepared to make necessary changes to their payroll systems to reflect the revised contribution rates as of January 1, 2023.

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Employers are required to communicate these changes to their current employees **by December 2, 2022** (30 days before the January 1, 2023 effective date). Copies of sample notifications can be found here. As a reminder, in addition to providing current employees with such notices, employers are required to provide these notifications to all *new* employees within 30 days of their hire. All notices may be provided in hard copy or electronic form. The notices must include the opportunity for the employee to acknowledge or decline receipt; employers should retain such forms per their internal document retention policy. Employers are also required to display posters setting forth MA PFML benefits at their workplace. An acceptable form of the 2023 MA PFML mandatory workplace poster can be found here.

PROPOSED AMENDMENTS TO MA PFML REGULATIONS REGARDING MAINTENANCE OF HEALTH INSURANCE

The Department of Family and Medical Leave has scheduled a public hearing for December 7, 2022, to review proposed amendments to the MA PFML regulations. A copy of the draft amendments can be found here.

The proposed changes would clarify and detail employers' statutory obligation to maintain health insurance benefits for employees during an MA PFML leave period. Specifically, the amendments note that in addition to continuing to provide for and contribute to an employee's health related benefits, employers would be required to "otherwise maintain" such coverage:

> The provision "otherwise maintain" shall be interpreted broadly to encompass any method of benefit maintenance or approximation of benefits that permits an employee taking family or medical leave to maintain access to health coverage for the duration of the leave on the same or equivalent terms, including the employee's costs for such coverage, such as premium contributions, co-pays, and deductibles.

The proposed regulations include a non-exhaustive list of ways in which employers may "otherwise maintain" health insurance for their employees, including by continuing to pay the employer portion of group health insurance premiums or (if an employee is eligible for COBRA/mini-COBRA coverage) by providing COBRA-continuation coverage and reimbursing the employee so that the employee's premium is the same as when the employee was actively employed. Under the proposed regulations, employers will not be required to provide for, contribute to, or otherwise maintain health insurance benefits for employees who do not receive or are not eligible for such benefits at the time their family or medical leave begins. Additionally, employers will not be required to provide for, contribute to, or otherwise maintain health insurance benefits for covered individuals who resign during a leave or who are former employees when their family or medical leave commences.

FY 2022 ANNUAL REPORT

The DFML has issued its annual report for the first full fiscal year of the MA PFML benefit program (July 1, 2021 through June 30, 2022).

- In FY22, the DFML approved 112,531 applications and denied 27,507 applications. Of the approved claims, 59% were medical leaves, 31% were family bonding leaves, 10% were leaves to care for a family member, and less than 1% were military exigency and service member care leaves.
- Of the more than 27,000 applications that the DFML denied, 41% were denied on eligibility grounds, 48% were denied due to lack of documentation, 2% were denied based on information received from employers, and the remaining 10% were denied because the applicant failed to meet the family leave requirements (for example, the leave requested did not fall within one year of the birth or placement of a child), the applicant submitted their application late, or the applicant sought family leave in excess of the amount allowed.

Over the course of FY22, the DFML issued more than $602M in family and medical leave benefits compared to the less

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than $175M in benefits paid out during the six benefit-eligible months of FY21.

This alert aims to provide an overview of the recent updates and changes to the Massachusetts Paid Family and Medical Leave law. Employers with questions about how to comply with these laws should consult their Bowditch attorney.

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