

EMPLOYMENT LAW ALERT AUGUST 2018

MASSACHUSETTS ADOPTS PAID FAMILY AND MEDICAL LEAVE AND INCREASES THE MINIMUM WAGE

On June 28, 2018, Massachusetts Governor Charlie Baker signed into law “An Act Relative to Minimum Wage, Paid Family Medical Leave And The State Tax Holiday.” Dubbed a “grand bargain” due to its successful passage through the compromise of legislators, the business community, and workers’ rights advocates, this new law has significant implications for Massachusetts employers. Specifically, Massachusetts adopted a broad and far-reaching paid family and medical leave for qualifying employees, and it will gradually raise the minimum wage to \$15 per hour by the start of 2023. Massachusetts will separately phase out time-and-a-half premium pay for certain employees on Sundays and some holidays. Below is a summary of the key provisions of this new law.

PAID FAMILY MEDICAL LEAVE

By January 1, 2021, qualified employees and certain former employees will be entitled to up to 20 weeks of paid medical leave to treat serious health conditions and up to 12 weeks of paid leave to care for a sick family member or newborn or adopted child. The law applies to all employers in Massachusetts, regardless of size, and creates strict notice requirements, obligating employers to provide detailed information to employees by July 1, 2019.

To fund the paid leave program, employers will contribute a payroll tax of 0.63% of employee wages to a trust fund, beginning on July 1, 2019. All employers will be able to apportion the portion of the payroll tax for family leave entirely to employees. Employers with over 25 employees will contribute at least 60% of the payroll tax portion that applies to medical leave. An employer may apply for approval of a private plan if the employer’s private plan meets certain minimum requirements of this law.

Highlights of the new law:

- ▶ A qualified individual can take paid leave to assist with the care of a “family member,” which includes a spouse, domestic partner, child, parent, parent-in-law, grandchild, grandparent, or sibling of the individual.
- ▶ During leave, an employee will continue to accrue vacation time, sick leave, and bonuses, under employer policies, and will also remain eligible to participate in the employer’s health insurance plan.
- ▶ An employee can take up to 26 weeks of paid leave aggregated in the same benefit year.
- ▶ An individual’s eligibility for paid leave depends on the number of hours worked within the benefit year.

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- ▶ Former employees may qualify for paid leave based on the number of hours worked prior to separation and provided they go on leave within six months after separation.
- ▶ Paid leave commences after a seven-day waiting period.
- ▶ Once paid leave commences, a portion of the employee's average weekly wages will be earned, with total weekly earnings capped at \$850 per week.
- ▶ The Department of Family and Medical Leave (created by enactment of this law) will publish regulations and administer and enforce the paid family medical leave program
- ▶ Employers are prohibited from interfering with an employee's right to leave or for retaliating against an employee for exercising any rights under the laws.
- ▶ The law creates a rebuttable presumption that the employer has retaliated against the employee if there is any "negative change" in the seniority, status, employment benefits, pay or other terms or conditions of employment of an employee which occurs any time during leave or within six months after an employee's leave.

MINIMUM WAGE

The Massachusetts minimum wage will be raised from its current \$11.00/hour to \$15.00/hour for non-tipped employees and \$3.75/hour to \$6.75/hour for tipped employees.

The increases will occur gradually at the start of every year from 2019 through 2023 as follows:

DATE	NON-TIPPED EMPLOYEE MINIMUM WAGE	TIPPED EMPLOYEE MINIMUM WAGE
Current	\$11.00/ hour	\$3.75/ hour
January 1, 2019	\$12.00/ hour	\$4.35/ hour
January 1, 2020	\$12.75/ hour	\$4.95/ hour
January 1, 2021	\$13.50/ hour	\$5.55/ hour
January 1, 2022	\$14.25/ hour	\$6.15/ hour
January 1, 2023	\$15.00/ hour	\$6.75/ hour

PREMIUM PAY FOR SUNDAYS AND HOLIDAY

Much like the gradual increase in the minimum wage, premium pay for Sundays and some holidays will be phased out gradually yearly, until its elimination by January 1, 2023. Premium pay is currently time-and-a-half of the employee's regular hourly rate.

Premium pay will be reduced as follows before being eliminated:

DATE	CHANGE TO PREMIUM PAY
January 1, 2019	1 ⁴ / ₁₀ regular rate
January 1, 2020	1 ³ / ₁₀ of regular rate
January 1, 2021	1 ² / ₁₀ of regular rate
January 1, 2022	1 ¹ / ₁₀ of regular rate
January 1, 2023	Elimination of premium pay

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The holidays affected by the new law are Memorial Day, July Fourth, and Labor Day. New Year's Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day will remain subject to time-and-a-half pay, depending on the type of establishment.

Voluntariness of work on Sunday and any of the aforementioned holidays will remain in effect as prior to the law.

PREPARING FOR CHANGES TO MASSACHUSETTS LAW

Employers must plan to provide proper notice of the new paid family medical leave law to all their Massachusetts employees by July 1, 2019. They should also make certain that any employees affected by the minimum wage increases will receive raises in time for the increase and inform payroll vendors of the changes to Massachusetts law regarding premium pay for Sundays and certain holidays.

CONTACT

Please contact a member of our [Employment Law Practice](#) to discuss the impact of this new law on your company's policies and practices.

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