

EMPLOYMENT LAW ALERT JUNE 2019

MASSACHUSETTS DELAYS IMPLEMENTATION OF PAYROLL TAX TO FUND PAID FAMILY AND MEDICAL LEAVE PROGRAM

On June 13, 2019, Massachusetts Governor Charlie Baker signed a bill that will delay by three months the scheduled July 1, 2019 implementation of a payroll tax to fund the state's new Paid Family and Medical Leave program. This means employers will not have to begin payroll deductions until October 1, 2019. The June 30, 2019 deadline for employers to notify their workers of the program has also been extended by three months, to September 30, 2019. However, to ensure the state has adequate funds to begin offering employees leave benefits in January 2021, the initial contribution rate has increased from 0.63% to 0.75% of a worker's earnings.

The delay in the program's implementation is the result of a combined effort by business groups and the employee rights advocates who originally lobbied for the program's creation, with the goal of preventing a messy roll-out for which many employers are unprepared. The program itself was created by the Paid Family and Medical Leave Act (PFML), which Governor Baker signed into law in June 2018. As previously [reported](#), PFML creates a paid leave system which is funded by payroll contributions from employers and covered individuals and administered by the newly created Department of Family and Medical Leave (Department). Beginning in January 2021, all Massachusetts employees and some independent contractors will be eligible to take up to 26 weeks per year of partially paid leave for qualifying medical or family events. The Department has issued draft regulations for implementing PFML, and final regulations are expected by July 1, 2019, in spite of the program's delayed implementation.

While there are many questions the Department has yet to answer regarding all aspects of PFML, we have summarized below employers' upcoming obligations, along with the new deadlines to comply with these obligations.

NOTICE

By September 30, 2019, employers must give each Massachusetts employee written notice of their rights under PFML. If more than 50% of an employer's Massachusetts workforce is made up of 1099-MISC contractors, the employer must also provide written notice to each of these contractors of their rights under PFML. Customizable written notices for employees and contractors will be available for download on the Department's website, though the Department has yet to update the notices presently available to reflect the new deadline and contribution rate. Each worker must receive notice in their primary language, provided a translated notice in that language is available on the Department's website. Going forward from September 30, 2019, employers need to provide the same notice to new employees within 30 days of their start date. Employers that have a workforce comprised of more than 50% contractors must provide notice to new contractors at the time the contract is made.

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If employers have already provided the required notice to workers and collected acknowledgments in anticipation of the original June 30, 2019 deadline, they will need to distribute an as-yet unpublished addendum to their workers by the new September 30, 2019 deadline. However, they are not required to collect additional written acknowledgment for this addendum.

By October 1, 2019, all Massachusetts employers must display a poster advising workers of their rights and obligations under PFML. The updated poster is available for [download](#) on the Department's website,, and it must be displayed in a place where workers can easily read it. The poster must be available in English and each language that is the primary language of five or more individuals in the employer's workforce (provided the Department has issued a translated poster in that language). Updated translated posters in 12 languages will eventually be available on the Department's website.

CONTRIBUTIONS

On October 1, 2019, employers must begin PFML payroll deductions for employees and eligible 1099-MISC contractors. The updated initial rate for contributions will be 0.75% of a covered individual's gross earnings, up to the Social Security income cap. The 0.75% contribution rate is split between contributions of 0.62% for medical leave and 0.13% for family leave.

All W-2 employees (full-time, part-time and seasonal) are covered individuals under PFML. If contractors make up more than 50% of an employer's total workforce, they are also covered individuals under PFML and contributions must be remitted on their behalf; otherwise, contractors are not considered in determining the size of an employer's covered workforce.

Employers with an average Massachusetts workforce of 25 or more covered individuals must pay at least 60% of the required medical leave contribution (approximately 0.37% of the individual's gross earnings), but are not required to pay any portion of the family leave contribution. The remainder of the required contribution may be deducted from the covered individual's earnings.

Employers with an average Massachusetts workforce of less than 25 covered individuals do not have to pay the employer share of the medical leave contribution and may deduct the remaining 40% of the medical leave contribution and 100% of the family leave contribution from a covered individual's earnings.

Employers who have not consulted with their payroll administrator about implementing the payroll tax should do so immediately to ensure that the appropriate deductions begin on October 1, 2019.

REMITTANCE

Contributions must be remitted quarterly through the Department of Revenue's MassTaxConnect system. Beginning in January 2020, employers must begin remitting contributions for the October-December quarter. Employers will also be required to file earnings reports on a quarterly basis through MassTaxConnect. Guidelines for earnings reports will be announced before July 1, 2019.

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EXEMPTIONS FOR PRIVATE LEAVE PLANS

Employers that offer (or will offer by January 2021) a private leave program with the same or greater benefits than those provided under PFML may apply for an exemption from the PFML program through MassTaxConnect. The private leave program must be available to all employees (full-time, part-time and seasonal) and cannot require employees to pay more for benefits than they would under PFML.

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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