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Labor and Employment Alert: Massachusetts Delays Payroll Deductions Under the Paid Family Leave Law

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In June 2018, Massachusetts followed California, Hawaii, New York, New Jersey, Washington and Rhode Island in mandating that employees be provided with some form of paid family leave. The Paid Family Leave Law (PFL) becomes effective on July 1, 2019, with paid leave benefits beginning on January 1, 2021.

The paid family leave program is funded by the state's Family and Medical Leave Trust Fund through employer and employee payroll contributions. Currently, the total contribution amount is 0.63% of an employee's wages. The amount is split between a 17.5% family leave contribution and 82.5% medical leave contribution. Employers with more than 25 employees will pay 60% of the medical leave contribution; employers with 25 or fewer employees do not contribute. Employers do not pay any of the family leave contribution. Employers were supposed to begin payroll deductions and contributions on July 1. The state has delayed the contributions until October 1, 2019.

Paid Family and Medical Leave Benefits

The PFL provides paid family and medical leave benefits for all employees (including, in certain cases, 1099-MISC independent contractors) in Massachusetts. Beginning January 1, 2021:

- Employees may be entitled to up to 12 weeks of paid family leave in a benefit year for the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces.
- Employees may be entitled to up to 20 weeks of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work.
- Employees may be entitled to up to 26 weeks of paid family leave in a benefit year to care for a family member who is a covered service member undergoing medical treatment or otherwise addressing consequences of a serious health condition relating to the family

member's military service.

Additionally, beginning July 1, 2021, employees may be entitled to up to 12 weeks of paid family leave in a benefit year to care for a family member with a serious health condition.

Employees may be eligible for up to 26 total weeks, in the aggregate, of paid family and medical leave in a single benefit year. An employee's weekly benefit amount will be based on the employee's earnings, with a maximum benefit of \$850 per week.

Payment for Concurrent Leave

Any paid leave provided under a collective bargaining agreement or employer policy and paid at the same or higher rate than PFL counts against the allotment of PFL benefits. Additionally, PFL runs concurrently with Massachusetts parental leave or leave taken under the federal Family and Medical Leave Act.

Job Protection, Continuation of Health Insurance, No Retaliation

Generally, an employee who has taken PFL must be restored to his or her previous position or to an equivalent position, with the same status, pay, employment benefits, length-of-service credit, and seniority as of the date of leave. The employer must continue to provide for and contribute to any employment-related health insurance benefits. The law prohibits discrimination or retaliation against an employee for exercising any right to which such employee is entitled under the law.

Private Plan Exemption

An employer offering comparable paid leave benefits may apply to the state for an exemption from paying the required contribution. However, employees still have the same statutory protections as under the PFL.

Employer Responsibilities

An employer must report wages paid, payment for contract services rendered, and other information about its workforce, and must determine contribution amounts for its employees and any contribution due as an employer. Additionally, by June 30, 2019, an employer must: (1) provide written notice of contributions, benefits, and workforce protections to Massachusetts W2 employees and Massachusetts 1099-MISC contractors; and (2) collect signed acknowledgments of receipt of such notice from those individuals. The state has model forms for this purpose. Employers also must post the state's [Paid Family and Medical Leave workplace poster](#), which should be done as soon as possible.

Beginning October 1, 2019, an employer must make deductions to cover employee contributions from payments you make to your workforce, either as wages or as payments for services from Massachusetts 1099-MISC contractors

Conclusion

This is a current summary of the law's main provisions, and the state may enact legislation before October 2019 to clarify certain aspects of the law. Contact your Vorys lawyer if you have questions about the Massachusetts Paid Family Leave Law or similar laws in other jurisdictions.