

CLIENT ALERT: Massachusetts Agency Issues Draft Regulations for Paid Family and Medical Leave Law - By Jaclyn Kugell

On January 23, 2019, the Executive Office of Labor and Workforce Development, Department of Family and Medical Leave (the “Department”) released draft regulations for the implementation of the Massachusetts Paid Family and Medical Leave Law. The draft regulations can be found [here](#).

Paid Family and Medical Leave (PFML) was created in the [Grand Bargain Legislation](#) signed into law by Governor Baker on June 28, 2018. Beginning on January 1, 2021, eligible individuals will be allowed to use paid family and medical leave for the following reasons:

- To bond with a child during the first 12 months after the child’s birth or after adoption or placement of a child;
- To tend to exigencies relating to a family member’s active duty or call to duty in the Armed Forces;
- To care for a family member who is a covered service member; or
- To care for the individual’s own serious health condition.

Beginning on July 1, 2021, eligible individuals also will be able to use paid family leave to care for a family member’s serious health condition.

PFML is job protected, and may be taken continuously, intermittently or on a reduced workweek basis for most qualifying reasons (bonding leave can only be taken continuously with employer permission). Municipalities, district, political subdivisions or their instrumentalities are not subject to the law unless adopted.

While employers familiar with the federal Family and Medical Leave Act (FMLA) may recognize many of these terms, PFML departs from the FMLA in many important respects (besides the fact that it is paid). First, employees of small employers (even employees who work for employers with only one employee), former employees and even individuals paid as 1099 contractors in certain circumstances may all be eligible for PFML. The list of covered family members for whom individuals may take PFML includes not only FMLA “family members,” but also domestic partners, parent-in-laws (as the result of both marriage and domestic partnership), grandchildren, grandparents and siblings. While leave to care for a family member and for other PFML reasons is limited to 12 weeks like the FMLA, an eligible individual may take up to 20 weeks of leave to care for his/her own serious health condition. An individual may not use more than an aggregate of 26 weeks of PFML in a benefit year.

PFML is effectively a new state-administered public benefit program. The granting of paid family and medical leave benefits (like unemployment) will largely be an interaction between the individual seeking benefits and the Commonwealth, with the employer remitting payroll contributions to the Family and Employment Security Trust Fund, i.e., the fund that will finance PFML. The contribution

rate is .63% on the first \$128,400 of an individual's earnings. Employers with 25 or more employees will be obliged to remit contributions on behalf of their employees, but can deduct up to 40% of the total medical leave contribution and up to 100% of the total family leave contribution from the employee's (or covered contractor's) pay. Employers with fewer than 25 employees must remit contributions on behalf of their workers but are not required to pay the employer share. Contributions to PFML will begin on July 1, 2019.

While much of the information in the draft regulations is included in the law itself, the draft regulations provide more detail on how the Department currently anticipates the law will work. Of note, the draft regulations provide as follows:

- Notification that employers and covered business entities will have to register with the Department of Revenue (DOR) MassTax Connect system in order to file quarterly earnings reports and contributions.
- Information about the Department's calculation of employers' total quarterly contribution; an employer or covered business entity must remit the contributions and failure to do so results in prescribed penalties.
- Details about PFML claims processing, including a description of information that the Department will obtain from both the individual and the employer to assess a leave request, the time frames to supply such information, and the Department's notification of whether the leave is approved.
- Time frames for notification of eligibility and payment.
- An explanation of how an employee may seek to extend his/her PFML.
- Confirmation that PFML will run concurrently with FMLA and leave under the MA Parental Leave Act when the leave qualifies under both (or all) of the laws.
- The process by which an employee can appeal a denial of PFML.
- The risk of impacting the employment of an individual who is/has used PFML, including the (rebuttable) presumption of retaliation if an employee suffers an adverse employment action within 6 months of an employee's leave or restoration, or participation in proceedings or inquiries related to PFML.

The draft regulations indicate that employers will have a limited role in approving PFML, and no clear ability to challenge a decision to grant PFML.

Importantly, the Department is hosting six "listening sessions" throughout the Commonwealth beginning January 30, 2019 and has invited the public to "attend and share...comments on the...(draft) regulations" at these sessions. We encourage anyone interested to attend one of these sessions and provide feedback to the Department.

Morgan Brown & Joy (MBJ) will continue to monitor the situation and will update clients on the



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anticipated impacts of the new law. MBJ will issue a comprehensive client alert once the regulations are finalized, which is set to occur on or before March 31, 2019.

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