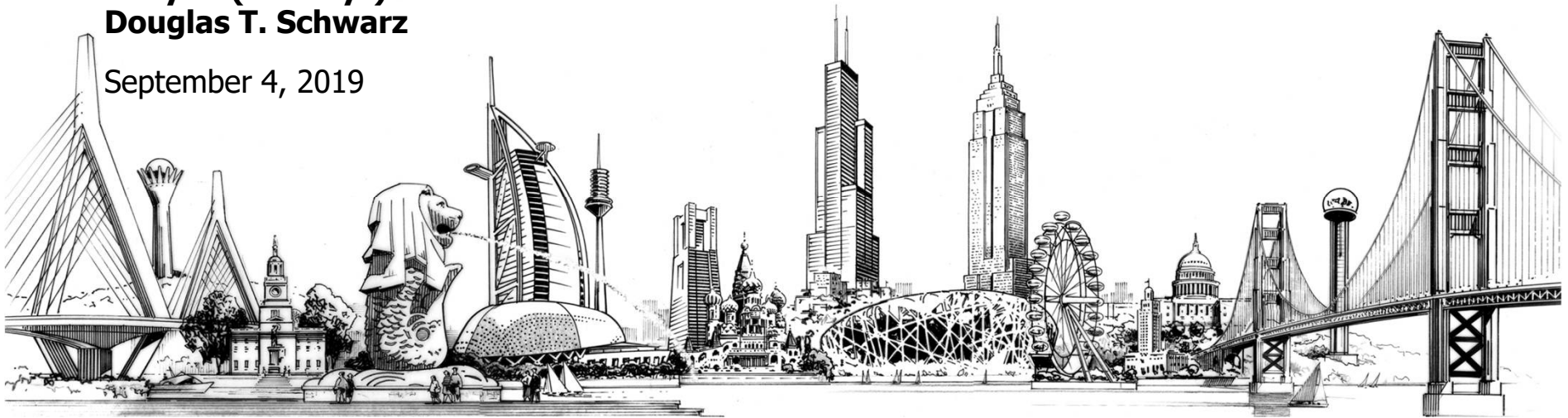


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MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE: WHAT YOU NEED TO KNOW

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Massachusetts Paid Family and Medical Leave

Background

- In 2018, Massachusetts signed into law the Massachusetts Paid Family and Medical Leave (“MPFML”) law that provides family and medical leave benefits to workers.
- Contributions begin on October 1, 2019.
 - MPFML was originally scheduled to go into effect on July 1, 2019. However, there was a three-month delay in implementation to prepare for compliance.
 - While Massachusetts workers will not be eligible for benefits through the state program until 2021, employer and business responsibilities begin on October 1, 2019. The final regulations were promulgated in June 2019.
- MPFML will be administered by a new state agency, the Massachusetts Department of Family and Medical Leave (the “Department”).

Massachusetts Paid Family and Medical Leave

Overview

- MPFML is both a benefits law and a leave law.
 - Compliance with MPFML requires that employers understand both the leave and the benefits parts of the law.
- On the benefits side, except where an employer/covered business entity has received an exemption for a private plan, the Department administers and oversees the benefit claim process and pays employees and eligible independent contractors while they are on leave.
- On the leave side, employers/covered business entities must ensure they properly administer leave, allow employees who meet the statutory requirements to return to work, and not retaliate against employees for exercising their rights under the law.
 - Eligible self-employed individuals are generally not afforded job protection but are afforded benefits for qualifying leaves.

Massachusetts Paid Family and Medical Leave

Overview

- MPFML benefits are funded through a contribution, initially assessed at 0.75% of earnings up to the federal Social Security OASDI limit – currently the first \$132,900 an employee earns.
 - The Department annually allocates the contribution between family leave benefits and medical leave benefits, and permits employers/covered business entities to deduct a portion of it from qualified earnings paid to workers.
 - Employers/covered business entities to pay contributions quarterly through the Department of Revenue's MassTaxConnect system. A state-controlled trust fund will hold the funds.
- Recommendation: Employers should consider adding to their employee handbooks a comprehensive policy explaining employees' MPFML rights.

Massachusetts Paid Family and Medical Leave

Overview: Employer responsibilities

- Beginning October 1, 2019, employers/covered business entities are responsible for:
 - Reporting wages paid, payment for contract services rendered, and other information about their workforce.
 - Determining contribution amounts for their workforce and for any contribution due from the employer.
 - Making payroll deductions to cover worker contributions from payments the employer makes to its workforce, either as wages or as payments for services from Massachusetts 1099-MISC contractors.
 - Notifying their workforce of MPFML.

Massachusetts Paid Family and Medical Leave

Overview: Preparing for compliance

- To comply with MPFML, beginning October 1, 2019, employers should begin:
 - Making deductions from wages or payments for services made to their workforce in order to fund quarterly contributions to the Department.
 - Preparing for quarterly reporting, of gross wages or other payments to all Massachusetts W-2 employees and Massachusetts 1099-MISC contract workers.

Massachusetts Paid Family and Medical Leave

Overview: Employer notification requirements

- Employers/covered business entities are required to notify their workforce about MPFML, including the benefits and protections that apply them. This notification includes:
 - Displaying a Paid Family and Medical Leave workplace poster in a highly-visible location (if you have not already done so, employers should immediately display the poster).
 - Providing written notice of contributions, benefits, and workforce protections to their current workforce (Massachusetts W-2 employees and Massachusetts 1099-MISC contractors) by September 30, 2019.
 - Collecting signed acknowledgments of receipt of such notice from Massachusetts W-2 employees and Massachusetts 1099-MISC contractors.

Massachusetts Paid Family and Medical Leave

Interplay with Code section 45S

- Internal Revenue Code section 45S provides a tax credit for 2018 and 2019 for employers who provide paid family and medical leave to their employees. Specifically, it is a credit of 12.5% of the payments if an employer pays the mandatory minimum benefit of 50% of wages paid to “qualifying employees” while on family or medical leave, but increases (to up to 25%) if the employer’s benefits increase to as much as 100% of wages.
- Eligible employers may claim a credit based on wages paid to “qualifying employees” on federal FMLA where the benefits cover at least 50% of the employees’ wages. “Qualifying employees” must have been employed for at least one year and have compensation not above \$72,000 for 2018.
- To be an “eligible employer,” an employer must have a written leave policy that meets each of the following requirements: (1) the policy must cover all qualifying employees; (2) the policy must provide at least two weeks per year of paid family and medical leave (the two-week requirement is pro-rated for part-time employees); and (3) the rate of pay under the program must be at least 50% of the employee’s normal wages.
- IRS Notice 2018-71 provides that as long as each qualifying employee receives at least the minimum benefit, the amount and duration of benefits does need to be uniform for all qualifying employees. The Notice also provides that eligibility for the credit is determined separately for each FMLA purpose, and thus some of an employer’s leave payments may qualify for the credit while others do not. For example, an employer that fails to qualify for the credit for short-term disability leave may nonetheless qualify for the credit for paid parental leave, if the employer meets the applicable requirements with respect to that type of leave.

Massachusetts Paid Family and Medical Leave

Interplay with Code section 45S

- Under the Internal Revenue Service's (IRS's) current interpretation of the 45S credit, if any state mandates paid leave of more than 50% of employees' wages, then the employer is not eligible for the credit anywhere (unless the employer pays leave exceeding 100% for at least two weeks), because the credit is only available if the employer is providing a rate of payment of at least 50% of wages that are not mandated.
- Given the level of state-mandated benefits under MPFML, Massachusetts employers will not be eligible for the 45S credit once benefit payments become mandatory beginning on January 1, 2021.
 - Note: There has been legislation proposed in Congress that not only would extend the section 45S credit for another year, but also would retroactively change the result mandated by the IRS Notice, to allow the credit to the extent that the employer's leave program for qualified employees was more generous than the coverage level mandated by the state.

COMPARISON

**NEW YORK PAID FAMILY
LEAVE (NYPFL)**

New York Paid Family Leave

Eligibility

- **NYPFL** - Employees become eligible for NYPFL as follows:
 - Full-time employees (20 or more hours per week) – after 26 weeks of employment with the employer.
 - Part-time employees (less than 20 hours per week) – after 175 days of **work** for the employer (not calendar days).

New York Paid Family Leave

Coverage

- NYPFL **cannot** be taken for an employee's own serious health condition or for a military caregiver (NYPFL cannot run concurrently with short-term disability).
- NYPFL **can** be taken to care for a seriously ill family member, for new child bonding, and for military exigency.
- Under NYPFL, **family members** include family members as defined by the FMLA **and**:
 - Domestic partners
 - Children of domestic partners
 - Children for whom the employee stands *in loco parentis*
 - Legal guardians
 - Parents who stand *in loco parentis* for the employee
 - Parents-in-law
 - Grandparents and grandchildren

New York Paid Family Leave

- Employees on NYPFL receive a benefit of **\$746.41 a week for up to 10 weeks in 2019** because NYPFL is capped at one-half of the New York State Average Weekly Wage.

Effective Date	Amount of Paid Family Leave Per Any 52-Week Calendar Period	Amount of Benefit	Cap
January 1, 2018	8 weeks	50% of the employee's average weekly wage	50% of the state average weekly wage
January 1, 2019	10 weeks	55% of the employee's average weekly wage	55% of the state average weekly wage
January 1, 2020	10 weeks	60% of the employee's average weekly wage	60% of the state average weekly wage
January 1, 2021	12 weeks	67% of the employee's average weekly wage	67% of the state average weekly wage



New York Paid Family Leave

Funding

- NYPFL can be funded by **employee contributions** or by **employer payment** of insurance premiums.
- If funded by **employee contributions**, the 2019 payroll contribution is 0.153% of an employee's weekly wage and is capped at an annual maximum of \$107.97.
 - If an employee earns less than the New York State Average Weekly Wage (\$1,357.11 per week), her or she will have an annual contribution amount less than the cap of \$107.97, consistent with his or her actual weekly wages.

New York Paid Family Leave

Tax Issues

- The New York State Department of Finance and Taxation released guidelines for employers and insurers concerning tax treatment of deductions and benefits under the New York Paid Family Leave law.
- The key takeaways from the guidance are the following:
 - Contributions will be deducted from employees' after-tax wages.
 - Benefits paid to employees are taxable non-wage income that must be included in federal gross income.
 - Taxes are not automatically withheld from benefits, but employees can request a voluntary tax withholding.
 - Employers should report income contributions on Form W-2 using Box 14 – State disability insurance taxes withheld.
 - Benefits should be reported by the State Insurance Fund on Form 1099-G and by all other payers on Form 1099-MISC.

COMPARISON

**CALIFORNIA PAID FAMILY
LEAVE (CAPFL)**

California Paid Family Leave

Funding

- CAPFL is employee-funded through payroll deductions. In 2019, the contribution rate is 1% of all wages up to \$118,371. Employees can receive a maximum of \$1,216 per week.

Benefits

- CAPFL currently provides up to 6 weeks (effective July 1, 2020, 8 weeks) of partial pay to employees who take time off to care for a seriously ill family member or bond with a new child.
- CAPFL does not provide job protected status.

California Paid Family Leave

Tax Issues

- California created the first paid family leave program in the country. Benefits are paid in the nature of unemployment compensation.
- California obtained a private letter ruling from the IRS concerning tax treatment of amounts paid as family leave. The key takeaways are:
 - Benefits paid to employees are exempt from California income tax.
 - However, benefits received under CAPFL are taxable for federal income tax purposes.

Massachusetts Paid Family and Medical Leave

Scope: Who is required to comply?

- Massachusetts Paid Family and Medical Leave applies to:
 1. Employers,
 2. "Covered Business Entities," and
 3. Massachusetts "Covered Individuals," including employees and self-employed individuals who elect coverage.

Massachusetts Paid Family and Medical Leave

Scope: 1. Employers are required to comply with MPFML

- In general, MPFML applies to all employers of one or more Massachusetts W-2 employees (including full-time, part-time, or seasonal) and Massachusetts IRS Form 1099-MISC independent contractors.
- 25 employee threshold
 - Employers with 25 or more employees are required to comply with all provisions of MPFML.
 - Employers with fewer than 25 workers in Massachusetts must remit contributions on behalf of their workers and provide employees with job protected leave. However, they are not required to pay the employer share of the contribution for family and medical leave.

Massachusetts Paid Family and Medical Leave

Scope: 1. Out-of-state employers

- Employers outside of Massachusetts may have to comply with MPFML if they have employees or contractors working or living in Massachusetts.
- Specifically, employers and individuals are covered by MPFML if:
 - A. the service is “localized in the Commonwealth”; or
 - A service is “localized in the Commonwealth” if the service is:
 - 1) performed entirely within Massachusetts, or
 - 2) is performed both inside and outside of Massachusetts, but the work performed outside is incidental to the services performed in Massachusetts.
 - B. the service provided by an individual is not localized in any state, but some part of the service is performed in Massachusetts and (1) the individual’s base of operations is in Massachusetts, or if there is no base of operations then if the services are directed or controlled from within Massachusetts; or (2) the individual’s base of operations or place from which such service is directed or controlled is not in any state in which the services are performed, but the individual’s residence is in Massachusetts.

Massachusetts Paid Family and Medical Leave

Scope: 2. “Covered Business Entities”

- A “Covered Business Entity” is a business or trade that contracts with self-employed individuals for services and is required to report the payment for services to such individuals on IRS Form 1099-MISC for more than 50% of its workforce.

Scope: 3. “Covered Individuals”

- “Covered Individuals” include:
 - Employees;
 - Self-employed individuals who elect coverage;
 - “Covered contract workers”; and
 - **Former employees** (who have been separated from employment for not more than 26 weeks at the start of the former employee’s family or medical leave).

Massachusetts Paid Family and Medical Leave

Scope: Eligibility for MPFML benefits and job-protected leave

- Most employees, covered contract workers, self-employed individuals who elect coverage, and former employees (who have not been separated from employment for more than 26 weeks) who satisfy the financial eligibility requirements and who perform work in Massachusetts are eligible for MPFML benefits.
 - In order for covered contract workers or self-employed individuals to be eligible for MPFML leave, they must reside and contract for services in Massachusetts.
- Financial eligibility requirements. MPFML determines individuals' eligibility using the financial eligibility requirements for unemployment compensation under Massachusetts law.
 - A covered individual must have earned (a) 30 times the weekly unemployment benefit amount the covered individual would be eligible to receive, and (b) at least \$4,700 during the four preceding calendar quarters; and all earnings must have been earned with an employer in the commonwealth).
- MPFML does **not** impose a length of service requirement.
- MPFML covers employees working in the United States under foreign work visas (e.g., H-1B, H-2B, O-1, O-2, etc.) if they otherwise qualify as a "covered individuals."

Massachusetts Paid Family and Medical Leave

Scope: Employee Exemptions

- The final regulations significantly changed the definition of “employment,” by adopting the definition of “employment” as used in the Massachusetts unemployment laws.
- As a result, 24 categories of employees are now exempt from MPFML. Of those 24 categories, among the most notable are:
 - (1) 100% commission-based real estate brokers/salespeople and insurance agents/solicitors classified as W-2 employees;
 - (2) students who perform work for a school, college, or university;
 - (3) employees of churches or organizations operated primarily for religious purposes; and
 - (4) student nurses working for a hospital or a nurses’ training school or interns working in a hospital, following a four-year course in a medical school.

Massachusetts Paid Medical Leave

Qualifying for leave and benefits under MPFML

- To qualify for leave and benefits under MPFML, a covered individual must have a “qualifying reason,” which includes the care of the covered individual’s or a “Family Member’s” serious health condition.

Medical Leave

- Paid medical leave can be taken by the covered individual to care for the individual’s own serious health condition.
- All employees (e.g., full-time, part-time, or seasonal) are eligible for paid medical leave of up to 20 weeks per benefit year if such employee is unable to work due to a “serious health condition.”

Massachusetts Paid Family Leave

Family Leave

- Paid family leave can be taken for the following reasons:
 1. To provide care to a family member with a serious health condition;
 2. To bond with a new child after birth, adoption, or foster placement within the first 12 months of the child joining the family;
 3. Because of a qualifying exigency due to a family member being on or called to active duty; or
 4. To care for a family member who is a covered service member.

Massachusetts Paid Family and Medical Leave

Amount of leave and benefits

- Beginning January 1, 2021, covered individuals will be entitled to take:
 - Up to 12 weeks of continuous or intermittent paid family leave;
 - Up to 20 weeks of continuous or intermittent paid medical leave; and
 - Cap of 26 total weeks of paid leave in any given benefit year.
- MPFML permits the use of intermittent leave.
 - An employee may use intermittent family leave: (1) to bond with a child following birth or placement if the employee and employer mutually agree; or (2) to care for a family member's serious health condition if the healthcare provider determines it is medically necessary.
 - An employee can use intermittent medical leave to care for his or her own serious health condition if medically necessary, and must attempt to establish a schedule that does not unduly disrupt the employer's operations, subject to the approval of the healthcare provider.
 - An employer may require that employees take intermittent leave in increments no smaller than a minimum amount designated by the employer (up to four consecutive hours).

Massachusetts Paid Family and Medical Leave

Wage Benefits & Funding Requirements

- Employees on a covered leave shall receive a weekly benefit amount of up to \$850/week, funded through contributions and paid by the trust fund.
 - Note: the opt-out rules are discussed on a later slide.
- The contribution rate for 2019 is set at 0.75% of each covered employee's wages on the first \$132,900 of annual gross earnings (i.e., the cap is tied to the annual limit for Social Security).
 - 0.62% for medical leave. Employers can deduct up to 40% of total medical leave contribution required for an individual.
 - 0.13% for family leave. Employers can deduct up to 100% of the total family medical leave contribution required for an individual.
- Employer deductions need not be uniform across the workforce. Employers may choose to deduct differing percentages from different groups of employees and covered individuals for medical leave contributions. However, employers may not deduct from wages or qualifying earnings more than 40% for medical leave contributions.
- Wage deductions apply to all wages beginning October 1, 2019, irrespective of when the employee performed the related services. Wages for services performed before October 1, 2019, but paid on or after October 1, 2019, are subject to withholdings. However, benefit payments in Massachusetts do not start immediately.

Massachusetts Paid Family and Medical Leave

Employer Notice Requirements

- By July 1, 2019, employers and covered business entities must post a Department-issued poster outlining worker entitlements and protections.
 - The Department delayed the written notice requirements to September 30, 2019. But, the Department did not similarly delay the requirement to display its poster notifying employees of MPFML. The July 1, 2019, notice deadline remains in effect for the poster requirement, and employers should immediately display this poster.
- By September 30, 2019, employers and covered business entities must provide written notice electronically or in paper to their current employees and self-employed individuals of MPFML.
 - The notice must include the opportunity to for an employee or self-employed individual to acknowledge receipt or decline to acknowledge receipt. Employers must collect and maintain acknowledgements.
 - If an employee or self-employed individual refuses or fails to acknowledge the notice, employers have complied with the notice requirement if they can demonstrate that they provided the employee or the self-employed individual with an opportunity to acknowledge the notice.
- Beginning October 1, 2019, new employees should receive the written notice within 30 days of their first day of employment and self-employed individuals at the time the employer enters into a contract for their services.

Massachusetts Paid Family Leave Law

Employer Notice Requirements

- Individual notice to employees must be provided within 30 days of commencement of employment. Covered contract workers must be provided notice at the time of contracting. The notice must inform employees of:
 - Explanation of right to family and medical leave, including reinstatement and health insurance continuation
 - Employee's contribution amount
 - Employer's contribution amount
 - Employer's family leave ID number
 - Employer's name and mailing address
 - Instructions on how to file a claim for family and medical leave benefits
 - Department's mailing address, email address, and telephone number
 - Any other information deemed relevant by the Department
- Significant penalty for failing to provide notice (\$50 per person/contractor for first time violation; \$300 per person/contractor for second time violation)

Massachusetts Paid Family and Medical Leave

Application for Exemption due to Approved Private Plan

- Employers and covered business entities will be automatically enrolled in the public plan unless they opt-out by applying for approval of a private plan to provide paid family and/or medical leave.
- An employer or covered business entity may apply for an exemption by offering paid family and medical leave benefits through a private plan. If approved, the employer/covered business entity is exempt from collecting and remitting payments to the trust fund. Exemptions may be sought for medical leave coverage, family leave coverage, or both.
- Exemptions will be effective for one year and may be renewed annually.
- Employers seeking a private plan exemption may only submit an application for approval once each quarter.

Massachusetts Paid Family and Medical Leave

Application for Exemption due to Approved Private Plan

- To qualify for exemption, an employer's private benefit plan (i.e., self-funded or through an insurer) must: (a) provide "the same or better" benefits provided by the Massachusetts Paid Family and Medical Leave law; and (b) "may not cost employees or covered contract workers more than they would be charged under the state plan."
- Deadline to apply for first quarter contributions: December 20, 2019.
- With respect to record retention, approved private plans are required to retain, for a period of three years, all reports, information, and records related to the approved plan, including those related to all claims for benefits.

Massachusetts Paid Family and Medical Leave

Employer Deduction and Reporting Requirements

- Employers will be required to file quarterly earnings report and forward contributions through the Massachusetts Department of Revenue's MassTaxConnect system. The report must contain the following information:
 - For each employer/covered business entity: the federal employer identification number (EIN) and the identification number that the employer is required to include on a withholding tax return;
 - For each employee: name, Social Security number, wages paid, or other earnings; and
 - For independent contractor: name, Social Security number, and the amounts paid to them.
- The Department will use the quarterly report to determine the contribution amount owed for the quarter. Contributions owed must be remitted within 30 days after the end of the calendar quarter.
- First quarterly report due in January 2020.
 - The first contribution and MPFML report is due for the period running from October 1 through December 31, 2019.

Massachusetts Paid Family and Medical Leave

Claim for Benefits

- Beginning in 2021, the Department will process applications for paid family and medical leave benefits. The initial application will go to the state agency, not the employer/covered business entity.
- The employer/covered business entity will receive notice of an application from the Department “not more” than 5 business days after an application is filed. The employer/covered business entity must submit certain information to the Department within 5 business days.
- The Department will approve applications within 14 calendar days.
- There is no provision for employer/covered business entity appeals of Department approvals. However, employers/covered business entities may seek to amend an approved claim if there is “a change in relevant circumstances” that would “justify” amendment.

Massachusetts Paid Family and Medical Leave

How Claims are Filed

- The covered individual must provide the following notice and information to the employer/covered business entity: (i) at least 30 days' notice of the anticipated start date of the leave, (ii) the anticipated length of the leave, (iii) the type of leave he or she is requesting, and (iv) the employee's expected return date. If the individual cannot provide 30 days' notice for reasons outside of his or her control, he or she must provide notice to the employer/covered business entity as soon as is practicable. The covered individual must provide medical certification supporting the request for leave.
- An individual must file a claim using Department-issued forms and must provide the following information:
 - Social Security number;
 - Employer's name and identification number;
 - The nature and expected duration of the leave;
 - Whether the leave will be continuous or intermittent;
 - The date that the individual provided notice to the employer;
 - Any denied, granted, or pending requests for leave from the employer during the benefit year;
 - For family leave or leave related to active duty military service by a family member, evidence of a family relationship; and
 - A completed certification evidencing that the leave serves a covered purpose (the draft rules describe the types of certifications that must be provided to support each of the six types of claims for benefits).
- Covered individuals must provide the Department with consent to share their information about the claim with their employer/covered business entity and/or health care provider. If a covered individual opts to amend or extend his or her claim for leave benefits, the covered individual must inform the Department within 14 days prior to the expiration of the original approved leave and obtain the Department's approval.

Massachusetts Paid Family and Medical Leave Law

Employer Information to Be Supplied for Claim

- The Department will notify the employer/covered business entity that a claim has been filed within five business days of its filing. The Department will then facilitate the disclosure and exchange of information or records relevant to the claim. If the Department requests additional information from an employer/covered business entity, the employer/covered business entity will have five days to comply. Requested information may include:
 - Wages or earnings for the past 12 months;
 - A description of the employee's or covered individual's position;
 - Whether the employee or covered individual currently works a full- or part-time schedule;
 - Weekly hours worked;
 - Prior requests/approvals for leave;
 - Amount of paid leave that has already been taken for a qualifying reason during the current benefit year;
 - A description of the employer's/covered business entity's paid leave policies and whether the covered individual has received paid leave during the current benefit year;
 - Whether the covered individual will receive any paid leave benefits from the employer during the requested leave; and
 - Any other information or records related to the claim, including evidence of a fraudulent claim.

Massachusetts Paid Family and Medical Leave

Benefits Offset

- A covered individuals' weekly wage benefit shall be reduced by the amount of pay employee receives from: (1) any government program or law, including workers' compensation and disability; or (2) an employer's permanent disability program.
 - However, the weekly benefit amount shall not be reduced to offset payments made pursuant to an employer's temporary disability program (i.e., STD) or an employer's paid family or medical leave policy.
 - If an employer provides payments during a family or medical leave period that meet or exceed the requirements of this law, employer can be reimbursed for those payments from the trust fund.

Massachusetts Paid Family and Medical Leave

Benefits Offset

- Covered individuals who need to take leave for a qualifying reason may choose to use accrued employer-paid leave in lieu of applying for MPFML benefits. Employers must notify employees that use of this job-protected leave runs concurrently with their leave entitlement under MPFML, and use of accrued employer-paid leave disqualifies employees for paid benefits under MPFML.
- Leave taken by covered individuals runs concurrently with leave under the federal Family and Medical Leave Act and the Massachusetts Parental Leave Law, when the leave taken is for a qualified reason under those acts.

Massachusetts Paid Family and Medical Leave Law

Return from Leave – Fitness for Duty Certificates

- Employers/covered business entities that want to require fitness for duty certificates for workers to return from medical leave must have policies in place and take steps at or near the beginning of the individual's medical leave.
- Within five days after the Department provides the employer/covered business entity with notice of the designation of the leave, the employer/covered business entity must give the individual a list of the essential functions of their job and must state to the individual that the certification must address their ability to perform the essential functions. This must occur pursuant to a uniformly applied policy or practice by which the employer or covered business entity requires a fitness for duty certificate from all similarly situated workers (i.e., same occupation, same serious health condition).

Massachusetts Paid Family and Medical Leave Law

Job protection and anti-retaliation protection under MPFML

- MPFML creates a presumption of retaliation for any negative employment changes that occur within 6 months of an employee inquiring about leave under this law, taking leave, or returning from leave.
 - The presumption is rebuttable, and the burden is on the employer to demonstrate that it did not retaliate against the employee for taking leave under MPFML.
- Upon return from this leave, employees must be reinstated to their previous position or an equivalent position with the same status, pay, and benefits. However, the final regulations make clear that an individual hired for a specific term or to work on a specific project is not entitled to the same rights to restoration if the employment term or project has concluded.

Private Right of Action and Remedies

- Employees and former employees aggrieved by a violation of MPFML can sue their employer, subject to a three-year statute of limitations.
 - In addition to all remedies available in common law tort actions, prevailing plaintiffs may be entitled to: (1) temporary restraining orders or preliminary or permanent injunctions to restrain continued violations of the law; (2) reinstatement to the same position held before the violation or to an equivalent position; (3) reinstatement of full fringe benefits and seniority rights; (4) trebled lost wages, benefits and other remuneration and interest; and (5) reasonable costs and attorney fees.

Massachusetts Paid Family and Medical Leave

Differences between MPFML and FMLA

- While MPFML is similar to the FMLA, it is considerably more expansive in terms of the leave and benefits it provides. The following identifies certain important distinctions between the two laws:
 - Employees provided compensation while on leave
 - FMLA - No compensation provided to employees who take leave for a qualifying reason.
 - MPFML - Employees are eligible to receive up to \$850 a week when they take leave for a qualifying reason.
 - Employers required to provide leave
 - FMLA - Employers with 50 or more employees within 75 miles of the worksite.
 - MPFML - Employers with one or more employees in the Commonwealth.
 - Employees eligible for leave
 - FMLA - Employees who have worked 1,250 hours and 12 months with the same employer in the 12 months prior to the FMLA leave.
 - MPFML - Any employee who has satisfied the financial eligibility requirements to receive unemployment compensation under Massachusetts law.

Massachusetts Paid Family and Medical Leave

Differences between MPFML and FMLA (continued)

- Self-employed individuals eligible for leave
 - FMLA - No job protected leave for self-employed individuals.
 - MPFML - Self-employed individuals are eligible for benefits payments in some circumstances, but are not entitled to reinstatement.
- Amount of leave to be taken
 - FMLA - Up to 12 weeks of job protected, unpaid leave in a benefit year.
 - MPFML - Up to 12 weeks of family leave and up to 20 weeks of medical leave, but the entire leave entitlement may not exceed 26 weeks in a benefit year.
- Employees exempted from workforce headcount
 - FMLA - Self-employed individuals are not included in the workforce headcount.
 - MPFML - Self-employed individuals must be included in the workforce headcount if the employer's workforce is composed of 50% or more self-employed individuals.

Massachusetts Paid Family and Medical Leave

Differences between MPFML and FMLA (continued)

- Exemption from offering job protection to certain employees
 - FMLA - “Key Employee” exemption available as a basis to deny job protection to an employee under certain circumstances.
 - MPFML - No similar provision under MPFML.

- Tracking the benefit year
 - FMLA - Several ways employers may track the benefit year.
 - MPFML - Requires employers to measure the benefit year forward for 52 weeks from the Sunday immediately preceding the date a covered individual first uses protected leave.

- Use of paid time off during leave
 - FMLA - Employers may require employees to use any paid sick time or vacation time/PTO while taking FMLA leave.
 - MPFML - Prohibits employers from requiring employees to use paid sick time or vacation/PTO while taking leave.

Massachusetts Paid Family and Medical Leave

Penalties

- Noncompliance could result in a penalty of up to 0.75% of total annual payroll.
- An employer could also be required to repay the total amount of benefits paid to covered individuals for whom it failed to make contributions.

Status of IRS guidance

- The Department submitted a request for guidance to the IRS to clarify whether employers calculate contributions on a pre-tax or after-tax basis. The Department announced:
“Until IRS guidance is issued, individuals and businesses are urged to consult with their own tax advisors on these questions. Based on its own review of federal rules and following consultation with the Massachusetts Department of Revenue, the Department of Family and Medical Leave anticipates that the IRS will conclude that employee contributions should be withheld from after-tax wages. A definitive rule for proper tax treatment of contributions will be available once IRS guidance is issued.”



Sean Callaghan focuses his practice on employee benefits and executive compensation law. He advises on tax-qualified retirement plans, health and welfare plans, executive and equity compensation plans, and fringe benefits. Sean counsels clients on complying with the Internal Revenue Code and the Employee Retirement Income Security Act (ERISA).

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Mary B. "Handy" Hevener helps US and multinational enterprises minimize corporate payroll taxes and maximize benefits-related tax deductions. She focuses her practice on the tax and information reporting treatment of employee and independent contractor benefits outside qualified retirement plans, including stock options and other stock-based compensation; executive income deferrals; golden parachutes; and fringe benefits that range from health and life insurance, to employee loans, cars, planes, and prizes. Handy is co-leader of the firm's Fringe Benefits and Payroll Tax Task Force and often works in concert with lawyers from the employee benefits and executive compensation, and tax practices.



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