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The Massachusetts Department of Family and Medical Leave (“DFML”) has recently published regulations for public comment and a guide for employers. A synopsis of significant, new, and clarifying information follows.

The Basics

In 2018, Massachusetts enacted legislation to create a statewide Paid Family and Medical Leave (“PFML”) program providing benefits beginning in January 1, 2021 and July 1, 2021. With limited exception, all employers with employees in Massachusetts will be required to provide paid family and medical leave benefits to their employees through:

- The state program; or
- An approved private plan.

If providing benefits through the state program, employers will begin to remit premium payments to the state beginning July 1, 2019.

Employers may opt to provide an approved private plan to employees. These arrangements must be approved by the DFML. If the employer secures approval on or before July 1, 2019, the employer will not be required to contribute to the state program beginning July 1, 2019.

Approved Private Plans

To comply with PFML requirements employers may either participate in the state program or provide benefits through an approved private plan option.

A private plan must:

- Be approved by the state,
- Provide paid leave benefits to employees that are equal to or greater than the benefits provided by the PFML,
- Cost employees the same or less than what they would pay under the state’s plan, and
- Provide equal or better rights and protections as those provided under the state’s program.

If an employer already provides a paid leave benefit to its workforce, the employer may be eligible to receive an exemption from collecting, remitting, and paying contributions to the state’s paid family or medical leave program.

An employer can apply for an exemption from the medical leave contribution, family leave contribution, or both. An employer will be able to apply for these annual exemptions

through its MassTaxConnect account beginning April 29. For Quarter 1 only, the deadline for a private plan exemption that will be in effect for first quarter contributions for paid family and medical leave is September 20, 2019 (extended from original date of June 30, 2019). This will allow employers additional time to contemplate private plan options. Going forward, the DMFL will continue to accept applications on a rolling basis but applications must be approved in the quarter prior to the quarter in which they go into effect. It should be noted that contributions to PFML begin on July 1, 2019 and the September 20, 2019 extension of the exemption application deadline only impacts the contribution requirements if the exemption request is approved. If the exemption request is denied, the impacted business will be responsible for remitting the full contribution amount from July 1, 2019 forward. Therefore, DFML recommends that businesses in the Commonwealth consult with their tax advisors as to the implications associated with applying for a private plan exemption that may or may not be approved.

A private plan may be provided through an insurance policy or through self-insurance. If an employer's plan provides for insurance, the forms of the policy must be issued by a Massachusetts licensed insurance company. At this point the carriers have not yet responded with new products in the marketplace.

If an employer's plan is in the form of self-insurance, it appears that MA will require the employer to secure a bond in some amount and form as approved by the state. The rules are vague as to what is required to self-insure a PFML plan, and hopefully additional guidance is forthcoming.

Employers applying for an exemption will receive an immediate approval or denial of exemption.

- If the exemption is approved, the employer will be asked to upload a copy of the plan on which the exemption is based.
- If the exemption is denied, the employer will be notified why it was denied. If the employer disagrees with the basis for denial, the employer may request a follow-up review

Required Contributions

Massachusetts employers with a workforce of any size, that do not adopt an approved private plan, must pay PFML contributions to the state beginning July 1, 2019.

The total contribution for an employee is 0.63% of qualifying earnings (capped at the Social Security maximum, currently \$132,900). For this purpose, qualifying earnings means:

- Wages paid to an employee; and
- Payments to covered business entities to covered contract workers.

If the employer has at least 25 covered individuals (i.e., employees and 1099 contractors in MA), both the employer and the employee share in the cost of medical leave benefits. The employee is responsible for the cost of the family leave benefits. The following illustrates the breakdown:

- Medical Leave Contribution: 0.52% of eligible payroll deduction
 - Employer: At least 60% of the medical leave cost is paid by the employer
 - Employee: No more than 40% of medical leave can be deducted from the employee's wages.
- Family Leave Contributions: 0.11% of eligible payroll deduction
 - May be paid entirely from employee wages (no employer contribution required).

If the employer has fewer than 25 covered individuals in Massachusetts, the employer is not required to contribute toward to medical leave portion of the benefit. The employees maximum share of the medical leave benefit remains 40%. The employer is responsible for remitting contributions to the state on behalf of their workers. Businesses that issue 1099s for more than 50% of their workforce must remit contributions for their 1099 workers ("covered individuals") as well as their employees. If your business has 25 or more workers in total, you must pay the employer share of the contribution for family and medical leave for both employees and covered individuals.

Employers are responsible for remitting all contributions following each quarterly report filed with DFML through MassTaxConnect. The DFML has created a calculator to

allow employers to estimate the required contributions they will need to remit. The DFML has also created a tool to assist employers in the determination of whether they are responsible for paying the employer share.

Workforce Notification

The DFML has released the mandatory PFML workplace poster. The poster explains the benefits available to an employer's workforce and must be displayed in the workplace in a location where it can be easily read. The poster must be available in English and each language which is the primary language of 5 or more individuals in the employer's workforce if such translations are made available from DFML.

Notifying Massachusetts W-2 Employees

Employers need to notify each of their Massachusetts W-2 employees in writing about available PFML benefits on or before June 30, 2019. Employers must also issue this notice to each employee within 30 days of their first day of employment. The notice must be written in the employee's primary language.

Employers must obtain from each employee a written statement acknowledging receipt of the notice or a statement indicating the employee's refusal to acknowledge the notice.

This notice must contain:

- An explanation of the availability of family and medical leave benefits
- The employee's contribution amount and obligations
- The employer's contribution amount and obligations
- The employer's name and mailing address
- The employer identification number assigned by DFML
- Instructions on how to file a claim for family and medical leave benefits
- The mailing address, email address, and telephone number of DFML

Notifying Massachusetts 1099-MISC Contractors

Employers need to notify each Massachusetts 1099-MISC contractor who provides services to the employer, in writing, about available benefits when the employer enters into a contract for services. The notice must be written in the contractor's primary language.

Employers must obtain from each contractor a written statement acknowledging receipt of the notice or a statement indicating the contractor's refusal to acknowledge the notice. There are specific content requirements applicable to notifying 1099 contractors that should be reviewed, if applicable.

Failure to notify employees and contractors

Failure to provide the required notifications may result in the following fines:

- First violation: \$50 per W-2 employee or 1099-MISC contractor
- Subsequent violations: \$300 per W-2 employee or 1099-MISC contractor

Reporting and Documentation

All employers will be required to file quarterly reports through MassTaxConnect beginning in October 2019. Reporting and documentation guidelines will be announced prior to July 1, 2019.

In the meantime, we expect the following information will be required:

Massachusetts workforce information

(this includes any Massachusetts 1099-MISC contractors):

- Name
- Social Security number
- Wages paid or other payments for services

Employer:

- Federal employer identification number (FEIN)

General Timeline Of Upcoming PFML Events

- April 29, 2019: Approved plan applications available to employers
- May 2019: State to hold at least 2 public hearings on the regulations
- June 30, 2019: Notification to employees and 1099-MISC contractors
- July 1, 2019: Final regulations issued, and payroll deductions begin
- October 31, 2019: Contributions due for July – September
- January 1, 2021: All leave is available except family leave to care for a family member with a serious health condition
- July 1, 2021: Family leave is available to care for a family member with a serious health condition

For Employer Guide: <https://www.mass.gov/guides/a-guide-to-paid-family-and-medical-leave-for-massachusetts-employers>

For MassTaxConnect: https://mtc.dor.state.ma.us/mtc/_/

For Exemption Information: <https://www.mass.gov/info-details/exemptions-from-paid-family-and-medical-leave-for-private-plans>

For Contribution Calculator: <https://calculator.digital.mass.gov/pfml/contribution/>

For Employer Share Determination Tool: <https://www.mass.gov/decision-tree/determine-if-youre-responsible-for-the-employer-share-of-pfml-contributions>

For Workplace Poster: https://www.mass.gov/files/documents/2019/03/21/20190321_DFML%20Notice_FINAL.pdf

For Workplace Poster in Other Languages & template notification: <https://www.mass.gov/info-details/informing-your-workforce-about-paid-family-and-medical-leave>

Employer Action

Employers should read all the available information from the DFML and work with labor counsel, leave vendors, payroll processors and any other related business advisors to make sure they are compliant with the PFML by the requisite dates. In addition, employers should continue to monitor the DFML website for additional guidance and regulations. We will continue to monitor this issue as well and will keep employers updated as applicable.

For more information visit:

For DFML Website: <https://www.mass.gov/orgs/department-of-family-and-medical-leave>

For Regulations: https://www.mass.gov/files/documents/2019/03/29/3-29-19%20Draft%20Regulations%20for%20Public%20Comment_0.pdf;