

Massachusetts Establishes Paid Family Leave and Raises Minimum Wage

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Last week, Governor Charlie Baker signed a landmark bill establishing a paid family and medical leave program for Massachusetts workers and gradually increasing the state minimum wage to \$15.00 per hour. Described as a “grand bargain,” the bill reflects a compromise between legislators, labor and community groups, and business groups, and is intended to keep proposed ballot questions concerning paid leave, minimum wage, and a sales tax reduction off the November 2018 ballot.

Under the new law, starting on January 1, 2021, Massachusetts workers will be entitled to up to 12 weeks of paid leave to care for a sick family member or a newborn, and up to 20 weeks of paid medical leave to attend to their own serious medical needs. For the purposes of family leave, the law broadly defines “family member” to include a domestic partner, grandparents, grandchildren, siblings, and the parents of a spouse or domestic partner. Similarly, the law adopts a relatively broad definition of “serious health condition.” The law will apply to all employers with at least one employee working in Massachusetts, regardless of the employee’s tenure with the company or weekly hours. Some former employees and self-employed workers will also be entitled to paid leave under the law.

The state will administer the new leave program and the leave will be funded through a 0.63% payroll tax, which the employer and employee will split. Workers on paid leave will be required to pass through a seven-day waiting period. Thereafter, they will begin earning 80% of their wages (capped at 50% of the state average weekly wage) and then 50% of their wages beyond that amount (capped at \$850 per week).

Employers will be subject to a host of new responsibilities and prohibitions under the new law:

- By July 1, 2019, in accordance with certain requirements of the newly established Department of Family and Medical Leave, employers must inform employees of their new rights by (1) conspicuously posting a notice of benefits, and (2) beginning to issue written information to new employees. Employers who are found not to have satisfied these notice requirements will face fines.
- Starting on July 1, 2019, Massachusetts employers must begin contributing 0.63% of each employee’s wages to the state trust funding the paid leave. Employers with more than 25 employees will be required to make the full contribution but will be able to deduct certain percentages of the contribution from the employee’s wages—up to 40% for medical leave and up to 100% for family leave. Employers with fewer than 25 employees will not have to contribute.
- Employers must continue to honor employee accrual of benefits (e.g., vacation, sick leave, seniority, and bonuses) and to contribute to employer-sponsored health insurance during an employee’s period of family/medical leave.
- Employers will remain bound by all preexisting laws, company policies, and/or collective bargaining agreements providing greater leave benefits, though employers with greater leave benefits may apply for an exemption from the program.
- Employers may not retaliate against employees for exercising their rights under the law, and any adverse employment action taken against an employee during or within 6 months of their leave will be considered presumptively retaliatory. The law provides employees with a private right of action to pursue retaliation claims.

Further, over the next five years, the state will raise the hourly minimum wage from \$11.00 to \$15.00 through annual increments—\$1.00 for 2019 and \$0.75 for each subsequent year. Tipped employees will also see an hourly increase from \$3.75 to \$6.75. As part of the compromise, however, the state will phase out required time-and-a-half pay on Sundays during the same five-year period. Additionally, as a concession to Massachusetts retailers, the state will now have an annual two-day sales tax holiday in August.

Employers will have to review their leave policies and update their employee notices to ensure compliance with the new law, in addition to budgeting for the new payroll tax. By March 31, 2019, the Department will publish proposed regulations, which will take effect July 1, 2019 and will provide more details regarding the implementation of the new program.

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