

Massachusetts Governor Signs Law Establishing Paid Family and Medical Leave Program, Increasing Minimum Wage, and Eliminating Sunday/Holiday Premium Pay

By [Gauri Punjabi](#) on June 29, 2018

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On June 28, 2018, Massachusetts Governor Charlie Baker signed a law affecting all employers in the Commonwealth by creating a paid family and medical leave program funded by a state payroll tax, increasing the state minimum wage, and eliminating premium pay requirements for work performed on Sundays and certain holidays.

To avoid November ballot questions initiated by multiple interest groups, last week the state legislature passed the “Grand Bargain” legislation addressing these issues, which Governor Baker signed without any changes. The new law has several significant changes in store for employers over the next 5 years.

Paid Family and Personal Medical Leave

Beginning in 2021, eligible employees will be allowed to take the following leave in a benefit year (defined as the 52-consecutive week period beginning on the Sunday preceding the first day the protected leave begins):

- Up to 20 weeks of job-protected paid medical leave to care for their own serious health condition;
- Up to 12 weeks of job-protected paid family leave to care for a family member with a serious health condition, to bond with the employee’s child during the first 12 months after the child’s birth or the first 12 months after the placement of the child for adoption or foster care with the employee, or because of any qualifying exigency arising out of an employee’s family member being active duty or notification of an impending call or order to be in the Armed Forces; and
- Up to 26 weeks of job-protected paid family leave to care for a covered service member.

An employee may not take more than 26 weeks in the aggregate in a benefit year. To be eligible for paid family and medical leave, an employee must meet the financial eligibility requirements for receiving unemployment compensation under Massachusetts law (which currently is to have earned 30 times the weekly unemployment benefit amount the employee would be eligible to receive and earned at least \$4,700 during the last four calendar quarters).

There will be a 7-day waiting period before leave can be used, except where an employee seeks to take medical leave during pregnancy or recovery from childbirth and the need for such leave is immediate and supported by documentation from a health care provider. During the 7-day waiting period, employees may use accrued sick leave or vacation pay or other paid leave. After returning from leave, employees must be restored to the same or equivalent positions that they previously held. Employers will be required to post a notice, and provide all new employees within 30 days of their hire with notice of benefits under the statute

The weekly paid family or medical leave benefit amount will be equal to (i) the portion of the employee’s average weekly wage that is equal or less than 50% of the state average weekly wage (currently \$1,338.05) replaced at the rate of 80%, plus (ii) the portion of the employee’s average weekly wage that is more than 50% of the state average weekly wage replaced at 50%. The maximum weekly benefit amount will be \$850 per week, adjusted annually to remain at 64% of the state average weekly wage. Weekly benefits will be reduced by the amount of wages or wage replacement received under a government program or law (such as workers’ compensation) other than for a prior permanent partial disability, or the employer’s permanent disability policy or program. Weekly benefits may not be reduced, however, by wage replacement received under an employer’s temporary disability policy or paid family or medical leave policy, unless the aggregate amount would exceed the employee’s average weekly wage.

The state leave program will be funded through a payroll tax of 0.63% (which will be adjusted annually) split between employers and employees. Employees will be required to cover 100% of the contributions for family leave and 40% of the contributions for personal medical leave. Employers with over 25 employees will be responsible for paying 60% of the contributions for personal medical leave. While employers with 25 or less employees will not have to cover the employer portion of contributions, they will still be required to deduct the payroll tax from employees' wages. Employer and employee contributions will begin on July 1, 2019, with benefit payments beginning on January 1, 2021 for personal medical leave and on July 1, 2021 for family leave benefits. Employers may opt out of the state program if they provide benefits that match or exceed those provided by the state plan.

Paid family and medical leave will run concurrently with leave taken under the Massachusetts Parental Leave Act and the federal Family and Medical Leave Act (FMLA). An employee who takes leave under the Massachusetts law while ineligible for FMLA leave may still take FMLA in the same benefit year but only to the extent the employee remains eligible to do so. An employer may require an employee to take paid family and medical leave concurrently with disability or family care leave under a collective bargaining agreement or employer policy such that the employee can receive the greater of the available benefits.

Growing Trend

Massachusetts' establishment of a paid family and medical leave program – the most generous in the country so far – comes on the heels of a similar New York state program funded by employee contributions that went into effect on January 1, 2018, and which we previously blogged about [here](#). The New York State Paid Family Leave Law provides employees with up to 8 weeks (and eventually 12 weeks) of partially-paid, fully job-protected leave and, unlike the Massachusetts law, requires employees to work at least 20 hours per week after 26 weeks of employment before they become eligible for paid leave.

California, New Jersey and Rhode Island also offer paid family and medical leave through state programs funded by payroll taxes. Under the California and New Jersey Paid Family Leave statutes, employees can take up to 6 weeks of partially-paid leave, while under the Rhode Island Temporary Caregiver Insurance Program, employees may take up to 4 weeks of partially-paid family leave and up to 30 weeks of partially-paid leave for their own disability.

Increased Minimum Wage, Elimination of Premium Pay by January 1, 2023

Under the new law, starting on January 1, 2019, and gradually over the following five years: (1) the state hourly minimum wage will rise from \$11.00 to \$15.00; (2) the tipped hourly minimum wage will increase from \$3.75 to \$6.75; and (3) the premium pay (1.5 times the hourly rate) requirement for work performed on Sundays and certain holidays will be completely eliminated.

Next Steps

While there are no imminent deadlines for employers under the new law, employers should start reviewing their payroll systems and/or discussing with their payroll providers (e.g., ADP, Paychex, etc.) to make sure they will have the mechanism in place to make the required deductions from employee payroll, as well as consider changes that may need to be made to their current employee leave policies. It is also likely that more employees will utilize leaves, so employers should start thinking about ways to address the challenges of managing workload while an employee is out on leave, such as hiring temporary replacements and temporarily assigning work to other employees. Employers should also start reviewing employee positions to determine which employees will need to receive wage adjustments come January 1, 2019. The state has not published any guidance on the law, but will likely do so in the upcoming months. Stay tuned.

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