

Managing Compliance with Changing/New State Leave Laws

NH Tech Alliance Human Resources Forum

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The Legal Stuff...

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Overview

- **Key State Leave Laws**
 - **Paid Sick Time**
 - **Parental Leave**
 - **(Paid) Family and Medical Leave**
- **Recent developments in NH, MA and ME**
- **Managing leave policies**

Sick Leave

Paid Sick Time – Typical Purposes

- Employee's own health condition/ preventive care
- Family member's health condition & preventive care
- Time needed to address domestic violence (e.g., CA, MA, NJ)

Paid Sick Time - General Provisions

- Notice requirements (employer and employee)
- Rate of accrual (or lump sum/frontload)
- Cap on accrual
- Carryover
- Threshold for paid vs. unpaid
 - Massachusetts: 11 employees
- Definition of family member

Paid Sick Time

Arizona (2017)	Oregon (1/2016; revised 1/2018)
California	Rhode Island
Connecticut	Vermont
Maryland (2/ 2018)	Washington
Massachusetts (7/2015)	Washington D.C.
New Jersey (eff. 10/ 2018)	<i>(Maine – starting in 2021)</i>

Plus dozens of cities, towns, counties

Paid Sick Time- Accrual


State	Accrual	Cap
Arizona	1 hour for every 30	15+ employees: 40 hours <15 employees: 24 hours
California	1 hour for every 30 hrs	Up to 48 hrs
Connecticut – some employers with 50+ ees	1 hour for every 40 hrs	Up to 40
Maryland and Mass.	1 hour for every 30 hrs	Up to 40
New Jersey (Oct. 2018)	1 hour for every 30 hrs	Up to 40
Oregon	40 hours	40 carryover plus 40 hours in current year
Vermont	1 hour for every 52 hrs	Up to 40 (after 12/31/18)
Washington (2018)	1 hour for every 40 hrs	Up to 40

Recent Developments

- **Maine** Earned Paid Time Off Law—
 - **Jan. 1, 2021** – will require paid time off for any reason, not just sick leave
 - Will cover employers with more than 10 employees working more than 120 hours/year
 - Employees will earn 1 hour paid leave for every 40 hours worked
 - Max. accrual = 40 hours/year
 - Use after 120 days, “reasonable” notice
 - Details to be announced by DOL

Parental Leave

Parental Leave

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- State law approaches to parental leave:
 - pregnant workers receive same benefits as other disabled employees
 - mothers allowed to use sick time
 - mothers use unpaid leave for length of documented disability (NH)
 - employer-offered disability insurance to cover maternity leave
 - unpaid leave for all eligible parents
 - paid leave for all eligible parents

Parental Leave

- Examples of States allowing disability leave for pregnancy-related conditions:
 - NH: length of leave based on employee's physical disability due to pregnancy, childbirth, related medical conditions (unpaid, indefinite)
 - California Pregnancy Disability Leave: employees disabled by pregnancy (before or after birth) can take "reasonable period of time," up to 4 months *[and then can take additional leave under CA Family Rights Act or the New Parent Leave Act]*
 - Rhode Island: Temporary Disability Leave- funded by payroll deductions
 - Other states with required disability benefits programs: **NY, NJ, CA, HI (and Puerto Rico)**

Parental Leave


- Several states: unpaid parental leave
 - Examples:
 - Massachusetts Parental Leave Act
 - 8 weeks of unpaid, job-protected leave after 3 months of full-time employment
 - California: employers with 20-49 employees must offer 12 weeks baby-bonding leave
- States beginning to pass paid parental leave (as part of paid family leave laws)

(Paid) Family and Medical Leave

Family and Medical Leave

- Federal FMLA
 - unpaid leave for employers with 50 or more employees
 - 12 weeks to care for family member or bond with new child

Family and Medical Leave

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- State variations:
 - expanding unpaid (or paid) FMLA-type to public employees but not to private employees (Alaska, Arkansas, Florida...)
 - expanding FMLA-type protections (unpaid) -- to smaller employers, more family members, longer leaves
 - allowing paid employee leave through disability insurance programs (e.g. RI, NY)
 - offering paid family leave

Family and Medical Leave – regional developments

- Massachusetts will require Paid Family and Medical Leave
 - Oct. 2019 – employers began collecting contributions through employee payroll to fund future benefits
 - Some benefits available January 2021, some July 2021

Mass. PFML

- Mass. G.L. c. 175M (PFML Act)
 - New agency: **Department of Family and Medical Leave (DFML)**
 - Law supplemented by new regulations (June 2019)
- PFML Act relies heavily on unemployment statute
 - Eligibility
 - Definitions of wages

Mass. PFML- Coverage

- Applies to most MA **employers**
 - Municipalities have to vote on it
 - Some excluded under MA unemployment law (religious, real estate/insurance agents who work on commission basis only)
- MA “**Covered business entity**” – business that contracts with 1099-MISC workers for more than 50% of its workforce

Mass. PFML- Coverage

- What workers are “Covered Individuals”?
 - MOST Massachusetts W-2 workers
 - Some MA 1099-MISC contractors
 - Self-employed individuals who have opted in
 - Some former employees

Mass. PFML- Coverage

- *Massachusetts W-2 workers*
 - Those for whom contributions submitted to Dept. of Unemployment Assistance (DUA)
 - **Services in MA or “localized” in MA**
 - Must meet financial eligibility test (currently \$4,700)

Mass. PFML- Coverage

- *Covered Contract Workers* (1099-MISC workers)
 - Must live in and perform services in MA
 - Work as “individual entity” (not professional corporation (PC), Limited Liability Company (LLC), Sole Member LLC, partnership, or corporation)
 - **Sept. 5th “Policy Clarification”**
 - Must NOT be “independent contractor” under unemployment law (c. 151A)
 - Count only if they **exceed** 50% of total workforce (MA employees + MA eligible contractors)

Mass. PFML- Coverage

- *Self-employed individuals*
 - May opt in
 - Must meet financial eligibility test
 - Must make contributions for at least 2 of previous 4 calendar quarters to receive benefits

Mass. PFML- Coverage

- *Former employees*
 - Must have earned enough money in Massachusetts (financial eligibility)
 - Separated from employment within the last 26 weeks

Mass. PFML- Who Pays?

- Beginning 10/1/19, Family and Employment Security Trust to be funded by:
 - **0.75%*** of gross wages or other payments to all covered individuals
 - Note: “wages” has broad meaning -- 401(k)!
 - Capped at first \$132,900 of earnings in 2019; for 2020 it will be \$137,700
- * State may change rate in future years

MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE

CONTRIBUTION RATE



FAMILY AND MEDICAL LEAVE DISTRIBUTION



Mass. PFML- How Much?

- **Maximum employee contribution (for now):**
 - \$0.38 per \$100.00 of wages

Mass. PFML- Opting In/ Opting Out

- Who can opt in?
 - Self-employed individuals are not required to participate, but can choose to opt-in.
- Who can opt out?
 - Covered individuals cannot opt out
 - Employers/covered business entities may apply for exemption

Mass. PFML- Opting Out/ Exemption

- Private plan/self-insured plan must offer:
 - Same number of job-protected weeks of leave
 - Equivalent wage replacement
 - Same or lower employee contributions

How Much Leave?

- Up to **12 weeks** of paid family leave
 - includes bonding leave, family member's serious health condition, and military qualifying exigency
- Up to **20 weeks** of paid medical leave (employee's own serious health condition)
- Up to **26 weeks** to care for military servicemember
- Total leave in benefit year cannot exceed **26 weeks**
- Intermittent leave allowed

Mass. PFML- When is Leave Available?

- **January 1, 2021**
 - All types of leave available except to care for family member with serious health condition
- **July 1, 2021**
 - May take leave to care for family member with serious health condition

Mass. PFML- What Happens During Leave?

- Wage Replacement (up to \$850/week)
- Continuation of health insurance, with employee contributions

Mass. PFML- Returning from Leave

- Fitness for duty
- Return to same or equivalent job

Mass. PFML- Protections After Returning

- Retaliation prohibited
- PRESUMED retaliation

Mass. PFML- Penalties

- Failure to give notice
 - First violation: \$50 per covered individual
 - Subsequent: \$300 per covered individual
- Failure to make contributions
 - Assessment:
 - total annual payroll for period of non-compliance x annual contribution rate
 - PLUS total amount of benefits paid to covered individuals
- Tax Evasion – criminal liability and fines

Mass. PFML- Deadlines

- *September 30, 2019 – Poster ✓*
- *October 1, 2019 – Collections Start ✓*
- *December 20, 2019 – Opt Out? ✓*
- *January 31, 2020 – Pay to State*
- *January 1, 2021 – Most Benefits*
- *July 1, 2021 – All Benefits*

Mass. PFML- Resources

- Regulations (458 CMR 2.00)
- Department of Family and Medical Leave
 - Website (www.mass.gov/pfml)
 - FAQs
 - Calculators
 - Subscribe to email notifications/guidances
 - Look for future model policies?

Family and Medical Leave Developments: **Maine**

- Private employers: 15+ employees; public employers: 25+ employees
- Employed for 12 consecutive months, but no minimum hours worked
- Up to 10 weeks in a 2 year period (unpaid):
 - Birth or adoption
 - Own serious health condition
 - Family member's serious health condition
 - Organ donation
 - Death or serious health condition of family on active duty
- Intermittent leave allowed

Paid FMLA Developments: Is **NH** Next?

- New Hampshire paid family leave bill
 - Many twists and turns/competing proposals
 - Concerns about plan design/solvency of prior proposals

Paid FMLA Developments: Is **NH** Next?

- October 2019 – bill introduced to create voluntary paid family leave insurance program for businesses or individuals
- November 2019 – NH House Finance Committee approved version of earlier bill (HB712)
 - Would require private employers to withhold .5% of employee's pay to provide benefits up to 60% of wages
- More progress in 2020?

Managing Leave Policies

- Tracking eligibility/availability/use
- Coordinating with FMLA
- Coordinating with other leaves
- Coordinating with existing policies
- Coordinating across state lines

Tracking eligibility/availability/use

- Have you given proper notice of policy
- Tracking which employees are eligible
- How much has each employee accrued
- How much has each employee used
 - Are managers paying attention?
- Any evidence of abuse/misuse?

Coordinating with FMLA

- Is employer covered by FMLA?
- Is employee eligible for FMLA?
- Is reason for leave covered by both FMLA and state leave law?
- Does policy notify employees that leaves will run simultaneously
- Have all appropriate forms and notice been given when leave needed?
- Are job protections the same?

Coordinating with other leaves

- Short-term disability
- Domestic violence
- Sick leave

Coordinating with existing policies

- Company-paid policies
 - Does state law allow stacking?
 - Can employer opt out from state program?
 - Can employer recover from state if it offers own benefits?

Coordinating Across State Lines

- Employers need to know the differences in laws of the states where employees work
 - How will they reconcile these differences (or not)
 - How will they track these differences
 - How they will communicate the differences

Coordinating Across State Lines

- Options:
 - follow the law that is most conservative/favorable to employees, apply across the entire company (IF POSSIBLE)
 - follow most favorable law for most situations, but separate out laws where there are significant differences (paid sick leave, paid family leave)
 - treat employees in each state according to the laws of that state

Coordinating Across State Lines

- Communicating the differences:
 - One handbook for all employees, with any state-specific policies embedded
 - A handbook that is general to everyone with an Appendix at the end for each different state
 - Separate handbook for each state

Wrap-Up

- Evolution towards employee-friendly, family-friendly laws
- Lots going on at federal and state level
- When federal and state conflict, follow the most generous policy
- Stay tuned for constant changes!

Thank you!

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