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HIGHLIGHTS

- Paid family and medical leave claims will be administered by the state.
- Paid family and medical leave will run concurrently with other employee leave entitlements.
- Employers and employees will be responsible for making contributions to fund the paid family and medical leave program.

IMPORTANT DATES

July 1, 2019

Employers must comply with workplace posting and new hire notice requirements. Employers must also begin remitting contributions to the trust.

January 1, 2021

Workers may begin receiving paid leave benefits.

Provided By:
FBinsure

Massachusetts Enacts Paid Family and Medical Leave

OVERVIEW

On June 28, 2018, Massachusetts Governor Charlie Baker signed [Bill H.4640](#) into law. The bill establishes a mandatory statewide paid family and medical leave program, which will be administered by a new Department of Family and Medical Leave. The leave program will be financed through employer and employee contributions.

Beginning in 2021, eligible employees may take protected paid leave for certain family and medical reasons. **Effective July 1, 2019**, employers must:

- ✓ Comply with a new workplace poster requirement and new hire notice; and
- ✓ Begin remitting contributions for the paid family and medical leave program.

ACTION STEPS

Employers should keep track of developments related to the new paid family and medical leave program, including publication of model workplace posters and employee notices. Proposed regulations are to be published for public comment by March 31, 2019.

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Covered Employers

All Massachusetts employers must comply with the paid family and medical leave requirements. However, **employers with fewer than 25 employees** in Massachusetts will not be required to pay the employer portion of premiums for the paid family and medical leave program.

Eligible Employees

Virtually all employees working in Massachusetts will be covered individuals who are eligible for paid family and medical leave benefits. There are no restrictions on length of employment or other eligibility requirements, other than having a qualifying reason for paid leave benefits.

Qualifying Reasons for Paid Family and Medical Leave

Paid Family Leave

Covered individuals can take paid **family leave** for any of the following reasons:

1	To bond with the employee's child during the first 12-month period following the birth of the child or the first 12 months after the placement of the child for adoption or foster care with the employee;
2	To care for a family member with a serious health condition;
3	Because of any qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces; or
4	To care for a family member who is a covered service member with a serious injury or illness incurred or aggravated in the line of duty.

For purposes of paid family leave, an employee's **family member** includes the employee's:

- ✓ Spouse or domestic partner;
- ✓ Child (biological, adopted, foster, legal ward or child to whom the employee stands *in loco parentis*—that is, in place of a parent—or a person whom the employee stood *in loco parentis* when the person was a minor);
- ✓ Parent, including parents-in-law and a parent of the employee's domestic partner;
- ✓ Grandchild and grandparent; and

All Massachusetts employers must comply with paid family and medical leave requirements, effective July 1, 2019. However, small employers with fewer than 25 employees are not required to pay the employer portion of the premium for family and medical leave benefits.

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✓ Siblings.

A person who stood *in loco parentis* (in place of a parent) to the employee when the employee was a minor is also included in the definition of family member.

Paid Medical Leave

Employees may take paid medical leave due to the employee's own serious health condition.

Serious Health Condition: For purposes of Massachusetts' paid family and medical leave program, a serious health condition is defined similarly to the definition of serious health condition under the federal Family and Medical Leave Act (FMLA). In general, it refers to an illness, injury, impairment or physical or mental condition that involves (1) inpatient care in a hospital, hospice or residential medical care facility; or (2) continuing treatment by a health care provider.

Duration of Paid Family and Medical Leave

Beginning Jan. 1, 2021, employees may begin receiving benefits for paid family and medical leave. The paid family and medical leave program provides the following leave amounts during the benefit year:

Family Leave	Up to 12 weeks (however, if leave is due to caring for a covered service member, up to 26 weeks of family leave)
Medical Leave	Up to 20 weeks
Combined Family/Medical Leave	Up to 26 weeks

The “**benefit year**” is defined as the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day that paid family and medical leave commences.

The new Department of Family and Medical Leave (Department) will be established within the [Executive Office of Labor and Workforce Development](#) and will be responsible for administering the paid family and medical leave program, including processing claims for paid leave benefits.

Employee Notification Requirements

Employees are to provide their employer at least **30 days' notice** of the intent to take paid family or medical leave. The employee's notice should include the anticipated start date of leave, the anticipated length of leave and the employee's anticipated date of return. However, if, due to reasons beyond the employee's control,

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the employee cannot provide 30 days' advance notice, the employee must notify the employer as soon as practicable.

However, if an employer fails to comply with its notice requirements, the employee notice requirement is waived.

Employer Notification Requirements

Effective July 1, 2019, employers must conspicuously **post a workplace notice** that informs employees of benefits provided under the paid family and medical leave program. The Department is to provide a model poster for employers to use. Employers will be required to post the notice in English, as well as in the primary language of five or more employees of the employer's workforce (if the translated notice is available from the Department).

In addition, effective July 1, 2019, employers must provide **each new hire**, within **30 days from the employee's start date**, with written notice detailing the new family and medical leave program. The employer must obtain each new hire's **written acknowledgement of receipt** of the information above, or have the employee sign a statement that he or she refused to sign the acknowledgement. The Department is to provide a model new hire notice for employers to use. The notice must be provided to the employee in the employee's primary language.

Amount of Family and Medical Leave Benefits

Beginning in 2021, employees may begin to receive benefits under the paid family and medical leave program. While on family and medical leave, employees will be paid 80 percent of their salary up to 50 percent of the average weekly wage, plus 50 percent of their salary exceeding 50 percent of the average weekly wage, up to a **maximum of \$850 per week**. These amounts may be adjusted annually.

Weekly benefit payments begin after an initial **seven-day waiting period**. Employees may use other accrued paid leave, such as sick leave or vacation, during this seven-day waiting period.

Paid Leave Funding

The paid family and medical leave program is funded by a mandatory payroll tax of **0.63 percent** of employees' wages, to be adjusted annually. The payroll tax will be split between employers and employees. However, for **employers with fewer than 25 employees**, no employer contribution is required for family or medical leave premiums.

Interaction with Existing Leave Laws and Employer Policies

Paid family and medical leave benefits will run concurrently with an employee's leave entitlement under the federal FMLA or the Massachusetts Parental Leave Law (if the employee is eligible for these types of leave). In other words, paid family and medical leave does not extend an employee's leave entitlement under these laws.

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Job Protections

An employee who takes paid family or medical leave is entitled to be reinstated to his or her previous position, or to an equivalent position, with the same status, pay, employment benefits, length of service credit and seniority as of the date of leave.

In addition, an employee's right to accrue vacation, sick leave, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs cannot be affected by the taking of paid family or medical leave.

An employer is required to **maintain the employee's health plan benefits** for the duration of a family or medical leave on the same terms and conditions as though the employee had not taken leave.

Additional Information

The Department is required to propose regulations implementing the paid family and medical leave program by March 31, 2019. These regulations should clarify employer obligations under the law. Employers will also want to watch for the Department to publish a model workplace poster and new hire notice that employers can use to satisfy their notice requirements.

The law permits employers to apply to the Department for approval to meet obligations under the law through a private plan. An employer's private plan must provide all of the same rights, protections and benefits as provided under the paid family and medical leave law. Employers may apply to provide medical leave under a private plan and provide family leave using the public plan, or vice versa.