



## EMPLOYMENT LAW ALERT

### UPDATE: MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE

The Massachusetts Department of Family and Medical Leave (the “Department”) announced a “soft launch” date of **December 15, 2020**. Effective on the soft launch date, certain Paid Family Medical Leave (“PFML”) information will be available and certain submissions accepted through the Department portal.

Approximately *two weeks ago* the Department issued an email to company contacts responsible for remitting taxes to the Massachusetts DOR with subject line: “Action Required: Submit Your Leave Administrator Contact Information.” That email provided a verification code for use by your company contact. Some notifications may have been issued, instead, to company payroll providers. Contact the Department if you have not received that email. Contact information and an employer’s guide to PFML compliance can be obtained at the following Department website link: <https://www.mass.gov/guides/employers-guide-to-paid-family-and-medical-leave>

Once the system goes “live” the Department will provide more specific information to employers regarding additional steps they must take.

Commencing on January 1, 2021, covered individuals may begin to take paid leave for most covered reasons. On July 24, 2020, the Department of Family and Medical Leave released their final regulations under the Massachusetts Paid Family and Medical Leave. The Department continues to provide guidance and direction and Tocci & Lee expects that to continue through 2021. We have summarized the most significant dates and recent changes below.

#### JANUARY 1, 2021

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- Covered individuals may begin to take paid leave for most covered reasons, including paid medical leave to manage their own serious health condition, paid family leave to manage family affairs while a family member is on active duty overseas, paid family leave to care for a family member who is a covered service member, and paid family leave to bond with a child newly born, adopted, or placed in foster care. This means that an employee may provide notice of intent to utilize bonding leave as early as **December 2, 2020**.
- Covered individuals will be entitled to up to **20 weeks** of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work.
- Covered individuals are entitled to up to **12 weeks** of paid family leave in a benefit year for leave related to the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty.

- Covered individuals are entitled to up to **26 weeks** of paid family leave in a benefit year for leave taken to care for a family member who is a covered service member with a serious health condition.
- Beginning on July 1, 2021, covered individuals will be entitled to up to **12 weeks** of paid family leave to care for a family member with a serious health condition.

## UPDATED REGULATIONS

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### ➤ Applications for Benefits and Benefit Availability

The final regulations clarified that covered individuals are now required to provide notice to their employer prior to applying for benefits at least 30 days prior to the start of the employee's leave, but not more than 60 days in advance.

Employees may also qualify for PFML benefits for treatment of a substance use disorder that qualifies as a serious health condition. However, leave taken because of the employee's use or abuse of illegal substance does not qualify for PFML leave. Moreover, nothing in the Act or regulations inhibit or prevent an employer for disciplining an employee who violates the employer's substance abuse policy, including the possession of illegal drugs in a workplace, the use of drugs or alcohol in the workplace and reporting to work or working while impaired by drugs or alcohol.

### ➤ Former Employees

The regulations clarified that a covered individual who has been separated from an employer for fewer than 26 weeks and remains unemployed on the date that an application for benefits is filed must submit an application for benefits with the individual's former employer.

A former employee who has been separated for fewer than 26 weeks and has become employed by a different employer at the time that an application for benefits is filed must submit an application with the individual's current employer.

## EMPLOYER ACTION ITEMS

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- As a courtesy to its clients and certain employer organizations, T&L has drafted and made available a model PFML Policy. This policy should be incorporated into your company employee handbook or policy manual or issued to employees as a stand-alone policy. If you have not received a policy from T&L, you may receive one by emailing Bianca Baldelli at [bbaldelli@toccilee.com](mailto:bbaldelli@toccilee.com) with your company name, human resource contact email address and title. We will be happy to promptly email you a model policy.
- Employers must also conspicuously post an employee notification/information poster regarding PFML. A poster may be obtained at no charge from the Department website at: <https://www.mass.gov/doc/paid-family-and-medical-leave-mandatory-workplace-poster/download>.
- **Please contact John F. Tocci, Manager of Tocci & Lee's Employment and Litigation Practice, at (617) 542-6200 x 212 or [jtocci@toccilee.com](mailto:jtocci@toccilee.com) with any questions.**