

Labor & Employment Alert
May 2, 2019

**EMPLOYERS TAKE NOTE: BREAKING NEWS FROM THE
DEPARTMENT OF FAMILY AND MEDICAL LEAVE - - 2
CRITICAL DEADLINES EXTENDED LATE YESTERDAY**

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Late yesterday afternoon, May 1, 2019, the Department of Family and Medical Leave extended 2 important deadlines relating to implementation of the new Paid Family and Medical Leave Act (MA PFML).

First, the deadline for employer notice to employees has been extended from May 31 to June 30, 2019. This notice must contain employer and employee rights and obligations under the MA PFML, including how much the employer plans to contribute and the amount of contributions deducted from employee earnings.

Second, the Department also extended the deadline to file for a private plan exemption, for Quarter 1 only, from June 30 to September 20, 2019. Going forward, private plan exemption applications must be approved in the quarter prior to when they go into effect.

Workforce Notification Deadline Extended

On April 17, 2019, the Department directed employers and covered business entities to notify their employees and self-employed individuals of their rights and obligations under the MA PFML on or before **May 31, 2019**. The Department posted template notices for both employees and self-employed individuals. [[Employer Notice to W2 Employee](#) [Employer Notice to Self Employed Individual](#)] The notice, which may be provided electronically, must include the opportunity for an employee or self-employed individual to acknowledge receipt or decline to acknowledge receipt of the information.

Late yesterday afternoon, the Department extended the May 31st workforce notification deadline until **June 30, 2019**. This extension will provide employers and covered business entities¹ with an additional 30 days to make important decisions about contribution levels for both employers and employees and self-employed individuals².

¹ The term employers will be used to reference both employers and covered business entities.

² The term employees will be used to reference both employees and self-employed individuals.

Labor & Employment Alert May 2, 2019

By way of background, employers with 25 or more employees are required to contribute 60% of the cost of medical leave and can deduct up to 40% of the cost of medical leave via employee payroll deductions. Employers are not required to contribute to the cost of family leave and can deduct up to 100% of the cost of family leave via employee payroll deductions. Employers with fewer than 25 employees are not required to make any contributions towards either family or medical leave, but must deduct 40% of the cost of medical leave via employee payroll deductions. **Of course, employers of any size can elect to pay more than their minimum required contribution.**

Prior to sending out the workforce notification, employers must make decisions regarding their contributions. Specifically, employers have to decide if they are going to contribute more than 60% for medical leave and more than 0% for family leave. The workforce notification form specifically requires employers to inform employees how much the employer will be contributing to both the family and medical leave and how much will be deducted from employee earnings. The Department website has tools and calculators that can assist with calculation of the cost of contributions.

In addition to notifying employees regarding contributions for family and medical leave, the required notice must also contain:

- Written statement from employee acknowledging receipt of notice or indicating refusal to acknowledge notice;
- Explanation of family and medical leave benefits;
- **Employee contribution amounts and obligations;**
- **Employer contribution amounts and obligations;**
- Employer's name, mailing and email addresses;
- Employer's DFML identification number;
- Instructions on how to file a claim for benefits; and
- DFML mailing and email addresses and telephone number.

To do NOW: It is important to begin making decisions now regarding how much you are going to contribute and how much you will be deducting from employee earnings, so this information can be conveyed to employees in a timely fashion on or before June 30, 2019.

Deadline to Apply for Private Plan Exemption Extended

Late yesterday afternoon, the Department also extended the deadline to file for a private plan exemption from June 30, 2019 to September 20, 2019. While it is the Department's position that



**Labor & Employment Alert
May 2, 2019**

exemptions for private plans must be approved in the quarter prior to the quarter in which they will go into effect, for Quarter 1 only, *i.e.* the quarter beginning July 1, 2019, employers can apply for a private plan exemption up until September 20, 2019. This exemption, if approved, will be in effect for first quarter contributions for paid family and medical leave.

Employers considering meeting their family and medical leave obligations through a private plan should be aware that their contribution obligation is not waived while the private plan exemption application is pending. Instead, if the application is denied, it is the Department’s position that employers will be responsible for remitting the full contribution amount from July 1, 2019 forward.

In order to be granted a private plan exemption, the benefits provided by the private plan must be greater than or equal to the benefits provided by the MA PFML. The exemption is only an exemption from collecting, remitting and paying contributions, and *not* an exemption from providing the required family or medical leave under the MA PFML.

The private plan exemption application became available through the Department of Revenue’s MassTaxConnect system earlier this week on April 29, 2019. In order to apply, if you do not have an existing MassTaxConnect account, you will need to register and establish a MassTaxConnect account.

For more information on workforce notification, private plan exemption or any other aspect of the MA PFML, please contact attorneys Nan O’Neill, Kier Wachterhauser, Sarah Spatafore, or Kathryn Murphy.

This alert was prepared by Attorney Nan O’Neill. If you have any questions about this alert, please contact one of the attorneys listed above, the attorney responsible for your account, or call (617) 479-5000.

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