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## Massachusetts Paid Family and Medical Leave — workforce notice and exemption applications

By Christopher J. Higgins and Jeffrey B. Gilbreth

The Department of Family and Medical Leave (“DFML”) has continued to release information and guidance regarding the Massachusetts Paid Family and Medical Leave Act (“PFML”). Our previous Alert about PFML can be found [here](#).

Here are the highlights of the recent developments:

- The DFML announced on May 1 a delay of the previously announced workforce notification deadline from May 31, 2019, until **June 30, 2019**.
- The DFML opened the application window for exemptions on April 29 for employers who wish to pursue a private plan exemption.
- The DFML also extended the deadline by which employers can apply for an exemption from first quarter (July 1, 2019–**September 30, 2019**) contributions until September 20, 2019.

Set forth below are additional details about each of these developments:

### Workforce notice

By June 30, employers must provide Massachusetts employees and 1099-MISC contractors with written notice regarding PFML and must hang a PFML poster in its Massachusetts facilities. The DFML has released sample notices for both employees and contractors, and it has also released a sample workplace poster. Copies of those sample notices can be found here: [W-2 employees](#), [1099-MISC contractors](#). A copy of the sample poster can be found here: [poster](#). Employers should hang the poster as soon as possible in their Massachusetts facilities where similar workforce/human resources notices are posted.

Employers can customize these sample notice forms—for example, an employer can remove the section of the form and the associated check boxes regarding a private plan exemption if the

employer is not pursuing a private plan exemption. If an employer elects to customize sample notice forms, the following information is required to be included:

- An explanation of the availability of family and medical leave benefits
- The employee's contribution amount and obligations
- The employer's contribution amount and obligations
- The employer's name and mailing address
- The employer identification number assigned by DFML
- Instructions on how to file a claim for family and medical leave benefits
- The mailing address, e-mail address and telephone number of DFML

Employers must collect from each individual to whom it provides notice a signed acknowledgement of receipt of the notice (or note the individual's refusal to sign the acknowledgement). Employers should consider imposing an internal deadline for all notice recipients to return a signed acknowledgement and ensure that acknowledgements are tracked and collected. Employers should follow-up with any individual who does not respond.

The poster and notices must be provided in English and each language other than English that is the primary language of five or more employees, provided that such other language is one of the 12 languages into which the sample notices and posters have been translated by the DFML.

## **Exemption applications**

On April 29, the DFML released the exemption application, which is located on MassTaxConnect. The DFML also released a document that lists all of the [questions](#) an applicant will be asked when applying for an exemption.

Employers can apply for an exemption for the medical leave payroll tax contribution, the family leave payroll tax contribution or both contributions if their private plan satisfies all of the terms and conditions set forth in the law and regulations. Many employers are finding their current plans do not meet or exceed those terms and conditions, and are concluding that updating or amending their policies, insurance policies and procedures is proving to be more burdensome and costly than expected.

Employers applying for an exemption will complete the application questionnaire on MassTaxConnect and will immediately receive a conditional approval, or a denial. If a conditional approval is received, the employer will then be required to submit follow-up documentation of their private plan details, which the DFML will review. DFML will then make a final determination regarding the employer's application for an exemption. Once an exemption is approved, the exemption will be in effect for one calendar year. Applications for the first quarter (beginning July 1, 2019) have been extended until September 20, 2019. Employers can reapply annually for an exemption, and all approved private plans are subject to audits throughout the year.

## **Next steps**

To ensure compliance with the PFML, all employers with Massachusetts workers should take the following actions:

- Hang the required workplace poster in a conspicuous location by **June 30, 2019**.

- Prepare a notice to all W2 employees and 1099-MISC contractors and ensure this is sent **by June 30, 2019**.
- Collect acknowledgements from all notice recipients.
- For employers considering an exemption, review current policies, procedures and benefits; identify any changes required; and complete the application on MassTaxConnect by **September 20, 2019**.
- For employers not pursuing an exemption, prepare for the payroll taking effect on **July 1, 2019**.

Nixon Peabody [labor & employment attorneys](#) are available to assist you in navigating these updates in Massachusetts law. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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