



## CLIENT ALERT

### **MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE: RECOMMENDED ACTIONS FOR EMPLOYERS TO TAKE IN ADVANCE OF THE JANUARY 1, 2021 BENEFITS ROLL-OUT DATE**

The long-awaited benefits roll-out date for the Massachusetts Paid Family Medical Leave Act (“PFMLA”) -- January 1, 2021 -- is on the immediate horizon. The following overview is designed to assist employers in preparing to manage requests for leave under this new program.

#### **General Overview of Law**

Generally, employees who meet the financial eligibility threshold will be eligible for leave for the following reasons:

- To bond with an employee’s child after the birth, adoption, or foster care placement, for up to 12 weeks, taken within one year of the child’s birth or adoption (*effective on 1/1/21*).
- For an employee’s serious health condition, for up to 20 weeks (*effective on 1/1/21*).
- To care for a family member with a serious health condition, for up to 12 weeks (*effective on 7/1/21*).
- For 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 in the Armed Forces, for up to 12 weeks (*effective on 1/1/21*).
- For military caregiver leave to care for a family member who is undergoing medical treatment or otherwise addressing consequences of a serious health condition relating to a family member’s military service, for up to 26 weeks (*effective on 1/1/21*).

Employee eligibility for PFMLA benefits is determined by the new Massachusetts Department of Family and Medical Leave (“DFML”) for those employers who did not obtain a private plan exemption. The DFML administers and oversees eligibility.

Employees seeking leave under the PFMLA must complete an online application for benefits that will be available on the DFML website.

### **Actions to be Taken by Employers Prior to January 1, 2021**

Employers must be prepared to address leave-related questions from employees and from the DFML, and should implement a system that will allow them to manage employee leave effectively. Employers should take the following steps:

***Review and Update Leave Policies.*** Most importantly, employers should review and update their leave policies to reflect the PFMLA's implementation, and to ensure that internal policies and procedures are carried out in a uniform manner consistent with applicable law. This includes policies addressing:

- Employee notice requirements relating to employee leaves under the PFMLA.
- Intermittent or reduced schedule leaves, particularly in situations where an employer is not obligated by law to allow such leaves (such as leave for bonding with a child).
- Fitness for duty certifications, and whether and when to require them prior to an employee's return to work from a PFMLA leave.
- Management of employees' accrued paid time off, and the circumstances when an employee is, and is not, permitted to use this time.
- Managing employee leave requests in the same benefit year for different qualifying events.

***Ensure Consistent Performance Review Protocols to Avoid Claims of Retaliation:*** In a uniquely protective provision, the PFMLA's regulations provide, among other things, that where "[a]ny negative change in seniority, status, employment benefits, pay or other terms or conditions of employment" occur during the six months following an employee's PFMLA job-protected leave or restoration to a position, such change in status is presumed to constitute retaliation. An employer can only rebut such a presumption by "clear and convincing evidence" demonstrating that the employer's action did not constitute retaliation and that sufficient independent justification existed. As a result, employers should maintain consistent practices documenting performance deficiencies and other employee policy violations in the event that it wishes to make a change in an employee's status within this six-month window for non-retaliatory, permissible reasons.

***Understand the Interaction between PFMLA and Other State and Federal Leave Laws.*** It is critical for employers to understand the interaction between the PFMLA and other leave laws which also may be applicable to an employee's leave request, including leaves under the Massachusetts Parental Leave Act ("MPLA") and the Family and Medical Leave Act ("FMLA"). Even where an employee is eligible for leave under the PFMLA, employers must continue to evaluate employee eligibility under other state and federal leave laws, such as the MPLA and the FMLA. This is important for a host of reasons, including the following:

- Where employees are eligible for leave under multiple leave laws for the same qualifying event, employers should ensure that employees are notified that such leaves shall run concurrently, to avoid an employee taking multiple leaves at different times. Employers will need to carefully review their leave policies.
- Where employees may be eligible for leave under both the PFMLA and the FMLA, employers should review their benefit years to ensure that the FMLA's benefit year is consistent with the benefit year applicable to the PFMLA.
- An employee's ability to use accrued paid leave varies under the PFMLA, the MPLA and the FMLA. Employers should ensure that they understand these differences and apply the requirements consistently.

***For Employers Who Obtained Private Plan Exemptions:*** The DFML does not administer the program for employers who obtained private plan exemptions. Those employers will need to be prepared to independently administer these leave requests and ensure compliance with the PFMLA.

If you have any questions regarding the PFMLA, or if you need assistance with your leave policies, upcoming employee leaves of absences, or other employment-related questions, please contact Attorneys Jill Brenner Meixel, [jmeixel@kb-law.com](mailto:jmeixel@kb-law.com), Allison Belanger, [abelanger@kb-law.com](mailto:abelanger@kb-law.com), or Paul Holtzman, [pholtzman@kb-law.com](mailto:pholtzman@kb-law.com).