

HR Insights

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New MA Law: Minimum Wage Increases, Paid FML, and More!

Governor Baker signed H.4640, known as the “Grand Bargain” into law on June 28, 2018. The new law:

- Increases the Massachusetts minimum wage over the next five years from \$11 to \$15 per hour
- Phases out certain overtime/premium pay requirements for retail employees working Sundays and holidays
- Creates a job protected **paid** family and medical leave (FML) program in Massachusetts

In addition, the new law establishes an annual permanent two-day weekend sales tax holiday starting in August of 2019.

This issue of *HR Insights* provides a summary of the Grand Bargain legislation along with some of PS&A’s insights regarding impact on businesses.

Minimum Wage Increases

The Massachusetts minimum wage will increase from \$11.00 to \$15.00 per hour over the next five years. The minimum wage for tipped employees will also increase over the next five years from \$3.75 to \$6.75 per hour. The table below shows the effective dates of the increases.

Effective Date	Minimum Wage	Minimum Wage Tipped Employees
1/1/2019	\$ 12.00	\$ 4.35
1/1/2020	\$ 12.75	\$ 4.95
1/1/2021	\$ 13.50	\$ 5.55
1/1/2022	\$ 14.25	\$ 6.15
1/1/2023	\$ 15.00	\$ 6.75

Insight: The minimum wage increases will have the greatest impact on businesses in the retail, hospitality, healthcare, and nonprofit industries. However, many businesses have already increased their pay rates to higher than the current minimum wage due to a

competitive labor market. For those that have, the impact may be minimized for a year or two.

Determining Cost Impact

When determining the cost impact of the minimum wage increases on your business, be sure to factor in the cost of other increases that may be necessary to address pay compression issues. Pay compression exists when there is little to no difference in pay between employees at different levels of skills and experience. For example, if you increase pay for jobs requiring a certain level of skills or experience to \$12, make sure you look at pay rates for jobs at the next level up to determine if any pay compression exists. If it does, additional pay increases may be necessary beyond those required to comply with the minimum wage increases.

Premium Pay for Retail Employees Working Sundays and Holidays

Under current law, most non-exempt employees working in retail must be paid 1.5 times their regular rate of pay for hours worked on Sundays and certain holidays. The new law phases out this premium pay requirement over a five-year period by reducing the rate by one tenth each year as follows:

Effective Date	Premium Rate
1/1/2019	1.4
1/1/2020	1.3
1/1/2021	1.2
1/1/2022	1.1
1/1/2023	1.0

Under current law, retail employees cannot be required to work on Sundays and holidays, and they cannot be punished or retaliated against in any way for refusing to do so. These requirements will continue to be in effect.

Insight: In phasing out premium pay, one thing for businesses to watch for over time is whether there will be sufficient incentives for employees to want to work on Sundays and holidays. Longer-term, retail businesses may need to consider some form of

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premium pay to provide sufficient incentives, for example, weekend differentials.

Paid Family and Medical Leave (FML)

Covered Employers

Unlike the Family and Medical Leave Act (FMLA), the Massachusetts FML law applies to almost all employers regardless of number of employees. However, municipalities, districts, and political subdivisions or its instrumentalities are not subject to the new law unless they choose to participate in the program.

Covered Individuals

Individuals are “covered individuals” eligible for paid FML leave if they are a:

- Current employee of a Massachusetts employer, regardless of how long they have worked for the employer or the number of hours they work
- Former employee of a Massachusetts employer who has not been separated from the employer for more than 26 weeks at the time FML would start
- A self-employed individual who has elected coverage under the program and who has reported self-employment earnings

In addition, to be a covered individual, an individual must meet the same financial requirements required to be eligible for unemployment insurance (i.e., earned at least \$4,700 during the last four completed calendar quarters, and 30 times the weekly benefit amount the individual would be eligible to collect).

When the FML Program Takes Effect

The FML program takes effect starting July 1, 2019, with some provisions taking effect later. The table that follows lists key effective dates:

Paid FML Program	Effective Date
1. Deadline for proposed regulations	3/31/2019
2. Deadline for all regulations	7/1/2019
3. Posting and notice requirements for employers begin	7/1/2019
4. Mandatory contributions to fund program start	7/1/2019
5. FML benefits payments start	1/1/2021
6. Deadline for first annual adjustment to maximum weekly benefits amount	10/1/2021
7. Deadline for first annual adjustment to contribution rate	10/1/2021

Qualifying Leave

A covered individual may take up to **12 weeks** of paid family leave per benefit year to:

- Care for a family member with a serious health condition
- Bond with a child during the first 12 months after the child was born to or adopted by or placed for foster care with the covered individual
- Handle 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

A covered individual may also take up to **26 weeks** per benefit year of paid family leave to care for a family member who is a covered servicemember.

A covered employee may take up to **20 weeks** of paid medical leave per benefit year for his or her own serious health condition.

Important Definitions:

A **family member** of a covered individual is a spouse, domestic partner, child, parent or parent of the spouse or domestic partner; a person who stood in loco parentis when the covered individual was a minor child; or a grandchild, grandparent or sibling.

Benefit year means the 52-week period that starts on the Sunday immediately preceding the first day that a covered employee’s FML begins.

The total aggregated FML a covered employee can take in a benefit year is capped at 26 weeks.

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Intermittent Leave

Covered individuals may take intermittent leave or leave on a reduced schedule because of their own serious health condition, to care for a family member with a serious health condition, or to care for a covered servicemember. In the case of family leave to bond with a child or to address qualifying exigencies arising out of deployments, leave may not be taken on an intermittent or reduced schedule basis, unless the employer and employee agree otherwise. When leave is taken intermittently or on a reduced schedule, leave benefits are prorated.

Process for Applying for FML Benefits

Individuals must file claims for FML benefits with the Department of Family and Medical Leave. The Department is required to develop procedures and claim forms as well as to establish documentation and forms required to support claims.

FML Benefits

The FML program replaces a portion of an individual's average weekly wages while on FML. Benefits begin after a waiting period of seven days. During the waiting period, employees may use their accrued sick, vacation, or other paid leave available under the employer's benefits program.

The maximum weekly benefit is capped at \$850. Each year, starting October 1, 2021, the cap will be reset to an amount equal to 64 percent of the state average weekly wage (SAWW). If reset, the new cap takes effect on the following January 1. The SAWW is set annually each October 1 by the Department of Unemployment Assistance. The current SAWW, effective October 1, 2017, is \$1,338.05.

The FML weekly benefit payable to a covered individual equals the lesser of:

- The maximum weekly benefit (\$850), or
- 80% of the individual's average weekly wage up to 50% of the SAWW + 50% of the individual's average weekly wage above the SAWW

The table that follows shows examples of benefits payments calculated using the current SAWW.

50% of SAWW = \$669.03						
Individual's Average Weekly Wage	80%		50%		Total Benefit Payable	Cap Applied
	\$ 575	\$ 460.00	\$ -	\$ -		
\$ 770	\$ 535.22	\$ 50.49	\$ 50.49	\$ 585.71		
\$ 950	\$ 535.22	\$ 140.49	\$ 140.49	\$ 675.71		
\$ 1,200	\$ 535.22	\$ 265.49	\$ 265.49	\$ 800.71		
\$ 1,500	\$ 535.22	\$ 415.49	\$ 415.49	\$ 950.71	\$ 850	

FML Benefit Reductions

FML benefits will be reduced by the amount of wages or wage replacement that a covered individual receives for that period from any of the following sources:

- Workers' compensation (unless for a permanent partial disability that occurred before FML leave)
- Any other state or federal program that provides temporary or permanent disability benefits
- An employer's permanent disability policy or program

FML benefits will **not** be reduced by the amount of wage replacement an employee receives while on leave from any of the following sources, unless the total amount an employee would receive would exceed the employee's average weekly wage:

- A temporary disability policy or program of the employer
- A paid family or medical leave policy of the employer

Benefits During Leave

While on leave, an employee must continue to accrue vacation, sick leave, bonuses, advancement, seniority, length of service credit, and other employment benefits, plans, or programs. If an employee has health insurance coverage through the employer, the employer must continue to provide for and contribute to the employee's health benefits at the same level as if the employee was not on FML.

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How Benefits Funded

FML benefits will be funded through a mandatory payroll tax remitted by an employer on behalf of each employee to a new trust fund called the Family and Employment Security Trust Fund. The payroll tax, effective July 1, 2019, initially equals .63 percent of employee wages. This contribution rate will be adjusted annually starting October 1, 2021.

Employers with 25 or more employees may require employees to pay a portion of the tax. For medical leave, the employer may require employees to pay up to 40 percent of the contribution required, and for family leave, up to 100 percent. Employers with fewer than 25 employees are exempt from paying the employer portion of the contribution.

Posting and Notice Requirements

Starting July 1, 2019, employers must post a notice describing the FML program in a conspicuous place. The notice will be developed by the Department of Family and Medical Leave. It must be posted in English and in any other primary language of five or more employees, if the notice is available in that language from the Department.

Employers must also provide a notice to every new hire within 30 days of hire that is written in the employee's primary language. The notice must explain the FML benefits, including reinstatement and continuation of health insurance, employee contributions and obligations, how to file claims, and other information. The employer must also have each employee acknowledge receipt of the notice in writing.

Employees must notify their employer at least 30 days in advance of the anticipated start date of FML and expected date of return, unless due to circumstances beyond the employee's control. Employers must notify employees of this requirement or the employee notice requirement will be waived.

An employer that fails to comply with the posting and notice requirements is subject to a first time civil

penalty of \$50 per employee, and for any subsequent violation, \$300 per employee.

Interaction with Other Leave Laws

A covered employee's paid FML runs concurrently with any other applicable leave the employee may take under FMLA and the Massachusetts Parental Leave Act. Should the employee take FML while not eligible for FMLA leave, the employee may take FMLA leave in the same benefit year only to the extent the employee remains eligible for concurrent leaves.

Job Protection Rights

Upon return to work from FML, employees must be restored to their previous position or to an equivalent position with the same status, pay, benefits, length of service credit and seniority as of the date of the leave. However, an employer is not required to restore employees to their previous position if other similarly situated employees have been laid off due to economic conditions or other operating changes affecting employment during the leave, provided employees retain preferential consideration for another position to which they were entitled as of the date of leave.

Retaliation and Remedies

Employers may not retaliate or discriminate against employees who take FML or interfere with their rights to do so. Any negative employment action that happens while an employee is on leave or within six months after returning to work or filing a civil complaint is presumed to be unlawful retaliation. An employer would have to prove otherwise. Employers found liable for violations may be required to pay three times an employee's lost wages and benefits plus reasonable attorney fees.

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