Guardian

The State of Paid Family Leave Laws, 2019

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On January 1, 2018, New York's paid family leave (PFL) law became effective, making it the sixth jurisdiction to offer this benefit in addition to California, New Jersey, Rhode Island, Washington[1] and the District of Columbia. Additionally, legislation to implement paid family leave was considered by state legislatures in Arizona, Connecticut, Delaware, Hawaii, Iowa, Maryland, Massachusetts, Missouri, Nebraska, and Virginia. Of these states, only Massachusetts enacted comprehensive paid family leave. Other PFL initiatives that vary in scope and intent were advanced in Hawaii, Delaware and Virginia.

This article will provide an overview of the newly enacted Massachusetts law and summarize other recent PFL activities.

Massachusetts Paid Family and Medical Leave Law

The new law gives workers up to 12 weeks of paid leave to care for a newborn or sick family member and up to 20 weeks of paid medical leave for their own serious illness. A "family member" includes a domestic partner, child, spouse, grandparents, siblings, and parents of a spouse or domestic partner. Employers with at least one employee working in Massachusetts are subject to the law, and an employee's tenure with a company has no bearing on his/her eligibility for paid leave. Certain former employees and self-employed workers also are eligible.

Massachusetts will administer the paid leave program, which will be funded through a 0.63% payroll tax to be split by the employer and employee. Workers taking paid leave must adhere to a seven-day waiting period after which they will begin earning 80% of their wages, capped at 50% of the state average weekly wage, and then 50% of their wages beyond that amount, capped at $850 per week.

The law becomes effective January 1, 2021. However, employers must fulfill several new requirements months in advance of that time. By July 1, 2019, some employers must begin contributing 0.63% of each employee's wages to the state trust that will fund the leave program. Employers with fewer than 25 workers will not be required to contribute. Companies with more than 25 workers must make the full contribution but will be permitted to deduct 40% of the contribution from the employee's wages for medical leave and 100% for family leave. Additionally, by July 1, 2019 employers must begin to inform workers of their rights under the new law through written communications and by posting notices advising of the new benefits in the workplace.

The Massachusetts law allows companies with more generous leave benefits to apply for an exemption from the paid leave program. It also requires that companies continue to contribute to employer-sponsored health insurance while an employee is on paid family or medical leave as well as continue to honor employees' accrual of benefits for vacation, bonuses, sick leave, seniority and the like. The law will prohibit employers from penalizing employees who take paid medical or family leave, noting that any adverse employment action taken against a worker within six months of a requested leave will be considered retaliatory. The statute will, however, allow employers to present evidence to justify an adverse employment decision. It also gives workers a private right of action, allowing them to seek reinstatement and reimbursement for lost wages.

[1] Effective July 2020

Other PFL Initiatives

- **Hawaii** did not enact paid family leave but took an important step in that direction. Its governor signed legislation authorizing the state's Legislative Reference Bureau to conduct a PFL study to assist lawmakers in determining what approach best suits the state. The Bureau will examine other state paid family leave frameworks as well as temporary disability insurance models, and will analyze such factors as ease of applications, the speed of benefits payments, and related costs to employers and employees. The Bureau must submit its findings and recommendations to the state legislature by September 1, 2019.

- **Oregon** also is studying paid family leave after two state legislators formed a workgroup to explore the development of a statewide paid family and medical leave program. The workgroup will deliver policy recommendations to the state legislature in 2019.

- **Delaware** and **Virginia** each passed new laws granting paid leave, but only to state workers. Delaware's law becomes effective April 1, 2019. The state's full-time public sector workers and teachers who have been employed for at least one year will be eligible for 12 weeks of paid maternity or paternity leave to care for a newborn or adopted child six years or younger. The Virginia law was implemented through an executive order that became effective July 1, 2018. It authorizes up to eight weeks of paid parental leave for executive branch state workers who can use the benefit to bond with a newborn, or a child 18 or younger newly placed through adoption, foster care or custodial care. Paid leave can be taken in conjunction with other leave benefits and applies to both parents if both are eligible Virginia state employees.

- **Federal legislative activity** has largely been focused on reducing costs associated with providing or taking leave. The Strong Families Act, which became law in December 2017, lets companies claim tax credits for a portion of wages of certain workers who take family or medical leave, an approach that should make paid leave more accessible to employees while making it less costly to employers. While paid leave has been a priority for White House Advisor Ivanka Trump, no action is expected during December on the Family and Medical Insurance Leave (FAMILY) Act, sponsored by Democrats Sen. Gillibrand (D-NY) and Rep. DeLauro (D-CT). Details of this proposed program can be found here.

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