

Massachusetts Raises Minimum Wage, Mandates Paid Family and Medical Leave

By Douglas J. Hoffman

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Massachusetts Governor Charlie Baker has signed a [sweeping bill](#) that, over a period of five years, will: (1) raise the minimum wage to \$15 per hour; (2) mandate paid family and medical leave for Massachusetts employees; and (3) phase out Sunday and holiday premium pay for retail employees. The law, signed on June 28, 2018, also will institute an annual sales tax holiday weekend. The first minimum wage increase, to \$12.00 an hour, and first decrease in Sunday and holiday premium pay will go into effect on January 1, 2019.

Minimum Wage

Beginning January 1, 2019, the basic Massachusetts minimum wage will increase from \$11.00 per hour to \$12.00 per hour. On the same date, the minimum wage for tipped employees will increase from \$3.75 per hour to \$4.35 per hour.

Subsequent increases are scheduled as follows:

January 1, 2020 — basic minimum wage: \$12.75; tipped minimum wage: \$4.95

January 1, 2021 — basic minimum wage: \$13.50; tipped minimum wage: \$5.55

January 1, 2022 — basic minimum wage: \$14.25; tipped minimum wage: \$6.15

January 1, 2023 — basic minimum wage: \$15.00; tipped minimum wage: \$6.75

A proposal to eliminate the tipped minimum wage altogether was proposed but ultimately not adopted.

Paid Family and Medical Leave

As part of the new legislation, Massachusetts will offer one of the most generous family and medical leave programs in the country. While the law is very complex and its requirements will be fleshed out by administrative regulations, the basics are as follows.

Beginning in 2021, most Massachusetts employees will be entitled to up to 12 weeks of paid leave to care for a family member or bond with a new child, and up to 20 weeks of paid leave to address their own serious medical issues.

The program will be funded by a new payroll tax at the initial rate of 0.63 percent, which goes into effect beginning July 1, 2019. Benefit amounts will be determined based on a percentage of the employee's weekly income, up to a maximum of \$850.00 per week.

The law also creates the Department of Family and Medical Leave, which will publish proposed regulations for comment by March 31, 2019. The regulations are expected to be finalized by July 1, 2019.

Although the right to take leave will begin in 2021, employers must take certain actions much earlier. For example, beginning July 1, 2019, employers must post a notice describing the benefits available under the law and provide each employee, within 30

days of hire, a written explanation of the employee's rights.

The law also contains very strong anti-retaliation provisions. If an employee experiences any negative change in status within six months of a requested leave, the change is presumed to be retaliatory. To rebut this presumption, the employer must present clear and convincing evidence that the action was not retaliatory, and was instead based on an independent justification. The statute also includes a private right of action for employees, who can seek, among other things, reinstatement and treble damages for any lost wages.

We will have additional details on these new leave requirements as the effective date approaches and more clarity is provided by regulation.

Sunday Premium Pay

The Massachusetts "blue laws" currently provide that employees in many retail establishments must receive 1.5 times their regular rate of pay on Sundays. This requirement will gradually disappear over the next few years. Effective January 1, 2019, the premium pay rate for Sunday and holiday work will drop to 1.4 times the regular rate. The premium rate will decrease by 0.1 each year, until the premium pay requirement is eliminated completely on January 1, 2023.

However, the blue laws' prohibition against *requiring* these retail employees to work on Sundays and holidays will remain in effect. Refusal to work on these days will not be grounds for discrimination, dismissal, discharge, reduction in hours, or any other penalty.

Next Steps

Massachusetts employers should ensure their policies and practices address these new requirements. Jackson Lewis attorneys are available to answer inquiries regarding the new laws and assist employers in achieving compliance.

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