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MEMORANDUM

TO: Members of the Stoneham Chamber of Commerce

FROM: Cheri L. Crow, Esq.

DATE: May 6, 2019

RE: Massachusetts Paid Family Medical Leave Act

Last summer, Massachusetts enacted the Massachusetts Paid Family Medical Leave Act (MPFMLA), M.G.L. c. 175M.

Under this law, a “covered individual” is defined as including an employee of an employer in Massachusetts **regardless of length of service with the employer or hours worked** and a former employee who has been separated for 26 weeks or less. Because the paid leave will be in the form of wage replacement paid through a state fund, non-employees (independent contractors) as well as employees can be eligible for paid leave. An employee must have earned enough money over the preceding year to meet the financial test for benefits. Employees must have approximately 15 weeks or more of earnings and earned at least \$4,700 in the prior 12 months in order to be eligible for payments from the state fund.

Covered employees will be entitled to receive, on an annual basis:

- Medical leave of up to 20 weeks for the covered individual’s own health condition,
- Family leave of generally up to 12 weeks to care for family members (defined as spouses, children, parents, domestic partners, parents of a spouse or domestic partner, grandchildren, grandparents and siblings), and;
- Combined medical and family leave of up to 26 weeks.

The law prohibits employers from requiring that employees use their sick time, vacation time or PTO while taking this Medical or Family Leave. This means that Earned Sick Time and vacation/PTO time is all **in addition to** the leave available under the Massachusetts Paid Family Medical Leave law.

These leaves will be required to be paid through a state fund starting on January 1, 2021 but employers with **25 or more employees** will have to start making financial contributions to support the paid leave program starting on **July 1, 2019**. Employers can deduct part of the required contributions from each employee's wages. The total contribution that an employer must collect and remit to the Department of Revenue is a payroll tax of .63%, with the maximum taxable earnings per employee capped at \$132,900.00. In other words the maximum annual tax per employee would be approximately \$837.27 if the employee made at least \$132,900 in earnings (.0063 X \$132,900 cap). The .63% contribution is then broken down to a medical leave contribution of .52% (\$691.08 max) and a family leave contribution of .11% (\$149.19 max). For medical leave, the employer is responsible for 60% of the .63% contribution (\$414.65 max) and the employee is responsible for 40% (\$276.43 max). For family leave, the employee is entirely responsible for 100% of the contribution (\$149.19 max).

The only responsibility that employers with **less than 25 employees** have regarding the contribution will be to deduct the employee's portion from their paycheck and remit it to the Department of Revenue. These deductions must begin to be made as of **July 1, 2019**. For medical leave the deduction is approximately .2079% of payroll (\$276.43 max) and for family leave approximately .11% (\$149.19) and the maximum taxable earnings per employee is capped at \$132,900.00.

Contributions and employment and wage detail reports are to be made through the Department of Revenue's MassTaxConnect system. Employers who do not have accounts on the system will have to register and establish an account.

Payments will be made by the State (no additional payments by employer) based on an employee's average weekly earnings, up to a maximum of \$850.00 per week with the maximum benefit adjusted periodically. The first 7 calendar days of leave are not paid but an employee may elect to use accrued sick or vacation or other PTO for those days.

Retaliation and interference are prohibited. The limitations period for violations of the law is 3 years and damages of 3 times the value of the lost wages and benefits, plus interest, costs and attorney's fees, and reinstatement, may all be awarded.

The Commonwealth has established a new Department of Family and Medical Leave ("DFML") which is to issue regulations with more specific including the use of intermittent leave, the grounds to deny reinstatement and the establishment and handling of employee fraud. Draft regulations for public comment were issued on March 31, 2019. They can be found at www.mass.gov/files/documents/2019/03/29/3-29-19_Draft_Regulations_for_Public_Comment_0.pdf. The final regulations are expected to be in place by July 1, 2019.

Deadline of May 31, 2019.

By May 31, 2019, every employer must **post the poster and provide a written notice** on the MPFLMA to every employee which must be signed by the employee as more fully discussed below.

DFML has released a poster that employers are required to post and notices that employers are required to provide to employees in order to comply with the MPFLMA. If you are a covered business entity (you contract with self employed individuals for services for which you are required to report on a 1099 to IRS for more than 50% of your workforce) under this law, you must also provide a notice to your independent contractors.

It is important to note that each Notice must have the Employer information section, the Employer/Employee Contributions section (for medical leave and family leave separately), and the Private Plan Exemption section

filled out and completed. Also, there is an Acknowledgment section which you **MUST** have the employee or independent contractor date and sign. You need to retain a copy and provide one to them. The notices are available in many languages.

The poster and notices can be found at:

<https://www.mass.gov/lists/paid-family-and-medical-leave-downloads-for-massachusetts-employers>

Additional information is also available at:

www.mass.gov/orgs/department-of-family-and-medical-leave

www.mass.gov/guides/a-guide-to-paid-family-and-medical-leave-for-massachusetts-employers

www.mass.gov/info-details/calculate-your-paid-family-and-medical-leave-contributions