



## THE GRAND BARGAIN

Two ballot initiatives were slated to be voted on by MA voters in this November's election; one a family and medical leave initiative and the other an increase in the MA minimum wage. Rather than wait for the November election results, Governor Baker, the MA legislature and the business community took control of the process and agreed to legislation known as "the Grand Bargain," signed by Governor Baker on June 28, 2018.

Interestingly, the Grand Bargain addresses four different components, while there were only two ballot initiatives, as described above. The Grand Bargain also addresses the phase-out of premium pay for retail work on Sundays and holidays, and an annual sales tax-free weekend every August. (For a comparison chart of the ballot initiatives and the Grand Bargain created by a member of the MA legislature, see [http://randyhuntcpa.com/docs/2018\\_Ballot\\_Questions\\_vs\\_Grand\\_Bargain\\_20180620.pdf](http://randyhuntcpa.com/docs/2018_Ballot_Questions_vs_Grand_Bargain_20180620.pdf).)

### IN A NUTSHELL

Here are the four components of the Grand Bargain:

- The minimum wage raises gradually from the current \$11.00 per hour to \$15.00 by January 1, 2023. Tipped workers also receive a graduated raise from the current \$3.75 to \$6.75 per hour by January 1, 2023.
- The employer obligation to pay retail employees time-and-one-half for hours worked on Sundays and holidays is gradually eliminated by 2023.
- MA law now includes an annual sales tax-free weekend to take place every August.
- Last, but certainly not least, the state's first paid family and medical leave requirement is created, with the first payouts beginning in 2021.

### MASSACHUSETTS PAID FAMILY AND MEDICAL LEAVE LAW

The most significant component of the Grand Bargain is the new MA Paid Family and Medical Leave (PFML) program). Following below is a basic summary of the major provisions to get you started without going too far into the weeds.

The PFML program will be administered by the state through a newly created state agency (the Department of Family and Medical Leave), and contributions will be held in

trust (the Family and Employment Security Trust Fund) designated solely for this purpose.

Speaking of contributions, the PFML is funded by employer and employee contributions through a .63% (.0063) payroll tax on wages. Although the first PFML benefits are not available until 2021, regulatory guidance and pre-funding will take place in the interim.

Pre-funding of the program begins July 1, 2019. Funding will continue once the program “goes live” on January 1, 2021. The initial payroll tax rate will be .63% (.0063) of wages paid up to the wage base limit established annually by the federal Social Security Administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program (\$128,400 in 2018).

Responsibility for paying the payroll tax will generally be split between employers and employees. However, employers with fewer than 25 employees are not required to pay the employer share of the payroll tax and may pass on 100% of the payroll tax to employees.

Benefits under the PFML program will be provided for the following periods of time:

Paid Medical Leave	Up to 20 weeks per benefit year
Paid Family Leave	Up to 12 weeks per benefit year (up to 26 weeks for care of a covered service member)
Maximum Medical/Family Leave	Up to 26 weeks per benefit year

Benefits provided during the PFML are:

- Wage replacement -- up to \$850 per week based on a formula after completion of a 7-day waiting period
- Job protection – reinstatement to a previous or equivalent position with the same status, pay, benefits, service credit and seniority as of the date the leave began, including accrual of vacation, sick leave, etc.
- Health plan protection –the employer must continue and contribute to the covered individual’s group health plan coverage during the family or medical leave on the same terms and conditions
- Prohibition against employer retaliation

Paid medical leave will be available to any covered individual with a serious health condition – a serious health condition is an illness, injury, impairment or physical or

mental condition that involves (A) inpatient care in a hospital, hospice or residential medical facility; or (B) continuing treatment by a health care provider.

Paid family leave will be available to any covered individual -- (A) to care for a family member with a serious health condition, (B) to bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after placement of the child with the covered individual for adoption or foster care, (C) because of 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 in the Armed Forces, (D) to care for a family member who is a covered servicemember with a serious injury or illness incurred or aggravated in the line of duty.

The PFML definition of family member is expansive; exceeding the federal FMLA definition of family member. For purposes of PFML in MA, a family member includes:

- The covered individual's spouse, domestic partner, child, grandchild, sibling, grandparent, parent of the spouse or domestic partner or an adult who was guardian of the covered individual when s/he was a child.
- "Child" includes a biological, adopted or foster child, a stepchild or legal ward, a child to whom the covered individual stands in loco parentis, or a person to whom the covered individual stood in loco parentis when the person was a minor child

While the PFML is a government program administered by the state, it creates both compliance and cost considerations for employers as well. For example, **Effective July 1, 2019**, employers will be subject to two new notice requirements under the PFML law. In both instances the DUA will provide model notices in several languages for use by employers.

- Workplace Notice. Employers must conspicuously post a workplace notice (poster) at all its business locations providing information regarding benefits under the new PFML law.
- New Hire Notice. Employers must deliver written notice to each new hire – within 30 days from the employee's start date – in the employee's primary language describing the PFML law and employer/employee contribution obligations as well as instructions on how to file a claim.

## EMAC EMPLOYER HARDSHIP WAIVER ENACTED

Yes, EMAC is still in the news. As part of the recently enacted Massachusetts budget bill, the EMAC provisions were amended to direct the DUA director to develop and approve a hardship waiver for an employer experiencing financial hardship due to its liability under increased EMAC contribution rates and/or the EMAC Supplement.



In evaluating eligibility for a hardship waiver, special consideration may be given to businesses including, but not limited to:

- businesses with limited or variable revenue;
- small businesses;
- employers with seasonal or temporary employees; and,
- employers providing services that serve the public interest.

Any such hardship waiver may reduce or fully exempt an employer for its EMAC liability due to an increased EMAC contribution.

In addition, the DUA director must develop and approve administrative procedures for providing advanced notice for, and extending the due date of, an employer's EMAC Supplement contribution. The procedures for requesting an extension of the EMAC Supplement due date may be provided to employers with their quarterly notice of EMAC liability determination.

This new hardship waiver is effective July 1, 2018 but likely will require notice of DUA procedures before the waiver can be practically implemented.

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