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EMPLOYMENT LAW ALERT
An Overview of Massachusetts' "Grand Bargain"

In late June 2018, Massachusetts' Governor, Charlie Baker, signed "An Act Relative to Minimum Wage, Paid Family Medical Leave, and the Sales Tax Holiday," more commonly known as the "Grand Bargain." As the Act's long name suggests, the law raises minimum wage while eliminating mandatory Sunday and holiday pay, introduces paid family medical leave, and establishes an annual statewide sales tax holiday.

Minimum Wage

Over the next five years, the state will raise the hourly minimum wage and the hourly tipped minimum wage as follows:

Effective Date	Minimum Wage	Tipped Minimum Wage
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

In addition to increasing the tipped minimum wage, the law requires that as of January 1, 2021, employers calculate "the additional amount on account of tips" at the "completion of each shift worked by the employee" rather than performing this calculation on a pay-period basis.

On its face, this is a straightforward (albeit potentially costly) change. But, it's important to think of this in the larger scheme of employer pay practices. Consider, for example, the impact this change can have to your compliance with the Massachusetts Equal Pay Act ("MEPA"). Under MEPA, employers must pay employees equally for comparable work. Employers may justify differences in pay using a very limited set of permissible bases. Changes to the minimum wage are not among those limited set of permissible bases. If an employer were to increase employee wages to comply with the minimum wage requirements, but failed to review the pay of those doing comparable work, the employer could run afoul of MEPA. Consider, too, the employee relations implications. An employee who made \$12.00/hour prior in 2018 made a full dollar more than minimum wage. While that employee's pay need not be increased in 2019 to comply with the law, might that employee not feel undervalued because they're suddenly making "only" minimum wage?

Sunday and Holiday Pay

Massachusetts Blue Laws currently require that retailers pay time-and-a-half to employees who work on Sundays or certain holidays, even if their hours do not exceed 40 in a single workweek. The new law will phase out this requirement as follows:

Effective Date	Rate for Sunday and Holiday Work
1/1/2019	1.4x regular rate
1/1/2020	1.3x regular rate
1/1/2021	1.2x regular rate
1/1/2022	1.1x regular rate
1/1/2023	Regular hourly rate

Unfortunately, the phase-out of Sunday and holiday premiums will not be a clean process. Under the FLSA, extra compensation provided by a premium rate for work on Sundays or holidays must be included in calculating an employee's regular rate. The only exception is when the premium rate is at least 1.5 times the rate for comparable work performed in non-overtime hours.

The current Sunday and holiday premium requires time-and-a-half for Sunday and holiday work, which means retailers do not have to include the Sunday/holiday premium in calculating employees' regular rate of pay. However, once the level drops to 1.4 in January 2019, the premium will have to be included in calculating the regular rate for overtime purposes. This could result in retailers paying more overtime, in addition to the Sunday/holiday premium. Retailers should take a look at their scheduling practices to determine whether lowering the premium prior to 2023, when it is eliminated, is actually in their best interest.

The new Sunday law continues to provide that employees cannot be required to work, or be penalized for refusing to work, on Sundays or holidays.

Paid Family Leave

Important Dates

- **March 31, 2019:** Proposed regulations published. This means that many of the current questions should be answered this spring.
- **July 1, 2019:** Employers must post a notice describing benefits available under the law and provide each employee and contractor (within 30 days of hire) a written explanation of employee's rights.
- **July 1, 2019:** State begins collection of the .63% payroll tax.
- **January 1, 2021:** Paid leave benefits begin.

Overview

Starting on January 1, 2021, Massachusetts workers will be entitled to up to 12 weeks of paid leave to care for a sick family member or a newborn, and up to 20 weeks of paid medical leave to attend to their own serious medical needs.

For the purposes of family leave, the law broadly defines "family member" to include a domestic partner, grandparents, grandchildren, siblings, and the parents of a spouse or domestic partner. The law adopts a broader definition of "serious health condition" than that set forth in the FMLA (either inpatient care or continuing treatment by a healthcare provider).

The law will apply to all employers with at least one employee working in Massachusetts, regardless of the employee's hours or length of service with the employer. Former employees and self-employed workers may also be entitled to paid leave under the law if criteria are met.

The state will administer the new leave program and the leave will be funded through a 0.63% payroll tax, which the employer and employee will split. Workers on paid leave will be required to pass through a seven-day waiting period (with the exception of new mothers following childbirth). Thereafter, 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).

Employer Required Notice of Family Leave

By July 1, 2019, in accordance with certain requirements of the newly established Department of Family and Medical Leave, employers must inform employees of their new rights by (1) conspicuously posting a notice of benefits, and (2) beginning to issue written information to new employees (and independent contractors). Employers who are found not to have satisfied these notice requirements will face fines.

Contribution of Wages

Also, starting on July 1, 2019, Massachusetts employers must begin contributing 0.63% of each employee's wages to the state trust funding the paid leave. Employers will be permitted to deduct certain percentages of the contribution from the employee's wages—up to 40% for medical leave and up to 100% for family leave (it is not yet known how the .63% will be allocated between medical leave and family leave). If the employer has 25 or more employees, it will have to contribute any additional amount beyond the employee-deduction. If the employer has less than 25 employees, it will not have to contribute any additional amount beyond the employee-deduction.

Additional Considerations

- Employers must continue to honor employee accrual of benefits (e.g., vacation, sick leave, seniority, and bonuses) and to contribute to employer-sponsored health insurance during an employee's period of family/medical leave.
- Employers must also continue to comply with all preexisting laws, company policies, and/or collective bargaining agreements providing greater leave benefits.
- Employers with greater leave benefits will have the option of applying for an exemption from the program.
- Employers may not retaliate against employees for exercising their rights under the law, and any adverse employment action taken against an employee during or within 6 months of their leave will be considered presumptively retaliatory. The law provides employees with a private right of action to pursue retaliation claims.
- Leave must be provided on a rolling 12-month basis. Consider now current policies that operate on a different calendar year and consider moving them to a rolling 12-month basis (changing FMLA calculation requires ample notice and significant care).

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