



May 20, 2019

**Re: Negotiators of the new paid family and medical leave program (see SECTION 29 of chapter 121 of the Acts of 2018) propose six legislative amendments to support successful implementation**

Dear Governor Baker, Senate President Spilka and House Speaker DeLeo:

The Commonwealth adopted landmark legislation last session establishing the paid family and medical leave program. This agreement resulted in several statewide ballot questions being removed from consideration in November 2018.

The complex new law was forged following months of detailed negotiations between legislative and executive leaders, members of the Raise Up Massachusetts coalition and representatives from the business community all working collaboratively to achieve a meaningful compromise.

New relationships and open lines of communication between our groups were established during the process of those negotiations. This continued spirit of collaboration has led us to agree to advocate collectively for several changes to the paid family and medical leave law prior to its full implementation. Our focus is limited to the paid family and medical leave law and does not extend to the minimum wage.

As we embark on full scale implementation of the new law, which will impact millions of workers across the state and tens of thousands of employers, the members of the Raise Up Massachusetts coalition and representatives from the business community are working together to ensure a successful rollout of this new program for employees and employers alike. In the course of our work together we have identified the need for a three month extension of the July 1, 2019 deadline for approval of employers' private paid family and medical leave plans and the commencement of the required plan contributions. In addition, there are five other amendments to chapter 121 of the Acts of 2018 that are necessary for clarification of rights and responsibilities of stakeholders to effect the smooth implementation and operation of the new law.

The state's Labor & Workforce Development Secretariat is to be commended for its efforts developing and distributing new draft regulations, as well as its outreach to employees and employers through listening sessions across Massachusetts. As the result of feedback provided to the Secretariat and the newly created Department of Family and Medical Leave at the statewide listening sessions, the department issued an extension of the deadline for securing state approval of proposed private plans to September 20, 2019. We are grateful to the department and the Labor Secretariat for recognizing the need for an extension and taking steps, within the scope of the department's authority, to address that need.

**However, given the lack of employer clarity on the regulations, the importance of communicating with employees regarding payroll deductions, and the ability for insurance providers to offer a private sector option, we continue to support and urge legislative action on the proposed amendment extending the deadline for private plan approvals and the commencement of required contributions from July 1, 2019, to October 1, 2019, as well as the additional five clarifying amendments to the statute described below.<sup>1</sup>**

Importantly, this proposed three month statutory extension would not impact any of the benefits or the timing for eligibility of benefits under the new law.

Given the complexity of this new law and its impact on employees and employers, we continue to work collaboratively through the implementation process. As the result of this process, and after considering feedback from stakeholders at the statewide listening sessions, we write to urge the adoption of the following legislative amendments that concern the paid family and medical leave law only.

These priority amendments will ensure greater clarity for employers, insurance providers (endeavoring to develop and provide products to employers), employees applying for the leaves covered by the new law, and health care providers certifying the need for leave. In addition, the clarifying amendments align core principles of the Massachusetts paid family and medical leave law with the federal Family and Medical Leave Act (FMLA), a common goal of all stakeholders, including the Commonwealth's Department of Family and Medical Leave.

Specifically:

1. Intermittent Leave – This amendment would clarify that leave taken on an intermittent or reduced leave schedule reduces the amount of remaining leave available to a covered worker. This change tracks the language of the federal FMLA.
2. Serious health condition – This amendment clarifies that eligibility for medical leave for the covered individual's own serious health condition arises where such a serious health condition "makes the covered individual unable to perform the functions of the covered individual's job". Again, this change aligns our state paid family and medical leave law with the federal FMLA.

As a group we also support the Administration's original request of the Internal Revenue Service (IRS) to provide direction as to how the paid family leave and medical leave benefits should be treated for tax purposes. We appreciate that the Department of Family and Medical Leave has provided initial guidance subject to IRS interpretation. However, should the IRS not provide formal guidance in time for July 1, 2019, we would urge the Department of Revenue (DOR) to issue formal interim guidance subject to a final IRS determination. Given the tax treatment in other states, DOR interim guidance would be helpful.

In order to ensure that there is a smooth roll out, we would also support the line item appropriation as proposed in H.74 line item (7003-0300) for \$3,500,000 currently pending before House Ways & Means. This appropriation would support the department's communication and outreach plan to employers and individuals.

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<sup>1</sup> However, per existing law, workers will not begin to access benefits until January 2021.

Attached hereto is a copy of draft language of the proposed amendments to chapter 121 of the Acts of 2018 for your consideration and review. We have worked collaboratively to identify, prioritize and draft the language to make these important changes that can positively impact the immediate issues facing employers and employees during this implementation period.

Please contact us if you have any questions or need additional information on any of these topics. We appreciate your leadership and support for paid family and medical leave.

Sincerely,

Debra Fastino, Executive Director, Coalition for Social Justice and Co-Chair, Raise Up Massachusetts

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