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LEGAL ADVISORY: The “Grand Bargain”

I. INTRODUCTION

On June 28, 2018, Governor Charlie Baker signed H.B. 4640, “An Act Relative to Minimum Wage, Paid Family Medical Leave and the Sales Tax Holiday, also known as the “Grand Bargain,” into law, Chapter 121 of the Acts of 2018 (“Law”). Significant provisions include the creation of a permanent annual state sales tax holiday (beginning August of 2019), increases to the state minimum wage over several years (initial increases effective January 1, 2019), and the creation of a new paid family and medical leave program in the Commonwealth (funding payroll tax effective July 1, 2019; paid leave benefits effective January 1, 2021). The new paid family and medical leave program, created by the Law via the insertion of M.G.L. c. 175M, is not applicable to a municipality, district, political subdivision or authority unless voluntarily adopted by a majority vote of the local legislative body or the governing body.

II. SUMMARY OF SIGNIFICANT PROVISIONS

A. Permanent State Sales Tax Holiday

With the aim of providing mutual benefit to both consumers and retailers, the Law creates a permanent, two-day weekend annual state sales tax holiday each August. The sales tax holiday will go into effect in August of 2019. The exact dates, to be determined, shall be set by the Legislature each year by June 15th. If the Legislature fails to do so, the Commissioner of Revenue shall set the dates no later than July 1st. The Law contains more specific parameters applicable to certain goods, to vendors, and to the Commissioner of Revenue.

B. Minimum Wage Increases, Sunday/Holiday Pay Phased Out

The Law will gradually increase the state minimum wage to \$15.00 per hour by 2023. The initial increase is effective in January of 2019, raising the hourly minimum wage from \$11.00 to \$12.00. The Law will also increase the state minimum base wage for tipped workers to \$6.75 per hour by 2023, with the first increase in January of 2019. The initial increase will raise the state minimum base wage for tipped workers from \$3.75 to

\$4.35 per hour. In addition, Sunday and holiday wage/work policies will be reformed under the Law, which phases out Sunday and holiday premium pay.

C. Paid Family and Medical Leave

The new paid family and medical leave program created under the Law and codified in M.G.L. Chapter 175M is only applicable to school districts upon a voluntary vote to adopt and accept employee participation in the program, as outlined in Section 10. The Law does not lessen or remove an employer's obligations to comply with any policy, law or existing collective bargaining agreement providing for an employee's greater or additional rights, nor does it curtail an employee's rights, privileges or remedies under a collective bargaining agreement or employment contract.¹

With the funding payroll tax effective July 1, 2019 and leave benefits effective January 1, 2021, the Law will provide covered employees who contribute to the program with paid family and/or medical leave, not to exceed a maximum of twenty-six (26) total weeks, in the aggregate, per benefit year. A covered employee may take up to twelve (12) weeks of paid family leave per year to care for a family member with a serious health condition, to bond with a new child (during the first twelve months after the child's birth or placement)², or relative to a qualifying exigency arising out of a family member's active duty or impending call or order to active duty in the military.³ A covered employee may take up to twenty (20) weeks of paid medical leave per year for a personal serious health condition.³ A covered employee may take up to twenty-six (26) weeks of paid family leave per year for the care of a family member who is a covered military servicemember.⁴

Under the Law, a covered employee's weekly benefit will be calculated as a percentage of the employee's average weekly wage, up to a maximum benefit of \$850.00⁵ per week.

¹ An employer may not compel an employee to exhaust sick time, vacation time or personal time prior to or while taking this paid medical leave. An employer may, however, require that payment be made concurrently or otherwise coordinated with payments made or leave allowed under a collective bargaining agreement or employer policy (any such leave paid at a higher rate shall count against the allotment of leave available under the Law), such that the employee receives the greater of the benefits available for the covered reason. Leave under the Law runs concurrently with leave taken under M.G.L. c. 149, § 105D or under the Family Medical Leave Act of 1993, 29 U.S.C. § 2611, et seq.

² Bonding leave may not be taken intermittently or on a reduced leave schedule unless the employee/employer agree otherwise.

³ Active duty leave may be taken intermittently or on a reduced leave schedule.

⁴ Such leave may be taken intermittently or on a reduced leave schedule when medically necessary.

⁵ This weekly maximum benefit shall be offset by any wage replacement received by a covered individual under any government program or law, including but not limited to workers' compensation under M.G.L. c. 152, other than for permanent partial disability incurred prior, or under other state or federal temporary or permanent disability benefits laws, or an employer's permanent disability policy or program. Offset shall only apply to an employer's temporary disability policy or program or paid family or medical leave policy benefits if the aggregate of an employee's total benefits would otherwise exceed the employee's average weekly wage.

Further, the Law provides that, no later than October 1st of each year, the maximum weekly benefit shall be adjusted to equal 64% of the state average weekly wage, with the adjusted maximum weekly benefit amount to be effective beginning January 1st of the following year.

There is a seven (7) calendar day waiting period for the receipt of benefits under the Law. Self-employed persons may opt into the program.

Upon return to employment, an employee who has taken paid family or medical leave under the Law shall be restored to the same or an equivalent position, unless other equivalent employees have been laid off in the interim due to a change in economic or operating conditions. Returning employees must receive the same pay, benefits, service credit and seniority as of the date of leave.

Employers and covered entities are required to issue notice to employees, inclusive of an explanation of available benefits and employee/employer obligations, and post approved notice of the benefits available under the Law in a conspicuously placed workplace notice on each premises in accordance with the Law's requirements. Employers bear the burden of demonstrating compliance, with violations resulting in fines.

The law sets forth additional requirements regarding employee notice to employer and waiver, benefit claims, certifications for leave, and contributions to the Family and Employment Security Trust Fund, established and administered under / in accordance with the Law. The Law also establishes a Department of Family and Medical Leave ("Department") within the Executive Office of Labor and Workplace Development, which shall propose regulations (to be published by March 31, 2019), confer paid medical and family leave benefits as specified and establish an appeals system pursuant to M.G.L. c. 30A. An employer may apply to the Department for approval to meet its obligations under the Law via a private plan, if the private plan provides the same rights, protections and benefits to employees and complies with stated requirements.

III. CONCLUSION

Employers should review the full text of the law, consulting with their counsel to discuss any potential impacts on existing policies or procedures.

This advisory is for informational purposes only and may be considered advertising. It is not intended to and does not constitute legal advice with respect to any specific matter and should not be acted upon without consultation with legal counsel.