Chimento & Webb, P.C.

MEMORANDUM

TO:	CLIENTS AND COLLEAGUES
FROM:	CHIMENTO & WEBB, P.C.
DATE:	JANUARY 31, 2018
RE:	MASSACHUSETTS PAID LEAVE ON THE BALLOT

Ballot question would create paid leave fund, requiring contribution from employers for all workers and contractors

Massachusetts voters may be asked later in 2018 to decide on creation of a new state-wide paid leave program.

A new ballot question would create a state-run trust account that would provide for paid leave to Massachusetts employees, independent contractors, and self-employed business owners.

I. What is the leave?

If passed, the ballot question would provide eligible Massachusetts employees – both regular W-2 employees and independent contractors – with up to 16 weeks of family leave and 26 weeks of medical leave. Employees on leave would receive benefits from a state trust fund of 90% of average weekly wage, up to a cap of $1,000 per week. That amount would be adjusted beginning in 2021 to account for changes to the Consumer Price Index.

Eligibility for the leave largely mirrors eligibility under the Family and Medical Leave Act, and allows covered individuals to take time off after birth or adoption, because of their own serious health condition, or to care for a family member with a serious illness. The proposal would also allow up to 26 weeks leave "because of any qualifying exigency" arising out of a family member's call to active duty in the Armed Forces.

During the leave, employers would continue contributing to all employment-related health insurance benefits at the same level as for active employees.

Although employers contribute to the trust account, employers would not approve the leave – approval for benefits will be the job of a new department of family and medical leave, created by passage of the law.

II. Funding the leave account

The ballot question would create the trust account through mandatory contributions from employers, though a share of the contributions could then be passed on to employees.

Under the proposal, employers would contribute .63% of each employee's wages into a trust fund (though the percentage would increase in future years). An employer may require that employees pay for up to half of the contribution from their own wages in the form of a salary deduction, or it may choose to fund the .63% all on its own.

Employers must also make contributions on behalf of every independent contractor. For independent contractors, the employer must pay 50% of the contribution amount (.315%) for each paid with a 1099. If the contractor wants to be covered under the law, the contractor must make an election for coverage and then pay the remaining 50% of the contribution amount out of pocket. However, the employer must make its contribution for the 1099 employee regardless of whether the contractor elects coverage.

The employer portion of this payment is **not** a deduction from employee wages, but an **extra contribution from the employer's own funds**; the amount is based on (but does not come from) the wages or payments to employees and independent contractors.

III. What happens next?

The Secretary of State has certified the ballot question. The measure is now before the legislature. If the legislature does not pass it, the measure could appear on the ballot in November, 2018.