



LEGISLATIVE UPDATE

The Retail Review

THE OFFICIAL NEWSLETTER OF THE
RETAILERS ASSOCIATION OF MASSACHUSETTS

May/ June 2019 Edition



Thursday, November 14

RAM Annual Meeting
8:30 am - 12:00 pm
RAMAE Luncheon
12:30 pm - 2:00 pm
Bentley University
Waltham, MA



MA FY20 State Budget:

Marketplace Sales Tax, Preliminary Sales Tax Remittance Changes, EMAC

By the end of May, the MA House of Representatives and the state Senate had both had a turn to debate the proposed FY20 state budget. Each branch enacted their own version of the budget, putting their signature stamp on what priorities and programs should be funded in our next \$42 billion plus spending plan. A Conference Committee of three representatives and three senators will now meet privately to negotiate a compromise budget bill with the goal of trying to deliver a final plan to the Governor in mid to late June, prior to the start of the new fiscal year on July 1.

RAM was successful in advocating for the inclusion of new **marketplace sales tax collection** language first in the Governor’s budget proposal (H.1), and then securing passage in both the House and the Senate. The proposed law would require marketplace facilitators (i.e., Amazon, E-Bay, Etsy, etc.) to collect and remit the state’s 6.25% sales tax on all of the transactions that take place on their platforms, including all sales made by third party marketplace sellers. The language closely resembles the bill language which RAM had drafted earlier this session and which was filed by Sen. Michael Rodrigues of Westport.

This important step to update the Commonwealth’s sales tax collection laws is in line with similar actions being taken across the country in the wake of the *Wayfair* decision, and will bring us closer to true marketplace and sales tax fairness between all sellers. The budget proposals also include RAM supported language to establish a lower sales threshold that would trigger an out-of-state remote seller’s obligation to collect and remit the MA sales tax. The proposed threshold of \$100,000 in remote sales into the Commonwealth also would fall in line with what was referenced in the *Wayfair* decision.

Also, as previously reported, in H.1 Governor Baker had **proposed changes to the state’s sales and meals tax collection and remittance process**. The vague language would have allowed the Department of Revenue (DOR) to, by regulation, mandate a “preliminary remittance of sales tax” be made to the Commonwealth by thousands of retailers and restaurants. RAM strongly opposed those provisions to make changes in the current sales tax remittance process, and expressed our extreme concern to both the House and Senate. **RAM lobbying on this issue paid off** in that the proposal was not included in either the House nor the Senate budget.

With regard to the **Employer Medical Assistance Contribution (EMAC) Supplement**, we can report that no attempt has been made by the Baker Administration, the House, or the Senate to extend or replace the expiring \$750 per employee penalty. The law which put the EMAC tax in place in August of 2017, called for a temporary two-year tax increase for 2018 and 2019. Employers with employees on public health assistance, MassHealth or ConnectorCare, have paid and are paying an additional EMAC Supplement of up to \$750

continued on next page >>>

{ www.retailersma.org }



The Retail Review

May/June 2019

OFFICERS

CHAIRMAN

Jerome F. Murphy
*M. Steinert & Sons
Company, Inc.*

VICE CHAIRMAN

Rocco Falcone
Rocky's Ace Hardware

SECRETARY

Wendy Hudson
*Nantucket Bookworks
& Cisco Brewers*

TREASURER

Shannon Kelley
The Paper Store

EXECUTIVE STAFF

PRESIDENT

Jon B. Hurst

VICE PRESIDENT

William C. Rennie

GENERAL COUNSEL

Ryan C. Kearney

MEMBERSHIP DIRECTOR

Andrea K. Shea

BUSINESS DEVELOPMENT DIRECTOR

Joe Barnes

FINANCE MANAGER

Audrey Brienza

You can contact RAM at:
18 Tremont Street
Suite 810
Boston, MA 02108
Phone: (617) 523-1900
Fax: (617) 523-4321
www.retailersma.org

per employee, annually. **RAM's top priority has been to ensure that the sunset of the program on December 31, 2019**, is in fact honored by the state. To date, the Administration, House and Senate have stood firm on the repeal date, and have not moved to introduce any extension or replacement program.

RAM Testifies Against Restrictive Scheduling Mandate

In April, RAM testified in opposition to two predictive scheduling bills before the Labor and Workforce Development Committee. The lead bill (S.1110) is a re-file from prior sessions and seeks to impose **strict employee scheduling requirements on retail**, hospitality and food service employers with more than 50 employees. Modeled after the San Francisco Retail Workers' Bill of Rights, the proposal would require that employers provide 14 days advanced written notice of an employee's work schedule and make penalty payments for employer-initiated changes made thereafter. The proposal also includes "Right to Rest" and "Offer to Work" provisions and allows for significant penalties for non-compliance with the law.

A similar measure had also been introduced as a proposed ordinance in the City of Boston by Boston City Councilor Michelle Wu in October 2018. Limited in scope, the Boston proposal would only apply to businesses contracting with the city. RAM is actively engaged in discussions with the Council as they further explore the issue this year.

Statewide Plastic Bag Ban/Tax Discussions

In the wake of the implementation of the City of Boston's **plastic bag ban** and mandatory \$0.05 fee, which took effect in December of 2018, pressure has increased considerably for passage of a statewide law. As of May, local bag ordinances are either in effect or have passed in one form or another in over 110 municipalities across the Commonwealth. Adoption of a statewide law is now needed to provide uniformity – provided certain important protections are put in place.

The Joint Committee on Environment, Natural Resources and Agriculture recently held a public hearing on legislation which calls for a complete ban on all single-use plastic check out bags provided to a consumer at the point of sale, allowing only for paper or reusable bags to be offered. The discussion has moved away from allowing for any thicker plastic bags to be considered reusable, regardless of mil thickness. Only polypropylene or similar commonly seen reusable bags would be considered to be "reusable." Whether or not to mandate a fee on bags like Boston and Cambridge, or to just go with a straight ban has become the main topic of debate.

RAM has engaged in meetings and discussions with both the Legislature and the environmental advocates to try and reach a compromise on a statewide bill. We surveyed our members earlier this year to better understand the varying opinions in the RAM membership. As expected, opinions varied greatly, but mainly fell along lines with regard to the type and size of seller.

In a proposed agreement to a ban on plastic and a minimum mandatory fee on paper and reusable bags, RAM is seeking a waiver from the mandatory fee for smaller sellers and low volume bag users – as yet undefined. We are also seeking strong preemption over past and potential future municipal actions, so that the statewide law will remain just that, the statewide standard. The discussions with the Committee and the environmental advocates are ongoing. ■

Family & Medical Leave Law

Key employer requirements under the Massachusetts Family and Medical Leave Law (FML) are scheduled to become effective over the next few months. All members are strongly advised to visit the Department of Family and Medical Leave (DFML) website to familiarize yourself with your rights and obligations under this complex law. <https://www.mass.gov/orgs/departments-of-family-and-medical-leave>

Contributions Commence July 1, 2019

Under the law employers will have to begin collecting required program contributions equal to .63% of a covered worker's earnings starting July 1, 2019. The maximum amount of earnings subject to the contribution rate is \$132,900 annually for each covered worker. Of the .63%, .52% is allocated to medical leave and the remaining .11% is allocated to family leave. Employers are responsible for paying 60% of the medical leave portion and may deduct the remaining 40% from employee pay. Employers may also deduct 100% of the family leave portion from employee pay. However, employers with fewer than 25 workers are exempt from contributing the employer share of the contribution but must still comply with all other requirements of the law. Guidance on contributions, including a contribution calculator, may be found at the following link: <https://www.mass.gov/info-details/family-and-medical-leave-contribution-rates-for-employers>.

The collected contributions, along with supporting workforce and wage documentation, will then have to be submitted to the DOR through its MassTaxConnect portal in October 2019, and on a quarterly basis thereafter. The form and timing of the quarterly reports have yet to be determined. Covered workers may begin taking the majority of the leave benefits January 1, 2021 (family leave for bonding with new child or managing affairs of active duty military,

and medical leave), with the remainder of benefits (all other family leave) available July 1, 2021.

Workplace Notification: June 30, 2019 Deadline

The deadline for employers to provide workers notification of the FML law is June 30th. Employers must post notification of the law in the workplace and provide their current workforce with written notification of their rights under the law. The notice, which may be provided electronically, must include the opportunity for the worker to acknowledge receipt or decline to acknowledge receipt of the information. DFML has published on its website a model notification poster and model notification form which includes the required acknowledgment provisions.

<https://www.mass.gov/info-details/informing-your-workforce-about-paid-family-and-medical-leave>

Private Plan Exemption: September 20, 2019 Deadline

DFML has also set the deadline for submitting applications to opt-out of the state program as September 20, 2019. Employers adopting a private plan may apply for an exemption from participating in the state program so long as the benefits provided by said plan meet or exceed the benefits required under the law and the private plans receives approval by the state prior to use. The September 20th date is the deadline for opting out of the program for the third quarter of 2019. For more information on applying for an exemption visit: <https://www.mass.gov/info-details/exemptions-from-paid-family-and-medical-leave-for-private-plans>

Questions or concerns may be directed to RAM General Counsel, Ryan Kearney, at 617-523-1900 or by email at rkearney@retailersma.org.



RAMHIC Expands BCBSMA Plan Offerings starting June 2019

Starting June 1, 2019, all Blue Cross Blue Shield of MA (BCBSMA) products offered in the small group market will be available for purchase through the RAM Health Insurance Cooperative (RAMHIC). Under the expansion, all of these products will be eligible to receive RAMHIC's 1% premium discount and additional free benefits, including a Hospital Indemnity Plan and Life Insurance, for your covered employees.

To receive these benefits your BCBSMA plan must be purchased through RAMHIC. To do so, members should contact their broker or BCBSMA directly to tell them you are a RAM member and are interested in receiving a RAMHIC quote. Please note that for existing BCBSMA accounts these changes are only available upon renewal occurring on or after June 1st.

For more information regarding these offerings as well as additional ancillary benefits please visit our webpage at www.retailersma.org/RAMHIC

Members may also contact RAM General Counsel, Ryan Kearney, at 617-523-1900 or via email at rkearney@retailersma.org.

RAM also works with Met Life for Dental and Vision. For more information, please call Ann Dickey at 800-456-8715.

Supreme Confusion: Massachusetts High Court Outlaws 100% Commission Pay

by Joshua D. Nadreau, Fisher Phillips

To the surprise of most observers, the Massachusetts Supreme Judicial Court (SJC) held that 100% commission employees are entitled to separate and additional payments for any overtime, Sundays, and certain holidays worked. In *Sullivan v. Sleepy's* the Court sided with enterprising plaintiffs' lawyers, finding that 100% commission employees are owed separate overtime payments that cannot be covered by commission payments.

Background: Since 2003, the Department of Labor Standards had opined that employers are in compliance with their wage and hour obligations to 100% commission employees so long as employees receive commissions that cover minimum wage up to forty hours, and 1.5x minimum wage for all overtime. For example, if an employee worked 45 hours, she would be entitled to \$570. As long as her commissions for that week equaled or exceeded \$570, there was no issue. Unfortunately – after an ambiguous change in regulations in 2015 – plaintiffs' lawyers began filing claims seeking separate and additional payments for overtime.

The Sleepy's Decision: The issue was before the Court in *Sleepy's* and Massachusetts law now requires separate and additional payments at a rate of 1.5x the minimum wage for all time worked over forty hours a week and on Sundays or certain holidays. In the example above, the employee now must receive an additional \$90 on top of her \$570 commission.

Will This Be Retroactive? Despite the fact RAM specifically raised this important issue in a brief filed with the Court, the Court did not discuss whether this would only be the rule moving forward or, rather, whether employers could be on the immediate hook for “noncompliance” going back three years from the filing of any lawsuit. This issue will be addressed in the coming months in several pending cases.

What Should You Do Now?

- Review and revise pay plans to provide “separate and additional” payments for all overtime worked
- Speak with counsel to explore ways to compensate employees prior to receiving a complaint
- Consider paying salespersonnel hourly and adjust commissions accordingly
- Adjust schedules to avoid anyone working more than 40 hours
- Reiterate the importance of keeping accurate records of employee time worked

This decision is unfortunate. The Court did not appear to comprehend or appreciate its full impact – and how it will affect your operations. RAM and other industry groups are pursuing legislative fixes to this disastrous decision and will update you with any developments. ■

Joshua Nadreau is an attorney at Fisher & Phillips, LLP, a national labor and employment firm representing hundreds of employers in Massachusetts and nationally. He may be reached at 617-722-0044.



2019 Small Business Day on Beacon Hill

Welcome 44 New Members



Retailers and small business owners from across the Commonwealth came together to discuss issues that impact their survival.



Senate President Karen Spilka reassured attendees that the EMAC would sunset as scheduled.

On May 9, RAM hosted Small Business Day at the Parker House in Boston. The keynote address was provided by Senate President Karen Spilka. Amongst other issues discussed, one key take away was her confirmation that the EMAC tax will sunset as planned.

An update was provided on issues pending before the Legislature including bills pertaining to Restrictive Scheduling, Teen/ Training Wage and Energy Costs.

Attendees heard from a panel on complying with the new Paid Family and Medical Leave law. Guest speakers included: David Robinson Esq., Ruberto, Israel & Weiner; William Alpine, Esq., Director, Department of Family and Medical Leave; and Mike Doheny, Undersecretary of Labor and General Counsel, Executive Office of Labor and Workforce Development.

RAM President Jon Hurst hosted another panel on small business health care costs. Panelists

included: Josh Archambault, Pioneer Institute; Mark Gaunya, Borislow Insurance; Senator Vinny deMacedo, Plymouth & Barnstable District & small business owner; and Rep. Matt Muratore, 1st Plymouth District.

RAM partnered with NFIB/MA, AIM, MA Food Association, MA Restaurant Association, MA Package Store Association, MA Association of Chambers of Commerce, MA Farm Bureau and New England Convenience Store & Energy Marketers Association. Local chambers who also promoted and brought members to the event included: Blackstone Valley, Cape Cod Canal Region, Springfield Regional, Metro South, Nashoba Valley, Neponset River, North Central MA, North Suburban, Cranberry Country, South Coast, Tri-Town, Reading/ North Reading and Worcester Regional.

Some members visited the State House following the presentations and met with their elected officials and their staff on key businesses issues.

DO YOU WANT TO BE AN AWARD WINNING BUSINESS?



For Main Street retailers to thrive in an internet world, you must be doing unique & innovative things to make your business stand out. Submit a nomination and let us know!

For category descriptions and to submit an online nomination, visit www.retailersma.org.

The 21st Annual RAM Awards of Excellence will be held on November 14, 2019 at the Conference Center at Bentley University, Waltham.



A Plus Auto Repair and Detailing
Dracut

Amelia's
Stoughton

APC Auto Body, Inc.
Dartmouth

Arnold's and Eddie's Foods, Inc. &
Arnold's Meat at the Barn LLC
Chicopee

Bass River Mercantile
South Yarmouth

Blue Canoe Cafe, Inc.
Marblehead

C.F. McCarthy's
Canton

Cask and Pig LLC
North Dartmouth

Colvin's
Waltham

Cornucopia Natural Wellness Market LLC
Northampton

DG Pace Corp
Billerica

Downtown Sounds Workers Cooperative
Northampton

Elm Foods, Inc.
Stockbridge

European Motor Works
Holliston

Fenway Johnnies LLC
Boston

Gateways Inn
Lenox

Hancock Appliance Corp.
Quincy

Holly Cleaners
Newton

IM Wireless
Andover

Janna Mediterranean Grill 7 Club LLC
West Springfield

continued on back page >>>>

Retailers can help protect kids from illness, even death, by being left alone in cars.

You can help prevent this by displaying “Not Even for a Minute” posters to remind your customers of the risk of leaving children unattended in cars. Hang the poster in spots visible to families including store entrances, bathroom changing tables, or children’s clothing and toy departments.

“Not Even for a Minute” posters and flyers are free of charge and can be directly mailed to you. Email Rayna Charles at Rayna.Charles@childrenstrustma.org or call (617) 502-8753 for more information.

The Children’s Trust, the state’s leading family support organization, runs this campaign and is providing free posters to member retailers interested in participating. The organization advises the public to call 911 or contact security personnel if they see a child left unattended in a car. It also provides safety tips for parents to prevent them from leaving a child unattended and to remind them to always lock their vehicles so children cannot enter them.



RAM Members Hudson and Herrell Named to Economic Development Planning Council



Members of the Economic Development Planning Council pose for a photo with Governor Charlie Baker and Lieutenant Governor Karen Polito.



Wendy Hudson, Nantucket Bookworks and Co-Founder of Cisco Brewers, Nantucket (seated left in photo above) and Judy Herrell, Herrell’s Ice Cream, Northampton (seated right in photo above) were sworn in May 13 to the Governor’s Economic Development Planning Council. The group is charged with developing an economic blueprint for MA.

During May and June, the Council will be hosting listening sessions across the Commonwealth. These sessions will provide an opportunity for members to connect with local economic development leaders on their priorities as the Executive Office of Housing and Economic Development (EOHED) writes a new economic development plan to be signed by the Governor at the end of this year. The new economic development strategy will guide the administration’s legislative agenda.



SUMMER IS COMING! ARE YOU READY?

Switch to ConnectPay as
your payroll provider by
August 1st, and get
a summer treat!

**WE'LL PAY YOUR
RAM DUES NEXT YEAR!**

For Details,
Get Connected
With Matt Venuto

(781) 941-6107

mvenuto@ConnectPayUSA.com

ConnectPayUSA.com



#ConnectedPayroll

Eversource Launches Electric Vehicle Charging Infrastructure Program

Electric vehicle (EV) owners will experience one less obstacle as they hit the road in Massachusetts thanks to Eversource. The company is partnering with businesses and municipalities to install new EV charging stations throughout the Commonwealth – and paying for 50-90 percent of the installation costs, an expense of thousands of dollars traditionally borne by the site owner.

For retailers, an EV charging station at your store front could mean an increase in your customer base and in-store dwell time. More than 100 sites in Massachusetts have already signed on, including shopping centers, offices, parking garages, schools, hotels and gas stations.

Who is an ideal site host?

Businesses or municipalities with large parking areas or where people are likely to be parked for a while. Shopping centers, mixed-use developments, apartment complexes or condominiums, and museums and other tourist attractions are ideal site hosts. The initiative also supports the installation of a limited number of Level III “DC Fast” chargers along travel corridors.

How does it work?

Building owners, managers or operators download the application from eversource.com and send it to evcharging@eversource.com to apply. Once approved, Eversource covers all of the infrastructure costs and implementation needed to install the charging stations – which generally accounts for 50-90 percent of total costs associated with installing EV charging stations. The site host is only responsible for purchasing and installing the charging stations.

A key benefit of the program is that Eversource provides enough infrastructure to support multiple charging stations, but site owners only have to commit to buy one charging station now. This means that the site owner can easily install additional charging stations later as demand for EV charging rises.

If a site is within an eligible Environmental Justice Community, Eversource will pay all costs for the chargers and their installation. Eversource has earmarked 10 percent of sites to be in Environmental Justice Communities.

Are new construction projects eligible?

Yes! Planning for EV charging access at the construction phase of a new building makes it easier to make the needed electrical infrastructure improvements and counts toward LEED v4 Green Building certification.

For more information about Eversource’s EV charging station program and how to become a site host, please visit Eversource.com.



18 Tremont St.
Suite 810
Boston MA 02108

New Members

Continued from page 5

KE Engineering LLC
Wilmington

Lincoln Square Service, Inc.
Weymouth

Michael's Party Rentals, Inc.
Palmer

Middleton Transmission & Auto Repair, Inc.
Middleton

Morgan House
Lee

New Cote Market, Inc.
Lowell

NH Beach Pizza
Haverhill

Parkers Pub LLC
Wrentham

Petrol Gas Station
Tewksbury

Riffs Joint & Myers Catering
Southampton

Riffs North
Southampton

Second on Third Cafe, Inc.
Burlington

Shirazi Distributing, Inc.
Boston

Small Oven Bakery
Easthampton

Smoke and More
Lakeville

Soft as a Grape
Wareham

Sweet Grace Heavenly Cakes LLC
Lawrence

The Last Drop
Brighton

The Muffin House Cafe, Inc.
Medway

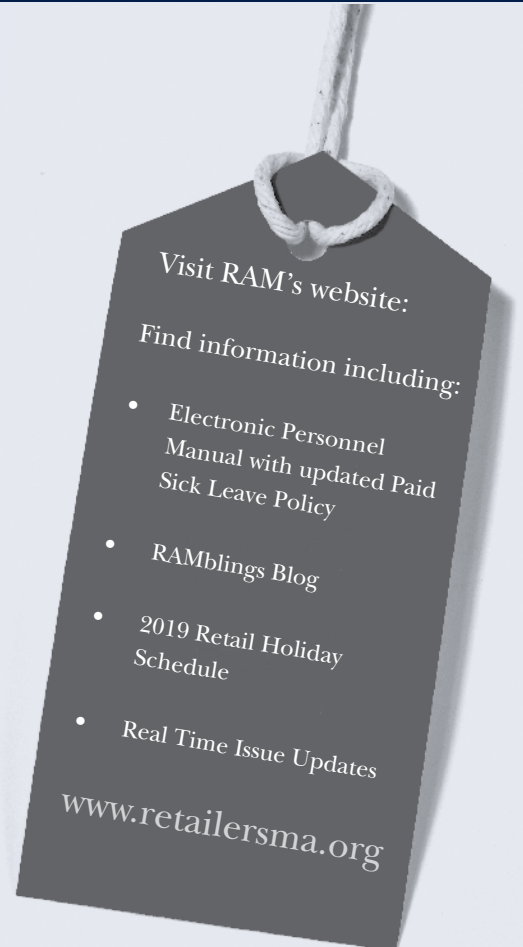
Tony's Bakery
Fall River

Venezia Restaurant
Boston

West End Johnnies
Boston

Wohler USA
Middleton

Yogies Cafe Corp.
Plymouth



Follow us on Twitter
– www.twitter.com/retailersofma



Connect with us on LinkedIn!
www.linkedin.com/company/retailersofma



LIKE us on Facebook: Retailers
Association of Massachusetts