

EMPLOYMENT ALERT

Department of Family and Medical Leave Provides Further Guidance on the Massachusetts Paid Family and Medical Leave Act

September 2019

On October 1, 2019, the payroll tax for the Massachusetts Paid Family and Medical Leave Act (PFML) will go into effect, following a three-month delay to give employers more time to prepare for the rollout of the program and for the newly created Department of Family and Medical Leave (the Department) to provide further guidance on the law. Two points on which the Department provided further guidance are discussed below.

As previously [reported](#), PFML creates a paid leave system that is funded by payroll contributions from employers and covered individuals, and administered by the Department. The initial contribution is 0.75% of a worker's earnings, which will be borne partially or entirely by the worker depending on the size of their employer's workforce. Employers must notify workers of their rights and obligations under PFML by September 30, 2019.

Based on public comments, the Department recently amended its interpretation of the October 1, 2019 payroll tax implementation date. Previously the Department advised that employers must withhold contributions from workers' earnings for services performed on or after October 1, 2019. Responding to criticism that this calculation would complicate payroll for employers that did not happen to begin a new pay period on October 1, 2019, the Department now interprets the implementation date to require withholding from wages paid on or after October 1, 2019, regardless of when the worker performed the services to earn those wages. For example, if a worker receives their regular paycheck on October 5, 2019, all the worker's wages will be subject to PFML withholding, even if the employee provided some or all of those services prior to October 1, 2019.

In addition, the Department recently issued new guidance on when 1099-MISC workers should be included in an employer's workforce count for purposes of PFML withholding and reporting requirements. According to the Department, a 1099-MISC worker must be counted as part of an employer's workforce when that worker:

1. performs services as an individual entity;
2. lives in Massachusetts;
3. performs the services in Massachusetts; and,
4. does NOT qualify as an independent contractor under Massachusetts' unemployment statute.

That means that where a worker is correctly determined to be an independent contractor as defined by the Massachusetts unemployment statute, the employer need not count that worker as a member of the employer's Massachusetts workforce, even if the worker meets the first three criteria listed above. An individual who performs services within the usual course of the employer's business cannot be properly classified as an independent contractor.

CONTACT

Please contact a member of our [Employment Law Practice](#) to discuss the impact of this new law on your company's policies and practices.