

# HR Insights

## MA PFML Updates

This issue of *HR Insights* provides an overview of new updates to the MA Paid Family and Medical Leave Act (PFML) and an updated list of the seven major action items important to complete now through January 2020 for implementing PFML.

### New Updates

The Department of Family and Medical Leave (DFML) has issued the following three new updates:

#### *Wages have been aligned with the MA Unemployment law's definition of wages.*

Numerous types of employment are excluded from the MA unemployment law. DFML will apply these same exclusions for determining whether an employer is required to remit contributions on behalf of its employees. Examples include services provided by:

- Real estate brokers/salespeople and insurance agents/solicitors in commission only jobs
- Employment by churches and certain religious organizations; services of work-study students, student nurses and interns
- Work trainee programs administered by non-profit or public institutions
- Services performed as part of certain programs providing work for physically or mentally impaired individuals
- Services performed for a son, daughter, or spouse and, if under age 18, services performed for one's father or mother

For the full list of exclusions, refer to MGL c. 161A Section 6.

#### *Withholdings start with wages first paid on or after October 1.*

Previously withholdings for contributions to PFML first applied to wages **earned** on October 1. This was changed to wages first **paid** on or after October 1 based on feedback from stakeholders. Therefore,

withholdings may apply to wages earned in September if paid on or after October 1.

#### *H-2A visa holders are exempt from PFML contributions.*

Employers who employ H-2A visa holders are exempt from remitting contributions to the DFML on their behalf. However, all other temporary foreign worker visa programs are subject to the contribution requirements and those workers are considered covered individuals if all other criteria for being a covered individual is satisfied.

## Updated Action Items to Complete Now through January 2020

In our last issue of *HR Insights*, we provided a list of seven major action items required for implementing PFML. These action items are updated to reflect changes in deadlines resulting from the delay to when contributions start as well as other changes.

### *#1: Display the PFML workplace poster*

If you have not already done so, you must display the workplace poster that explains the benefits available under PFML. The poster must be posted in a location where it can easily be read, such as the place or places where you post other mandatory employment related posters. In addition, the poster must be posted in English and in any other primary language of five or more employees, provided the notice is available in that language from the Massachusetts Department of Family and Medical Leave (DFML). The workplace posters in English and other languages are available on the DFML website at:

[https://www.mass.gov/files/documents/2019/03/21/20190321\\_DFML%20Notice\\_FINAL.pdf](https://www.mass.gov/files/documents/2019/03/21/20190321_DFML%20Notice_FINAL.pdf).

### *#2: Determine your 2018 MA workforce*

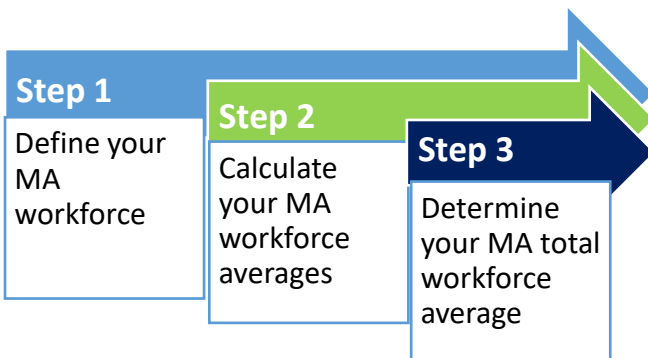
This action item, an action you will need to tackle annually, is important for determining your organization's responsibilities for contributions for 2019, including whether your 1099-MISC contractors are considered covered individuals for whom

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contributions would be required and whether your company is responsible for paying the employer share of medical leave contributions.

An employer's contributions depend on the average number of covered individuals from the previous calendar year (thus, for 2019 contributions, the average number of covered individuals for the period January 1, 2018 through December 31, 2018).

Determining your MA workforce average is a three-step process.



## Step 1: Define your MA workforce

Your MA workforce includes the following types of workers employed during the previous calendar year:

- **MA W-2 employees.** This is everyone you had on your payroll (e.g., full-time, part-time, seasonal, union affiliated, and minor employees), **and for whom you did payroll withholding through MassTaxConnect.** This includes employees who live out of state.
- **MA 1099-MISC contractors.** This is anyone who performs services as an individual entity and who lives and performs services in MA for whom your business is required to report payment for services on IRS Form 1099-MISC.

## Step 2: Calculate your MA workforce averages

To calculate your MA workforce averages:

- To determine your 2018 MA W-2 employees average:
  - a. Count the number of MA W-2 employees you paid in each pay period in 2018

- b. Sum total the number paid in 2018 for all pay periods
  - c. Divide the sum total by the total number of pay periods in 2018
- To determine your 2018 MA 1099-MISC contractor average:
    - a. Count the number of MA 1099-MISC contractors paid for services during each pay period in 2018
    - b. Sum total the number paid in 2018 for all pay periods
    - c. Divide the sum total by the total number of pay periods

## Step 3: Determine your MA Total Workforce Average

To calculate your average total workforce for 2018, add:



## #3: Determine your number of covered individuals

You must submit contributions for all covered individuals in your workforce. In general, MA W-2 employees are always considered covered individuals. However, MA 1099-MISC contractors are considered covered individuals **only if they comprise more than 50 percent of your total workforce.** Remember also, employees performing services that are excluded from the definition of wages and H-2A visa holders are not covered individuals for whom contributions must be remitted. Use the table that follows to determine whether your 1099-MISC contract workers are covered individuals for 2019.

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If your 2018 MA 1099-MISC average is...	Then your covered individuals for 2019 are...
≤ Your 2018 W-2 average	Only your MA W-2 employees
> Your 2018 W-2 average	Your MA W-2 employees AND your MA-1099-MISC contractors

## *#4: Determine your organization's financial responsibility for contributions*

If your total covered individuals from Action Item #3 is fewer than 25, then your organization is not responsible for the employer share of medical leave contributions. However, you must still remit the covered individuals' share of contributions for both medical and family leave.

For the covered individual's share of contributions, an employer, regardless of the number of covered individuals, may elect to pay a portion or all of the covered individuals' share of contributions. In addition, the final regulations allow employers to deduct differing percentages from wages or qualifying payments of different groups of covered individuals. This decision should be made as soon as possible in order to coordinate with your payroll provider on what to withhold and be able to include the information in the notices to covered individuals.

## *#5: Notify your covered individuals of PFML by 9/30/2019*

You must notify your W-2 workers and, if covered individuals, your 1099-MISC contractors of the PFML law and benefits in writing by September 30 (previously the deadline was June 30 and before that, May 31).

The notice may be in paper or electronic form and must be written in the covered individual's primary language. In addition, you must obtain a written statement in paper or electronic from each covered individual acknowledging the receipt of the notice or a statement saying they refuse to acknowledge receipt of the notice. In the event that an employee or self-employed

individual fails to acknowledge receipt, the DFML will consider an employer to have fulfilled its notice obligation if it can establish that it provided the notice and opportunity to acknowledge or decline to acknowledge to each member of its current workforce. If less than 50% of your workforce includes MA 1099-MISC contractors, you are not required to inform contractors of PFML benefits, although DFML encourages employers to do so in order for contractors to be made aware that they may opt into the PFML program.

For model notices in English and other languages, refer to DFML's website at:

- For W-2 covered individuals at:  
<https://www.mass.gov/lists/paid-family-and-medical-leave-downloads-for-massachusetts-employers#employer-written-notices-to-w-2-workers/>
- For 1099-MISC covered individuals at:  
<https://www.mass.gov/lists/paid-family-and-medical-leave-downloads-for-massachusetts-employers#employer-written-notices-to-eligible-1099-misc-workers->

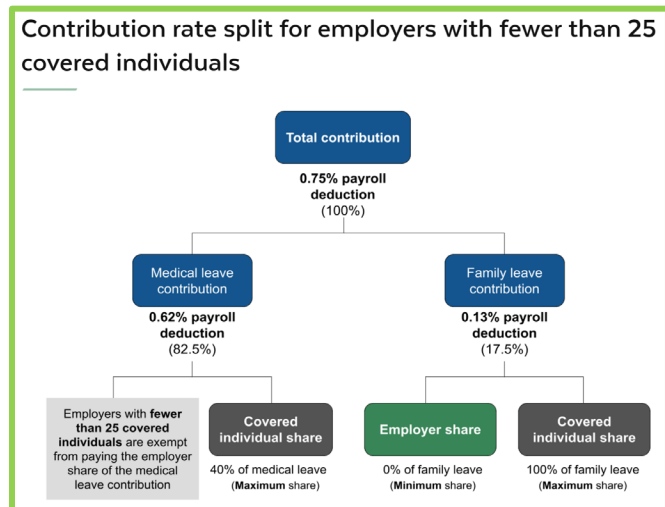
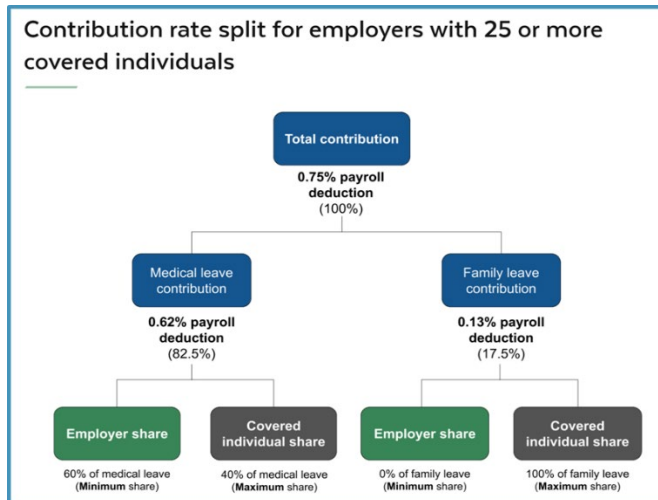
**Important Note:** If you already notified your employees of PFML before the notice deadline was delayed and the contributions were increased, you need not notify them again. Instead, you can provide them with rate sheets updated for the new contribution rates, which do not require acknowledgement of receipt. For rate sheets, refer to DFML's website at:  
<https://www.mass.gov/info-details/informing-your-workforce-about-paid-family-and-medical-leave#written-notice-requirements->

## *#6: Start payroll withholdings 10/1/2019*

You must start withholding contributions from covered individuals for compensation first **paid** on and after October 1, 2019.

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The diagrams that follow are from the DFML website and show the contribution breakdowns for employers with 25 or more employees and for those with fewer than 25 employees.



**Note:** The DFML provides an excellent contribution calculation tool on its website at:  
<https://search.mass.gov/?q=Contribution+calculator&org=department-of-family-and-medical-leave>.

## #7: Start quarterly filings and remitting contributions through MassTaxConnect by 1/31/2020

You must file a quarterly report and remit contributions for the previous calendar quarter through MassTaxConnect starting January 2020 for the quarter October through December 2019. You must file an Employment and Wage Detail Report after the quarter ends that includes the name of:

- Each W-2 employee and their wages earned during the quarter
- Each 1099-MISC contractor (**even if your organization's contractors are NOT covered individuals**) and their earnings paid during that quarter

DFML will then calculate the quarterly contribution owed and you must remit what is owed on or before the quarterly filing deadline.

**IMPORTANT NOTE:** *HR Insights* is for informational purposes only. While we hope that our readers find this issue of *HR Insights* of great value, it does not constitute legal advice or opinion and is not a substitute for legal advice.

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