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Dear Clients,

Massachusetts enacted the Paid Family and Medical Leave Law (PFML) for Massachusetts workers. Although workers won't be eligible for benefits under the act until 2021, employer responsibilities will begin sooner unless delayed by the state. It is important that you notify employees of the tax that will be withheld from their wages as well as that you contact your payroll company.

If you are not currently using a third party payroll company, this is another example of the challenges with keeping up to date with payroll responsibilities and a reason to make the switch. Please contact your account manager for recommendations on payroll providers to consider.

**Notification:**

**By June 30, 2019:**

You must notify your entire workforce of the PFML law by:

- Posting the Paid Family and Medical Leave Workplace poster on your premises.
- Providing written notice of contributions, benefits and workforce protections to all covered individuals in your workforce. You must collect a signed acknowledgement for each covered individual.

Please click on the link below for both documents:  
**[www.mass.gov/dfml/notices](http://www.mass.gov/dfml/notices)**

If more than 50% of your workforce is made up of MA 1099-MISC contractors, you are required to inform them of PFML benefits and protections the same as MA W-2 employees. In this situation, you must obtain a written statement acknowledging receipts of the notification.

**Employee Contribution:**

**Starting on July 1, 2019:**

Start deducting family and medical leave payroll

contributions for all your MA W-2 employees (and, if you are required, MA 1099-MISC contractors). No matter the size of your workforce, you are responsible for remitting contributions on your covered individuals' behalf. The withholding rate is 0.318% of wages (32 cents out of every \$100). The maximum amount of earnings subject to these contribution rates is the same as the Social Security income limit (\$132,900 in 2019 annually for each employee.)

### **Employer Contribution:**

Employers with an average employee workforce of 25 or more employees will have an employer responsibility and are required to pay a contribution of 0.312% of a covered individual's gross pay. This is an employer payroll tax and is in addition to the employees' contribution mentioned above.

Although not specifically addressed in the proposed regulations, guidance from the department's website states that because the department will establish accounts by tax identification number, the PFML law (including workforce counts) will be based on tax identification numbers.

If more than 50% of your workforce is made up of MA 1099-MISC contractors, the 1099-MISC contractors are included in the 25 employee count. Under the draft regulations, 1099-MISC contractors are self-employed individuals for whom an employer is required to report payment for services on IRS Form 1099-MISC.

MA DFML has created a tool to determine if you are responsible for the employer share of PFML contributions:

**<https://www.mass.gov/decision-tree/determine-if-youre-responsible-for-the-employer-share-of-pfml-contributions>**

Under the proposed regulations, the 25 employee workforce calculation is done by calculating the average number of employees per pay period. This doesn't take into consideration part-time or full-time status. Employers should also review the classification of their 1099-MISC contractors under the state's three-part "ABC" test to determine if they are misclassified and should be classified as employees which would potentially include them in the 25 person count, even if issued a 1099-MISC. Information about the three part "ABC" test can be found here:

**<https://www.mass.gov/service-details/independent-contractors>**

**Remittance of Employee and Employer (if applicable) contributions:**

**By October 21, 2019:**

The employee and employer (if applicable) contributions for the quarter July - September 2019 must be remitted to the MA Department of Revenue (DOR) through MassTaxConnect. You must contact your payroll company to ensure they are withholding the employer contribution and timely remitting the contributions to the DOR.

Other:

Under the proposed regulations, payments to MA 1099-MISC contractors must now be reported on quarterly employment and wage detail reports, even if less than half of the employer's workforce is made up of MA 1099-MISC contractors.

Penalties:

Failure to comply with the notification requirements of the new law may result in penalties of \$50 per MA W-2 employee or MA 1099-MISC contractor for the first offense and \$300 each for subsequent violations. Failure to remit contributions will result in the employer being responsible for both employee and employer contributions.

Please note some organizations are trying to have the effective dates delayed, but as of right now the above dates are the effective dates. In addition, the final regulations are not expected to be released until after the 7/1/19 effective date.

If you have questions or concerns, please let us know.

Rosen & Associates, LLP