

MA Paid Family & Medical Leave

What You Need to Know and Do Now
Dennis Chamber of Commerce
June 27, 2019

Today's Session

Objectives are to learn:

- About the basic requirements of the MA Paid Family and Medical Leave Act (PFML) and how they impact your business
- What action items you need to complete and how starting now through January 31, 2020

To achieve these objectives we'll:

- Start with an overview of PFML
- Then tackle 7 key action items for now through January 2020
- And throughout the session point out recent updates due to the delay in starting payroll withholdings and the final regs

Please feel free to ask questions throughout the workshop!

IMPORTANT NOTE: While it is our hope that you find this workshop of great value, this workshop does not constitute legal advice or opinion nor is it a substitute for legal advice.

PFML Overview

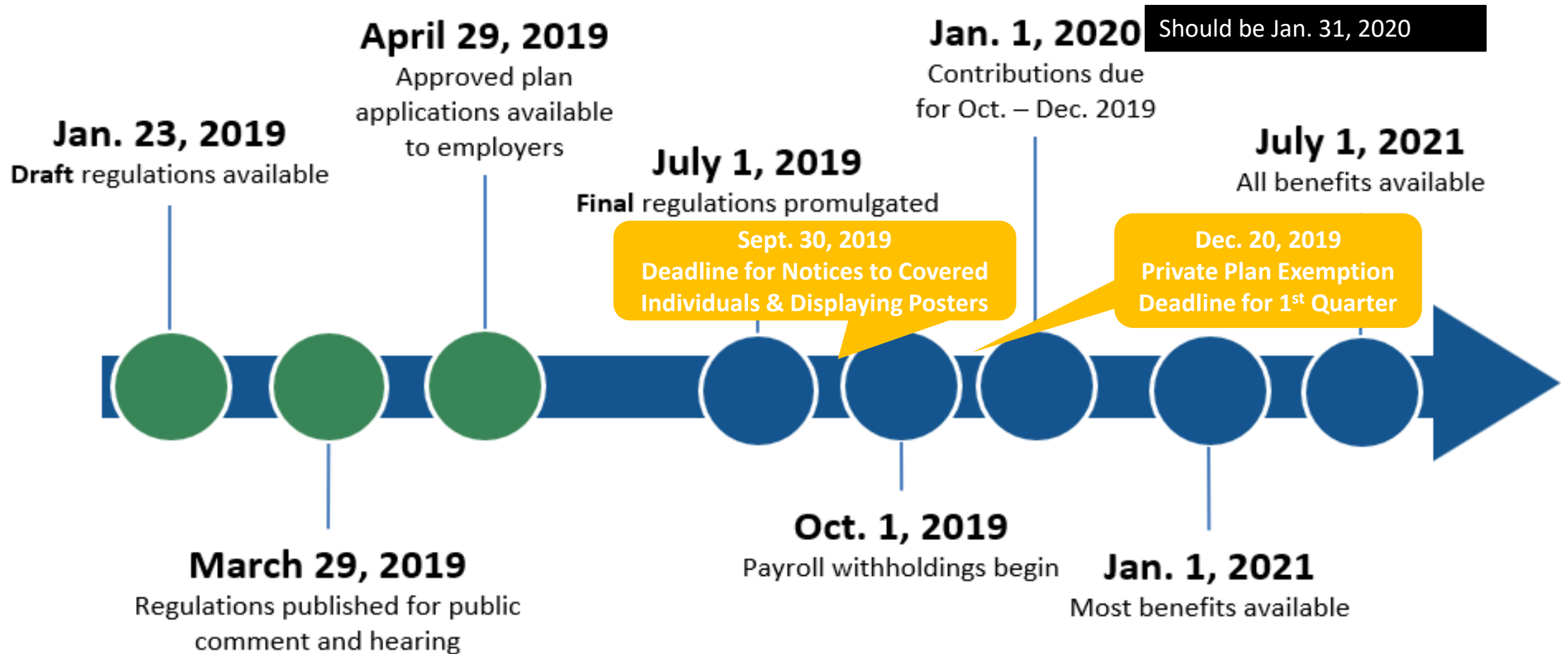
- PFML defined
- Timeline
- Employers subject to PFML
- Covered employment
- Types of leave, qualifying reasons, duration, and when first available
- Family members defined
- Eligibility for leave
- Paid leave benefits
- Reductions in leave benefits
- Contributions
- Private plan exemption

PFML Defined

- PFML is a paid family and medical leave program funded through mandatory payroll taxes and administered by the Department of Family and Medical Leave (DFML)
- The payroll taxes (also referred to as contributions) are paid by:
 - Employers
 - Covered business entities
 - Employees (W-2 workers)
 - Covered contract workers (covered 1099-MISC workers)
 - Self-employed individuals electing coverage



Timeline



Employers Subject to PFML

- The PFML law applies to virtually all MA employers and covered business entities, provided:
 - An individual employer is determined by the FEIN
 - The Department of Early Education and Care is deemed the employer of family child care providers and that PCA Quality Home Care Workforce Council is deemed the employer of personal care attendants
 - Any employer not subject to PFML may become a covered employer by notifying the Department of Family and Medical Leave (DFML)
 - A municipality, district, political subdivision, or its instrumentalities are not subject to PFML unless it adopts coverage under PFML by majority vote of its authorized local legislative or governing body
- A covered business entity is a business or trade whose total workforce (i.e., employees plus 1099-MISC contractors) is comprised of more than 50% of 1099-MISC workers (More on why this is important later!)

Covered Employment

- In general, PFML applies to all employment in MA, except for services not included in employment under M.G.L. c. 151A §6 (**Note:** The services not included in employment is a provision that was added in the final regulations.)
- Examples of services not included in employment under M.G.L. c. 151A §6 are those performed by:
 - Licensed real estate brokers paid solely in commissions except for any services performed for a governmental employer
 - Insurance agents or solicitors paid solely in commissions and who meet certain other requirements
 - Employees of religious organizations provided the organizations are operated, supervised, controlled, or principally supported by a church or convention or association of churches
 - Duly ordained, commissioned, or licensed ministers of a church in the exercise of their ministry
 - Full-time students employed by organized camps, provided the camp meets certain requirements
 - Full-time students enrolled at a nonprofit school, college, or university that are part of a work study program that meets certain criteria
 - Employees, provided that the services performed in any calendar quarter are not in the course of the employer's trade or business unless paid more than \$50 for the services and the services are performed by individuals who are regularly employed by the employer to perform the services (Note: An is “regularly employed by an employer” during a calendar quarter only if: (a) the employee performed services that are not in the course of the employer’s trade or business for some 24 days during the quarter or portion thereof, or (b) the individual was regularly employed, as determined under clause (a), by the employer in the performance of the service during the preceding calendar quarter.)
 - Individuals participating in a rehabilitation program because their earning capacity is impaired by age or physical or mental deficiency or injury or in a program providing remunerative work because their physical or mental capacity cannot be readily absorbed in the competitive labor market
 - Services performed by individuals employed by their son, daughter or spouse, and services performed by children under the age 18 employed by their father or mother

Types of Leave, Qualifying Reasons, Duration, and When First Available

Important to know:

- The number of weeks of leave an individual can take depends on the qualifying reason for the leave.
- In general, PFML runs concurrently with other leaves such as MA Parental Leave and federal FMLA Leave.
- Leave may be taken on an intermittent or reduced leave basis. Per final regulations, an employer may require intermittent leave be taken in increments not smaller than four hours.

Maximum Weeks of Leave Per Benefit Year	Type of Leave/Qualifying Reason	When Benefits First Available for Eligible Individuals
20	Medical: For a serious health condition that incapacitates a covered individual from work	1/1/2021
12	Family/Birth, Adoption or Foster Care or Qualifying Exigency: For a parent to bond with their child during the first 12 months after the child's birth, adoption, or foster care placement, or for a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces	1/1/2021
26	Family/Servicemember: To care for a family member who is a covered servicemember	1/1/2021
12	Family/Serious Health Condition: To care for a family member with a serious health condition	7/1/2021
26	Aggregate: Total combined family and medical leave	See Above

Note: *Benefit year* is the 52 consecutive week period beginning on the Sunday immediately preceding the first day the leave commences.

Family Members Defined

PFML law defines a **family member** more broadly than the federal FMLA law. PFML family members include a:

- Spouse or domestic partner
- Child
- Parent or parent of a spouse or domestic partner
- Person who stood in loco parentis to the covered individual when a minor child
- Grandchild
- Grandparent
- Sibling

The final regulations dropped language from the draft regulations saying a child had to be younger than 18, or if older, incapable of self-care. Therefore, leave to care for a child with a serious health condition for example could be for a child of any age.



Eligibility for Leave

Covered individuals who meet a financial eligibility test and are one of the following are eligible for paid leave:

- **W-2 employees** who perform services in MA
- **Former W-2 employees** who met the financial eligibility test when separated and who have been separated from employment for not more than 26 weeks at start of leave
- **1099-MISC contract workers** for whom at least one employer or covered business entity had to remit contributions
- **Self-employed individuals** who elected coverage under PFML and who made contributions for at least two of previous four quarters

Financial Eligibility Test

An individual meets the financial eligibility test if during the 12 months preceding the claim for benefits the individual receives total wages from a MA employer or covered business entity that in the aggregate equal or exceed:

- 30 times the individual's weekly benefit amount (which is approximately 15 weeks of earnings); and
- \$4,700 (Note: Final regulations clarify that this amount will be calculated annually by the Department of Unemployment Assistance (DUA).)

This financial eligibility test is the same as that for unemployment benefits.

Paid Leave Benefits

PFML Benefits

- DFML will pay benefits directly to individuals in an amount that replaces a portion of an individual’s average weekly wage.
- Benefits begin after a 7-day waiting period during which individuals may use their accrued sick, vacation, or other paid leave available under their employer’s benefits program.
- The maximum weekly benefit is capped at \$850.
- As of October 1, 2021, the cap will be reset annually to equal 64% of the state average weekly wage (SAWW).
- If reset, the new cap is effective on the following January 1. The SAWW is set annually by the DUA. The SAWW as of October 1, 2018, is \$1,383.41.

The table below shows examples of calculated benefits at different levels of wages using the current SAWW and income replacement ratios.

50% of SAWW= \$ 691.71					
Individual's Average Weekly Wage	80%	50%	Total Benefit Payable	Income Replacement Ratio	
\$ 480	\$ 384.00	\$ -	\$ 384.00	80.0%	
\$ 600	\$ 480.00	\$ -	\$ 480.00	80.0%	
\$ 800	\$ 553.36	\$ 54.15	\$ 607.51	69.2%	
\$ 1,000	\$ 553.36	\$ 154.15	\$ 707.51	55.3%	
\$ 1,200	\$ 553.36	\$ 254.15	\$ 807.51	46.1%	
\$ 1,600	\$ 553.36	\$ 454.15	\$ 850.00	34.6%	
\$ 2,400	\$ 553.36	\$ 854.15	\$ 850.00	23.1%	

Insight: Note that lower paid individuals receive a much higher percent of income replacement than higher paid. Businesses should review benefits and time off programs to coordinate with PFML.

Reductions in Leave Benefits

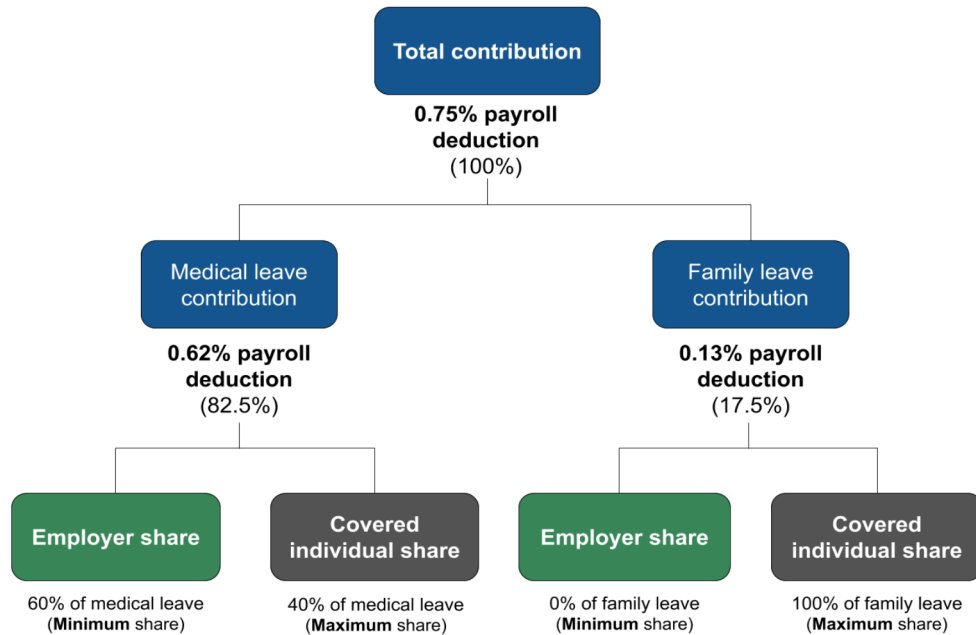
PFML benefits will be reduced by the amount an individual on leave receives for that period from:

- Any government program or law, including unemployment and workers compensation (unless for a permanent partial disability incurred before the family or medical leave claim)
- Another state or federal temporary or permanent disability benefits law
- An employer's permanent disability policy or program

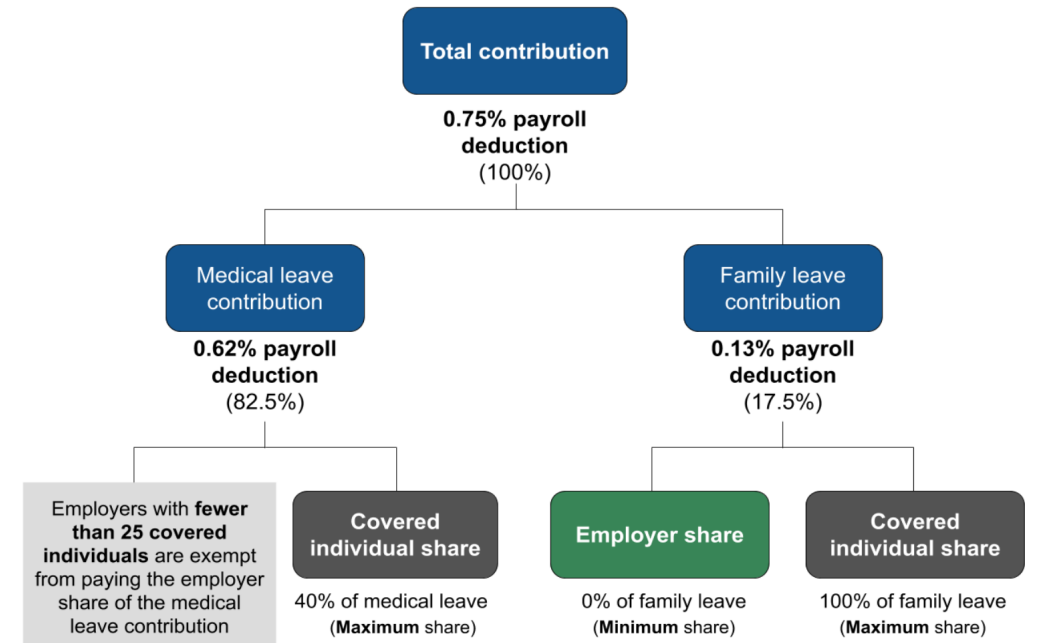
However, benefits will NOT be reduced (unless the total received exceeds an individual's average weekly wage) by the amount received from the employer's temporary disability policy or paid family or medical leave policy

Contributions

Contribution rate split for employers with 25 or more covered individuals



Contribution rate split for employers with fewer than 25 covered individuals



Note: For employers with 25 or more covered individuals, the total contribution is \$750 per \$100K of payroll. The employer share is \$372, and the employee share, \$378 (about a 50/50 split). For employers with fewer than 25 covered individuals, the total contribution is only the employee share of \$378. 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>.

Private Plan Exemption

- If you provide a paid leave benefit your business may be eligible to receive an exemption from collecting, remitting, and paying contributions under the PFML law, or you may want to consider implementing a private plan
- You may apply for an exemption from contributing to family leave, medical leave, or both, by submitting an annual application through MassTaxConnect.
- For an exemption to be approved, the private plan must offer benefits that match or exceed those provided under the PFML program. In addition, employees must still be entitled to all rights and protections provided under the PFML law.
- Applications are available on the DFML website. The filing deadline for exemption from contributions for the first quarter (October 1 through December 31) is December 20, 2019.

Insight: The application process is arduous and must be renewed annually. In addition, there are no insured products currently available that would meet the minimum requirements (e.g., the high replacement ratios for lower wage workers), although insurers are looking at developing products. A business could self-insure a plan but if so, a substantial surety bond is required. Finally, it is not clear whether a private plan would save money. Recommendation: consider waiting.

PFML Action Items

Seven key action items for implementing PFML now through 1/31/2020:

#1: Display workplace poster by 9/30/2019

#2: Determine your 2018 MA workforce

#3: Determine your covered individuals

#4: Determine your financial responsibility for contributions

#5: Notify your existing workforce of the PFML law and benefits by 9/30/2019

#6: Start withholding contributions as of 10/1/2019

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

Note: For more information, refer to the DFML's website at <https://www.mass.gov/guides/prepare-for-paid-family-and-medical-leave#-step-2:-determine-your-2018-massachusetts-workforce->.

#1: Display Workplace Poster

The poster must be displayed in:

- A place where it can easily be read, such as where you post your other mandatory employment related posters
- English and in any other primary language of five or more employees, provided the notice is available in that language from the DFML

You may display the poster now or no later than 9/30/2019

Note: 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

Notice of Benefits Available Under M.G.L. Chapter 175M

Paid Family and Medical Leave

Beginning on October 1, 2019:

- Employers will deduct payroll contributions from a covered individual's wages or other earnings to fund PFML benefits.

Beginning on January 1, 2021:

- Covered individuals may be entitled to up to 20 weeks of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work.
- Covered individuals may be entitled to up to 12 weeks of paid family leave in a benefit year related to the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces.
- Covered individuals may be entitled to up to 26 weeks of paid family leave in a benefit year to care for a family member who is a covered service member with a serious health condition.

Beginning on July 1, 2021:

- Covered individuals may be entitled to up to 12 weeks of paid family leave to care for a family member with a serious health condition.

Covered individuals are eligible for no more than 26 total weeks, in the aggregate, of paid family and medical leave in a single benefit year.

Who is a Covered Individual Under the Law?



Generally, a worker qualifies as a covered individual and may be eligible for paid family and medical leave if:

- S/he is paid wages by a Massachusetts employer; or
- S/he resides in Massachusetts and is paid for contract services by a Massachusetts entity that is required to report payment for services on IRS Form 1099-MISC for more than 50 percent of its workforce; or
- S/he is a self-employed individual who resides in Massachusetts and chooses to opt-in to the program.

Job Protection

Generally, an employee who has taken paid family or medical leave must be restored to the employee's previous position or

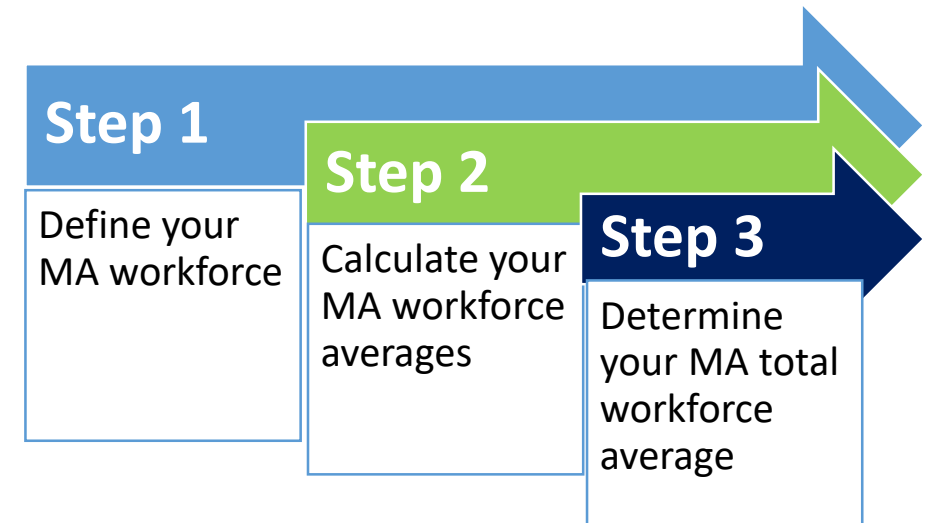
Weekly Benefits

To fund PFML benefits, employers will deduct payroll contributions from a covered individual's wages or other

#2. Determine Your 2018 MA Workforce

- This action item is done annually to determine your responsibility for contributions, including whether your:
 - 1099-MISC contractors are covered individuals for whom contributions would be required
 - Company is responsible for paying the employer share of contributions for medical leave (i.e., 60%)
- Your responsibility for contributions is based on your prior calendar year MA total workforce average (e.g., for 2019 contributions, your average total workforce for the period 1/1/2018 through 12/31/2018).

Determining your MA total workforce average is a **3-step process**.

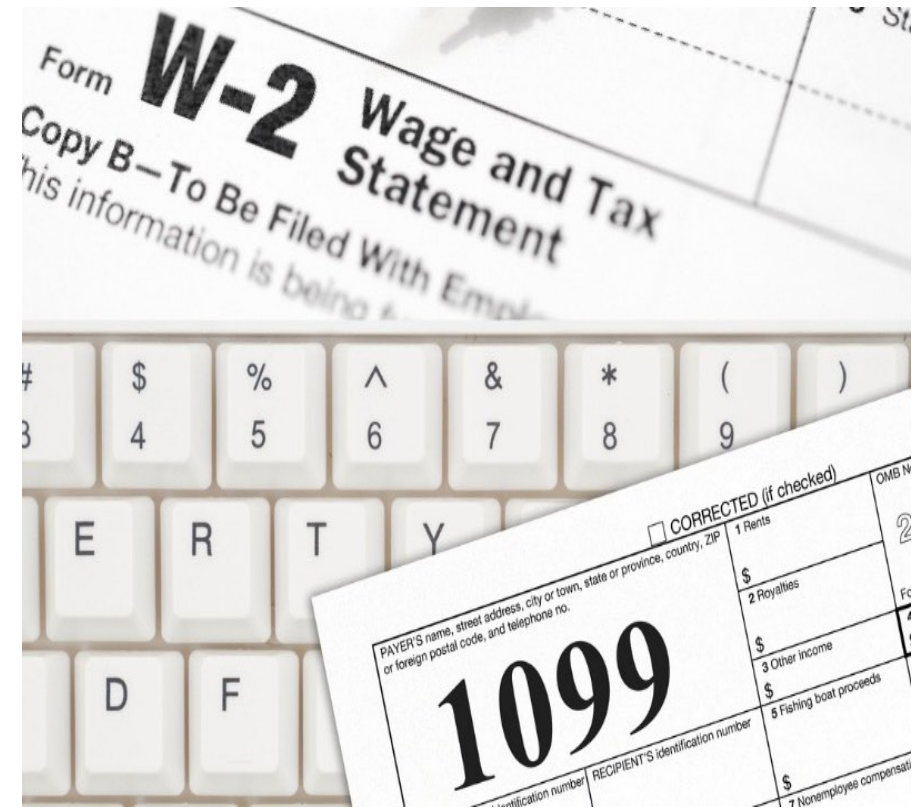


#2. Determine Your 2018 MA Workforce, (cont'd)

STEP 1:

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

- **MA W-2 employees.** This is everyone you had on your company's payroll (e.g., full-time, part-time, and seasonal employees), and for whom you did payroll withholding through MassTaxConnect.
- **MA 1099-MISC contractors.** This is everyone who **lives and performs services in MA** for whom your company is required to report payment for services on IRS Form 1099-MISC and for whom services are not excluded from employment



#2. Determine Your 2018 MA Workforce, (cont'd)

STEP 2:

To calculate your MA workforce averages:

- Your 2018 MA W-2 average equals:
 - a. Count total MA W-2 employees you paid in each pay period in 2018
 - b. Sum the number paid for all pay periods
 - c. Divide the sum total paid by the total number of pay periods
- Your 2018 MA 2019-MISC average equals:
 - a. Count the number of MA 1099-MISC contractors you paid for services each pay period in 2018
 - b. Sum total the number paid for all pay periods
 - c. Divide the sum total by the number of pay periods

STEP 3:

To calculate your average total workforce for 2018, add:



#3: Determine Your Covered Individuals

- You must remit contributions for all covered individuals in your workforce.
- MA W-2 employees are always covered individuals.
- MA 1099-MISC contractors are covered individuals **only if they make up more than 50 percent** of your company's total average workforce.
- Use the results from Action Item #2 and the table to the right to determine whether your company's 1099-MISC contract workers are covered individuals.

If your 2018 MA 1099-MISC average is...	Then your covered individuals are...
\leq 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 Responsibility for Contributions

- If your total covered individuals from Action Item #3 is less than 25, then your company is **NOT** responsible for the **employer share of medical leave contributions**.
- However, the covered individual's share of contributions for both medical and family leave must still be remitted.
- 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.
- You should decide soon if you want to contribute more than required and then coordinate with your payroll provider on what to withhold.

#5: Notify Your Workforce as of 9/30/2019

- You must notify your W-2 employees and, if covered individuals, your 1099-MISC contractors of the PFML law and benefits in writing **by September 30** (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
- You must obtain a written statement in paper or electronic form from each covered individual acknowledging receipt of the notice or a statement saying they refuse to acknowledge receipt of the notice.
- If a covered individual fails to acknowledge receipt, the DFML will consider an employer as having fulfilled its notice obligation if it can establish that it provided each covered individual the notice and the opportunity to acknowledge or decline to acknowledge receipt.
- If you have already notified your employees before the delay, you need only send them a rate sheet with the new contribution numbers. Acknowledgement of the rate sheet is **NOT** required.
- DFML has published updated notices and rate sheets on its website.

#5: Notify Your Workforce as of 9/30/2019 (cont'd)

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

- 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->.

For rate sheets for employers **with 25 or more AND fewer than 25** covered individuals, refer to DFML's website at:

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

Employer Notice to W2 Employee

Covered Entities with 25 or more Workers

Rights and Obligations under the Massachusetts Family and Medical Leave Law, M.G.L. c. 175M

(Employer Name)
(Employer Street Address)
(Employer City, State, Zip)
(Federal Employer ID Number) (FEIN)

Explanation of Benefits

- Beginning January 1, 2021, you may be entitled to up to:
 - o 12 weeks of paid family leave in a benefit year for the birth, adoption, or foster care placement of a child, or because of a qualifying exigency arising out of the fact that a family member is on

Effective Rates: 2019

For employers with 25 or more employees

Family Leave Contribution	Medical Leave Contribution	Total Contribution Amount
.13%	.62%	.75%

On October 1, 2019, contributions to the Department of Family and Medical Leave (DFML) Employment Security Trust Fund will begin. An employer will be responsible for sending contributions to the DFML for all employees.

Currently, the total contribution amount is 0.75% of wages. Of that 0.75% total contribution amount, there is a split: 17.3% is a family leave contribution and 82.7% is a medical leave contribution.

Under the law, employers are responsible for a minimum of 60% of the medical leave contribution (.372% of wages), but are permitted to deduct from employees' wages up to 40% of the medical leave contribution (.248% of wages) and up to 100% of the family leave contribution.

#6: Start Withholding Contributions by 10/1/2019

- You must start withholding contributions from covered individuals with respect to compensation **earned** on and after **October 1, 2019**.
- To ensure withholdings and associated processes are set up, work closely with your payroll provider.

Example:

An employer pays on a weekly basis with the following pay periods during which compensation is earned and paid:

Pay Period Start Date	Pay Period End Date	Pay Date
9/22/2019	9/28/2019	10/4/2019
9/29/2019	10/5/2019	10/11/2019

In this example, withholdings for contributions to PFML would start for the pay period beginning 9/29/2019, and first reflected in an employee's paycheck dated 10/11/2019. The amount withheld would be based on the earnings from 10/1/2019 through 10/5/2019.

#7: Start Completing Quarterly Filings and Remitting Contributions 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 the company'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's owed on or before the quarterly filing deadline.

Insight: Consider auditing your workforce currently classified as independent contractors to make sure they pass the MA three-part test (which is harder to pass than the federal test). To treat someone as an independent contractor you must show that the work is:

1. Done without the employer's direction and control
2. Performed outside the usual course of the employer's business
3. Done by someone who has their own independent business doing that kind of work

#7: Start Completing Quarterly Filings and Remitting Contributions by 1/31/20, (cont'd)

About MassTaxConnect

- If your company already has an active withholding account, MassTaxConnect will auto-register a PFML account type on your company's behalf with an effective date of October 1 (was July 1).
- If your company does not have an active withholding account, your company will need to register with MassTaxConnect. MassTaxConnect will open for PFML registrations on October 1 (was July 1).

Your Questions



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