

# Client Alert

## Employment Law



## Department of Family and Medical Leave Clarifies Key Issues for Employers

The Massachusetts Department of Family and Medical Leave (“DFML”) released new guidance on its website about how to comply with several provisions of the new Paid Family and Medical Leave Act (“PFMLA”). The new posting, titled “Prepare for Paid Family and Medical Leave” is accessible at <https://www.mass.gov/guides/prepare-for-paid-family-and-medical-leave>.

The information in the posting is largely consistent with our previous understanding, but does shed light on a few areas:

### **Electronic Notice/Signatures**

In addition to displaying a mandatory workplace posting, an employer must, by June 30, 2019, provide individual notices to its current workforce, explaining the law and any deductions from pay. But employers had questions about whether the notices and acknowledgments of receipt must be in paper form, and what to do if a recipient refused to sign. The DFML’s new posting confirms that notices to the current workforce, and signed acknowledgments, can be in electronic form. The new posting also confirms that if a covered individual “fails to acknowledge receipt, the Department shall consider an employer to have fulfilled its notice obligation if it can establish that it provided to each member of its current workforce notice and the opportunity to acknowledge or decline to acknowledge receipt.”

### **Notice Not Required for Contractors if Contractors Comprise Less than 50% of the Workforce**

The new DFML posting confirms that individual notice forms need not be provided to MA 1099-MISC contractors if those contractors make up less than 50% of the workforce. Originally, the DFML had taken the view that contractors must be given individual notice forms regardless of whether contractors comprised less than 50% of the workforce.

### **Calculations**

The size and composition of an employer’s workforce, on average, determines (a) whether the

employer is large enough to be required to pay a share of contributions, and (b) whether the employer's 1099-MISC workers are covered individuals under the law. The new DFML posting provides specific guidance about making these average calculations, and clarifies that the applicable time period for 2019 calculations is the last calendar year, January 1, 2018 to December 31, 2018

## For More Information

The DFML website may be subject to change as the DFML continues to consider public input. We encourage employers to check the DFML website and [sign up for their email updates](#).

For additional info about the PFMLA or for compliance help, contact any member of the HRW team:

- Cathy Reuben: creuben@hrwlawyers.com / 617-348-4316
- Dave Wilson: dwilson@hrwlawyers.com / 617-348-4314
- Pete Moser: pmoser@hrwlawyers.com / 617-348-4323
- Mike Birch: mbirch@hrwlawyers.com / 617-348-4359
- Charlotte Petilla: cpetilla@hrwlawyers.com / 617-348-4353
- Ari Kristan: akristan@hrwlawyers.com / 617-348-4365
- Mark Macchi: mmacchi@hrwlawyers.com / 617-348-4331
- Liz Monnin-Browder: emonnin-browder@hrwlawyers.com / 617-348-4349

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