

Massachusetts PFMLA Update

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Department Clarifies that Law Will Not Apply to Properly Classified Independent Contractors

On September 5, 2019, the Massachusetts Department of Paid Family and Medical Leave issued new guidance on when workers who receive 1099-MISC forms will be included in a business's workforce count under the Paid Family and Medical Leave Act (PFMLA). Prior guidance suggested that all individual 1099-MISC workers in Massachusetts that provided service to a company would be counted. However, the new guidance clarifies that only 1099-MISC workers who live and perform services in Massachusetts as an "individual entity" and who are not a properly-defined independent contractor under the Massachusetts unemployment statute will be counted as part of the company's workforce. Independent contractors who are properly classified therefore will not be included in the workforce count.

Under Massachusetts unemployment law, whether an independent contractor is "properly classified" depends on three factors. First, the contractor must be free from control and direction in the performance of their services. This freedom from control must exist under the contract for services as well as in the way the services are performed in reality. Second, the contractor's service must either be performed outside of the company's usual course of business, or outside of all of the company's places of business. Third, the contractor must be engaged in an independently established trade, occupation, profession, or business of the same nature of the service that they are providing. All three factors must be met – and the employer has the burden of proving them – if a worker is to be properly classified as an independent contractor.

In light of the Department's announcement, companies now have further incentive to review their engagements with 1099-MISC contractors to confirm that they are properly classified. Assuming the contractors are properly classified, companies will not have to remit any PFMLA contributions for them, include them in calculations of the total workforce, or provide the Department quarterly disclosures about their earnings.

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