

CLIENT ALERT: The Massachusetts Paid Family and Medical Leave Law: Important Updates and Clarifications - By Jaclyn L. Kugell and Tracy Thomas Boland

On May 10, 2019, Michael Doheny, General Counsel of the Executive Office of Labor and Workforce Development, participated in Morgan, Brown and Joy's (MBJ) webinar on the new MA Paid Family and Medical Leave law ("PFML"). Attorney Doheny provided some important clarifications and insights on employers' obligations under the PFML that we wanted to share with all of you. ***It is important to note that some of this updated information conflicts with information MBJ previously provided via client alerts and our webinar on May 9, 2019. We apologize for any confusion but updates and clarifications are being made at the State level on an ongoing basis. We have been informed that the following reflects the State's definitive position on these issues.***

Employers' Obligations to Disseminate PFML Notices

Employers' Notification Obligations to 1099-MISC Contractors:

MA W-2 employees must receive and acknowledge a **PFML notice by June 30, 2019**. While employers generally understand all MA W-2 employees must receive and acknowledge the notice, there has been some confusion about whether employers also must disseminate the notice to 1099-MISC contractors. Attorney Doheny made clear that the PFML notice must only be provided to 1099-MISC contractors *if such contractors make up 50% or more of the employer's workforce*.

Electronic "Read Receipt" is Not Sufficient Acknowledgement of an Employee's Receipt of the PFML Notice:

Attorney Doheny said a "read receipt," in the first instance, probably is not sufficient proof of an employee's "acknowledgement" of the PFML notice. Attorney Doheny explained the statute contemplates a signature, or some other affirmative statement of acknowledgement of receipt of the notice. Nevertheless, Attorney Doheny said an electronic "click" or "check" by which the employee specifically "acknowledges receipt" of the notice would be sufficient to meet an employer's obligation.

Only Certain Contractors Receive a PFML Notice Even if 50% of Employer's/Covered Entity's Workforce Receives a 1099:

Attorney Doheny explained that, relative to contractors, the PFML applies only to self-employed individuals whose payments for services are reported on a 1099- MISC form, *not* other 1099s, e.g., 1099K. Additionally, vendors such as law firms or medical practices are not "covered individuals" even if monies paid for their services are reported on a 1099-MISC. Simply, the law applies to self-

employed individuals and not businesses.

Employers' Quarterly Reporting Obligations

Employers Must Include Payments for Services to 1099-MISC Contractors in Quarterly Reports:

On October 31, 2019, employers will begin to submit quarterly reports regarding their workforce through their MassTaxConnect accounts. Even if an employer's workforce does not include 50% or more 1099-MISC contractors, if an employer made payments to individuals for services during the previous quarter that are reported on a 1099-MISC, information about such payments, e.g, name of the contractor, social security number, amounts of such payment, etc., must be included in the employer's report. In other words, while an employer does not have to provide these self-employed individuals with notice of the PFML (unless they make up at least 50% of the workforce), payments made for services to such individuals must be included on an employer's quarterly reports.

Public Hearings

Public hearings on the draft PFML regulations will be held by the Department of Family and Medical Leave next week. Information about the hearings can be found [here](#). By way of reminder, final regulations are to be issued by July 1, 2019.

As always, as we learn more information about this new law, we will provide you further updates. In the meantime, do not hesitate to contact the lawyers at MBJ for more information.

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This alert was prepared on May 15, 2019.

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