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Who's a covered individual under the PFML law?

Your Massachusetts workforce determines your responsibilities as an employer for making contributions under the Paid Family and Medical Leave (PFML) law. For the most part, PFML follows the unemployment statute (M.G.L. c. 151A) for determining what qualifies as employment and excluded employment.

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Determining your total workforce

As a Massachusetts employer, your responsibility for making contributions under the [Paid Family and Medical Leave \(PFML\)](#)

[law \(/doc/458-cmr-200-department-of-family-and-medical-leave/download\)](#) (M.G.L. c. 175M) depends on the makeup of your workforce. To make sure you're correctly assessed for contributions, it's important that you properly report the size and makeup of your Massachusetts workforce to the Department of Family and Medical Leave.

Your total workforce includes:

- Massachusetts W-2 employees (full-time, part-time, or seasonal). Generally, DFML follows the same eligibility criteria as the unemployment insurance program in Massachusetts. If you are required to report a W-2 employee's wages to the Department of Unemployment Assistance (DUA), those employees should be counted. These employees don't need to reside in Massachusetts to be covered.
- Massachusetts 1099-MISC contractors. Generally, an MA 1099-MISC contractor is an individual

or sole proprietor who resides and performs services in Massachusetts for whom you are required to report payment for services on IRS Form 1099-MISC. These individuals must be performing services in your trade or business or be regularly engaged to perform services for you.

If you own a business and pay yourself through a W-2, you are an employee of that business and will be considered part of your covered workforce under PFML.

For help calculating your workforce and contributions, [use our contributions calculator \(/info-details/calculate-your-paid-family-and-medical-leave-contributions\)](#).

Each quarter, you'll be required to remit the required employee contributions for all covered individuals in your MA workforce. You may deduct all or part of the required employee contribution from amounts you pay to covered individuals. If your MA workforce has fewer than 25 covered individuals, you are not responsible for paying the employer's contribution.

Additional Resources

[Calculate your Paid Family and Medical Leave contributions](#)

[\(/info-details/calculate-your-paid-family-and-medical-leave-contributions\)](#)

Counting MA 1099-MISC contractors as covered individuals

In order for a 1099-MISC worker to be considered part of your MA workforce count, the 1099-MISC contractor MUST:

1. Perform services as an individual entity.
2. Live in Massachusetts.
3. Perform services in Massachusetts.

The 1099-MISC worker MUST NOT:

- Be an independent contractor as defined by the Massachusetts unemployment statute,

(**M.G.L. c.151A** (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section2>)), which is a guiding authority for the PFML program in many respects.

The Massachusetts unemployment statute defines independent contractors as workers who meet [this three-part test](/service-details/independent-contractors) (</service-details/independent-contractors>).

If a worker meets the criteria provided above and you have determined that the individual entity is not an independent contractor under the three-part test, then you should count them as a member of your Massachusetts workforce.

Massachusetts 1099-MISC workers only count toward your total number of covered individuals for purposes of contributions and reporting only if they make up more than 50% of your total Massachusetts workforce (MA W-2 employees and MA 1099-MISC workers combined). Otherwise, an employer is not required to contribute or report on 1099-MISC workers.

Note that only services provided that would otherwise require the issuance of a 1099-MISC are subject to contributions. For a full description of when a 1099-MISC is required, please refer to the [**IRS guidance on reporting payments to independent contractor**](#)

[s](https://www.irs.gov/businesses/small-businesses-self-employed/reporting-payments-to-independent-contractors) (<https://www.irs.gov/businesses/small-businesses-self-employed/reporting-payments-to-independent-contractors>).

For the purposes of counting your workforce, professional corporations (PCs), Limited Liability Companies (LLCs), Sole Member LLCs, partnerships, and corporations are not individuals and should not be included in your count, even if you make payments to them by 1099-MISC. Those types of business entities should not have withholdings taken by an employer.

Counting visa program workers as covered individuals

Foreign worker program visas

H-2A visa holders (seasonal agricultural workers) are exempt from making PFML contributions and are not considered covered individuals. Therefore, you're not required to withhold or remit PFML contributions from your H-2A visa holders.

All other temporary foreign worker visa programs (e.g. H-1B, H-2B, O-1, O-2, etc.) are considered covered individuals (assuming they meet all other criteria above) and you're required to withhold

and remit PFML contributions on their behalf.

International student and foreign exchange program visas

International student and foreign exchange program visa holders (e.g. F-1, OPT, J-1, and J-2) are considered covered individuals (assuming they meet all other criteria above) and you're required to withhold and remit PFML contributions on their behalf when these employees are permitted to work in the United States.

Counting your workforce for Professional Employment Organizations (PEOs)

Professional Employment Organizations (PEOs) typically file a single consolidated return when reporting Massachusetts withholding taxes on behalf their clients.

Since the business is considered the employer for PFML purposes the business must file a return that includes its entire covered workforce which would include the employees paid by the PEO. If the PEO filed a single consolidated return for all of its clients then all the employees of the various clients would be grouped together. By lumping all of these employees together the workforce count would always be greater than 25. The workforce count and the employer contribution rate should be determined on a client by client basis. Therefore, a PEO should never submit a consolidated return on behalf of their clients. Rather PEOs should submit individual filings for each client. PEOs should use the Department's bulk filing method so all of their clients' returns are transmitted in a single transmission.

Read more about [MassTaxConnect's bulk filing specifications \(/info-details/dor-bulk-file-instructions-for-businesses\)](#).

Partial list of excluded employment

Excluded employers and employment types are automatically excluded from PFML, and do not need

to apply for an exemption.

Certain types of employment that are excluded under section 6 of the [unemployment statute](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section6) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section6>) are also excluded from the PFML law, including:

- Services performed for a son, daughter, or spouse
- If under 18, services performed for one's father or mother
- Services performed by inmates of penal institutions
- [Independent contractors as defined by this three-part test](/service-details/independent-contractors) (</service-details/independent-contractors>)
- Employment in the railroad industry
- Services provided by real estate brokers/salespeople and insurance agents/solicitors in commission only jobs
- Newspaper sales and delivery by persons under 18
- Employment by churches and certain religious organizations
- Services of work-study students, student nurses and interns, work trainee programs administered by non-profit or public institutions

Please review [Section 6 of MGL c.](#)

[151A](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section6) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151A/Section6>) for a complete list of excluded employment.

Additionally, certain employers (and their workers) are excluded, regardless of the make-up of their workforce. Excluded employers include:

- Municipalities: cities and towns
- Political subdivisions: Any division of any local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit

More guidance to come on regional authorities.

These employers can choose to opt-in to PFML if a majority vote of their governing body votes to

do so.

Additional Resources

Use the PFML contribution calculator to estimate your contribution responsibilities

(</info-details/calculate-your-paid-family-and-medical-leave-contributions>)

Family and medical leave contribution rates for employers

(</info-details/family-and-medical-leave-contribution-rates-for-employers>)

Contact

Department of Family and Medical Leave

Online

Contact the Department of Family and Medical

Leave (https://massgov.service-now.com/dfml?id=dfml_req_form&sys_id=e97cce63dbe97f00d272f12cbf961928)

Sign up for our newsletter (<http://eepurl.com/gbxd39>)

RELATED

Be prepared for the beginning of PFML (</guides/employers-guide-to-paid-family-and-medical-leave>)

Informing your workforce about Paid Family and Medical

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