

Massachusetts Paid Family and Medical Leave Act



Massachusetts has passed a new law which will provide an important benefit for our churches and their employees. Beginning in 2021, employees of Massachusetts organizations, including those churches that choose to opt in, will be eligible for state-funded paid family and medical leave. This will allow virtually all workers in Massachusetts some compensation and job security if they become sick or need to care for a sick family member, or after the birth, adoption or foster care placement of a child. From a justice perspective, this is excellent news. Similar laws have been enacted by California, New Jersey, New York, Rhode Island, Washington, and the District of Columbia.

This new law will also require some learning on the part of our churches, as each church will need to make a decision about whether to include its employees in these new benefits, and, if so, comply with new employer responsibilities. This document describes the basic requirements of the new law, with links to further information and resources.

Eligibility for Participation

The new law, [M.G.L. chapter 175M](#), applies to all workers who receive a W-2 form from most Massachusetts employers, as well as to some independent contractors who reside in Massachusetts and receive a 1099-MISC form from a Massachusetts employer, such as guest preachers, musicians, and maintenance workers.

Which employers are required to participate?

- All employers who are subject to Massachusetts unemployment taxes, as defined in M.G.L. chapter 151A, section 6 are required to comply with the new law. Churches and religious organizations are excluded from MA unemployment laws in subsections (r) and (s). So we are not required to participate.
- However, according to the [final PFML regulations](#), any employer not subject to M.G.L chapter 175M may become a covered employer by notifying the Department of Family & Medical Leave and completing the procedure outlined on the MassTaxConnect website after October 1, 2019.

What are the benefits of becoming a covered employer?

- If an employee or covered contractor needs to take more than 7 days off to care for themselves or to care for a family member with a serious medical condition (including spouse or partner, child, sibling, parent or spouse's parent, grandchild or grandparent), the Commonwealth would pay them 80% of the first \$36,000 of their wages and 50% of the amount over that, up to a maximum of \$850 per week for up to 12 weeks.
- The church could then use budgeted funds not paid to the employee during their absence to hire any needed substitutes.

What are the costs of being a covered employer?

- Churches would have to file a quarterly report on MassTaxConnect and remit the PFML taxes that have been withheld from employees.
- Churches with an average of 25 or more workers would have to pay an employer share of .372% of covered wages.
- Those churches who may wish to cover the cost of this benefit may do so or they may raise employee wages by 0.378%. This translates to 4.5 cents per hour for a minimum wage job, or \$37.80 for a salary of \$10,000.

Who is a 1099 contractor?

- The IRS requires reporting via Form 1099-MISC, Box 7 for:
 - payment for services in the course of your trade or business,
 - made to individuals, LLCs, partnerships and other unincorporated entities,
 - totaling \$600 or more per calendar year.
- For the purposes of the PFML program, an eligible 1099-MISC contractor is an individual who resides in Massachusetts for whom you are required to report payment for services on IRS Form 1099-MISC.
 - Note that 1099 payments to LLCs, partnerships and other incorporated entities are *not* included.
 - Note that this includes stipends that are paid in exchange for services, but does not include scholarships or personal assistance as long as no services are provided.
 - This is meant to include those who work regularly for the employer. The work is excluded unless the individual performs work on 24 or more days during the current or preceding calendar quarter.
 - An employer's 1099 contractors are only included if these eligible contractors are more than 50% of the employer's work force. (See step #1 below).
- More information is included in [A Church Finance Handbook](#), pages 100-101 and 185-187.

At the end of each quarter, employers will be required to report all payments for services that are covered, whether paid to employees (W-2) or to covered contractors (1099-MISC), and to remit the tax on their covered individuals via MassTaxConnect.

- Employers will withhold and remit tax for all of their employees.
- Employers will be required to withhold and remit tax for their independent contractors only if the average number of contractors was more than 50% of the employer's total workforce during the prior year.
- Employers will be required to add an employer's portion of the tax if their total number of covered individuals is 25 or more.

Note that if you contract with a payroll service, you will need to coordinate carefully with them since the law covers both employees and independent contractors. The payroll service will need detailed information about all payments to your independent contractors, in order to comply with the law and avoid penalties.

Exemption for Private Plans

There is a procedure for applying for exemption from the law if the employer has a private plan in place, with the application due by December 20, 2019 for exemption from the first quarter's contributions. Further information is available at the FMLA website.

However, we anticipate that very few, if any, of our churches will be eligible for exemption. The only exception to required participation in this Massachusetts program will be for employers who offer paid family or medical leave to each of their employees and covered independent contractors, with benefits that are at least as generous as those provided under the law. These benefits are quite generous. Once the law is fully in effect, the benefits will include:

- 1) Up to 20 weeks of paid medical leave in a benefit year if they have a serious health condition that incapacitates them from work,
- 2) Up to 12 weeks of paid family leave related to the birth, adoption or foster care placement of a child,
- 3) Up to 12 weeks of paid family leave to care for a family member with a serious health condition, or up to 26 weeks if the family member is a covered service member with a serious health condition.

Note that to apply for an exemption, the employer must provide these benefits for *all* employees, even those who work for only an hour or two per month, as well as those who have left employment within the past six months. In all cases, paid leave includes full pay (based on the employee's/contractor's average weekly earnings) and continuation of medical benefits.

These benefits are considerably more generous than those provided by the UCC Pension Boards' Life Insurance and Disability Income Plan, which provides a benefit of 60% of salary basis, in many cases for shorter time periods than those established in the new Massachusetts law.

First, decide whether or not to opt in to the PFML program

Decide whether or not to opt in to the PFML program, and if so, as of what date.

- The process for notifying the Department of Family & Medical Leave will be posted on the MassTaxConnect website after October 1, 2019.
- Individual employees may not opt in or out of the program. Once the employer decides, then the employees are bound by the employer's decision.
- Self-employed individuals may also opt in to the program. Once enrolled in the program, they are required to remain enrolled for a minimum period of 3 years. We do not yet know if churches who opt in will be subject to the same requirement.
- The vote of your governing board should be included in the official minutes for that meeting.
- There is no cost to the church unless the church has an average of 25 or more covered individuals on its payroll; the full amount of the tax may be withheld from employee wages.

Example

Grace UCC has a long-time custodian who also works at Faith UCC in the next town. Each church pays her \$200 for 10 hours per week. The custodian develops a serious medical condition and cannot work for six weeks. Each church arranges for temporary custodial help, at a cost of \$100 per week.

- Grace UCC had opted in to PFML.
 - After using 10 hours of her sick leave for the first week, the Commonwealth pays the custodian \$160 per week. The custodian receives a total of \$1,000, compared to her usual wages of \$1,200.
 - The church saves \$1,000 while she is out, and uses that to hire her substitute, for a net savings of \$400 compared to budget.
 - Note that the amount the custodian pays in PFML taxes per year is \$39.31 on \$10,400 in annual income; the cost to the church is \$0.
- Faith UCC did not opt in to PFML.
 - If the church only allowed its employees to carry over the state-required minimum of 40 hours of earned sick leave, then the church would pay her \$800, plus \$600 for the substitute coverage, for an additional cost of \$200 over budget.
 - If the church allows its employees to accumulate all unused sick time, then they would pay her \$1,200 for six weeks of sick time, plus \$600 for the substitute coverage, or \$600 over budget.
 - Also note that the custodian only receives \$800 for the six weeks, compared to her usual pay of \$1,200.

Churches should consider their own financial risk for potential extra expenses in such situations, and should also consider whether excluding their employees from this important public benefit at a time of personal or family need is wise.

Five Responsibilities of Employers

All covered Massachusetts employers (those mandated to participate and those who opt in) – including those who *only* employ 1099 contractors -- will be required to comply with the law, which involves five steps outlined below:

- [determine employer status](#),
- [notify employees and contractors](#),
- [withhold taxes](#),
- [report wages](#), and
- [remit withheld taxes and the employer portion](#).

#1 -- Determine employer status based on the year ending December 31, 2018

Determine whether the employer is a *covered business entity* who is required to withhold from its independent contractors, based on the previous calendar year. A covered business entity is an employer whose independent contractors make up more than 50% of its total workforce.

For the period January 1 – December 31, 2018:

- 1) Calculate the average number of employees – full time, part-time, and seasonal -- per pay period. Include temporary employees unless they are paid by a separate Employment Agency.
- 2) Calculate the average number of eligible Massachusetts contractors per pay period. In order to be eligible to be counted as a covered individual, a 1099 contractor must be:
 - a) a resident of Massachusetts
 - b) an individual (not operating as an LLC, partnership or other entity)

- c) providing services on at least 24 days of the current or previous calendar quarter
- 3) If (2) is greater than (1), then the employer is a covered business entity for the following calendar year and the covered workforce is the sum of (1) and (2) – both its employees and contractors.
- 4) If (2) is less than (1), then the employer is not a covered business entity and the covered workforce is (1) -- its employees only.

You can find a calculator tool linked from [this page](#).

Note that this determination of the status of the employer then carries over to the next year's contractors, regardless of the 50% threshold in the current year.

Also note that the majority of independent contractors are not a part of a church's workforce for the entire year, but for one or more pay periods, for example:

- A lawn maintainer, once a week, May – October, 13 of 26 pay periods
- A guest preacher from out of state, three Sundays, not eligible since out of state
- A guest preacher living in Massachusetts, three Sundays, three pay periods
- A trumpeter for the Christmas and Easter services, two pay periods
- A plumber, three service calls
- A painter, three days per week, mid-July-September, five pay periods
- A bookkeeping service, twice per week, all year

In this example, a church filing seven 1099 forms would have an average of 1.2 eligible Massachusetts contractors per pay period (the painter and the bookkeeper).

#2 -- Notify all employees and contractors before withholding begins

Notify all employees and contractors of the new law by September 30, 2019, as soon as you opt in, or at the time of hire, and receive acknowledgement that they have received the notification.

All participating employers must:

- 1) Display a poster on the premises, available [here](#).
- 2) Provide a written notice of contributions, benefits and workforce protections to all individuals in its workforce, employees and Massachusetts contractors, either in person, by mail or by e-mail. The Department of Family and Medical Leave has provided templates for notification of your employees and 1099 contractors. You will need to download the template and fill in the information applicable to your church ~~for 2019~~. Note that this notice may change from year to year.
 - a. For all employees on your payroll as of the date you will begin withholding, [download the template here](#).
 - b. For all covered individuals who are independent contractors for whom you will provide a 1099 in 2019, and who you will pay for services on or after the date you will begin withholding, [download the template here](#).
 - c. The notice must be given in the individual's primary language. The notice is provided in twelve languages [here](#).

- 3) Collect a signed acknowledgement from each covered individual and keep it in their personnel file. If you do not receive the signed acknowledgement returned to the church, be certain that you have documented the delivery of the notice to the individual so that the church avoids penalties.
- 4) The [penalty](#) for failing to provide notice is \$50 per employee or contractor for the first violation and \$300 per employee or contractor for subsequent violations.

**#3 -- Begin withholding from covered individuals after you have opted in
Withhold the new Paid Family and Medical Leave payroll tax (PFML) on all eligible wages and payments for services beginning October 1, 2019, or on the date you opt in, whichever is later. For those with fewer than 25 covered individuals, this tax may be funded entirely by withholding from employee wages.**

Withholding from employee wages is not required, if an employer would rather pay the full tax for each employee and/or covered contractor. However you will need to add the tax to the employee's taxable income and then record it as withheld from their wages.

Note that payroll services such as Intuit's QuickBooks payroll will calculate and withhold this tax, presuming your subscription is updated and current.

- Deduct 0.248% from employee wages for Medical Leave contributions, and 0.13% for Family Leave contributions, for a total of 0.378% to be deducted from employee paychecks and remitted to the Commonwealth. The maximum wage base for each employee is the Social Security wage base, \$132,900 for 2019.
- If a church employs 25 or more covered individuals, it will add the employer share of 0.372%.
 - *Although we are awaiting guidance from the IRS, we expect that these withholdings will be on an after-tax basis, and that any payments made by the employer will be taxable income.*
 - *We are also awaiting guidance about whether or not clergy housing allowances are included in the reporting of employee wages or contractor payments, but the first indication is that housing will be reported and taxed.*

A diagram showing the elements of the contributions and the proportions can be found [here](#).

**#4 -- File Employment & Wage Detail Report via MassTaxConnect by 30 days after the end of the first quarter of participation
File the quarterly Wage Detail Report, which is due at the end of the month following the end of each quarter.**

All quarterly reporting will be completed online, via www.mass.gov/topics/tax-self-help

- If you have employees, you should already have a MassTaxConnect account used to report and remit those taxes. Make sure you have the church's username and password. Note that this

username is connected to the Treasurer’s personal social security number, and should be changed whenever the Treasurer changes.

- If you contract with a payroll service, discuss with them how information about eligible contractor payments will be reported, and who will remit the required tax.
- If you do not have employees, the Treasurer should register with MassTaxConnect so that you receive notifications and are prepared to file your first quarterly report by 1/31/20.
- The reports are due at the end of the month following the end of the quarter:
 - October 1 – December 31 due by January 31
 - January 1 – March 31 due by April 30
 - April 1 – June 30 due by July 31
 - July 1 – September 30 due by October 31

In addition to reporting employee wages and hours, employers are required to report all 1099 payments for services for covered individuals.

#5 -- Remit required taxes to the MA DOR via MassTaxConnect by 30 days after the end of the first quarter of participation

Make the required payment by the last day of the month following the end of the quarter.

When you enter the information for the quarterly Wage Detail Report on the MassTaxConnect website, the tax payment will be calculated for you and paid electronically on the MassTaxConnect site.

- Although the specific due date and time has not yet been posted, keep in mind that some MA DUA payments are due by 3pm on the last business day before the due date, and others are due by midnight on the due date itself.

Examples

Three examples show how the requirements of the law are handled by churches in different situations.

Grace UCC: Grace United Church of Christ has decided to opt in to PFML, beginning October 1, 2020. The church has three year-round employees and two 1099 contractors (a custodian cleaning two days per week and paid semi-monthly and a guest preacher paid weekly for six weeks):

- 1) Since the average number of employees per pay period in 2018 (3) was greater than the average number of 1099 contractors per pay period (1.25) in 2018, the 1099 contractors are not covered in 2019 and nothing is withheld from them. Since the total number of covered employees (3) is less than 25, the employer is not required to pay the employer’s portion.
- 2) The church notifies all employees by October 1, and each eligible contractor when hired.
- 3) The church withholds 0.248% for Medical Leave and 0.13% for Family Leave from employee wages.

	Total Paid Oct-Dec 2019	Medical Leave Tax	Family Leave tax
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		withheld	withheld
Employees:			
Pastor's Salary & Housing	\$15,000	\$37.20	\$19.50
Organist	\$3,000	7.44	3.90
Administrator	\$4,000	9.92	5.20
Contractors:			
Custodial Service	\$1,300		
Guest Preacher	\$1,200		
TOTAL	\$24,500	54.56	28.60

- 4) The church reports wages and payments of \$24,500 for the quarter via MassTaxConnect by January 31, 2020.
- 5) In addition to any other withholdings, the church remits \$83.16 to the Commonwealth of Massachusetts via MassTaxConnect by January 31, 2020.

Glendale UCC: Glendale UCC operates a large pre-school with 23 teachers, assistants, and administrators in addition to seven church staff, for a total of 30 staff members. The school does not operate in the summer. It issued only ten 1099s last year, so it is not a covered business entity. The church Council voted to opt in to PFML, beginning January 1, 2020.

- 1) Since the average number of employees per pay period in 2018 (26) was greater than the average number of 1099 contractors per pay period (2.5), the 1099 contractors are not covered in 2019 and nothing is withheld from them. Since the average number of covered employees (26) is greater than 25, the employer is required to pay the employer's portion.
- 2) The church notifies all employees by January 1, and each contractor when hired.
- 3) The church withholds 0.248% for Medical Leave and 0.13% for Family Leave from employee wages. The employer adds 0.372% for its share.

	Total Paid Jan-Mar 2020	Medical Leave Tax withheld	Family Leave tax withheld	Employer share
Employees:				
Church Staff	\$50,000	124.00	65.00	186.00
School Staff	62,000	153.76	80.60	230.64
Contractors:				
Church & School	8,000			
TOTAL	\$120,000	277.76	145.60	416.64

- 4) The church reports wages and payments of \$120,000 for the quarter via MassTaxConnect by April 30, 2020.
- 5) In addition to any other withholdings, the church remits \$840.00 to the Commonwealth of Massachusetts via MassTaxConnect by April 30, 2020.

Example: Faith Chapel UCC

Faith Chapel UCC: Faith Chapel is a small summer chapel with no employees. The Council invites and pays summer preachers and maintains the building year round for occasional weddings, memorial services, and community groups. Although the Chapel issued eight 1099s last year, seven were for preachers for two or three weeks only. However, the custodian worked two days each week during the summer, as well as plowing and indoor painting in the winter, so the Chapel is a covered business entity. At first, the Chapel's governing board thought they would not vote to opt in to the PFML program, since it would require filing a quarterly report and withholding a few dollars each quarter. However, they realized that opting in would provide an important benefit for their custodian and her family at no cost to the Chapel, so they voted to opt in as of October 1, 2019.

- 1) Since the average number of employees per pay period in 2018 (0) was less than the average number of covered MA 1099 contractors per pay period (1), the 1099 contractors are covered in 2019 and their portion of the taxes are withheld from them; no taxes are withheld from the guest preacher from Connecticut or the independent contractors working less than 24 days per quarter. Since the total number of covered workers (1) is less than 25, the employer is not required to pay the employer's portion.
- 2) The Chapel notifies the custodian of the MA law.
- 3) The Chapel withholds 0.248% for Medical Leave and 0.13% for Family Leave from all covered contractor payments.

	Total Paid Jul-Sep 2019	Medical Leave Tax withheld	Family Leave tax withheld
Contractors:			
Maintenance	1,200	2.98	1.56
Guest Preachers	3,500		
TOTAL	\$4,700	2.98	1.56

- 4) The Chapel reports contractor payments of \$1,200 for the quarter via MassTaxConnect by January 31, 2020.
- 5) The Chapel remits \$4.54 to the Commonwealth of Massachusetts via MassTaxConnect by January 31, 2020.

Other Considerations

- **These FAQs are helpful:** <https://www.mass.gov/info-details/paid-family-medical-leave-for-employers-faq>
- **If you use a payroll service**, it will be important to let them know about any and all covered contractors you hire at the time you hire them. Note that many payroll services are requiring that their clients handle their own reporting, withholding and remitting of 1099 contractor payments on the MassTaxConnect website. If your payroll service will be reporting payments to contractors quarterly and remitting the withheld tax on your behalf, they can only do so accurately if you relay complete information to them. Note that this is already required, in

order to comply with New Hire reporting requirements, but many churches are not fully compliant with this requirement.

- **Intuit has updated their payroll service** for QuickBooks users, with information [here](#). Note that you will have to add the appropriate payroll items. It is easiest if you wait to get payroll updates until *after* you have entered your final September paychecks. Further QuickBooks instructions are available at www.congregationalfinance.com.
- **Hiring contractors can be more complicated under the new law.** Churches will likely find it easier to comply with the law if they minimize the classification of individual workers as contractors. For example, if you are currently treating your regular weekly musicians as contractors, it may be simpler to put them on the payroll as employees, even though that means paying the employer portion of Social Security and Medicare taxes.
- **Steps to take now:**
 - Clean up your procedures for hiring 1099 contractors:
 - Obtain a completed W-9 before work is begun.
 - Provide notification of MA PFML coverage at the time of hire.
 - Inquire about workers' compensation and liability insurance and collect Certificate of Insurance, if applicable. Note that this is a required part of your annual workers' compensation insurance audit.
 - File a New Hire report with MA DOR within two weeks of hire.
 - In your bookkeeping software, to avoid inadvertently missing reporting or withholding of contractors, make sure that your vendor list indicates *all* individuals and unincorporated entities as eligible for 1099, and includes tax ID before paying them \$600 or more in a calendar year.
 - Make sure that *all* aspects of your church are reported under one EIN, since that is the only possible way to ensure compliance with all requirements for counting employees and tracking contractors.
 - Nursery School
 - Women's Guild
 - Soup Kitchen
 - Thrift Shop
 - Youth Group
 - Make sure that every church bank account is reported in the church's complete set of books and that any checks written are reported to the Treasurer *before* they are issued.
 - This ensures that proper notification can be sent to employees and contractors.
 - This ensures that reporting compliance can be timely and complete.
- **Remaining questions:**
 - If a minister has filed IRS Form 4361 or a church has filed IRS Form 8274 because they conscientiously object to receiving government benefits for church work and they have opted out of Social Security, is there a similar procedure for the PFML tax?

- What aspects of ministerial compensation are to be reported? Salary and SECA allowance, but what about housing allowance or parsonage value?
 - MGL c.151A Section 1(s)(A) "Wages" includes every form of remuneration of an employee subject to this chapter for employment by an employer, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all remuneration paid in any medium other than cash;
- Is the deduction taken from after-tax income?
 - If the employer opts to pay the full tax, rather than withholding from employers or contractors, is the tax paid then reported as taxable income?
 - [TurboTax reports](#) that recipients of FML payments receive a 1099-G and pay federal and state income tax on the amount.