CLIENT ALERT: Notices to Covered Individuals Must Be Issued by September 30, 2019, Deductions for Contributions to Begin October 1, 2019 and Massachusetts Issues New Guidance on Contractors under the Paid Family and Medical Leave Law – By Jaclyn L. Kugell and Tracy Thomas Boland

As a reminder, employer notices about the Massachusetts Paid Family and Medical Leave law ("PFML") must be provided to each covered individual no later than September 30, 2019. Model notices are available here. Employer deductions for employee contributions are set to begin on October 1, 2019.

Due to the extension for collecting contributions, the contribution rate has increased to 0.75% of a covered individual's qualified earnings. The Department of Family and Medical Leave ("the Department") has issued updated notices that employers must provide to covered individuals that explain the new contribution rate. Employers that completed the notification process prior to the extension (prior to June 30, 2019) will need to issue an amendment to the previous notice and distribute it to all covered individuals with the modified contribution rate. The Department has directed that this amendment does not need to be signed (or otherwise acknowledged in writing) by the covered individuals and can be sent electronically. The Department further notes that this process will need to be completed each time the contribution rate changes.

Additionally, as you consider the size and makeup of your workforce and for whom you have contributions and reporting obligations, note that the Department recently issued new guidance clarifying when 1099-MISC workers must be counted as part of your workforce for PFML purposes. The Department's guidance states that 1099-MISC workers count as part of an employer's Massachusetts workforce if the workers:

1. Perform services as an individual entity;
2. Live in Massachusetts;
3. Perform services in Massachusetts; and
4. **Are *not* considered independent contractors under the Massachusetts Unemployment Statute, M.G.L. c. 151A, § 2**.

As the Department's website explains, the Massachusetts unemployment statute defines independent

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contractors as workers who meet a three-part test (available here). If your 1099-MISC workers live and perform services as an individual entity in Massachusetts, but do ***not*** meet the three-part independent contractor test, then you must count them as a member of your Massachusetts workforce in determining the size of your workforce. If these workers make up at least 50% of your workforce, then you also must provide them with the "Notice to 1099-MISC Contractors," report on them and withhold and remit contributions on their behalf.

Put another way, 1099-MISC workers who are true independent contractors are not covered individuals and are not entitled to any benefits under PFML; you do not need to count them, provide notice to them, report on them or withhold and remit contributions on their behalf.

The Department also notes on its site the following relevant information:

- "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 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."

The Department's guidance outlining this information is available here.

Please contact your MBJ lawyer with any questions.

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