

Labor & Employment Alert
June 9, 2021

Massachusetts COVID-19 Emergency Paid Sick Leave

On May 28, 2021, Governor Baker signed into law an Act providing for Massachusetts COVID-19 emergency paid sick leave, the text of which can be found at <https://malegislature.gov/Bills/192/H3702/House/Bill/Text>. *This law took effect immediately on May 28, 2021.* The law directs federal funds received by the Commonwealth in response to the COVID-19 public health emergency into the new COVID-19 Emergency Paid Sick Leave Fund. A website has been established regarding this new leave, which can be found here - <https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program>.

Covered Employers

It appears that all Massachusetts employers, regardless of size, are covered under this new law. Unlike the federal Families First Coronavirus Response Act, municipal and other public employers who were not able to take advantage of the tax reimbursements for that leave are eligible for reimbursements under this new law.

Employee Benefits

The Commonwealth has earmarked \$75 million for the COVID-19 Emergency Paid Sick Leave Fund, and the law will be in effect either until that money is exhausted or until September 30, 2021, whichever comes first. An employee who takes COVID-19 emergency paid sick leave is entitled to their regular employment benefits during the paid time-off, and to compensation for up to 40 hours of work at the employee's regular rate of pay up to a maximum amount of \$850. So, if an employee earns less than \$850 per week, they will be fully paid under this new law, but if the employee earns more than \$850 per week, their benefit will be capped at \$850 and this is the maximum that an employer can seek reimbursement for.

The number of hours for which an employee is eligible is dependent upon that employee's regular schedule: employees who regularly work 40 or more hours per week are allowed 40 hours of COVID-19 emergency paid sick leave; employees who work regular, consistent hours shall be provided with sick leave equal to the number of hours worked per week; and employees whose schedules and weekly hours vary shall be provided with sick leave that is equal to the average number of hours worked over the immediately preceding six-month period. An employee who has not yet worked six months for their employer is still eligible for COVID-19 emergency paid sick leave and is entitled to a number of hours of leave equal to the reasonable expectation of that employee's average hours.

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The leave that an employee is entitled to does not need to be taken consecutively; the employee may use the leave on an intermittent basis and in hourly increments.

Reasons for Taking Leave

The law focuses on two main reasons an employee would need to take leave from work because of COVID-19: for the employee's own illness, exposure, or need to quarantine, and for the employee's need to care for a family members' illness, exposure, or need to quarantine. The specific reasons for which an employee is entitled to take emergency paid sick leave are—

- Employee, for himself or herself:
 - o **Self-isolation** or **care for oneself** because of the employee's COVID-19 diagnosis
 - o Need to **obtain diagnosis, care, or treatment** for COVID-19 symptoms
 - o Opportunity to obtain **COVID-19 immunization**, or need to recover from injury or illness related to immunization
 - o Response to a **quarantine order** or other determination by a public health official, employer, or healthcare provider, regardless of whether the employee has been diagnosed with COVID-19
 - o **Inability to telework** because of COVID-19 diagnosis or symptoms
- Need to care for a family member who:
 - o **Is self-isolating**
 - o Needs medical **diagnosis, care, or treatment** for COVID-19 symptoms
 - o Is subject to a **quarantine order** by a public health official, employer, or healthcare provider, regardless of whether the family member has been diagnosed with COVID-19

Employer Responsibilities and Rights

In addition to paying employees taking emergency sick leave, employers have three main responsibilities to support their employees affected by a qualifying reason. First, if an employee is taking COVID-19 emergency paid sick leave, the employer may not require them to find a replacement to cover the hours they were scheduled to work. Second, an employer also may not require an employee to use other forms of paid leave, such as vacation, before using the COVID-19 emergency paid sick leave. An employer may allow an employee to use vacation or other paid leave to supplement their COVID-19 emergency paid sick leave, however the employer will not be reimbursed more than the \$850 maximum per employee. Lastly, the law includes non-retaliation provisions for employers who administer the COVID-19 emergency paid sick leave programs, which prevent employers from taking adverse employment action against any employee who exercises rights under the law.

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Employee Notice and Employer Reimbursement

Generally, employers are entitled to notification from employees taking paid time off as soon as possible or foreseeable. After this initial notification, an employer can require further notice for the employee to continue receiving paid sick leave.

Employers also have the right to be reimbursed for the cost of paid sick leave by the COVID-19 Emergency Paid Sick Leave Fund, unless the sick leave wages paid by the employer are eligible for the tax credit under the federal Families First Coronavirus Response Act. If the employer is not eligible for this tax credit, then they are entitled to reimbursement up to \$850 per employee. An application for reimbursement includes the employee's name, the dates of leave, and a statement of the COVID-19 related reason the employee is requesting leave or is unable to telework. Gathering this information will require the employer to collect confidential medical information about an employee or the employee's family, which the employer has a responsibility to keep separate and confidential. More information about the reimbursement application process is forthcoming and will be posted here -

<https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program>

Employer Posting Requirements

Employers are required to post notice about the law in a conspicuous location in the workplace, as well as send notification via electronic message or electronic posting if employees work remotely. There are two options for notices to be posted, which can be found here -

<https://www.mass.gov/doc/massachusetts-covid-19-emergency-paid-sick-leave-notice-to-employees/download> and here - <https://www.mass.gov/doc/massachusetts-covid-19-emergency-paid-sick-leave-notice-to-employees-in-poster-format/download>.

If you need any guidance or advice regarding the Massachusetts COVID-19 Emergency Paid Sick Leave Fund and associated law, please do not hesitate to reach out to the attorney assigned to your account.

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This Client Alert was prepared by Bridget Rose and Sarah Spatafore. If you have any questions about this issue, please contact Sarah Spatafore, Nan O'Neill, Kier Wachterhauser, or the attorney responsible for your account, or call (617) 479-5000.

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