

**Labor & Employment Alert**  
**October 6, 2021**

**MA LEGISLATURE EXTENDS AND EXPANDS  
COVID-19 TEMPORARY EMERGENCY PAID SICK LEAVE PROGRAM**

On September 29, 2021, the day before it was set to expire, the Massachusetts legislature amended the COVID-19 Emergency Paid Sick Leave Act (MA EPSL), extending it until April 1, 2022 or the exhaustion of \$75 million in program funds, whichever is earlier. Additionally, the amended MA EPSL expanded the reasons for which employees can use sick leave to include “to care for a family member who needs to obtain or recover from a COVID-19 immunization.”

**REASONS FOR LEAVE**

Under the amended MA EPSL, Massachusetts private and public employers are required to provide emergency paid sick leave to employees who are unable to work for the following COVID-19-related reasons:

1. An employee’s need to:
  - a. Self-isolate and care for themselves because they have been diagnosed with COVID-19;
  - b. Get a medical diagnosis, care, or treatment for COVID-19 symptoms; or
  - c. Get or recover from a COVID-19 immunization;
2. An employee’s need to care for a family member who:
  - a. Must self-isolate due to a COVID-19 diagnosis;
  - b. Needs medical diagnosis, care, or treatment for COVID-19 symptoms; or
  - c. *Needs to obtain or recover from a COVID-19 immunization;*
3. A quarantine order or similar determination regarding the employee by a local, state, or federal public official, a health authority having jurisdiction, the employee’s employer, or a health care provider;
4. An employee’s need to care for a family member due to a quarantine order or similar determination regarding the family member by a local, state, or federal public official, a health authority having jurisdiction, the family member’s employer, or a health care provider; or
5. An employee’s inability to telework due to COVID-19 symptoms.

All of the reasons for leave provided above, except reason 2(c), were included in the original MA EPSL enacted on May 28, 2021. As referenced above, the amended MA EPSL was expanded to add reason 2(c). Additionally, “family member” has the same definition as in the Massachusetts

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Paid Family and Medical Leave Act (MA PFML), namely an employee's spouse, domestic partner, child, parent, grandchild, grandparent, or sibling, a parent of a spouse or domestic partner of the employee, or a person who stood *in loco parentis* to the employee when such employee was a minor child.

Employer guidance also emphasizes that employers may not require employees to use other types of available paid leave before they use COVID-19 emergency paid sick leave.

**LEAVE AMOUNTS**

For employees who work 40 or more hours per week, employers must provide 40 hours of COVID-19 emergency paid sick leave. The amount of leave is pro-rated for employees who work less than 40 hours per week. For employees who work varying schedules, employers must provide leave that is equal to the average number of hours the employee was scheduled to work per week over the previous six months, and if such employees have not worked for six months, the employer must provide leave equal to the number of hours per week the employee is reasonably expected to work.

**PAY AMOUNTS**

The maximum amount an employer is required to pay per employee is \$850, which includes both the employee's hourly rate and the cost of benefits. This means that the actual maximum payment to a benefitted employee will be less than \$850 since the sum of the paid sick leave + the cost of benefits cannot exceed \$850. It is permissible for employees to use other forms of paid time off to make up the difference between their normal rate of pay and the emergency paid sick leave benefit. Additionally, unlike other laws, including the MA Earned Sick Time Law, employers are required to provide employees with the same employment benefits during emergency paid sick leave as when they are working, including, but not limited to, accrual of paid time off (*e.g.* sick leave, annual or vacation leave), group life insurance, health insurance, disability insurance, educational benefits and pensions.

**EMPLOYER REIMBURSEMENT**

Employers are eligible for reimbursement from the Commonwealth for the costs of providing employees with COVID-19 emergency paid sick leave up to a maximum amount of \$850 per

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employee, which includes both the employee's hourly rate and the cost of benefits, subject to an offset for any applicable federal tax credit amount.

Importantly, employers who want to receive reimbursement must require employees to submit requests for emergency paid sick leave in writing. A Sample Employee Leave Request Form has been developed and is available here. <https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program#sample-employee-leave-request-forms->. Additionally, in order to be eligible for state reimbursement, employers must obtain written support from employees for the COVID-19-related reason they are seeking leave. This includes written medical documentation for leave related to an employee or family member's diagnosis or treatment for COVID-19.

**NEXT STEPS**

In addition to providing the paid leave for the reasons specified above, employers should consider the implications of the MA EPSL as they develop vaccine policies. Specifically, OSHA guidance issued in mid-August, 2021 suggests employers provide paid time off for employees for the time it takes them to get vaccinated and recover from any side effects. And, it is expected that the Emergency Temporary Standard which will be issued by OSHA in the coming weeks will contain a rule requiring certain private employers to provide paid time off for the time it takes workers to get vaccinated or to recover if they are under the weather post-vaccination. At least until April 1, 2022, or until the \$75 million dries up, the MA EPSL provides a funding source for this paid leave. However, as stated above, in order to be eligible for reimbursement, employers must get the employee request for leave in writing. Accordingly, we recommend employers consider use of the Sample Employee Leave Request Form (link above) provided by the Commonwealth, and incorporation of such form into your vaccine policy.

Additionally, with regard to vaccine policies, many employers are also deliberating over whether and how to provide a testing alternative to a vaccine mandate. The issue of whether employers need to pay for the testing, and the time taken to get tested, implicates both state and federal wage hour laws. While the issue of pay is unsettled at this time, and may be determined by particular facts and circumstances of an employer's policy, we expect more definitive guidance in the coming weeks.

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If you have any questions or need guidance regarding the MA COVID-19 Temporary Emergency Paid Sick Leave program or developing COVID-19 protocols, including vaccine policies, please do not hesitate to contact the attorney assigned to your account.

*This Client Alert was prepared by Nan O'Neill, and was reviewed by Kier Wachterhauser and Felicia Vasudevan. If you have any questions, please contact Nan O'Neill, Kier Wachterhauser or the attorney assigned to your account, or call (617) 479-5000.*

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