
Massachusetts Mandatory Emergency Paid Sick Leave Starts Now

Description

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Governor Baker has signed a mandatory emergency paid sick leave law ("EPSL") requiring that every Massachusetts employer provide up to 40 hours of paid leave to employees for certain reasons relating to COVID-19. The payment to employees – including the cost of benefits – does not have to exceed \$850 per week, meaning that for many employees, the leave is partially paid. Employers may be reimbursed for such payments through a newly created \$75,000,000 Massachusetts Emergency Paid Sick Leave Fund ("Fund").

When does the law go into effect? Immediately. The EPSL goes into effect on June 7, 2021 (ten days after its May 28, 2021 enactment), and it ends on September 30, 2021 or whenever the Fund runs out of money, whichever comes first.

Which employers are subject to the law? All employers with workers in Massachusetts (regardless of size).

How much leave can employees take? Essentially one week. Employees who work 40 hours a week or more can take 40 hours of leave. Employees working a consistent schedule of less than 40 hours a week can take the number of hours that the employee works per week (for example, an employee working 30 hours a week can take 30 hours of leave). Employees who work inconsistent hours can take the average number of hours that the employee worked per week over the previous six months (and if the employee has not worked for the employer for six months, the employee can take the number of hours they were expected to work each week at the time of hiring). Employees do not need to take their allotted leave all at once and can instead use the leave intermittently in blocks as short as one hour.

Reasons for Leave. Employees may take leave due to the employee's inability to work due to:

1. An employee's COVID-19 diagnosis (including the need to self-isolate, care for oneself, seek treatment or is otherwise unable to work due to symptoms);
2. An employee's need to seek or obtain medical diagnosis, care, or treatment for COVID-19 symptoms or whose symptoms make the employee unable to work (regardless of whether the employee has COVID-19);
3. An employee's need to obtain the COVID-19 vaccine or recovery from vaccine side effects;
4. An employee's need to care for a family member who is self-isolating due to a COVID-19 diagnosis or needs medical diagnosis, care, or treatment for COVID-19 symptoms;
5. A quarantine order or other determination by a local, state, or federal public official, a health authority having jurisdiction, the employee's employer or a healthcare provider that the employee's presence on the job or in the community would jeopardize the health of others because of the employee's exposure to COVID-19; or
6. An employee's need to care for a family member due to a quarantine order or other determination by a local, state, or federal public official, a health authority having jurisdiction, the family member's employer or a healthcare provider that the family member's presence on the job or in the community would jeopardize the health of others because of the family member's exposure to COVID-19, regardless of whether the family member has been diagnosed with COVID-19.

Is the Massachusetts law identical to the FFCRA? No. While there is an overlap in many of the reasons for leave to the federal Families First Coronavirus Response Act's ("FFCRA"), there are differences. Unlike the

FFCRA, the Massachusetts law does not cover COVID-related childcare closures. The Massachusetts law also covers leave due to COVID-19, COVID-19 exposure and COVID-19 symptoms of the employee or a family member even absent a health care provider or government quarantine order or pending test results. Additionally, the FFCRA defines covered family members to include immediate family and members of the employee's household (such as roommates), while the Massachusetts law includes 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.

The Massachusetts law is also mandatory (unlike the current voluntary FFCRA) and provides a much lower pay rate (the FFCRA allows for between \$200 and \$511 dollars per day, depending on the reason) and smaller leave period than the FFCRA. Finally, the Massachusetts law applies regardless of employer size, whereas the FFCRA only applies if the employer has less than 500 employees.

Who pays for the leave? The employer pays the employee during the leave. The employer can then seek reimbursement from the Fund if the leave is not covered by the FFCRA. Assuming the employee qualifies for leave under both laws, the employer will not be entitled to reimbursement from the Fund because the employer will be reimbursed by taking the payroll tax credit per the FFCRA.

Are there limits on how much the employee must be paid? Yes. The maximum amount of compensation an employee can receive (and correspondingly the maximum amount the employer can seek to be reimbursed from the Fund) is \$850 per week (inclusive of wages and benefit costs). The \$850 limit applies to both full-time and part-time employees.

What if the employer has other paid leave policies? An employer may not require an eligible employee to use other paid leave before using, or concurrently with, the EPSL leave. Of specific note is the already existing Massachusetts Sick Leave Law, which also requires employers to provide up to 40 hours of leave due to some overlapping reasons set forth in the Sick Leave Law. The EPSL leave is *in addition* to the Sick Leave Law. However, if the employer has a separate COVID-19 sick leave policy that makes available the amount of leave the employee is entitled to under the EPSL for the reasons allowed by the EPSL, the employer does not have to provide additional EPSL leave.

How does the employer seek reimbursement? In order to receive reimbursement for the costs under the Fund, employers must require employees provide the following information with their leave request: the employee's name; the dates for which leave is requested and taken; a statement of the COVID-19-related reason for leave with support; and a statement that because of the COVID-19-related reason, the employee is unable to work. Any request based upon a quarantine order or self-quarantine advice, must also include the name of the governmental entity ordering quarantine or the name of the health care provider advising self-quarantine; and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

Retaliation is prohibited. The EPSL prohibits the employer from interfering with an employee's ability to take EPSL leave and employers cannot take any negative action against the employee for taking the leave, such as giving a poor evaluation, forgoing a promotion, taking a disciplinary action, or terminating the employee.

Are employers required to provide notice of the EPSL to employees? Yes. Employers must provide [this notice](#) immediately, by posting the notice in a conspicuous location accessible to employees in every establishment and to also provide a copy of the notice to all employees. Employees working remotely must receive the notice electronically.

Employers are encouraged to contact their employment counsel with questions. The attorneys in the [Employment & Labor Practice Group](#) at Partridge Snow & Hahn are ready to answer questions regarding the new Massachusetts law. For additional information and resources visit the firm's [COVID-19 Advisory Group](#) page.

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