

## Massachusetts Enacts COVID-19 Emergency Paid Sick Leave Law

### Partners

Lindsey A. Gil

### Related Practices

COVID-19 Task Force

Employment Law and Litigation

By Lindsey A. Gil on June 7, 2021

Starting on **June 7, 2021**, all Massachusetts employers are required to provide their employees with up to 40 hours of COVID-19 emergency paid sick leave pursuant to legislation signed by Governor Charlie Baker on May 28, 2021. An employee's right to seek leave under the COVID-19 Emergency Paid Sick Leave Law begins on May 28, 2021, and will continue until September 30, 2021, or until a \$75 million COVID-19 Emergency Paid Sick Leave Fund created to reimburse eligible employers for this emergency paid leave is exhausted.

### Qualifying Reasons for COVID-19 Emergency Paid Sick Leave:

Massachusetts employees are now entitled to COVID-19 emergency paid sick leave if they are unable to work for any of the following reasons:

1. An employee's own need to:

- self-isolate and care for oneself because of a COVID-19 diagnosis;
- obtain a medical diagnosis, care or treatment for COVID-19 symptoms; or
- obtain or recover from the COVID-19 vaccine;

2. An employee's need to care for a "family member" who is:

- self-isolating due to a COVID-19 diagnosis; or
- needs a medical diagnosis, care or treatment for COVID-19 symptoms;

3. A COVID-19 related quarantine order or similar determination by a local, state or federal public official, a health authority, an employee's employer, or a health care provider that the employee's presence in the workplace or community would jeopardize the health of others;

4. An employee's need to care for a "family member" due to a COVID-19 related quarantine order or similar determination by a local, state or federal public official, a health authority, a family member's employer, or a health care provider that the family member's presence in the workplace or community would jeopardize the health of others; or

5. An employee's inability to telework because the employee has been diagnosed with COVID-19 and the employee's symptoms prevent telework.

"Family member," as defined by the law, includes an employee's spouse, domestic partner, child, parent, grandchild, grandparent, and sibling, as well as the parent of an employee's spouse or domestic partner and any person who stood *in loco parentis* to the employee as a child.

### **Leave Length:**

COVID-19 emergency paid sick leave can be taken on an intermittent basis and in hourly increments. The overall amount of paid leave available to an employee depends upon the employee's scheduled work hours.

Employees that regularly work 40 or more hours each week are entitled to up to 40 hours of COVID-19 emergency paid sick leave.

Employees that maintain a consistent schedule of fewer than 40 hours each week are entitled to COVID-19 emergency paid sick leave in an amount equal to the average number of hours the employee worked per week during 14 days of their regular schedule.

Employees whose scheduled hours vary on a weekly basis are entitled to COVID-19 emergency paid sick leave in an amount equal to the average number of hours they were scheduled to work each week during the previous six months. If the employee has not worked for the employer for six months, the employer is required to provide leave equal to the number of hours per week the employee was reasonably expected to work when hired.

### **Leave Benefit Compensation and Cap:**

COVID-19 emergency paid sick leave is compensated at the employee's regular rate of pay. However, the weekly leave benefit amount is capped at \$850, which includes benefit(s) costs. All employee benefits, including health insurance, vacation leave, sick leave, disability insurance and pension, must be maintained during the employee's leave.

While employers may provide more generous COVID-19 related paid leave under their own policies, they cannot seek reimbursement from the COVID-19 Emergency Paid Sick Leave Fund for amounts paid to an employee in excess of \$850 per week.

### **Intersection with other Leave Laws and Employer Policies:**

Employers must provide COVID-19 emergency paid sick leave in addition to all job protected time off (whether paid or unpaid) required under the Massachusetts Earned Sick Time law (M.G.L. c. 149, § 148C); any existing employer policy, program, or collective bargaining agreement; and under federal law. Employers cannot require employees to use other types of available paid leave before using COVID-19 emergency paid sick leave (unless federal law requires otherwise). However, the paid leave provided to an employee under this new law may be reduced by wages an employee receives for the leave period under any other government program or law. Further, employees cannot combine their leave entitlements under state or federal law to receive more than 100% of their weekly wages.

Any employer that has already adopted a COVID-19 paid leave policy that meets the requirements of this new law is not required to provide an additional 40 hours of paid sick leave. However, such employers cannot seek reimbursement from the COVID-19 Emergency Paid Sick Leave Fund for leave voluntarily provided to an employee before May 28, 2021.

**Employer Notice Requirements:**

Employers are required to provide all employees with a copy of this [notice](#) explaining the COVID-19 Emergency Paid Sick Leave Law. A copy of the notice must also be posted in a conspicuous workplace location. If an employer does not maintain a physical workplace or has employees that telework, the notice must be provided to employees via electronic communication such as email or, if an employee performs work through an employer's web-based platform, a conspicuous posting on that platform.

**Employee Requests for COVID-19 Emergency Paid Sick Leave:**

Employees are required to provide notice of the need for COVID-19 emergency paid sick leave as soon as practicable or foreseeable. Following the first workday an employee receives leave, an employer can require the employee comply with reasonable notice procedures to continue receiving paid leave. Employees cannot be required to find a replacement worker to cover their leave.

**Employer Reimbursement Requests:**

Employers not otherwise entitled to a tax credit under the Families First Coronavirus Response Act (FFCRA) and all extensions thereof can seek reimbursement for paid leave provided under this new law from the Commonwealth's COVID-19 Emergency Paid Sick Leave Fund. To do so, employers must first require that employees submit written requests for COVID-19 emergency paid sick leave, which must include:

1. The employee's name;
2. The date(s) for which leave is requested and taken;
3. A statement of the COVID-19 related reason for the leave with support; and
4. A statement that the employee is unable to work, including by telework, due to the COVID-19 related reason advanced for the leave request.

If an employee's leave request arises from a COVID-19 quarantine order or self-quarantine, an employee's written request for leave must also include:

1. The name of the government entity ordering quarantine or the name of the health care provider advising self-quarantine; and
2. If the person subject to the quarantine order or advisory is not the employee, that person's name and relation to the employee.

The Commonwealth will be issuing a template leave request form.

The Commonwealth will also be issuing a reimbursement application. Once submitted, payment will issue to the employer within 30 business days, provided that the COVID-19 Emergency Paid Sick Leave Fund has not exhausted prior to payment.

If an employee provides health information in support of a request for COVID-19 emergency paid sick

leave, the employer must treat it as a confidential medical record and keep it in a file separate from the employee's personnel record.

**Non-Retaliation:**

The COVID-19 Emergency Paid Sick Leave Law explicitly prohibits employers from interfering with an employee's ability to take COVID-19 paid sick leave, including by using it as a negative factor in any employment action, like an evaluation, promotion, disciplinary action or discharge. The law likewise prohibits employers from retaliating against an employee for taking leave or for opposing practices the employee believes are in violation of the law.

**Further Information:**

Given the relatively short lead time between the May 28, 2021 enactment of this legislation and the law's June 7, 2021 effective date, employers will need to move quickly to adopt compliant leave policies and procedures. Employers are encouraged to contact a member of Peabody & Arnold's Employment Law and Litigation Practice Group for further guidance on the COVID-19 Emergency Paid Sick Leave Law and assistance updating their leave policies.

*(Updated June 15, 2021)*