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# NEW MASSACHUSETTS COVID-19 EMERGENCY PAID SICK LEAVE LAW

Massachusetts joins a growing number of states that require employers to provide their employees with paid sick leave for COVID-19 related reasons. Effective May 28, 2021, covered Massachusetts employers are required to provide up to 40 hours of paid leave to employees for COVID-19 related reasons. Covered employers include private or public entities (excluding the federal government). The amount of leave to which an employee is eligible will depend on the employee's regularly-scheduled number of work hours per week (up to 40 hours). The amount of compensation that an employer is required to pay an employee for the emergency paid sick leave is capped at \$850 per week. An employee may use the COVID-19 emergency paid sick leave on an intermittent basis or in hourly increments.

## Reason for Leave

Under the new law, employers are required to provide emergency paid sick leave to employees who are absent from and are unable to work for the following qualifying reasons related to the outbreak of COVID-19:

An employee's need:

- To self-isolate and care for oneself because of the employee's COVID-19 diagnosis;
- To get a medical diagnosis, care or treatment for the employee's COVID-19 symptoms;
- To get or recover from the employee's COVID-19 vaccination;
- To quarantine pursuant to an order or similar determination by a local, state or federal public official, a health authority having jurisdiction, the employee's employer or health care 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
- For leave due to the employee's inability to telework because the employee has been diagnosed with COVID-19 and the symptoms inhibit the ability of the employee to telework.

An employee's need to care for a family member:

- Who is self-isolating due to a COVID-19 diagnosis;
- Who needs to obtain a medical diagnosis, care or treatment for COVID-19 symptoms; or
- Who is required to quarantine pursuant to an order or similar determination by a local, state or federal public official, a health authority having jurisdiction, the family member's employer or health care 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.

## Use of Leave with Other Available Paid Leave

In general, employers may not require employees to use other types of available paid leave before they use the state's COVID-19 emergency paid sick leave. However, employers with a separate COVID-19 sick leave policy who make available an amount of COVID-19 sick leave sufficient to meet the requirements of the new law, that may be used for the same purposes and under the same conditions as the new law, are not required to provide additional COVID-19 emergency paid sick leave.

## Reimbursement from the Commonwealth

Employers who provide their employees with COVID-19 emergency paid sick leave can seek reimbursement from the state's COVID-19 Emergency Paid Sick Leave Fund (the "Fund"). It is important to note, however, that those employers who pay qualified sick leave wages and are eligible for the tax credit under the federal Families First Coronavirus Response Act ("FFCRA") or subsequent extensions in the American Rescue Plan Act ("ARPA") are not eligible for reimbursement from the Fund. The Commonwealth must directly reimburse an eligible employer within 30 business days after that employer has submitted a reimbursement application. Additional information on how to apply for reimbursement will be issued in the coming weeks. A word of caution to employers seeking reimbursement. Applications should be submitted promptly and before November 1st, as any monies remaining in the Fund as of that date which are not already subject to pending reimbursement applications filed by employers, will no longer be available for reimbursement.

Emergency paid sick leave under the state law shall be available to employees until September 30, 2021, or the exhaustion of \$75 million in program funds as determined by the Commonwealth, whichever occurs first.

## Written Request for Leave

Employers who seek to obtain state reimbursement for the COVID-19 emergency paid sick leave must have their employees submit a written request for the leave in which each employee provides:

1. The employee's name;
2. The date or dates for which the leave is requested and taken;
3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. A statement the employee is unable to work, including by means of telework, for such reason. If leave is based on a quarantine order or self-quarantine advice, the employee 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. The Executive Office for Administration and Finance is to develop a form for employers to use.

Employers must maintain an employee's health information related to the COVID-19 emergency paid sick leave in a separate file from the employee's personnel information. This health information must be treated as confidential medical records.

An employee should give notice to the employer of the need for leave as soon as practicable or foreseeable. After the first day of leave, the employer may require that the employee follow reasonable notice procedures in order to continue receiving paid leave.

## Non-Retaliation Provision

The state law makes it unlawful for an employer to interfere, restrain or deny COVID-19 emergency paid sick leave or to institute any adverse action against an employee who opposes practices believed to be in violation of the law or supports the exercise of a right of another employee under the law.

## Poster

The Executive Office for Administration and Finance will prepare a notice for employers to provide to employees and to post in the workplace.



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