



Commonwealth of Massachusetts

Massachusetts COVID-19 Emergency Paid Sick Leave—Employer Guidance

Effective Friday, May 28, 2021, and until September 30, 2021 or the exhaustion of \$75 M in program funds as determined by the Commonwealth, whichever is earlier, employers must offer Massachusetts employees leave time as follows. Additional guidance will be issued in the coming weeks, including information on how to apply for reimbursement.

Reasons for Leave

Massachusetts 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:
 - (i) self-isolate and care for themselves because they have been diagnosed with COVID-19;
 - (ii) get a medical diagnosis, care, or treatment for COVID-19 symptoms; or
 - (iii) get or recover from a COVID-19 immunization;
- (2) an employee's need to care for a family member¹ who:
 - (i) must self-isolate due to a COVID-19 diagnosis; or
 - (ii) needs medical diagnosis, care, or treatment for COVID-19 symptoms;
- (3) a quarantine order or similar determination regarding the employee by a local, state, or federal public official, a health authority having jurisdiction, 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.

Note that, in general, employers may not require employees to use other types of available paid leave before they use COVID-19 emergency paid sick leave. Similarly, employers may not

¹ "Family member" has the same definition as in the Massachusetts Paid Family and Medical Leave Act (M.G.L. c. 175M), 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.

require employees to search for or find a replacement worker to cover the time the employee will miss while using COVID-19 emergency paid sick leave.

Leave Amounts

- (1) Employers must provide 40 hours of COVID-19 emergency paid sick leave to their employees who work 40 or more hours per week.
- (2) For employees who regularly work fewer than 40 hours per week, employers must provide leave in an amount that is equal to the average number of hours that such employee works per week.
- (3) For employees whose schedule and weekly hours vary from week to week, employers must provide leave that is equal to the average number of hours that the employee was scheduled to work per week over the previous 6-months.
- (4) If an employee with a variable schedule has not worked for the employer for 6 months, the employer must provide leave that is equal to the number of hours per week that the employee reasonably expected to work when hired.
- (5) The maximum amount an employer is required to pay per employee, and the maximum amount for which the employer may seek reimbursement for any one employee, is \$850 (including cost of benefits).

Employee Requests for Leave

Employers who want to receive reimbursements from the Commonwealth for the costs of providing employees with COVID-19 Massachusetts emergency paid sick leave must require their employees to submit requests for COVID-19 emergency paid sick leave in writing. Employers should therefore prescribe a form² that requires employees to provide the following information for all requests:

- (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 the employee is requesting leave and written support for such reason; and
- (4) a statement that because of the COVID-19 related reason the employee is unable to work or telework.

² A standard form is in development and will be posted for use at employers' option at mass.gov.

For leave requests based on a quarantine order or self-quarantine advice, the statement from the employee must also include:

- (1) the name of the governmental entity ordering quarantine or the name of the health care provider advising self-quarantine; and
- (2) if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

Employers must treat health information regarding an employee or employee's family member as confidential medical records in accordance with applicable state and federal law, and must not disclose such information to any third parties without the employee's express permission.

Employers should also collect and retain the following information in anticipation of applying for reimbursement:

- (1) the employee's social security or tax identification number;
- (2) the employer identification number associated with the position from which the employee took leave;
- (3) the length of the leave (in hours) and wages paid during that leave that are not eligible for federal tax credits, and are not otherwise paid under any other government program or law;
- (4) benefits applicable to the employee taking leave; and
- (5) the number of hours in the employee's regular schedule, or (A) if the employee has no regular schedule, the hours that the employee was scheduled to work per week over the 6-month period immediately preceding the date on which such employee takes the COVID-19 Massachusetts emergency paid sick leave, including hours for which such employee took leave of any type; or (B) if the employee did not work over such 6-month period, is equal to the reasonable expectation of the employee at the time of hiring of the average number of hours per week that the employee would normally be scheduled to work.

Non-Retaliation Provisions

While administering their COVID-19 emergency paid sick leave programs, employers may not interfere with an employee's ability to use COVID-19 emergency paid sick leave or retaliate against an employee for exercising rights under the program. Specifically, employers may not:

- (1) interfere with, restrain, or deny an employee's ability to take COVID-19 emergency paid sick leave, including, but not limited to, by using an employee's taking of COVID-19 emergency paid sick leave as a negative factor in any employment action, such as an evaluation, promotion, disciplinary action, or termination;
- (2) discipline or take any other adverse action against an employee for using COVID-19 emergency paid sick leave; or

(3) take any adverse action against an employee because the employee opposes practices believed to be in violation of this program, or because the employee supports the exercise of rights of another employee, including, but not limited to:

- (i) filing an action, or instituting or causing to be instituted any proceeding;
- (ii) providing or intending to provide any information regarding any inquiry or proceeding; or
- (iii) testifying or intending to testify in any inquiry or proceeding.