

# Employment Alert: Massachusetts Enacts COVID-19 Emergency Paid Sick Leave

By Dave Robinson on June 2, 2021



On May 28, 2021, Governor Baker signed into law a temporary requirement for employers to provide employees up to 40 hours of COVID-19 emergency paid sick leave (EPSL) and created a \$75 Million fund for employers to seek reimbursement. EPSL will start on June 7, 2021 and remain in effect until September 30, 2021 or until the exhaustion of the \$75 Million in program funds, whichever is earlier.

Massachusetts employers are required to provide EPSL to employees who are unable to work for the following COVID-19 related reasons:

1. An employee's need to:
  - self-isolate and care for themselves because they have been diagnosed with COVID-19;
  - get a medical diagnosis, care, or treatment for COVID-19 symptoms; or
  - get or recover from a COVID-19 immunization;
2. An employee's need to care for a family member who:
  - must self-isolate due to a COVID-19 diagnosis; or
  - 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.

Employers may not require employees to use other types of available paid leave before they use EPSL. Similarly, employers may not require employees to search for or find a replacement worker to cover the time the employee will miss while using EPSL.

Employers must provide up to 40 hours of EPSL for employees who work 40 or more hours per week. For employees who work fewer than 40 hours per week, the employer must provide leave in an amount that is equal to the average number of hours that such employee works per week. The maximum amount an employer is required to pay per employee and the maximum amount for which the employer may seek reimbursement for such employee is \$850.

Employers who want to receive reimbursement from the Commonwealth for the cost of providing employees with EPSL must require their employees to submit requests for EPSL in writing and provide the following information: (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

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leave and prove 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. For leave requests based on a quarantine order or self-quarantine advice, the statement from the employee must also include the name of the governmental entity or health care provider ordering or advising to 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. It is expected that a sample employee request form will be provided by the Executive Office of Labor and Workforce Development (EOLWD) for employees to use.

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

EPSL has an anti-retaliation provision which prohibits employers from interfering with an employee's ability to use EPSL or otherwise exercising rights under the program. Specifically, employers may not interfere with or otherwise discourage employees from taking EPSL, negatively viewing the use of EPSL in any evaluation, promotion, disciplinary action or termination, or otherwise take any adverse employment action against the employee's exercise of such rights or supporting the excising of rights by another employee.

#### **What's Next?**

The EOLWD, in consultation with the Executive Office for Administration and Finance, is expected provide a sample Notice of EPSL by June 14, 2021, which employers will be required to post in a conspicuous location accessible to employees. It is also expected that these agencies will issue more detailed guidance for employers to administrate EPSL and how to apply for reimbursement.

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