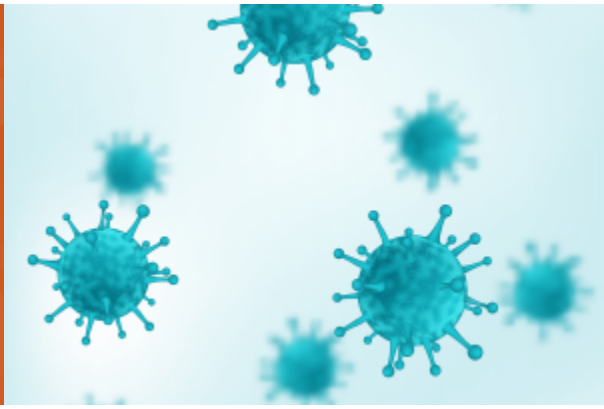
COVID-19 Alert: EPSL Extended

Massachusetts Emergency Paid Sick Leave Extended to April 2022

October 06, 2021



The Massachusetts Emergency Paid Sick Leave program (EPSL), which was set to expire on September 30, 2021, was extended by the Massachusetts Legislature and Governor Baker until April 1, 2022. The temporary program was established in May 2021 and provides up to 40 hours of emergency paid sick leave to Massachusetts employees for qualifying reasons related to COVID-19.

Qualifying Reasons

All Massachusetts employers, regardless of size, are required to provide EPSL under the program. The program is available until April 1, 2022, *or* until the $75 million fund is depleted (the "Fund"). Employers are required to provide paid sick leave for the following ("Qualifying Reasons"):

- Due to an employee's need to:
  - self-isolate and care for themself because they have been diagnosed with COVID-19;
  - receive a medical diagnosis, care, or treatment for COVID-19 symptoms; or
  - receive or recover from a COVID-19 immunization.

- Due to an employee's need to care for a family member who:
  - must self-isolate due to a COVID-19 diagnosis;
  - needs medical diagnosis, care, or treatment for COVID-19 symptoms; or
  - needs to receive or recover from a COVID-19 immunization.

- Due to a quarantine order, or similar determination by a local, state, or federal public official, a health authority having jurisdiction, the employee's employer, or a health care provider.
- Due to 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.
- Due to an employee's inability to telework due to COVID-19 symptoms.

For purposes of Qualifying Reason #4, a "family member" is defined as the employee's spouse, domestic partner, child, parent (including the parent of a spouse or domestic partner), a grandchild, grandparent, or sibling.

Employers must provide up to 40 hours of EPSL for full-time employees working at least 40

hours per week. Part-time employees working fewer than 40 hours per week regularly are entitled to EPSL in an amount equal to the average number of hours they work per week. For employees whose schedule and/or hours vary week to week, employers must provide EPSL in an amount equal to the average hours they worked during the prior six-month period. For those employees who have been employed less than six months, employers must provide EPSL in an amount equal to the number of hours per week that the employee was reasonably expected to work upon their hire. The maximum amount an employer is required to pay is $850 per week, per employee (including the cost of benefits).

Employees can use EPSL on an intermittent basis and in hourly increments. Generally, employers are prohibited from requiring employees to use or exhaust other types of available paid leave before they use EPSL. Employers may also not require employees to search for or find a replacement employee to cover their shift or time they will miss while using EPSL. The law also provides anti-retaliation provisions to protect employees for exercising their rights under the EPSL program.

Employer Reimbursement

Employers may seek reimbursement from the state for the amounts of EPSL paid to employees, up to the $850 per week cap. However, employers who took advantage of the payroll tax credits available through the Families First Coronavirus Response Act ("FFCRA") and/or the American Rescue Plan Act may not seek reimbursement from both the state and the federal government. Payments for leave that are eligible for reimbursement under FFCRA are not eligible for reimbursement from the Massachusetts EPSL fund.

Employers who wish to seek reimbursement from the Fund must require employees to submit requests for EPSL in writing. The Commonwealth, therefore, advises employers to use a form requesting leave that contains certain information. To receive EPSL, employees must provide notice as soon as possible. Instructions for how employers may apply for reimbursement can be found here.

Please contact the Employment Team should you have questions concerning this subject, or any other COVID-19 response matters.

Go to our full COVID-19 Resource Collection.