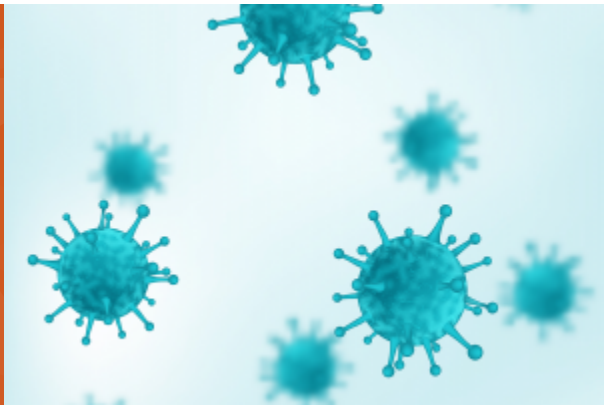
COVID-19 Alert: Emergency Leave Act

New Massachusetts Law Provides COVID-Related Emergency Paid Leave To Employees

By:Matthew L. Mitchell
June 02, 2021



On May 28, 2021, Massachusetts Governor Charlie Baker signed into law the Massachusetts COVID-19 Emergency Leave Act (the "Act"). Under the Act:

- Massachusetts employers are required to provide COVID-19 Emergency Paid Leave benefits (up to $850) to employees who are unable to work for certain specified reasons related to COVID-19.
- A $75 Million fund (the "Trust Fund") is created to reimburse employers for financial costs related to compliance with the Act.

All Massachusetts employers, regardless of size, are subject to the Act, and all Massachusetts employees, regardless of full-time or part-time status, are eligible to receive paid leave benefits under the Act.

Employer obligations under the Act commence on June 7, 2021, and remain in effect through September 30, 2021, or until the Trust Fund is exhausted.

The key aspects of the Act are summarized below.

Employee Eligibility; Qualifying Events

A Massachusetts employee qualifies for COVID-19 Emergency Paid Leave (a "Qualified Employee") upon experiencing any of the following events:

1. An employee's need to: (i) self-isolate and care for oneself because of the employee's COVID-19 diagnosis; (ii) seek or obtain medical diagnosis, care or treatment for COVID-19 symptoms; or (iii) obtain immunization related to COVID-19 or the employee is recovering from an injury, disability, illness or condition related to such immunization;
2. An employee's need to care for a family member who: (i) is self-isolating due to a COVID-19 diagnosis; or (ii) needs medical diagnosis, care or treatment for COVID-19 symptoms;
3. A quarantine order, or other determination by a local, state or federal public official, a health authority having jurisdiction, the employee's employer or a 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 exhibiting of symptoms, regardless of whether the employee has been diagnosed with COVID-19;
4. An employee's need to care for a family member due to a quarantine order, or other determination by a local, state or federal public official, a health authority having jurisdiction, the family member's employer or a 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, regardless of whether the family member has been diagnosed with COVID-19; or

5. An 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.

Leave Entitlements

The total amount of COVID-19 Emergency Paid Leave that is available to a Qualified Employee depends on that employee's assigned work schedule:

- An employee who works 40 hours or more per week is entitled to 40 hours of COVID-19 Emergency Paid Leave.
- An employee who works less than 40 hours a week, but maintains a regular schedule with consistent hours per week, is entitled to COVID-19 Emergency Paid Leave that is equal to the number of hours that such employee works per week, on average over a 14-day period of such regular schedule.
- For an employee whose schedule and weekly hours worked vary from week to week, such employee is entitled to COVID-19 Emergency Paid Leave that: (a) is equal to the average number of 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 Emergency Paid 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.

Qualified Employees may use COVID-19 Emergency Paid Leave on an intermittent basis, in hourly increments.

Pay and Benefits During Leave

Qualified employees are entitled to their regular rate of pay during COVID-19 Emergency Paid Leave periods – *capped at $850 per week*. The employee's regular benefits (*e.g.*, health insurance, vacation leave, sick leave, disability insurance) must be also maintained during COVID-19 Emergency Paid Leave periods.

An employer may not require a Qualified Employee to use other paid leave before using COVID-19 Emergency Paid Leave unless federal law requires otherwise. Rather, COVID-19 Emergency Paid Leave is *"in addition to"* other paid and unpaid time off that may be available to employees. In other words, an employer may not reduce a Qualified Employee's COVID-19 Emergency Paid Leave benefit because that employee also qualifies for other paid leave benefits, such as: under the Massachusetts Earned Sick Time Law; under a paid time off / vacation policy; pursuant to a collective bargaining agreement; or as permitted under federal law. However, an employee may not aggregate COVID-19 Emergency Paid Sick Leave with other leave entitlements if the combination of such benefits would yield the employee a leave payrate that exceeds the employee's average weekly wage.

Notice of Need For Leave

A Qualified Employee must provide notice to the employer of the need for COVID-19 Emergency Paid Leave as soon as practicable or foreseeable.

After the first workday an employee receives COVID-19 Emergency Paid Leave, an employer may require the employee to follow "reasonable notice procedures" in order to continue receiving COVID-19 Emergency Paid Leave. An employer may not, however, require, as a condition of an employee's taking COVID-19 Emergency Paid Leave, that the employee search for or find a replacement worker to cover the hours during which the employee is using

COVID-19 Emergency Paid Leave.

Health information related to a COVID-19 Emergency Paid Leave request that is received by an employer must (i) be maintained on a separate form and in a separate file from other personnel information; (ii) be treated as confidential medical records; (iii) not be disclosed except to the affected employee or with the express permission of the affected employee; and (iv) be kept confidential in accordance with any other state or federal law.

Request for Reimbursement

Employers who are not otherwise eligible for tax credits for paid sick and paid family and medical leave under the federal Families First Coronavirus Response Act may submit claims for reimbursement to the Commonwealth's Trust Fund for each employee's use of COVID-19 Massachusetts Emergency Paid Leave.

Employers who plan to seek reimbursement must require written requests from any employee seeking COVID-19 Emergency Paid Leave that includes: (i) the employee's name; (ii) the date or dates for which leave is requested and taken; (iii) a statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and (iv) a statement that the employee is unable to work, including by means of telework, for such reason.

For leave requests based on a quarantine order or self-quarantine advice, the statement from the employee must also include: (i) the name of the governmental entity ordering quarantine or the name of the health care provider advising self-quarantine; and (ii) if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

No-Retaliation

Under the Act, it is unlawful for any employer to interfere with, restrain or deny an employee's ability to take COVID-19 Emergency Paid Leave, including, but not limited to, using an employee's taking of COVID-19 Emergency Paid Leave as a negative factor in any employment action, such as an evaluation, promotion, disciplinary action or termination, or otherwise subjecting an employee to discipline or taking any other adverse action against an employee for the use of COVID-19 Emergency Paid Leave.

It is also unlawful for any employer to take any adverse action against an employee because the employee opposes practices believed to be in violation of the Act, or because the employee supports the exercise of rights of another employee under the Act, including, but not limited to: (i) filing an action, or instituting or causing to be instituted any proceeding under or related to the Act; (ii) providing or intending to provide any information in connection with any inquiry or proceeding related to the Act; or (iii) testifying or intending to testify in any inquiry or proceeding related to the Act.

Employee Notice Requirement

The Act requires the Massachusetts Executive Office of Labor and Workforce Development to release a model COVID-19 Massachusetts Emergency Paid Leave poster notice by June 4, 2021. Upon publication, employers must display this poster notice at a conspicuous location within the workplace. In cases in which the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, notification is required to be sent via electronic communication or a conspicuous posting in the web-based platform.

The Massachusetts Executive Office of Labor and Workforce Development is expected to publish clarifying regulations in coming weeks. Morse is focused on assisting our clients navigate the complex compliance standards of the Act, and other COVID-19 considerations. Please contact Matthew Mitchell should you have questions concerning this subject, or any other

COVID-19 response matters.

Go to our full COVID-19 Resource Collection.