

Massachusetts Employers Must Provide Up to 40 Hours of COVID-19 Emergency Paid Sick Leave

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Massachusetts has established a statewide mandate for employers to temporarily provide employees up to 40 hours of COVID-19 Massachusetts emergency paid sick leave (MA EPSL) when they are unable to work due to specific qualifying reasons related to the pandemic.

Governor Charlie Baker originally vetoed the MA EPSL legislation in April 2021 with recommended amendments, but the Massachusetts legislature reworked the bill and resubmitted it to the Governor. He signed House Bill 3702 into law on May 28, 2021. Per the law, which appears as [Chapter 16 of the Acts of 2021](#), employees are entitled to MA EPSL benefits from May 28, 2021 until the earlier of September 30, 2021, or until reimbursement funds are depleted. The new MA EPSL benefit is in addition to existing paid time-off benefits offered by employers or required by law (such as Earned Sick Time), subject to some limited exceptions. Although all employers (except the federal government) must provide the MA EPSL, they are eligible to be reimbursed for the costs of MA EPSL from a newly established state fund. As explained below, employers may not “double dip” by seeking reimbursement for MA EPSL, which is also subject to reimbursement through the federal government.

Qualifying Reasons

Under the newly enacted law, all Massachusetts employers are obligated to provide up to 40 hours of MA EPSL to Massachusetts-based employees who are absent from and unable to work due to any of the following reasons:

1. An employee's need to:
 - a. Self-isolate and care for oneself because of the employee's COVID-19 diagnosis;
 - b. Seek or obtain medical diagnosis, care, or treatment for COVID-19 symptoms; or
 - c. 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:
 - a. Is self-isolating due to a COVID-19 diagnosis; or
 - b. 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 healthcare 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 healthcare 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.

The statutory definition of “family member” includes: an employee's spouse, domestic partner, child, parent (including the parent of a spouse or domestic partner), a grandchild, grandparent, or sibling.

Amount of MA EPSL Available

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Employees working at least 40 hours per week are entitled to the maximum entitlement of 40 hours of MA EPSL.

Employees working fewer than 40 hours per week on a regular schedule with consistent hours are entitled to MA EPSL in an amount equal to the average number of hours they work during a regular 14-day schedule. Employees with varying hours and schedules are entitled to MA EPSL in an amount equal to the average hours they worked during the prior six-month period.

Employees may use MA EPSL on an intermittent basis and in hourly increments.

Benefits, Protections During MA EPSL

Employees are entitled to MA EPSL *in addition to* all other job protected leave (paid or unpaid) that the employer is *required* to provide to employees under the Massachusetts Earned Sick Time Law, the employer's existing policies or programs, collective bargaining agreements, or federal law. Employers, however, who have voluntarily created a COVID-19 sick leave policy that provides employees the required amounts of COVID-19 sick leave for the qualifying reasons under the law are not required to provide additional MA EPSL. Employers may not require an employee to use other forms of leave before using MA EPSL (unless required by federal law).

While an employee is on MA EPSL, the employer must maintain the same employment benefits to which the employee is otherwise entitled, such as group health insurance, life insurance, disability insurance, sick leave, or vacation leave.

It is unlawful for an employer to interfere with, restrain, or deny an employee's use of MA EPSL or to retaliate against an employee for the use of MA EPSL or for opposing any practice in violation of the new law.

Limits on MA EPSL

During MA EPSL, employers must compensate employees up to a maximum of \$850 per week. Although MA EPSL is in addition to other required forms of paid time off, it may be reduced if the aggregate amount the employee receives would exceed the employee's average weekly wage. MA EPSL also may be reduced by the amount of wages or wage replacement that an employee receives under any government program or law (such as unemployment benefits).

Reimbursement for Employers

As noted above, all employers, regardless of size, are required to provide MA EPSL. Employers, however, may seek reimbursement from the state for the amounts of MA EPSL paid to employees, up to the \$850 per week cap.

To the extent certain covered employers may have opted to obtain payroll tax credits through the extension of the Families First Coronavirus Response Act (FFCRA) and its extensions, most recently through the American Rescue Plan Act, they 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 state's MA EPSL fund.

Obligations During MA EPSL

Employees are required to provide notice to employers of the need for MA EPSL as soon as practicable or foreseeable. Employers may require employees to provide a written request, with relevant information, for MA EPSL. This relevant information, in turn, will be required if an eligible employer seeks reimbursement. Health information regarding an employee or an employee's family member must be treated as confidential medical records, kept confidential under state and federal law, not disclosed except to the affected employee or with the affected employee's express permission, and maintained on a separate form and in a separate file from other personnel information.

After the first day of MA EPSL, employers may require employees to follow reasonable notice procedures to continue to receive MA EPSL.

Notice Obligation

Employers are required to provide a copy to all employees and post a notice regarding MA EPSL. The notice is available [here](#).

Availability of MA EPSL

Employees are entitled to use MA EPSL from May 28, 2021 until September 30, 2021, or until the state provides notice that MA EPSL fund will be depleted, whichever is first.

Potential Regulations

Additional guidance and information regarding MA EPSL may be forthcoming, because the law provides for the possible promulgation of regulations necessary for implementation of the MA EPSL provisions.

Jackson Lewis attorneys will continue to monitor developing changes in the law and provide updates. Please reach out to a Jackson Lewis attorney if you have questions this developing area of the law or its interaction with existing state and federal laws.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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