



10 Tips to Help Massachusetts Employers Navigate Wage And Hour Issues During Reopening

Insights

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As Massachusetts employers navigate reopening their workplaces while complying with federal, state, and local guidelines, it is helpful to gain some insight into government enforcement priorities. The Fair Labor Division of the Massachusetts Attorney General's Office has not only prepared a Frequently Asked Questions document, but recently participated in a webinar for employers to offer informal suggestions on wage and hour compliance during these unprecedented times. We attended the webinar and summarized the highlights below so you wouldn't miss out.

Top 10 Wage And Hour Tips

While keeping in mind that many of the employment issues arising during the COVID-19 pandemic require a fact-intensive analysis (for which you should consult your local Fisher Phillips counsel) and that the legal landscape continues to evolve, below are the top 10 tips to assist Massachusetts employers with balancing the priorities of their businesses while keeping workers safe and minimizing litigation risk:

1. **Prospective Reduction of Hours and/or Salary:** You may reduce a non-exempt employee's hours, and may also lower the salary of exempt employees or the hourly rate of non-exempt employees on a prospective basis, subject to either a minimum salary of \$684 for exempt employees or the minimum wage for non-exempt, hourly employees. Such changes should be made and communicated to employees prior to the start of the workweek in which they will take effect. You should be wary of *ad hoc* schedule changes or salary reductions that may impact employees' exempt status or certain visa qualifications.
2. **Reporting Pay:** Massachusetts requires employers to pay employees for a minimum of three hours of work at the minimum wage when the employees are scheduled to work a shift that is three hours or longer, report to work at their scheduled time, and are sent home without working at least three hours. If an employee shows up to work and cannot work because the employee has a temperature or is exhibiting symptoms from COVID-19, the Massachusetts Attorney General's Office has advised that this situation would not trigger reporting pay obligations.
3. **Vacation Pay:** Unless a contract or policy indicates otherwise, you may dictate when or whether an employee may use vacation time or force your employees to use vacation time. Employers are reminded, however, that you must pay any accrued vacation upon separation from employment. A failure to do so could subject you to a claim for mandatory triple damages.

4. **Quarantining Employees:** You may use your discretion in deciding whether an employee who recently traveled out-of-state should be forced to quarantine before returning to work. If you elect to do so, consider whether the employee may utilize paid time off during this quarantine period, through either the Massachusetts Earned Sick Time Law or the Families First Coronavirus Response Act. (The Massachusetts Attorney General's Office has a webpage dedicated to resources for essential workers who are quarantined.)
5. **Meal Breaks:** As communal spaces, such as workplace cafeterias, are likely impacted by COVID-19 protocols during reopening, you should keep in mind that employees must have the option to leave the premises and be relieved of all job responsibilities if taking an unpaid meal break. If either of these restrictions are not satisfied, the employee must be paid for the time. If you have employees who choose to eat lunch at their desks, you should remind them that they are not expected or permitted to do any work during the break.
6. **Reimbursing Expenses for Remote Employees:** The Massachusetts Attorney General's Office suggested employers assess whether the expense is unavoidable and necessary for the employee to perform job responsibilities from home. It is unlikely that this category of costs would include expenses an employee incurred for personal reasons separate and apart from a remote work arrangement. Potential reimbursable costs could include covering the cost of a computer that the employee had to purchase, or the costs associated with purchasing or upgrading home internet or cellular telephone service.
7. **Costs of Personal Protective Equipment:** If a workplace requires the use of masks that offer greater protection than those required in public spaces in Massachusetts (e.g., N95s), the Massachusetts Attorney General's Office suggested that the employer may need to bear this cost. You should consult the Department of Labor Standards with specific questions on mask requirements, especially if the workplace setting does not allow for social distancing of at least six feet.
8. **Costs of COVID-19 Tests:** While an increasing amount of COVID-19 tests are administered without any cost to the worker (either through free testing or insurance coverage), the Massachusetts Attorney General's Office suggested that you reimburse the employee if the test results in a cost to the employee and is a requirement for that person to return to work. Furthermore, the time taking the test may be deemed compensable time and you should consider this expense when imposing testing requirements.
9. **Informal Resolutions:** The Fair Labor Division of the Massachusetts Attorney General's Office has increased the number of matters that are being resolved informally, often without a payroll demand or citation/penalty. If contacted about a new matter, we recommend asking whether the Massachusetts Attorney General's Office is addressing the inquiry informally for resolution. You are encouraged to contact counsel for informal resolutions, nevertheless.
10. **Resources:** You may also consider referring to the Massachusetts Attorney General's Office's website and the U.S. Equal Employment Opportunity Commission's guidance when analyzing other COVID-19 related questions in the workplace.

Health And Safety Enforcement

While the Massachusetts Attorney General's Office does not enforce health and safety matters, the office is currently serving as a liaison between complainants, employers, and various state and local agencies regarding these issues. Given that the Fair Labor Division has received complaints on a wide array of health and safety matters, it now offers a new [complaint form](#) available online for reporting health concerns regarding COVID-19.

Examples of the main types of complaints it has been receiving of late include, but are not limited to: (1) mask usage for employees and customers/visitors entering the workplace; (2) social distancing protocols; (3) cleaning protocols; and (4) information sharing/transparency regarding positive COVID-19 cases. Attorneys and investigators in the Fair Labor Division are informing employers of health and safety complaints in an effort to provide resources for alleviating potential issues before referring the matters to local health boards, other state or local agencies, or other divisions within their office.

Before reopening, you need to post a [compliance poster](#) in a location where customers and employees can see it. This [template](#) is available on the Massachusetts Attorney General's Office's website to assist businesses in certifying that they have developed a written plan for complying with the required standards for reopening a business in Massachusetts. As some businesses have health and safety requirements tailored to their industry, we encourage employers to review the [Massachusetts Attorney General's Office's guide](#), [sector-specific protocols](#) and [workplace safety measures](#) in Massachusetts as well as refer to the websites of the [CDC](#) and [OSHA](#) for additional guidance.

Conclusion

As you begin the process of reopening, you should also familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the [author](#), any attorney in our [Boston](#) office, or any member of [our Post-Pandemic Strategy Group Roster](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



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Wage and Hour