

# MASSACHUSETTS ENACTS YET ANOTHER COVID-19 PAID LEAVE OBLIGATION FOR BAY STATE EMPLOYERS

Insights  
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Massachusetts Governor Charlie Baker signed legislation on May 28 creating another statewide mandate for employers to provide emergency paid leave related to COVID-19. The COVID-19 Paid Leave obligations outlined in this article began immediately with the governor's signature on May 28, which means you need to quickly adjust your policies and practices to comply with this new law. What do Bay State employers need to know about this latest legal compliance challenge?

**(Ed. Note: This paid leave law was extended through April 1, 2022. The full details [can be found here.](#))**

## How Much More Leave?

The law requires all public and private with employees in Massachusetts (other than the U.S. government) to provide up to 40 additional hours of paid leave to employees who are unable to work due to COVID-19. The amount of paid leave an employee is entitled to depends on the number of hours they work in a given week:

- those regularly working 40 or more hours per week will receive 40 hours of COVID-19 Paid Leave;
- employees regularly working fewer than 40 hours per week will receive COVID-19 Paid Leave that is equal to the number of hours that the employee works on average over a 14-day period; and

## Related People



**Zinnia Khan**

Associate

617.904.7442



**Joshua D. Nadreau**

Regional Managing Partner  
and Vice Chair, Labor  
Relations Group

- employees working varying hours from week to week will receive COVID-19 Paid Leave equivalent to the average number of hours they worked each week over the six-month period immediately preceding the date on which they take the COVID-19 Paid Leave. If the employee did not work a six-month period prior to taking leave, then they will receive leave based on their reasonable expectation of the average number of hours per week that they would normally be scheduled to work.

617.722.0044

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## Service Focus

Employee Leaves and Accommodations

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## What Can Employees Use the Leave For?

Employees may use COVID-19 Paid Leave for the following qualifying reasons:

- Self-isolation on the advice of a healthcare provider;
- Caring for oneself or receiving medical treatment;
- Getting vaccinated;
- Recovering from a disability due to COVID-19;
- Complying with a quarantine order from a public official, health authority, the employer, or a healthcare provider; or
- An inability to telework due to COVID-19 because they have been diagnosed with COVID-19 and the symptoms inhibit their ability to telework.

Further, employers must provide COVID-19 Paid Leave for employees to care for family members under the following circumstances:

- Caring 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; or
- Caring for a family member due to a quarantine order from a public official, health authority, the family member's employer, or a healthcare provider.

Employers must retain the same employment benefits for those eligible for COVID-19 Paid Leave while they are on leave. These benefits include group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits, and pensions.

## Protections for Employees

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Employers cannot compel employees to use other paid leave provided by the employer before using COVID-19 Paid Sick Leave. Retaliating against employees for using leave is also prohibited. Employers also cannot require, as a condition of taking leave, that an employee search for or find a replacement worker to cover their shifts while the employee is out on COVID-19 Paid Leave.

The Executive Office of Labor and Workforce Development will create and distribute a notice of rights under the COVID-19 Paid Leave law to employers. Employers must post this notice in a conspicuous location accessible to employees and additionally provide a copy to each employee.

### **What Will This Cost Employers?**

Employees are entitled to full wage replacement, up to a cap of \$850 per week per employee. In other words, any employee who earns less than \$850 per week will receive full pay during their COVID-19 Paid Leave. Fortunately, the law creates a \$75 million COVID-19 Emergency Paid Sick Leave Fund to reimburse eligible employers for the costs of this new mandate. Eligible employers will be reimbursed from the Fund for providing COVID-19 Paid Leave until the amount of the Fund is depleted. Information on which employers are eligible for reimbursement from this Fund is set forth below.

### **Differences Between COVID-19 Paid Leave and Leave under the Families First Coronavirus Relief Act (FFCRA)**

The [American Rescue Plan Act of 2021 \(ARPA\)](#) signed into law by President Biden on March 11 extends paid leave under the FFCRA on a voluntary basis through September 30, 2021. As with the initial paid leave provided for under FFCRA, this voluntary paid leave is applicable to employers with fewer than 500 employees. ARPA further extends tax credits available to employers with fewer than 500 employees who choose to grant employees paid leave. Though paid leave provided under the FFCRA and COVID-19 Sick Leave overlap in many areas, there are key differences in the two schemes employers should be aware of.

#### ***Term***

Where the FFCRA has been extended until September 30, 2021, the COVID-19 Paid Leave will only be available until either (i) 15 days after the Fund issues notice that the \$75

million amount is approaching depletion or (ii) September 30, 2021, whichever occurs first.

**(Ed. Note: This paid leave law was extended through April 1, 2022. The full details [can be found here.](#))**

### ***Employer Eligibility***

The extended FFCRA applies only to employers with fewer than 500 employees and is voluntary. Massachusetts' COVID-19 Paid Leave applies to all employers with employees in Massachusetts, irrespective of size, and is mandatory.

### ***Intermittent Leave***

Employees will have the option of using COVID-19 Paid Leave intermittently and in increments as small as one hour. By contrast, in most situations, employees cannot take intermittent paid leave under the FFCRA. Intermittent leave is only available under the FFCRA when a non-teleworking employee must care for a child whose school or place of care is closed, or whose childcare provider is unavailable, because of COVID-19 related reasons. Otherwise, paid sick leave for qualifying reasons related to COVID-19 must be taken in full-day increments.

### ***Reimbursement Eligibility***

Reimbursement for COVID-19 Paid Leave is not available if the employer is [eligible for tax credits under the ARPA](#). Therefore, reimbursement from the Massachusetts Fund is only available to employers with 500 or more employees. Employers with fewer than 500 employees are not eligible to be reimbursed by state the Fund for providing COVID-19 Paid Leave unless the leave does not qualify for reimbursement under the ARPA, such as if an employee took incremental leave that is unavailable under the extended FFCRA.

Employers will need to follow certain steps to seek reimbursement, such as submitting an application to the Executive Office for Administration and Finance. Reimbursements will be sent directly to employers within 30 business days. Given that the Fund is limited to only \$75 million, employers are strongly encouraged to submit reimbursement requests as soon as possible.

Employers with fewer than 500 employees should apply to the federal government for reimbursement through payroll tax credits for all COVID-19 Paid Leave provided. The federal payroll tax credit is limited to \$511 per day and \$5,110 in the aggregate.

### **Stay Tuned For More**

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Massachusetts employers, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information.

If you have questions or would like to obtain the documents listed below, please contact your Fisher Phillips attorney, the authors of this alert, or any attorney in our [Boston office](#).

- Massachusetts Temporary Emergency Sick Leave Policy
- Required State-Issued Poster
- Massachusetts Temporary Emergency Sick Leave Request Form
- Combined Massachusetts TEPSL/ARPA/FFCRA Leave Request Form