

Insights, News & Events

MASSACHUSETTS EXTENDS COVID-19 PAID LEAVE OBLIGATION FOR BAY STATE EMPLOYERS

Insights
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Massachusetts Governor Charlie Baker just signed legislation extending the statewide mandate for employers to provide emergency paid leave related to COVID-19. These COVID-19 Paid Leave obligations will now continue until April 1, 2022. What do Bay State employers need to know about this latest change in an already confusing sea of voluntary and mandatory leave mandates?

What's Changed?

As avid readers of our Insights may recall, we provided a [comprehensive assessment](#) of Temporary Emergency COVID-19 Paid Sick Leave statute when it was enacted by the legislature in May 2021. The good news for you is that the legislature left the existing law largely intact.

However, in addition to extending the mandate from September 30, 2021 to April 1, 2022, the legislature made one change to the qualifying reasons for leave. Employees will now be eligible to care for a family member who "is obtaining immunization related to COVID-19 or is recovering from an injury, disability, illness or condition related to such immunization." This change aligns the self-care and family-care provisions of the law and further bolsters the Commonwealth's commitment to encouraging vaccinations.

It does not appear, however, that employees who have used their 40-hour entitlement will be entitled to any additional leave under the statute. According to a [Frequently Asked Questions](#) page maintained by the Executive Office of Administration and Finance, while the law does not address

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how many times an employee can take leave, there is a cap with respect to total hours (40).

A Brief Refresher

As a reminder, all public and private employers in Massachusetts (other than the U.S. government) are required 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
- 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.

What Can Employees Use the Leave For?

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

- Self-isolating and caring for oneself because of the employee's COVID-19 diagnosis;
- Seeking or obtaining a medical diagnosis, care or treatment for COVID-19 symptoms;
- Obtaining immunization related to COVID-19 or recovering from an injury, disability, illness or condition related to such immunization;
- Caring for a family member who is self-isolating due to a COVID-19 diagnosis;

- Caring for a family member who needs medical diagnosis, care, or treatment for COVID-19 symptoms;
- Caring for a family member who is obtaining an immunization related to COVID-19 or is recovering from an injury, disability, illness, or condition related to such immunization;
- 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.

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

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 has created a [notice](#) of rights under the COVID-19 Paid Leave law. Employers must post this notice in a conspicuous location accessible to employees and additionally provide a copy to each employee.

Recordkeeping Obligations

Employers should develop a written request for leave form and maintain a copy in the employee's personnel file. Employers must also keep written medical documentation from an employee if the employer is going to request reimbursement from the state.

While this law has no express restrictions on what medical documentation an employer may collect, employers are cautioned to keep any health information confidential and

not disclose it to any third parties without the employee's permission.

What Will This Cost Employers?

Employees are entitled to full wage replacement, up to a cap of \$850. 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 maintains the \$75 million COVID-19 Emergency Paid Sick Leave Fund created in May 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.

Importantly, employers may seek reimbursement for employee benefits costs as part of the \$850 cap. Employers would be wise to calculate the hourly costs of benefits when calculating their reimbursement requests.

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, please contact your Fisher Phillips attorney, the [author](#) of this alert, or any attorney in our [Boston office](#).

If you have questions or would like to obtain any of the documents listed below, please contact your Fisher Phillips attorney, the author 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**