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Labor & Employment Alert

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UPDATE: Massachusetts Emergency Paid Sick Leave Extended Effective October 1

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We highlight key aspects of the new (and recently extended) Massachusetts Emergency Paid Sick Leave law, for which all Massachusetts employees (other than federal employees) are eligible.



What's the Impact?

- / This law provides Massachusetts employees with up to 40 hours of paid sick leave for certain COVID-related reasons
- / Massachusetts will reimburse employers for payments made to employees who provide paid sick leave for certain COVID-related reasons
- / The law was extended to run through April 1, 2022, or until reimbursement funds are exhausted
- / Employers are required to post a notice issued by the Commonwealth Regarding this leave

Under a law that took effect on May 28, 2021 and which was extended effective October 1, 2021, all employers in Massachusetts must provide employees with up to 40 hours of Emergency Paid Sick

Leave (“EPSL”) if an employee is unable to work due to certain reasons related to COVID-19. Unlike the federal emergency paid sick leave program under the Families First Coronavirus Response Act (“FFCRA”), employers in MA cannot opt out of this new law, nor are there carve outs in the statute for employers of certain sizes—it appears that *all* employers (other than federal agencies) must provide EPSL under this law to *all* MA employees. EPSL is generally in addition to other paid time off that employers provide to their MA employees. *Notably, employers can seek reimbursement from the Commonwealth for the cost of EPSL used by employees.*

The following are the key aspects of this new law:

Applicable time period

Under the extended law, employees are eligible to take EPSL until the earlier of April 1, 2022, or when the date on which Commonwealth’s \$75 million fund for EPSL is exhausted.

Reasons an employee can use EPSL

MA employees can use EPSL for one of the following reasons:¹

- / an employee’s need to:
 - self-isolate and care for themselves because they have been diagnosed with COVID-19;
 - get a medical diagnosis, care, or treatment for COVID-19 symptoms; or
 - get or recover from a COVID-19 immunization;
- / an employee’s need to care for a family member who:
 - must self-isolate due to a COVID-19 diagnosis; or
 - needs medical diagnosis, care, or treatment for COVID-19 symptoms;
 - **needs to obtain or recover from a COVID-19 immunization;**
- / a quarantine order or similar determination regarding the employee by a local, state, or federal public official; a health authority having jurisdiction; or a health care provider;
- / an employee’s need to care for a family member due to a quarantine order or similar determination regarding the family member by a local, state, or federal public official, a health authority having jurisdiction, the family member’s employer, or a health care provider;
or
- / an employee’s inability to telework due to COVID-19 symptoms.

Leave time

EPSL can be used intermittently and in hourly increments. Employees who work 40+ hours per week are eligible to receive up to 40 hours of EPSL. Employees who regularly work fewer than 40 hours per week are eligible for an amount of EPSL equal to the average number of hours they work each week. If an employee works an irregular schedule, they are eligible for an amount of

¹ See [“Massachusetts COVID-19 Emergency Paid Sick Leave—Employer Guidance.”](#)

EPSL equal to the average number of hours they were scheduled to work over the prior six months. If an employee with an irregular schedule has not been employed for at least six months with the employer, the employee's EPSL entitlement is equal to the number of hours per week the employee was scheduled to work when hired.

Payment amount

The maximum amount an employee is eligible to be paid for EPSL is \$850 (including cost of benefits).

Employer reimbursement

Employers should note that Massachusetts will reimburse employers up to \$850 per employee for payments made to employees who utilize EPSL. **To date, these reimbursements appear to be underutilized and employers who have provided EPSL to employees should consider seeking reimbursement.**

Employers that plan to seek reimbursement should obtain the following from an employee who takes EPSL:

- / A written request to use EPSL
- / Employee's name
- / Dates of the requested leave
- / A statement of the covered reason for the leave
- / A statement that because of the reason for leave, the employee is unable to work or telework
- / If the leave is due to a quarantine or isolation order, the name of the governmental entity or health care provider advising to quarantine, and if the person quarantining is an employee's family member, the name of the family member and relation to the employee

All health-related information the employee provides in connection with an EPSL request is a medical record and should be treated as such by the employer (meaning, it should be kept confidential, maintained in a file separate from other personnel records, etc.).

The employer should also ensure it has a record of amounts paid to the employee during EPSL, the amount of EPSL taken, the employee's regular schedule, and other information to facilitate reimbursement.

Employers cannot obtain reimbursement from Massachusetts for EPSL payments if also seeking or sought reimbursement from the federal government pursuant to such leave under the FFCRA.

Employer notice

Employers are required to post a notice to employees about EPSL. **The required notice is [available online](#).**

Our Nixon Peabody team will continue to provide [updates](#) on other issues facing employers and solutions to assist them in navigating these quickly evolving times. For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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