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# COVID-19 Temporary Emergency Paid Sick Leave Program

Information about the Commonwealth's new temporary sick leave program for certain reasons related to COVID-19.

Under the terms of Chapter 16 of the Acts of 2021 (An Act Providing for Massachusetts COVID-19 Emergency Paid Sick Leave), which was enacted by the Legislature and signed by Governor Baker, effective May 28, 2021, employers are required to make paid leave time available to employees for COVID-related illnesses, quarantine, and vaccinations, and then may apply for reimbursement from the state. The law was amended on September 29, 2021 to extend the duration of the program and to expand the reasons employees may take leave under the law.

## Guidance for Employers

Effective Friday, May 28, 2021, and until April 1, 2022 or the exhaustion of \$75 M in program funds as determined by the Commonwealth, whichever is earlier, employers must offer Massachusetts employees leave time as follows.

## Contact

For questions regarding the COVID-19 Temporary Emergency Paid Sick Leave Program, employers can email [CovidSickLeave@mass.gov](mailto:CovidSickLeave@mass.gov) (<mailto:CovidSickLeave@mass.gov>).

For questions on applying for employer reimbursements, employers can email [ESL@dor.state.ma.us](mailto:ESL@dor.state.ma.us) (<mailto:ESL@dor.state.ma.us>).

Before submitting questions, please check this webpage for the most up-to-date information.

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## Reasons for Leave

Massachusetts employers are required to provide emergency paid sick leave to employees who are unable to work for the following COVID-19-related reasons:

1. an employee's need to:
  - a. self-isolate and care for themselves because they have been diagnosed with COVID-19;
  - b. get a medical diagnosis, care, or treatment for COVID-19 symptoms; or
  - c. get or recover from a COVID-19 immunization;
2. an employee's need to care for a family member<sup>1</sup> who:
  - a. must self-isolate due to a COVID-19 diagnosis;
  - b. needs medical diagnosis, care, or treatment for COVID-19 symptoms; or
  - c. needs to obtain or recover from a COVID-19 immunization;
3. a quarantine order or similar determination regarding the employee by a local, state, or federal public official, a health authority having jurisdiction, the employee's employer, or a health care provider;
4. 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
5. an employee's inability to telework due to COVID-19 symptoms.
6. Note that, in general, employers may not require employees to use other types of available paid leave before they use COVID-19 emergency paid sick leave. Similarly, employers may not require employees to search for or find a replacement worker to cover the time the employee will miss while using COVID-19 emergency paid sick leave.

## Leave Amounts

1. Employers must provide 40 hours of COVID-19 emergency paid sick leave to their employees who work 40 or more hours per week.
2. For employees who regularly work fewer than 40 hours per week, employers must provide leave in an amount that is equal to the average number of hours that such employee works per week.

3. For employees whose schedule and weekly hours vary from week to week, employers must provide leave that is equal to the average number of hours that the employee was scheduled to work per week over the previous 6-months.
4. If an employee with a variable schedule has not worked for the employer for 6 months, the employer must provide leave that is equal to the number of hours per week that the employee reasonably expected to work when hired.
5. The maximum amount an employer is required to pay per employee, and the maximum amount for which the employer may seek reimbursement for any one employee, is \$850 (including cost of benefits).

## Employee Requests for Leave

Employers who want to receive reimbursements from the Commonwealth for the costs of providing employees with COVID-19 Massachusetts emergency paid sick leave must require their employees to submit requests for COVID-19 emergency paid sick leave in writing. Employers should therefore prescribe a form that requires employees to provide the following information for all requests:

1. the employee's name;
2. the date(s) for which leave is requested and taken;
3. a statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
4. a statement that because of the COVID-19 related reason the employee is unable to work or telework.

For leave requests based on a quarantine order or self-quarantine advice, the statement from the employee must also include:

1. the name of the governmental entity ordering quarantine or the name of the health care provider advising self-quarantine; and
2. if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

Employers must treat health information regarding an employee or employee's family member as confidential medical records in accordance with applicable state and federal law, and must not disclose such information to any third parties without the employee's express permission.

Employers should also collect and retain the following information in anticipation of applying for reimbursement:

1. the employee's social security or tax identification number;
2. the employer identification number associated with the position from which the employee took leave;
3. the length of the leave (in hours) and wages paid during that leave that are not eligible for federal tax credits, and are not otherwise paid under any other government program or law;
4. benefits applicable to the employee taking leave; and
5. the number of hours in the employee's regular schedule, or

- a. if the employee has no regular schedule, the hours that the employee was scheduled to work per week over the 6-month period immediately preceding the date on which such employee takes the COVID-19 Massachusetts emergency paid sick leave, including hours for which such employee took leave of any type; or
- b. if the employee did not work over such 6-month period, is equal to the reasonable expectation of the employee at the time of hiring of the average number of hours per week that the employee would normally be scheduled to work.

## Non-Retaliation Provisions

While administering their COVID-19 emergency paid sick leave programs, employers may not interfere with an employee's ability to use COVID-19 emergency paid sick leave or retaliate against an employee for exercising rights under the program. Specifically, employers may not:

1. interfere with, restrain, or deny an employee's ability to take COVID-19 emergency paid sick leave, including, but not limited to, by using an employee's taking of COVID-19 emergency paid sick leave as a negative factor in any employment action, such as an evaluation, promotion, disciplinary action, or termination;
2. discipline or take any other adverse action against an employee for using COVID-19 emergency paid sick leave; or
3. take any adverse action against an employee because the employee opposes practices believed to be in violation of this program, or because the employee supports the exercise of rights of another employee, including, but not limited to:
  - a. filing an action, or instituting or causing to be instituted any proceeding;
  - b. providing or intending to provide any information regarding any inquiry or proceeding; or
  - c. testifying or intending to testify in any inquiry or proceeding

## How to Apply for Reimbursement

Beginning July 8, 2021, and until April 1, 2022 or the exhaustion of \$75 million in program funds as determined by the Commonwealth, employers may apply for reimbursement of the costs of providing COVID-19 emergency paid sick leave, consistent with the program parameters described above. The application is available through the Department of Revenue's [MassTaxConnect website \(https://mtc.dor.state.ma.us/mtc/\)](https://mtc.dor.state.ma.us/mtc/).

The following are step-by-step instructions for submitting a claim:

1. Log into your **MassTaxConnect** account.
- 2: Select the **More...** tab.
- 3: Select the **Register for Emergency Sick Leave Reimbursement** hyperlink in the **Other Actions** panel.

**4:** Read the instructions carefully. When you have, select the **Acknowledge** check box and select **Submit**. This will create an Emergency Paid Sick Leave account.

**5:** Select the **Summary** tab to return to your list of tax accounts.

**6:** Locate the **Emergency Paid Sick Leave** panel and select **Returns** hyperlink.

**7:** Here you will find a list of returns that are available to be filed to submit your reimbursement request. Select the **File Now** hyperlink for the week ending in which the sick leave was paid.

**8:** On the return fill out the required fields with the information for each employee for which you are seeking reimbursement. Read the **Information** section carefully and select the **Attestation** check box for each employee once you have. Choose **Next** when you are finished.

**9:** Review the confirmation information and then choose **Submit** to file your request.

**10:** You have successfully made a request for Emergency Paid Sick Leave reimbursement. Select **OK** to return to the Returns screen. If you need to file a request for another week, you can follow steps 5 – 11 again. You do not need to create another Emergency Paid Sick Leave account.

**11:** The status of the return you just filed is **Submitted**. The status will change to **Processed** overnight. If you need to, you can **View** or **Amend** a previously submitted and processed return.

Please visit the following link to watch a video that demonstrates how to submit an application using screenshots: <https://www.youtube.com/watch?v=VdBp20G6FEw> (<https://www.youtube.com/watch?v=VdBp20G6FEw>).

Depending on when your request is submitted, it may take several weeks or longer to process. If you need to file a request for another week, you can proceed here to file another return as before.

## Frequently Asked Questions - COVID-19 Temporary Emergency Paid Sick Leave Program

Posted Date: January 7, 2022

*New questions and answers are flagged with posted date; undated questions, except as noted, are unchanged from first FAQ document posted on June 7, 2021.*

### Administration

#### Q1. Where can I find a copy of the state law?

The law is available here: Additional Resources, titled Chapter 16 of the Acts of 2021, <https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program> ([/info-details/covid-19-temporary-emergency-paid-sick-leave-program](https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program))

**7/8/21 update:** The law is also available on the [Legislature's website](https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter16) (<https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter16>).

**9/29/21 update:** Recently passed legislation amending the law will be posted when available.

**11/12/21 update:** Legislation that extended the program in time and made other changes is available on the Legislature's website, here: <https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter55>  
(<https://malegislature.gov/Laws/SessionLaws/Acts/2021/Chapter55>)

## Q2. When does the law take effect?

May 28, 2021. Note that earlier versions of the law provided for a ten-day delay between the statute becoming law and the effective date of the sick leave policy; however, the final version of the law took effect upon signing, on May 28. Leave time taken prior to May 28 does not satisfy the state mandate, and is not eligible for reimbursement under this state program.

**9/29/21 update:** Effective October 1, 2021, employees may use MA COVID sick leave for the following additional reasons: to care for a family member who needs to obtain or recover from a COVID-19 immunization.

## Q3. Where can employers find the notice that they are required to share with employees?

Notices are available under Additional Resources: <https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program> (/info-details/covid-19-temporary-emergency-paid-sick-leave-program).

The notice requirement can be satisfied by using either the poster form or the document form of the notice made available on the MA COVID sick leave website.

## Q4. Is there a requirement to issue the Notice to Employees individually or does posting satisfy the notice obligation?

There is not a requirement to issue the notice individually; however, in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based platform.

# Interactions with Federal and Non-Federal Programs

## Q1. Are employees who were already offered 80 hours of federal leave under FFCRA, the CARES Act, and/or ARPA eligible for another 40 hours state leave?

The state mandate is for 40 hours between May 28 and the termination of the mandate. For an employee who took federal leave prior to May 28, the state leave may be in addition to the federal leave. However, to the extent employees have not exhausted their federal leave, the state and federal leave may run concurrently on or after May 28, so long as the state mandate is met in full.

## Q2. Is the federal tax credit program primary or should employers submit to the state for reimbursement first?

The federal tax credit is primary. Employers must attest they are ineligible for federal tax credits for any costs for which they are applying for state reimbursement.

## Q3. The statute says that reimbursement is unavailable for "sick leave wages paid by an employer that are eligible for the [federal] tax credit." Given that the federal program is voluntary, many employers of <500

**have opted out as of Jan 1st or April 1st. Will their submissions for reimbursement be rejected because the companies are technically eligible?**

When applying for reimbursement, employers will be directed to attest that they are ineligible for the federal tax credit – employers who do so are free to access the state reimbursement. Employers may be ineligible for the federal tax credit either because the employer is categorically disqualified or because the parameters of the leave program the employer offers do not meet federal requirements.

**Q4. Are multi-state employers with Massachusetts employees required to notify their Massachusetts employees, even if they are already covered under federal Emergency Paid Sick Leave?**

Yes. Notice must go to all employees with a primary place of employment in the Commonwealth (see “Eligibility” below for additional information). The state mandate may in some cases exceed the federal EPSL program (also sometimes known as FFCRA for the federal law by which it was originally enacted) – notably if an employee used up all available leave time prior to May 28.

**New on 6/11/21:**

**Q5. Does the law apply to employers who are already offering leave under the federal Emergency Paid Sick Leave law?**

Yes. MA COVID leave is similar though not identical to federal Emergency Paid Sick Leave. Notably, family leave is payable at 2/3 regular pay under the federal Emergency Paid Sick Leave, whereas family leave is payable at an employee's regular rate of pay under MA COVID leave. For employers who, voluntarily or otherwise, offer federal Emergency Paid Sick Leave, MA COVID leave may run concurrently with the federally compliant leave, so long as the state mandate is met in full, including 40 hours (or a prorated amount for part-time employees) beginning May 28.

**Q6. How does it work if an employee takes time off to care for a family member, where this leave time is addressed in both federal and state law?**

An employee who takes leave to care for a family member must be paid the full rate of compensation for the first 40 hours (prorated for part-time employees), up to \$850. In determining reimbursement, an employer who offers federal Emergency Paid Sick Leave would first calculate the amount available for a credit under federal law, which is generally two thirds of the employee's regular rate of pay, up to \$200 per day, or \$2,000 total. The employer would then subtract the federal tax credit amount from the reimbursement otherwise available from the state.

**Q7. Are employees who were already offered 40 or more hours of temporary non-federal COVID-specific paid leave (over and above an employer's normal year-round sick leave policies) that meets or exceeds the MA COVID leave requirements eligible for another 40 hours state leave?**

The state mandate is for 40 hours of COVID-specific leave between May 28 and the termination of the mandate. As with federal COVID leave, for an employee who took temporary non-federal COVID-specific leave that meets or exceeds the MA COVID leave requirements prior to May 28, the state-mandated leave may be in addition to the temporary non-federal COVID-specific leave. However, to the extent employees have not exhausted their temporary COVID-specific leave, the two leave programs may run concurrently on or after May 28, so long as the state mandate is met in full.

**New on 9/29/21:**

**Q8. How will smaller employers be affected when the federal EPSL program expires on September 30, 2021, while the state mandate is extended?**

Employers of all sizes are covered by the state program. Until September 30, 2021, since federal credits are primary and smaller employers in most cases can access federal credits, they would claim state reimbursement only for costs for which they are not claiming federal tax credits. After September 30, assuming the federal program is not extended, employers can claim reimbursement for eligible costs from the state, without seeking a federal tax credit.

**New on 10/15/21:**

**Q9. If an employer, on or after May 28, 2021, provided a full-time employee with 40 hours of leave that met the state COVID sick leave mandate, but the employer did not seek reimbursement from the state - e.g., an employer provided 40 hours of leave at an employee's regular rate of pay under the federal Emergency Paid Sick Leave program and claimed federal tax credits to cover the cost - is the employer required to offer that same employee 40 hours of MA COVID sick leave and seek reimbursement from the state? If not, can the employer opt to do so?**

If an employer previously met the state mandate with respect to an employee but did not seek reimbursement from the state, the employer may - but is not required to - offer the employee additional MA COVID sick leave and seek reimbursement from the state (40 hours for full-time employees, prorated for part-time employees). Doing so is at the employer's election; employers are not required to offer additional leave under these circumstances, so long as the state mandate has been met in full.

## Documentation and Reimbursement

**Q1. How can employers access reimbursement?**

**7/8/21 update:** Please see the section titled "[How to Apply for Reimbursement](#)" (</info-details/covid-19-temporary-emergency-paid-sick-leave-program/latest#how-to-apply-for-reimbursement->) above, which includes a YouTube video explaining the process and demonstrating each step with screenshots.

**Q2. Is there a standard form available from the state to collect the needed information from employees?**

**7/8/21 update:** Yes. Under "Additional Resources" below, see "[Sample Employee Leave Request Form.](#)" (</doc/sample-employee-leave-request-form/download>)

**Q3. Are absences prior to May 28th paid for by the employer eligible for reimbursement from this fund?**

No.

**Q4. Is an employer permitted to request medical documentation for the categories of leave related to an employee or family member's diagnosis or treatment for COVID-19? And if so, are there limitations? Is written support required in order to access reimbursement?**

**Revised answer as of 1/7/22:**

Yes; written medical documentation must be requested of an employee in order for an employer to claim state reimbursement. There are no express limitations on the medical documentation an employer may collect;



however, employers must treat health information regarding an employee or employee's family member as confidential medical records in accordance with applicable state and federal law, and must not disclose such information to any third parties without the employee's express permission.

COVID-19 self-tests—also referred to as home tests or over-the-counter (OTC) tests—may serve as the basis for using MA COVID-19 sick leave (due to the employee's or a family member's positive diagnosis for COVID-19). If a COVID-19 self-test is used, the medical documentation requirement can be satisfied by a statement from the employee accompanied, at the employer's discretion, by a photo of the positive test. In some circumstances, especially where there is a time lag, it may no longer be feasible to obtain a photo from the employee. Employers should use reasonable discretion taking account of the circumstances.

#### **Q5. Are employers required to get documentation of an immunization if this is the reason for their leave?**

Yes, if they seek reimbursement from the state.

**New on 6/11/21:**

#### **Q6. How will employers be notified when state funds have been depleted?**

**Revised answer as of 9/29/21:**

If the state funds are expected to become depleted prior to April 1, 2022, employers will be notified with 15 days advance notice. Employers may continue to access reimbursement for leave taken up until the termination date of the program, and additional state funding will be added to the program as necessary to ensure that all eligible costs are reimbursed.

**New on 8/20/21:**

#### **Q7. What documentation is required?**

The law does not address what documentation is required. In addition to a written request for leave from the employee (see [Sample Employee Leave Request Form \(/doc/sample-employee-leave-request-form/download\)](/doc/sample-employee-leave-request-form/download)), employers should use discretion in collecting and maintaining the records necessary to support the specific type of MA COVID sick leave taken in the event that verification is required. For example, if leave is taken to comply with a quarantine order issued by a local, state, or federal public health official, a digital or paper copy of the quarantine order should be retained on file.

## **Eligibility**

#### **Q1. Does the law apply to new or temporary employees?**

Yes. However, note that the hours that the employer must offer are prorated for those with part-time schedules. For more information, see Leave Amounts, <https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program#leave-amounts> (/info-details/covid-19-temporary-emergency-paid-sick-leave-program#leave-amounts-)

#### **Q2. Is there a waiting period for new hires?**

No.

#### **Q3. Does the law apply to Massachusetts residents who work in another state?**

Eligible employees are defined as, among other aspects, those whose primary place of employment is in the Commonwealth (see Q4 below for this definition). Unless a Massachusetts resident who works in another state has a primary place of employment in the Commonwealth, the law does not apply.

#### **Q4. Where is an employee's primary place of employment?**

##### **Revised answer as of 9/29/21:**

An employee's "primary place of employment" means the worksite or physical location where the employee spent the greatest percentage of work hours between the dates of January 1, 2020 and April 30, 2021; temporary telecommuting arrangements entered into during this period should not factor into this determination. For a new employee who commences work on or after May 1, 2021, "primary place of employment" means the worksite or physical location where the employee is expected to spend the greatest percentage of work hours between the first day of work and April 1, 2022, based on the work arrangement agreed upon between the employer and the employee.

Note: this question is intended to address stable employment situations. See also Q10, below.

#### **Q5. Does this law apply to businesses based in neighboring states with employees who live in MA and work from home?**

As above, the law applies if an employee's primary place of employment is in the Commonwealth.

#### **Q6. How does the law apply to employees of Massachusetts or multistate employers with a mix of Massachusetts and out of state employees?**

Only employees whose "primary place of employment is in the Commonwealth" will be eligible.

#### **Q7. Does the law apply to employers of all sizes?**

Yes.

#### **Q8. How many times can an employee take leave?**

The law does not address how many times an employee can take leave. The cap is only with respect to total hours.

##### **New on 6/17/21:**

#### **Q9. Does the law apply with respect to employers that do not require immunizations?**

Yes. The law applies to all employers of Massachusetts employees.

##### **New on 6/25/21:**

#### **Q10. Does the law apply to an employee who used to work in Massachusetts but has since been permanently transferred out of state?**

No.

##### **Revised answer as of 9/20/21:**

#### **Q11. Does the law cover a parent or guardian whose child's school or daycare closes due to COVID?**

**Revised answer as of 9/20/21:**

Yes, potentially, if the employee is otherwise eligible, and two conditions are met: 1) the closure is due to the determination of a federal, state, or local official that closure under such circumstances is warranted (e.g., an order or general guidance from the federal Centers for Disease Control and Prevention (CDC), state Department of Early and Secondary Education, state Department of Early Education and Care, state Department of Public Health, or Local Board of Health); and 2) the employee is unable to work, remotely or otherwise, as a result.

**New on 9/29/21:****Q12. Does the law cover an employee who needs to (1) take a family member to obtain a COVID-19 vaccination or (2) care for a family member who is recovering from a COVID-19 vaccination?**

Yes, effective October 1, 2021. MA COVID sick leave may not be used to cover leave taken for either of these reasons prior to October 1, 2021.

## Leave Detail

**Q1. What leave is mandated?**

Required leave amounts are detailed here: <https://www.mass.gov/info-details/covid-19-temporary-emergency-paid-sick-leave-program#leave-amounts> (/info-details/covid-19-temporary-emergency-paid-sick-leave-program#leave-amounts-)

**Q2. For full-time employees, is the leave 40 hours total, or 40 hours per week?**

40 hours total.

**Q3. Does an employee need a positive COVID test to qualify for COVID sick leave?**

Note: This answer has been withdrawn. Please see question 10.

**Q4. If an employer currently provides sick time to full-time and part-time employees, must that employer provide additional leave time?**

Additional leave time may be required. Generally, MA COVID leave is required to supplement otherwise available sick time. Note that for employers who, voluntarily or otherwise, offer federal Emergency Paid Sick Leave, MA COVID leave may run concurrently with the federally compliant leave, so long as the state mandate is met in full, including 40 hours (or a prorated amount for part-time employees) beginning May 28.

**Q5. An employer provides employees with a separate paid time policy to obtain a COVID-19 vaccine for him or herself. This paid time is not deducted from the employee's sick or vacation time. Can this leave time run concurrently with MA COVID EPSL?**

Yes, as long as the paid time-off is compensated at the employee's regular rate of pay, and with the same employment benefits to which the employee is entitled to as a term of the employee's employment.

**Q6. For an employee who makes more than \$850 per week, does this mean the employer is required to grant them 40 hours off but only pay them for a portion of the time? If this is the case, is it ok to allow employees to use PTO to make up the difference?**

Yes, the law requires 40 hours (for full-time employees, prorated for part time), but only requires payment of \$850, including benefits. Yes, employees may use other forms of paid time off, such as sick leave, in order to earn their normal rate of pay. In that case, once the \$850 dollar cap is hit, the leave times could run concurrently.

**Q7. With respect to the maximum amount an employer is required to pay per employee, and the maximum amount for which the employer may seek reimbursement for any one employee, is \$850 a weekly cap or a total cap?**

\$850 is a total cap.

**New on 6/11/21:**

**Q8. Are MA COVID leave benefits taxable?**

Yes. Leave benefits are treated like wages paid while an employee takes sick time.

**Q9. Is MA COVID leave retroactive?**

No, leave time taken prior to May 28, 2021 is not covered by the state mandate.

**New on 6/17/21:**

**Q10: If an employee is symptomatic, is tested for COVID-19 and the result is negative but the employee needs to remain home, are they entitled to the EPSL?**

**Revised answer as of 8/6/21:**

COVID sick leave must be related to COVID. The state will defer to an employer's good faith determination that the reason for the leave is COVID-related. For example, an employee may have a probable diagnosis of COVID from a medical professional, alongside a false negative test for COVID. Or, the employee may have an ambiguous diagnosis, and be advised to remain home based on the possibility that the illness is COVID. An employee may take time for a COVID test based on symptoms that appear to be COVID, but turn out to be something else. Any of these scenarios could reasonably be considered COVID-related.

Conversely, once the illness is definitively determined not to be COVID-related, further paid leave is not available under this law. For example, if an employee who took four days of leave learned definitively at the close of day two that the illness was not COVID-related, the employee would be entitled to two days of COVID sick leave and the remaining two days would not be covered by the law. As noted above, if there was any ambiguity surrounding the diagnosis, the state will defer to the employer's good faith determination that the reason for the latter two days of leave was COVID-related. The same analysis applies where an employee has taken leave to care for a family member whose illness turns out to be unrelated to COVID-19.

**Q11. Are benefits deducted from the \$850 cap?**

Benefits are part of the \$850, both in the sense that \$850 (including the value of benefits) is the maximum amount an employer may seek in reimbursement, and in that \$850 is the maximum the employer is obligated to compensate an employee under this state law.

For example, a full time employee earning \$20 per hour whose benefits cost an employer \$8.34 per hour has a total cost of compensation of \$28.34 per hour.

- If that employee were to take 30 hours of leave for COVID-related reasons, the employee would be entitled to \$600 in wages (\$20 x 30 hours), and the employer could claim \$850 in reimbursement (\$600 in wages plus \$8.34 x 30 hours in benefit costs).
- If that employee were to take 10 more hours of leave (40 hours total) for COVID-related reasons, the employee would be entitled to no further wages (except potentially by taking sick leave under an employer's policy, if applicable). The employer would be required to grant the employee the full 40 hours leave, with regular benefits, but would be entitled to no further reimbursement from the state.

**New on 6/25/21:**

#### **Q12. What is an employee's regular rate of pay?**

**Note: this answer was supplemented on 8/20/21:** The amount that an employee is regularly paid for each hour of work. Employers may use reasonable discretion in determining regular rate of pay. For tipped employees who ordinarily receive less than the minimum wage, the regular rate of pay means the effective minimum wage under M.G.L. c. 151, § 1 (\$13.50 as of January 1, 2021).

#### **Q13. By what date must an employer pay an employee who has used COVID-19 Massachusetts emergency paid sick leave? Can an employer withhold pay until the employee submits required documentation?**

The law does not specify requirements in this area. Employers should use reasonable discretion.

#### **Q14. How does an employer calculate the cost of benefits?**

Benefits are defined in statute as non-wage compensation "provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions." The employer's cost of benefits per hour of leave is the total annual or monthly cost of these benefits for an employee, divided by the employee's average number of hours worked per year or per month, as applicable. In assessing the cost of insurance benefits, an employer may rely on premium amounts paid to a carrier during the paid leave for fully insured coverage (or the COBRA premium, prorated, for self-insured employers), the average premium rate across all employees, or a substantially similar method that distinguishes between individual and family coverage. An employer who is claiming tax credits for federal emergency paid sick leave (EPSL) must use a consistent methodology in calculating the costs of benefits for federal and state purposes.

#### **Q15. How does the COVID-19 Massachusetts emergency paid sick leave requirement to provide "the same employment benefits" which include, e.g., sick leave, interact with rules (940 CMR 33.03(5)) the AG adopted to implement the Massachusetts Earned Sick Time Law that say "Employees accrue earned sick time only on hours worked, not on hours paid when not working. For example, employees do not accrue earned sick time during vacation, paid time off, or while using earned sick time."?**

In this respect, the requirements of the two laws are different, but need not interact. The COVID-19 Massachusetts emergency paid sick leave law operates independently of the Massachusetts Earned Sick Time law.

#### **Q16. If under normal circumstances an employee would not earn an employment benefit (like accrual of sick leave or vacation hours) when no work is performed (e.g., a weeklong absence), can an employer apply that policy when an employee uses COVID-19 Massachusetts emergency paid sick leave?**

With respect to an employee who accrues paid time off while working, no. Per the COVID-19 Massachusetts emergency paid sick leave law, benefits are defined to include the accrual of paid time off. As a result, if an employee would have accrued paid time off if that employee were working, then the employee should accrue paid time off when using COVID-19 Massachusetts emergency sick leave as if the employee were working a regular schedule.

**New on 7/8/21:**

**Q17. If I think my employer is not in compliance with the COVID-19 Temporary Emergency Paid Sick Leave law, what should I do?**

Because the facts of each employment relationship are unique, consider speaking with an attorney who can assist you in evaluating your particular situation and any potential options for recourse.

**New on 8/6/21:**

**Q18. If I have an employee who has elected to travel out of the state or out of the country for personal reasons and I am requiring the employee to obtain a COVID-19 test and/or quarantine for a period of time before returning to work, and it is infeasible to assign them work responsibilities that can be performed remotely, are they entitled to use MA COVID sick leave?**

Yes.

**New on 11/12/21:**

**Q19. Can employers who are subject to the Occupational Safety and Health Administration (OSHA) COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) that went into effect on November 5, 2021 claim state reimbursement for paid time provided for COVID-19 vaccination and to recover from vaccination side effects in compliance with the ETS?**

Yes, as long as the employee is otherwise eligible for MA COVID sick leave (i.e., their primary place of employment is located in Massachusetts and they have not exhausted their total allotted hours under the state law), employers may claim reimbursement for paid time provided for COVID vaccination and to recover from vaccination side effects in compliance with the ETS.

For example, if a full-time employee who has utilized 38 of their 40 allotted hours of MA COVID sick leave takes 4 hours to obtain a COVID vaccine dose, their employer may seek reimbursement from the state for 2 of the 4 hours.

## Notices to Employees

[Massachusetts COVID-19 Emergency Paid Sick Leave—Notice to Employees](#)

</doc/massachusetts-covid-19-emergency-paid-sick-leave-notice-to-employees/download> (English)

[Massachusetts COVID-19 Aviso aos Empregados em caso de Licença Médica de Emergência Paga](#)

</doc/massachusetts-covid-19-aviso-aos-empregados-em-caso-de-licenca-medica-de-emergencia-paga-1/download> (Portuguese)

[Aviso a los empleados sobre el Permiso de Enfermedad Pagado por Emergencia COVID-19 en Massachusetts](/doc/aviso-a-los-empleados-sobre-el-permiso-de-enfermedad-pagado-por-emergencia-covid-19-en-massachusetts-0/download) (/doc/aviso-a-los-empleados-sobre-el-permiso-de-enfermedad-pagado-por-emergencia-covid-19-en-massachusetts-0/download) (Spanish)

[Avis aux employés concernant les congés maladie d'urgence en raison de la COVID-19 du Massachusetts](/doc/avis-aux-employes-concernant-les-conges-maladie-durgence-en-raison-de-la-covid-19-du-massachusetts-1/download) (/doc/avis-aux-employes-concernant-les-conges-maladie-durgence-en-raison-de-la-covid-19-du-massachusetts-1/download) (French)

[Avi pou Anplwaye Konsenan Konje Peye Maladi Ijans COVID-19 Massachusetts la](/doc/avi-pou-anplwaye-konsenan-konje-peye-maladi-ijans-covid-19-massachusetts-la-0/download) (/doc/avi-pou-anplwaye-konsenan-konje-peye-maladi-ijans-covid-19-massachusetts-la-0/download) (Haitian-Creole)

[Avviso ai dipendenti riguardante il congedo malattia retribuito per COVID-19 in Massachusetts](/doc/avviso-ai-dipendenti-riguardante-il-congedo-malattia-retribuito-per-covid-19-in-massachusetts-0/download) (/doc/avviso-ai-dipendenti-riguardante-il-congedo-malattia-retribuito-per-covid-19-in-massachusetts-0/download) (Italian)

## Sample Employee Leave Request Forms

[Sample Employee Leave Request Form](/doc/sample-employee-leave-request-form/download) (/doc/sample-employee-leave-request-form/download) (English)

[Formulario de Solicitud de Permiso de Enfermedad por COVID-19 Pagado, Temporal y de Emergencia en Massachusetts \(Spanish\)](/doc/formulario-de-solicitud-de-permiso-de-enfermedad-por-covid-19-pagado-temporal-y-de-emergencia-en-massachusetts-spanish/download) (/doc/formulario-de-solicitud-de-permiso-de-enfermedad-por-covid-19-pagado-temporal-y-de-emergencia-en-massachusetts-spanish/download)

[Massachusetts COVID-19 Formulário de Pedido de Licença para Doentes de Emergência Temporária Paga \(Portuguese\)](/doc/massachusetts-covid-19-formulario-de-pedido-de-licenca-para-doentes-de-emergencia-temporaria-paga-portuguese/download) (/doc/massachusetts-covid-19-formulario-de-pedido-de-licenca-para-doentes-de-emergencia-temporaria-paga-portuguese/download)

[麻省 COVID-19 临时紧急带薪病假申请表 \(Chinese\)](/doc/masheng-covid-19-linshijinjidaixinbingjiashenqingbiao-chinese/download) (/doc/masheng-covid-19-linshijinjidaixinbingjiashenqingbiao-chinese/download)

[Mẫu đơn nghỉ bệnh COVID-19 \(Vietnamese\)](/doc/mau-don-nghi-benh-covid-19-vietnamese/download) (/doc/mau-don-nghi-benh-covid-19-vietnamese/download)

[Échantillon de Formulaire Pour Conge de Maladie Liee a la COVID-19 \(French\)](/doc/echantillon-de-formulaire-pour-conge-de-maladie-liee-a-la-covid-19-french/download) (/doc/echantillon-de-formulaire-pour-conge-de-maladie-liee-a-la-covid-19-french/download)

[19\) استمارة الطلب الإجازة المرضية المؤقتة الطارئة المدفوعة الأجر المتعلقة بجائحة COVID \(ولاية ماساتشوستس\) \(Arabic\)](/doc/astmart-altlb-alajazt-almrdyt-almwqtt-altaryt-almdfwt-alajr-almqlt-bjayht-19-covid-bwlayt-masatshwsts-arabic/download) (/doc/astmart-altlb-alajazt-almrdyt-almwqtt-altaryt-almdfwt-alajr-almqlt-bjayht-19-covid-bwlayt-masatshwsts-arabic/download)

[매사추세츠 주 COVID-19 임시 긴급 유급 병가 요청 서식 \(Korean\)](/doc/maesachusecheu-ju-covid-19-imsi-gingeub-yugeub-byeongga-yocheong-seosig-korean/download) (/doc/maesachusecheu-ju-covid-19-imsi-gingeub-yugeub-byeongga-yocheong-seosig-korean/download)

[Esempio di Modulo per Congedo Malattia COVID-19 \(Italian\)](/doc/esempio-di-modulo-per-congedo-malattia-covid-19-italian/download) (/doc/esempio-di-modulo-per-congedo-malattia-covid-19-italian/download)

[Fom Echantiyon Konje Peye Pou COVID-19 \(Haitian-Creole\)](/doc/fom-echantiyon-konje-peye-pou-covid-19-haitian-creole/download) (/doc/fom-echantiyon-konje-peye-pou-covid-19-haitian-creole/download)

[ОБРАЗЕЦ БЛАНКА ЗАЯВЛЕНИЯ О ПРЕДОСТАВЛЕНИИ ОТПУСКА В СВЯЗИ С COVID-19 \(Russian\)](/doc/obrazec-blanka-zayavleniya-o-predostavlenii-otpuska-v-svyazi-s-covid-19-russian/download) (/doc/obrazec-blanka-zayavleniya-o-predostavlenii-otpuska-v-svyazi-s-covid-19-russian/download)

[ແບບຮ່າງຂໍ້ ວາບ່ວຍສຸກເສີນຊື່ ວກວາຍ້ອນພະຍາດໂຄວິດ-19 ໂດຍໄດ້ຮັບຄຳຈ້າງໃນລັດ ມາສາຈຸເຕັດ \(Lao\)](/doc/eibbfmkhm-laapwnysukesiins-wkhaawnyphanyaadokhwid-19-odnyaidbkaachaangaynl-d-massachusetts-lao/download) (/doc/eibbfmkhm-laapwnysukesiins-wkhaawnyphanyaadokhwid-19-odnyaidbkaachaangaynl-d-massachusetts-lao/download)

[Sample Employee Leave Request Form \(Khmer\)](#) (/doc/sample-employee-leave-request-form-khmer/download)

## Additional Resources

### COVID-19 Temporary Emergency Paid Sick Leave Program Frequently Asked Questions

(<https://www.mass.gov/doc/covid-19-temporary-emergency-paid-sick-leave-program-frequently-asked-questions/download>)

(DOCX 31.73 KB)

**Chapter 16 of the Acts of 2021** (<https://www.mass.gov/doc/chapter-16-of-the-acts-of-2021/download>) (PDF 6.55 MB)

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<sup>1</sup> “Family member” has the same definition as in the Massachusetts Paid Family and Medical Leave Act (M.G.L. c. 175M), namely, an employee’s spouse, domestic partner, child, parent, grandchild, grandparent, or sibling, a parent of a spouse or domestic partner of the employee, or a person who stood *in loco parentis* to the employee when such employee was a minor child