

## State Establishes COVID-19 Sick Leave Fund

### All employees eligible for additional week of paid sick leave

June 18, 2021

#### Massachusetts COVID-19 Emergency Paid Sick Leave

On May 28, 2021, the Governor signed Chapter 16 of the Acts of 2021 (the “Act”) into law, which establishes a new COVID-19 Emergency Paid Sick Leave Fund with \$75 million from federal relief funds. Under this new law, municipal employees are eligible for an *additional week* of paid sick leave for COVID-19 related reasons, as explained in more detail below. This leave, also known as “MA COVID EPSL”, is available immediately. *Employers may not discriminate against employees from taking leave under the Act.*

**Terms and Funding:** Employees will be eligible for one additional week of paid sick leave for qualifying reasons through September 30, 2021 (or until funding runs out, if sooner). Full-time employees will be eligible for a maximum of 40 hours of leave, and regular part-time employees will be eligible for leave commensurate with their average weekly hours worked. Regular employees who do not have a set weekly schedule are eligible for leave commensurate with their average weekly hours worked over the six-month period immediately preceding the leave. This leave may be used on an intermittent basis and in hourly increments, and maxes out at \$850 per employee per week. The costs associated with this additional sick leave are covered entirely by the COVID-19 Emergency Sick Leave Fund, through reimbursements to employers. The state Executive Office for Administration and Finance (“A&F”) will establish forms that employers will submit in order to obtain this reimbursement.

The Act provides sick leave for nearly the same reasons paid sick leave was available under last year’s Federal Families First Coronavirus Relief Act, except there is an additional basis relative to teleworking. Employees may take this leave for the following reasons:

- To take care of themselves or obtain medical treatment due to a COVID-19 diagnosis or symptoms, or to get or recover from a COVID-19 immunization;
- To follow a quarantine order or determination of a state or local public health official or the employee’s health care provider, that the employee’s presence in the workplace would jeopardize others due to actual or potential COVID-19 exposure; and
- To care for a covered family member in either of the above situations.

Where the employer allows the employee to telework, the employee will be eligible to use this additional paid sick leave if they have been diagnosed with COVID-19 and symptoms prevent the employee from performing telework.

For purposes of the Act, a “covered family member” is an employee’s: spouse, domestic partner, child, parent, grandchild, grandparent, sibling, parent of the employee’s spouse or domestic partner, or a person who stood *in loco parentis* to the employee when the employee was a minor child.

Employers may require that employees request this leave in writing. We advise that employers in fact require written requests, because the Act establishes certain required information that the employer will need to submit to A&F for reimbursement (and we expect A&F to issue a sample request form in the near future). The request should include the employee’s name, the date(s) for which leave is requested, the qualifying reason for the leave, and a statement that the employee is unable to work or telework for that reason. If the leave is being taken due to a quarantine order, the employee’s request must also include the name of the entity issuing the quarantine order. If the quarantine order is directed to another person whom the employee is caring for, that person’s name and relationship to the employee must also be included. The employee’s request will be submitted to A&F along with the request for reimbursement.

**Other Considerations:** The sick leave provided may be reduced by the amount of any government wage or wage replacement program or law, but may not be reduced by any amount of job protected time off required under (1) G.L. c. 149, §148C (earned sick time)<sup>1</sup>, (2) existing employer policies, (3) existing Collective Bargaining Agreement, or (4) federal law. Employees are only eligible to be paid their average weekly wage while using this sick leave (and thus, employers are not required to pay an eligible employee the full \$850 per week if the employee would not otherwise earn that amount).

Although employees also may not be required to use other paid leave before using this sick leave (unless federal law requires otherwise), employees who earn more than \$850 per week may use other existing paid accrued leave to supplement the \$850 benefit, so that they receive their normal salary, if the employer allows this for other similar forms of paid leave.

Employers who had previously adopted a COVID-19 sick leave policy that provided benefits sufficient to meet (or exceed) the requirements of the Act, will not be required to provide additional sick leave under the Act.

Finally, A&F has also issued answers to some Frequently Answered Questions, as well as Employer Guidance, both of which can be found [here](#). The Office of Labor and Workforce Development has developed a notice concerning these benefits, which must be posted in a conspicuous place in the workplace (in each location that covered employees work) and provided by email to teleworking employees. That notice can be found [here](#).

If you have any specific questions regarding the Act and how it will impact your employees, please contact your KP Law attorney or any member of the firm’s Labor and Employment Practice Group at 617.556.0007.

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<sup>1</sup> Also known as the “Massachusetts paid sick leave law,” this is a local option statute for municipalities.