

Massachusetts Now Requires Paid COVID-19 Leave for all Employees

by Samuel J. Baldwin on July 23, 2021

Massachusetts now requires all employers, regardless of size, with Massachusetts employees to offer employees paid, job-protected leave for certain COVID-19-related reasons, including to get or recover from a COVID-19 vaccine. Massachusetts also has established a fund to reimburse employers for the cost of providing COVID-19 paid leave required by the law.

Effective May 28, 2021, the law requires employers to provide all employees up to 40 hours (pro-rated for part-time employees) of paid leave. Employers are required to provide leave until the earlier of September 30, 2021, or when Massachusetts announces that the \$75 million fund to reimburse employers is expected to be depleted.

Employees are eligible to take COVID-19 paid leave for any of the following reasons:

- The employee or the employee's family member needs to self-isolate because of a COVID-19 diagnosis, or needs medical diagnosis, care, or treatment for COVID-19 symptoms.
- The employee requires leave to get or recover from a COVID-19 vaccination.
- A quarantine order or similar determination regarding the employee or the employee's family member by a local, state, or federal public official, a health authority having jurisdiction, or a health care provider.
- The employee is unable to telework due to COVID-19 symptoms.

In general, employers may not require employees to use other types of available paid leave before they use COVID-19 paid leave or require employees to search for or find a replacement worker to cover the time the employee will miss.

The maximum benefit employers are required to provide an employee for all leave taken under the law is \$850. Employers are permitted to provide additional COVID-19 paid leave benefits to employees but will only be eligible for reimbursement for up to \$850. For employees who earn less than \$850 per week, employers will not be eligible for reimbursement of amounts in excess of the employee's typical weekly wages.

The law applies to any employee whose primary place of employment is in Massachusetts, regardless of where the employer is located. "Primary place of employment" means the physical location where the employee spent the greatest percentage of work hours between January 1, 2020, and April 30, 2021. Although this includes employees who live in Massachusetts and telecommute, it does not include employees for whom a telecommuting arrangement is temporary and began during that

period. For new employees, “primary place of employment” means the physical location where the employee is expected to spend the greatest percentage of work hours between the date the employee commences work and September 30, 2021. If an employee with a primary place of employment in Massachusetts permanently transfers to another state, the employee ceases to be eligible for COVID-19 paid leave.

Employers may require employees to request COVID-19 paid leave in writing. In fact, according to an [online guide](#) published by the Massachusetts Executive Office for Administration and Finance, employers who seek reimbursement from the Commonwealth for the cost of providing employees with COVID-19 paid leave must require employees to submit requests for COVID-19 paid leave in writing, and the request should include the following information:

- the employee’s name
- the date(s) for which leave is requested and taken
- a statement of the reason the employee is requesting leave and written support for such reason, such as documentation of vaccination
- a statement that because of the COVID-19-related reason the employee is unable to work or telework

To qualify for reimbursement, the employer must provide the employee with leave as required under the law, and the amount paid to the employee during the leave for which the employer seeks reimbursement must not be eligible for federal tax credits or otherwise be paid under any government program or law. The online guide advises employers to collect the following information, if they intend to apply for reimbursement:

- the employee’s social security or tax identification number
- the employer identification number associated with the position from which the employee took leave
- the length of the leave (in hours) and wages paid during that leave that are eligible for reimbursement
- other employee benefits, such as group health plan coverage, provided to the employee taking leave
- the number of hours in the employee’s regular schedule or other information about the employee’s schedule used to determine the amount of leave the employee is entitled to

Employers are required to post a notice at their workplace describing COVID-19 paid leave. Massachusetts has provided a [sample notice](#). There is no requirement to distribute the notice individually to employees, but if the employer has employees who exclusively telecommute or does not maintain a physical workplace, notification must be distributed electronically to any employees who telecommute or be conspicuously posted in an accessible location online.



Massachusetts has already provided several updates to its guidance about the new law, and it is possible that further clarifications will be forthcoming. Please contact a member of Verrill's Employee Benefits and Executive Compensation Group if you have any questions about this new law and how it applies to your business.



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