



LEGISLATION ENACTED REQUIRING EMPLOYERS TO PROVIDE EMERGENCY PAID SICK TIME IN MASSACHUSETTS FOR COVID-19 RELATED ABSENCES

Last week H.3702 -- an Act Providing for Massachusetts COVID-19 Emergency Paid Sick Leave (the Act) – was passed by the MA Legislature and signed by Governor Baker.

- Effective Friday, May 28, 2021 and until the earlier of September 30, 2021, or the exhaustion of \$75 million in program funds, the Act requires employers to make paid sick leave time available to Massachusetts employees for certain reasons related to COVID-19, as described later below.
- The Act establishes the COVID-19 Emergency Paid Sick Leave Fund (Fund) and directs the transfer of \$75 million from the state's general fund to the Fund to reimburse employers providing leave under the Act.
- MA will reimburse employers from the Fund for the cost incurred by employers to provide COVID-19 Emergency Paid Sick Leave (EPSL) to their employees.
 - No double dipping by employers is permitted. Thus, any qualified sick leave wages paid by an employer that are eligible for the federal tax credit under the FFCRA, or subsequent extensions, including the federal CAA, 2021 and ARPA 21 are NOT eligible for reimbursement from the Fund.
- In general, employers may not require employees to use other types of available paid leave before they use EPSL. Similarly, employers may not require employees to find a replacement worker for the time missed while using EPSL.

The MA Department of Unemployment Assistance (DUA) released preliminary Employer Guidance last Friday (May 28, 2021). In the coming weeks MA will establish a website devoted to the EPSL program with more information, including information on how employers can apply for reimbursement, and an e-mail address will be established for questions related to the program. DUA indicated that it will not be administering this program and the DUA call center will not be able to assist with questions about this program. At present, it appears the Executive Office of Administration and Finance (ANF), or another department or agency designated by ANF, will administer reimbursements to employers.

REASONS FOR MA COVID-19 EMERGENCY PAID SICK LEAVE

Massachusetts employers are required to provide EPSL to employees who are unable to work for the following COVID-19-related reasons:

- 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.
- An employee being subject to 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 subject 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.
- An employee's inability to telework due to COVID-19 symptoms.

LEAVE AMOUNTS AVAILABLE UNDER MA COVID-19 EMERGENCY PAID SICK LEAVE

- The maximum EPSL amount an employer is required to pay an employee, and the maximum amount for which the employer may seek reimbursement for any one employee, is \$850 (including the cost of benefits).
- Employers must provide 40 hours of EPSL to their employees who work 40 or more hours per week.
- 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.
- 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.
- 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 was reasonably expected to work when hired.

EMPLOYEE REQUESTS FOR MA COVID-19 EMERGENCY PAID SICK LEAVE

Employers who wish to apply for reimbursements from MA for the costs of providing employees with EPSL must require their employees to submit their requests for EPSL in writing. Employers may develop and use their own form but a standard form is under development and will be



posted at Mass.gov when available. The form must require the following information for all requests:

- The employee's name and date(s) for which leave is requested and taken.
- A statement of the COVID-19 related reason and written support for the reason.
- A statement that the employee is unable to work or telework.
- For requests based on quarantine, the employee's statement must also include the governmental entity ordering, or the name of provider advising, the quarantine and the name of the person subject to the quarantine if not the employee.

Employers applying for reimbursement will also need to provide certain information as part of their reimbursement application, including a statement that the leave is not eligible for federal tax credits or otherwise paid/payable under any other government program.

OTHER PROVISIONS

Employers must treat any 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.

Finally, the Act contains non-retaliation provisions. Generally, employers may not interfere with an employee's ability to use EPSL or retaliate against an employee for exercising rights under the program.

* * * * *

Please watch for future developments such as the release of the EPSL website, email, and applications for employee EPSL benefits and employer reimbursements.

Richard A. Szczebak, Esq.
781-731-9933 | rszczebak@raslawpc.com
Experience | Knowledge | Perspective

The foregoing has been prepared for the general information of MassAHU members. It is not meant to provide tax, legal or plan design advice with respect to any specific matter and should not be acted upon without professional counsel. This material may be considered advertising under certain rules of professional conduct.

*Rick Szczebak, Esq. is an accomplished attorney and consultant with a strong background in regulatory and compliance matters regarding employee benefit plans, federal health care reform (ACA) and Massachusetts health care reform. He concentrates exclusively in employee benefits law. **Rick is the author of the 4th edition of the Bloomberg BNA Tax Management Portfolio on Code Section 125 Cafeteria Plans (cited as Szczebak, 397-4th T.M., Cafeteria Plans).***