

CLIENT ALERT: Executive Office for Administration and Finance Updates COVID-19 Emergency Paid Sick Leave Frequently Asked Questions

Last week, the Executive Office for Administration and Finance issued a list of frequently asked questions (“FAQs”) addressing the new Massachusetts COVID-19 emergency paid sick leave law, which are discussed in further detail [here](#). Those FAQs were updated Friday, clarifying the following additional points:

The Massachusetts COVID-19 emergency paid sick leave law applies to employers who are already offering leave under the federal Families First Coronavirus Response Act (“FFCRA”). The Massachusetts emergency paid sick leave law is similar to the federal emergency paid sick leave, though not identical. For example, family leave under the federal law is payable at 2/3 of the employee’s regular pay, whereas it is payable at 100% of the employee’s regular rate under the Massachusetts law (up to a maximum of \$850 per employee). In that case, employers who are offering leave under the federal law may run the Massachusetts leave concurrently, so long as the mandate is met in full, including 40 hours (or a pro-rated amount for part-time employees), beginning May 28, 2021. As for reimbursement under this scenario, the employer would first calculate the amount available for a credit under federal law (generally 2/3 of the employee’s regular rate of pay, up to \$200 per day, or \$2,000 in the aggregate), and then would subtract the federal tax credit amount from the reimbursement otherwise available from the state.

Employees who were already offered 40+ hours of temporary, COVID-19 specific paid leave may still be entitled to up to 40 hours of Massachusetts COVID-19 emergency paid sick leave. The Massachusetts mandated leave must be offered between May 28, 2021 and the termination of the program, so to the extent an employee used employer-provided COVID-19 paid sick leave prior to May 28, it may not be counted against the Massachusetts COVID-19 emergency paid sick leave entitlements. Any leave taken after May 28 that also meets the Massachusetts leave mandate may be run concurrently, so long as the full mandate is met.

Employers will receive 15-days advance notice of when the Massachusetts COVID-19 Emergency Paid Sick Leave Fund has been depleted. 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.

Massachusetts COVID-19 emergency paid sick leave benefits are taxable. They are treated like wages paid while an employee takes sick time.

Massachusetts COVID-19 emergency paid sick leave is not retroactive. As stated above, leave time taken prior to May 28, 2021 is not covered by the state mandate.

MBJ will continue to monitor and update clients on new developments in this law. Employers with



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questions about the new COVID-19 emergency paid sick leave law should consult with their MBJ attorney.

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