

Locke Lord QuickStudy: Emergency Paid Leave in Massachusetts: Round Two

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On May 28, 2021, Governor Charlie Baker signed into law the “Act Providing for Massachusetts COVID-19 Emergency Paid Sick Leave.” This legislation originally reached Governor Baker in early April as part of the “Act Financing a Program for Improvements to the Unemployment Trust Fund and Providing Relief to Employers and Workers in the Commonwealth.” As discussed in our April 2nd [QuickStudy](#), however, Governor Baker returned it to the Legislature for further consideration with two suggestions.

First, he recommended that the Massachusetts sick leave program (the “Program”) be amended to provide employees with their regular rate of pay or two-thirds of their regular rate of pay up to \$850. He also suggested that the Legislature align the Program with the federal Emergency Paid Sick Leave Program to “reduce onerous compliance work for employers already burdened by economic challenges brought on by the global pandemic.” Second, he proposed changing funding for the Program into a \$40 per employee tax credit for employers who do not qualify for tax credits under the federal Families First Coronavirus Response Act.

The Legislature declined to adopt Governor Baker’s changes and approved a largely unchanged version of the program. That Program provides that employees are entitled to receive compensation at a rate that is not less than the state minimum wage and not more than \$850 a week. The amount an employee receives from the Program may be reduced if the aggregate amount would be more than the employee’s average weekly wage. Employers who provide sick leave will receive reimbursement from the Program’s COVID-19 Emergency Paid Sick Leave Fund (the “Fund”). The Legislature also rejected Governor Baker’s proposal to exclude municipal employees from the program.

As now enacted, the Program requires employers to provide paid sick leave to employees who need to:

- Get tested or receive treatment for COVID-19 symptoms
- Quarantine due to a positive COVID-19 diagnosis
- Receive a COVID-19 vaccine or recover from a vaccine related illness
- Care for a family member who is quarantining due to a positive COVID-19 diagnosis
- Care for a family member who is being treated for COVID-19 symptoms
- Be absent from work because the employee is unable to work remotely due to COVID-19 symptoms
- Be absent from work to comply with a quarantine order or other determination that the employee should stay home from work due to exposure to COVID-19 or
- Care for a family member who is under a quarantine order or other directive to stay at home due to COVID-19 exposure

The amount of leave an employer must provide depends on the number of hours an employee works on average. An employee who works full-time (40 or more hours per week) can take up to forty hours of COVID-19 Emergency Paid Sick Leave. An employee who works part-time (less than 40 hours per week) is entitled to paid leave equal to the average number of hours the employee works per week over a two-week period. Finally, an employee who works an irregular schedule is entitled to leave equal to the average number of hours per week the employee worked in the six months prior to taking leave or, if the employee did not work during the entire six months prior to taking leave, in an amount equal to the average number of hours the employee reasonably expected to work per week when that individual was hired.

Employers who have adopted COVID-19 sick leave policies that meet or exceed the requirements of the Program are not required to provide additional leave under this new law. Sick leave under the Program is in addition to any other job protected time off that employers are required to provide by law or policy and employers may not require employees to use other paid leave before using COVID-19 Emergency Paid Sick Leave. The Program will run through September 30, 2021 or until the Fund is depleted.

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