

## **FREQUENTLY ASKED QUESTIONS ABOUT COVID-19: EMPLOYEE RIGHTS and EMPLOYER OBLIGATIONS**

The Attorney General's Fair Labor Division (FLD) is receiving many questions from both employers and employees about COVID-19 and its impact on the workplace. We understand that this is an extremely difficult time for employers and employees alike. Below are answers to provide general guidance on some of the most frequently asked questions<sup>1</sup>. We will continue to update this guidance as circumstances may change.

### **Q: Can I apply for unemployment insurance benefits if I'm out of work due to COVID-19?**

A: Employees have a right to apply for unemployment insurance benefits if they are discharged (laid off or fired) or if they are partially unemployed<sup>2</sup>. They cannot be forced to use all of their earned sick time before applying for unemployment. Most employees who are out of work due to COVID-19 should be eligible for unemployment insurance benefits. There is no waiting period for persons filing a claim for unemployment insurance benefits, where they have been separated from employment due to COVID-19.

Contact the Division of Unemployment Assistance at (617) 626-6800 or go to [www.mass.gov/how-to/apply-for-unemployment-benefits](http://www.mass.gov/how-to/apply-for-unemployment-benefits) for more information or to apply for benefits.

### **Q: If an employer temporarily lays off its employees, do employees have a right to be paid in full on the day of layoff?**

A: Yes, when an employee is temporarily laid off, they have a right to be paid all of their earned wages, including all accrued vacation pay, on that same day. If an employee voluntarily agrees to save accrued vacation for later use, the AGO will not take enforcement action for untimely payment of vacation pay, although our office does not have control over private litigation.

### **Q: Can an employer pay its employees late if they are shut down or operating at reduced capacity due to COVID-19?**

A: No, employers must pay employees on the day of discharge (shut down) or within 6-7 days of the end of a pay period, depending on how many days per week employees work.

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<sup>1</sup> FLD is unable to offer legal advice to any employer or employee about their particular situation. If you have specific questions or need detailed guidance, we recommend contacting an employment attorney. You can find a lawyer through a [local legal services agency or a bar association](#).

<sup>2</sup> If an employee's hours or earnings have been reduced by more than 1/3, they may be eligible to collect unemployment benefits.

**Q: Can an employer require an employee to stay out of work or make them leave work because they are too sick to work?**

A: Yes, an employer can tell an employee not to come to work. An employer can also require an employee to leave work if they are sick. The employee must still be paid their regular wage for the hours they were at work before the employer sent them home. If employees are asked to stay home, they may apply for unemployment insurance benefits.

**Q: Can an employer require an employee to stay out of work because the employee or one of their family members may have been exposed to COVID-19 but public health officials or healthcare providers have not recommended or required a quarantine?**

A: Yes, an employer can tell an employee not to come to work. We encourage employers to allow employees to use earned sick time in this situation.

For certain salaried employees (i.e., EAP exempt<sup>3</sup>), employers must pay their full salary when they have worked any part of a work week. *See also* COVID-19 or Other Public Health Emergencies and the Fair Labor Standards Act Questions and Answers, United States Department of Labor, available at <https://www.dol.gov/agencies/whd/flsa/pandemic>.

**Q: Can an employer require an employee to go to crowded events or travel or report to work at all despite COVID-19 concerns? Is the employee eligible to use earned sick time?**

A: All employers should follow applicable federal and state guidelines with respect to travel and social distancing restrictions. If an employee does not feel comfortable carrying out an assignment, we encourage employers to allow liberal use of earned sick time, vacation or paid time off during this public health emergency in order to support full compliance with the recommendations of health professionals.

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<sup>3</sup>“EAP exempt” means that the employee qualifies as exempt from overtime as a bona fide Executive, Administrative, or Professional employee under Massachusetts and federal law. *See* Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA), available at [https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a\\_overview.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a_overview.pdf). Massachusetts looks to the analogous federal law for guidance with respect to interpretations of the EAP exemption. M.G.L. c. 151, § 1A(3); 454 C.M.R. § 27.03(3).

**Q: When can I use Earned Sick Time (EST) if I miss work due to COVID-19?**

A: Most employees in Massachusetts have the right to earn and use up to 40 hours of job-protected sick leave per year to take care of themselves and certain family members. Employees must earn at least one hour of earned sick leave for every 30 hours worked. For an overview of Earned Sick Time in Massachusetts, visit <https://www.mass.gov/info-details/earned-sick-time>.

Situation	Can I use Earned Sick Time?
Public health officials or healthcare providers <b>require</b> an employee or a family member to quarantine.	Yes.
Public health officials or healthcare providers <b>recommend</b> that an employee or family member quarantine and employee follows the recommendation.	Yes.
An employee misses work because their child's school is closed due to an order from a state or local authority because of a COVID-19-related matter.	We encourage employers to allow use of Earned Sick Time, accrued vacation or other paid time off during this public health crisis even if Earned Sick Time is not required.

**Q: Do employees have to be paid if a business temporarily shuts down due to COVID-19?**

A: In general, **hourly employees** do not have to be paid when they do not work. There are a few very specific exceptions that are beyond the scope of this FAQ. Consult an attorney if you need more detailed answers. We encourage employers to allow employees to use earned sick time in these situations. If employees are asked to stay home, they may apply for unemployment.

For **salaried employees** who are EAP exempt from overtime requirements:

- If the business shuts down for an **entire week**: no pay is required provided the employee has not performed ANY work during that week.
- If the business shuts down for **only part of the week**: full pay is required. The employer may require employees to use vacation or other paid time off for the part of the week the business is closed for an entire day to ensure full weekly salary. *See also* COVID-19 or Other Public Health Emergencies and the Fair Labor Standards Act Questions and Answers, United States Department of Labor, available at <https://www.dol.gov/agencies/whd/flsa/pandemic>
- **Salaried employees paid on a fluctuating work week basis** generally must be paid their full guaranteed salary when they have performed work during that week.

**Q: I'm an independent contractor. Is there any help for me?**

A: We know that independent contractors and self-employed individuals are impacted by this health crisis and need help. We are looking into benefits that you may be eligible for as an independent contractor. We are also working with other governmental agencies and reaching out to lawmakers to advocate for benefits for independent contractors and self-employed individuals impacted by this health crisis. You may find information about food, cash and housing assistance here: <https://www.mass.gov/topics/health-social-services>. We will update this FAQ to reflect any developments.

**Q: I own a small business, what relief options are available to me?**

A: There is a [\\$10 million dollar fund](#), run through Mass Growth Capital Corporation where businesses with fewer than 50 employees can request up to \$75,000 with a 3% interest rate. The application is live and has more information on all the requirements a business must meet.

Additionally, Massachusetts has received a [disaster designation from the Small Business Administration](#) which enables small businesses and non-profits to apply for disaster assistance loans. These are loans up to \$2 million, with a 3.75% interest rate for businesses and 2.75% interest rate for non-profits. Many businesses signed an initial petition for Massachusetts to receive the designation. This was not an application, and you still need to [fill out an application with the SBA](#). If you did not sign the initial petition, you can still [apply through the SBA](#). The application has more information on the requirements of these loans.