

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 questions¹. We will continue to update this guidance as circumstances may change.

1. Q: Has the federal government passed a new COVID-19 stimulus bill for 2021?

A: The new COVID-19 Stimulus Package, part of the Consolidated Appropriations Act, 2021, which was signed into law on December 27, 2020, provides for the following:

- The Families First Coronavirus Relief Act ("FFCRA") payroll tax credits for certain employers were extended until March 31, 2021. However, the Emergency Paid Sick Leave and Emergency Family Medical Leave expansion portions of the FFCRA were not extended, and these programs ended on December 31, 2020.
- Additional funding is provided for the Paycheck Protection Program ("PPP") and allowable uses have been expanded.
- The Pandemic Unemployment Assistance program ("PUA") has been extended through March 14, 2021, and it continues to include self-employed persons. (See FAQ #2 below.)
- The Pandemic Emergency Unemployment Compensation program ("PEUC") is also extended through March 14, 2021. Eligible individuals may receive an additional \$300 per week in unemployment benefits. (See FAQ #2 below.)
- Stimulus checks are being sent to individuals and families subject to certain income levels.

2. 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 unemployed². 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

¹ 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](#).

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

period for persons filing a claim for unemployment insurance benefits, where they have been separated from employment due to COVID-19.

The Massachusetts Department of Unemployment Assistance (DUA) is currently reviewing the CARES Act unemployment extension provisions contained in the new COVID-19 Stimulus Package. Additionally, DUA is awaiting guidance from the U.S. Department of Labor. These provisions will bring additional unemployment compensation to hundreds of thousands of people in the Commonwealth of Massachusetts. They also include new requirements to qualify to receive benefits from the federal programs outlined within the act. Please [visit this website](https://www.mass.gov/covid-19-and-unemployment-what-you-need-to-know) for the latest information, or contact the DUA at 877-626-6800. To open a new claim for benefits if you have not already been collecting, please visit <https://www.mass.gov/covid-19-and-unemployment-what-you-need-to-know> for more information. If you already have an open claim, please log in to your claim account for any updates or instructions related to your benefits.

3. 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.

If the employer and employee wish to continue the employment relationship by means of a furlough in order to, for example, maintain health insurance, disability insurance, retirement and other benefits, AGO will not consider it to be a discharge from employment for purposes of the Wage Act. Therefore, earned and accrued vacation pay need not be paid out upon the date of furlough. If, however, the employee wishes to separate from employment, all earned wages must be fully paid on the next regular pay day.

If the employer becomes unable to continue contributions towards employee benefits plans, then AGO will consider when that event occurs to be the effective date of discharge. The employee always maintains the right to terminate the relationship at any time and trigger the employee's right to full payment on the next regular pay day.

4. 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.

5. 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. Employees may also be eligible for paid sick leave under the Massachusetts Earned Sick Time Law.

6. 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 exempt³), 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>.

7. 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.

8. 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

³“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. 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).

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 require an employee or a family member to quarantine.	Yes
Public health officials or healthcare providers recommend 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.

9. 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.

10. 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. The Continued Assistance for Unemployed Workers Act of 2020, which provides for an extension of the CARES Act unemployment provisions from December 31, 2020 until March 14, 2021, includes the pandemic unemployment assistance (PUA) program for self-employed individuals. Please [visit this website](#) for the latest information, or contact the DUA at 877-626-6800. To open a new claim for benefits if you have not already been collecting, please visit <https://www.mass.gov/covid-19-and-unemployment-what-you-need-to-know> for more information. If you already have an open claim, please log in to your claim account for any updates or instructions related to your benefits.

You may find information about food, cash and housing assistance [here](#).

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

A: The Commonwealth of Massachusetts has made millions of dollars available to support businesses weathering the economic effects of the COVID-19 crisis, through new and existing programs. Please visit the following site for information about resources that may be available to you: <https://www.mass.gov/info-details/covid-19-resources-and-guidance-for-businesses>

12. Q: I was approved for Pandemic Unemployment Assistance (PUA) benefits and was receiving payments but they have stopped unexpectedly. What should I do?

A. The Massachusetts Department of Unemployment Assistance (DUA) is currently reviewing the CARES Act unemployment extension provisions contained in the Continued Assistance for Unemployed Workers Act of 2020, which was signed into law on December 27, 2020. Additionally, DUA is awaiting guidance from the U.S. Department of Labor. This may result in an interruption of benefits, but should not affect your eligibility. Please log into your claim account for any updates or instructions related to your benefits.

According to the [Department of Unemployment Assistance](#) (DUA), an interruption in PUA benefits *may* be the result of an identity issue or fraud hold on your claim. You should log into your [Pandemic Unemployment online](#) account and submit/attach two forms of identification to your claim. *You must submit both at the same time.* The documents must be valid, clear, legible, and unaltered and you must provide a picture of both the front and the back of each document. If you have any questions about this process, you should contact the DUA call center at (877) 626-6800. The documents that DUA will accept are:

- A government-issued document that has your Social Security Number on it. Typically this would be your Social Security card. If you do not have your original Social Security card, you can provide another government-issued document that has your name and your full Social Security card number on it, like your W-2 or Form 1099. Alternatively, you can apply to the Social Security Administration for a replacement Social Security card at <https://ssa.gov/ssnumber/>

- Your Driver's License, State ID, passport, *or* some other government-issued documentation that includes an official photograph of you, your name, and date of birth. If you do not have one of these documents, and you are under eighteen years old, a copy of your High School identification with your photograph will be sufficient. If the government-issued documents do not match the address used to file the claim, it is recommended that you provide a current bill or another document verifying your address. Documents with an expiration date on or after 3/8/2020 will be accepted. Documents with an expiration date of prior to 3/8/2020 will not be accepted.

13. Q: I received a letter from the Department of Unemployment Assistance (DUA) requesting that I verify my identity but I never applied for unemployment benefits. What should I do?

A. As part of a [nationwide unemployment benefits fraud scheme](#), criminal enterprises are using stolen personal information to try to fraudulently file unemployment claims. If you believe someone is using your identity to falsely claim unemployment benefits, visit the DUA's website for information on how to [report the fraud](#) and protect your identity.

14. Q: I live in Massachusetts but work in another state. Do I have to complete the online [Massachusetts Travel Form](#) and follow quarantine and testing requirements pursuant to the Governor's [Travel Order](#)?

A: According to the Governor's [Travel Order](#), all individuals entering Massachusetts after 12:01 a.m. on August 1, 2020 who are over the age of 18 or an unaccompanied minor must complete and submit the on-line [Massachusetts Travel Form](#) unless the individual meets a specific exemption. Exemptions for workers include:

- **Persons Commuting for Work or School:** People who regularly commute, at least weekly, outside of Massachusetts to a fixed place to attend school or work or any person who regularly commutes, at least weekly into Massachusetts to a fixed place to attend school or work; provided that in either case, this exception applies only to and from the person's residence and place of work or school. Workers or students who travel to any place that is not their home state for personal or leisure reasons cannot rely on this exemption.
- **Workers Providing Critical Infrastructure Services:** Workers who enter Massachusetts to perform critical infrastructure functions as specified in Version 3.1 of the listing published by the Federal Cybersecurity and Infrastructure Security Agency are exempt from quarantine while they are commuting to or from or while at work. For the first 14-days after arrival, when the worker is not at work or commuting to work they must quarantine. Additional information may be found here: <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>. Workers who travel to or from Massachusetts for personal or leisure reasons cannot rely on this exemption.

15. Q: My job requires out-of-state travel. My boss gives me assignments and I go where I am assigned. Is this a violation of the Governor's [Travel Order](#)?

A: Employers are strongly discouraged from requiring or allowing business-related travel to non-lower-risk states, as indicated on the map found at <https://www.mass.gov/info-details/covid-19-travel-order#lower-risk-states>. Employers that permit employer-paid or -reimbursed travel to non-lower-risk states should take measures to ensure employees comply with the [Travel Order](#). Employers are also urged to strongly discourage their employees from taking leisure travel to non-lower-risk destinations.

16. Q: What if I have questions, complaints or feedback about the Governor's [Travel Order](#)?

A: Individuals should contact the [Massachusetts Department of Public Health](#) or the [Local Board of Health](#).