

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

The Attorney General's Fair Labor Division (FLD) has received many questions from both employers and employees about COVID-19 and its impact on the workplace. Below are answers to provide general guidance on some of the most frequently asked questions¹. **The following is provided for informational purposes and is not to be construed as a legal opinion of the Attorney General.** We will continue to update this guidance as circumstances may change.

1. Q: Can my employer require that all its employees are vaccinated?

- A. According to the Equal Employment Opportunity Commission's (EEOC) Technical Assistance issued on May 28, 2021 release: "Federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other EEO considerations. Other laws, not in EEOC's jurisdiction, may place additional restrictions on employers. From an EEO perspective, employers should keep in mind that because some individuals or demographic groups may face greater barriers to receiving a COVID-19 vaccination than others, some employees may be more likely to be negatively impacted by a vaccination requirement."

For more information, visit: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

2. Q: Is information about an employee's COVID-19 vaccination confidential medical information under the ADA?

- A. According to the Equal Employment Opportunity Commission's (EEOC) Technical Assistance issued on May 28, 2021: "Yes. The ADA requires an employer to maintain the confidentiality of employee medical information, such as documentation or other confirmation of COVID-19 vaccination. This ADA confidentiality requirement applies regardless of where the employee gets the vaccination. Although the EEO laws themselves do not prevent employers from requiring employees to bring in documentation or other confirmation of vaccination, this information, like all medical information, must be kept confidential and stored separately from the employee's personnel files under the ADA."

¹FLD 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](#).

For more information, visit: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)

3. Q: If my employer requires me to get the vaccine, am I supposed to pay for the vaccine?

- A. The vaccine is being provided free of charge to all individuals by the federal government. If you have insurance, it will be billed at no cost to you. However, you do not need to be insured to receive the vaccine. You will never be asked for a credit card number to make an appointment. You can get the vaccine even if you do not have insurance, a driver's license, or a Social Security number. For more information on the costs of the vaccine and what you need to make an appointment, please visit the Department of Public Health's [COVID-19 Vaccine Frequently Asked Questions](#) and their Guide on [How To Prepare for Your COVID-19 Vaccine Appointment](#).

4. Q: If my employer requires me to get the vaccine, is the time spent getting the vaccine compensable working time?

- A. In Massachusetts, "working time" includes all time during which an employee is required to be on the employer's premises or at any other location. Therefore, if your employer mandates that you receive the vaccine at a specific location and/or on a specific date, this is likely to be considered "working time" and therefore is compensable. If your employer simply requires proof of a vaccine, but does not mandate when, where and how you obtain it, this is unlikely to be considered compensable time. For a formal opinion, please contact the Massachusetts Department of Labor Standards at dlsfeedback@state.ma.us.

5. Q: Is my travel time to and from the vaccination site compensable time? Does my employer have to reimburse me for mileage?

- A. If an employee who regularly works at a fixed location is required to report to a location other than his or her regular work site, the employee must be compensated for all travel time in excess of his or her ordinary travel time between home and work and must be reimbursed for associated transportation expenses. Therefore, if your employer mandates that you receive the vaccine at a specific location and/or on a specific date, travel time and travel expenses may be compensable. If your employer simply requires proof of a vaccine, but does not mandate when, where and how you obtain it, travel to and from the vaccination site is unlikely to be considered compensable time. For a formal opinion, please contact the Massachusetts Department of Labor Standards at dlsfeedback@state.ma.us.

6. Q: If my employer permits me to choose to get weekly tests and wear face coverings, rather than to get the vaccine, does my employer have to pay for the testing?

A: Generally, an employer in Massachusetts cannot take a deduction from an employees' pay (or require employees to pay) unless there is a valid attachment, assignment or setoff as described in G.L. c. 149, §150, which is defined as a "*clear and established debt*", commonly known as a valid setoff. If an employee has opted for an allowable testing alternative to getting a vaccine under an employer policy, and the employer simply requires a test result, but does not mandate when, where and how the employee obtains it, it is unlikely that the employer needs to bear the cost of the test. It should be noted that free testing is still widely available in Massachusetts. Please visit: <https://www.mass.gov/info-details/find-a-covid-19-test>.

7. Q: If my employer permits me to choose to get weekly tests and wear face coverings, rather than to get the vaccine, does my employer have to pay for the face coverings?

A: Generally, an employer in Massachusetts cannot take a deduction from an employees' pay (or require employees to pay) unless there is a valid attachment, assignment or setoff as described in G.L. c. 149, §150, which is defined as a "*clear and established debt*", commonly known as a valid setoff. If an employee has opted for an allowable testing alternative to getting a vaccine under an employer policy, unless the employer is mandating that the employee wear a specific face covering (such as one that bears a company logo) or type of face covering with special features (such as a respirator) it is unlikely that the employer needs to bear the cost of the face coverings. The more prescriptive an employer is about the face coverings required to be worn by employees, the more the face covering may become akin to a uniform or PPE in the context of the wage and hour laws. Employers cannot charge employees for uniforms or PPE.

8. Q: If my employer permits me to choose to get weekly tests and wear face coverings, rather than to get the vaccine, does my employer have to pay me for the time it takes to get the test?

A: In Massachusetts, "working time" includes all time during which an employee is required to be on the employer's premises or at any other location. If an employee has opted for an allowable testing alternative to getting a vaccine under an employer policy, and the employer simply requires a test result, but does not mandate when, where and how the employee obtains it, this is unlikely to be considered compensable time. For a formal opinion, please contact the Massachusetts Department of Labor Standards at dlsfeedback@state.ma.us.

9. Q: If I'm required to get the vaccine and have a reaction or do not feel well after getting the vaccine and do not have any more available earned sick time

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hours, will I be compensated for my missed work?

- A. Most workers in Massachusetts have the right to earn and use up to 40 hours of job-protected sick time per year to take care of themselves and certain family members. Workers must earn at least one hour of earned sick leave for every 30 hours worked. If your employer has 11 or more employees, this sick leave must be paid. Using earned sick time to cover absence from work due to feeling ill after receiving a vaccine is an allowable use of earned sick leave in Massachusetts. For more information on the Massachusetts Earned Sick Time Law, please visit the Attorney General's [earned sick time webpage](#). If an employee has exhausted all earned sick time hours, please visit this [webpage](#) to see potential available options for job-protected and/or paid leave.

10. 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 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.

Please [visit this website](#) for the latest information, or contact the DUA at 877-626-6800.

11. 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.

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

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.

12. 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.

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

14. 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>.

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

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).

- 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 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.

16. 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.

17. 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 the health and economic impacts of the COVID-19 pandemic. Please [visit this website](#) for the latest information, or contact the DUA at 877-626-6800.

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

18. 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/guides/assisting-small-businesses-during-the-covid-19-crisis>.

The Department of Unemployment Assistance administers a program called WorkShare which is an alternative for employers faced with a cut in workforce. Employers can divide available work between affected employees instead of laying off workers. It allows employees to receive a part of their unemployment insurance benefits while working reduced hours. Please visit the following site for more information about WorkShare: <https://www.mass.gov/topics/workshare-program>.

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

- A. 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.

20. 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.