

# 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.

## 1. Q: What is the CARES Act?

A: As part of the federal government's stimulus legislation, the **Coronavirus Aid, Relief, and Economic Security Act** ("CARES Act") (2020), Pub. L. 116-136, was signed into law on March 27, 2020. The CARES Act provides some economic and fiscal relief to individuals and small businesses facing financial difficulties due to the COVID-19 crisis.

For individuals, the law provides:

- *Supplements the weekly unemployment benefits for workers who qualify by \$600*
- *Waives the waiting period to begin collecting benefits*
- *Extends benefits for an additional 13 weeks*
- *Expands access to unemployment benefits to include part-time, self-employed, and gig economy workers*
- *Expands coverage to those who do not have sufficient earnings over the last year to qualify for state unemployment*

Further action is required before you may apply for stimulus act funds. When that information becomes available, we will provide updated information.

The Small Business Rescue Plan portion of the CARES Act makes available:

- *loan forgiveness grants to small businesses and non-profits to maintain their existing workforce and to help pay for other expenses like rent, mortgage, and utilities*
- *up to \$10 billion for Small Business Association emergency grants of up to \$10,000 to provide immediate relief for small business operating costs*

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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](#).

- up to \$17 billion to cover 6 months of payments for small businesses with existing SBA loans

You can read the CARES Act here:

<https://www.congress.gov/bill/116th-congress/house-bill/748/text>.

To learn more about the Small Business Rescue Plan, visit the United States Chamber of Commerce, *Coronavirus Aid, Relief, and Economic Security Act: What Small Businesses Need to Know*, available at <https://www.uschamber.com/co/start/strategy/cares-act-small-business-guide>.

**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 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.

**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.

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<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.

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 a new federal law – Families First Coronavirus Response Act (FFCRA). Information can be found on the United States Department of Labor's website, *Families First Coronavirus Response Act: Employee Paid Leave Rights*, available at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>. Employers may not require an employee to use other paid leave provided by the employer to the employee before the employee uses emergency paid leave under the FFCRA.

**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 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

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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).

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 overview of Earned Sick Time in Massachusetts, visit <https://www.mass.gov/info-details/earned-sick-time>. Employees may also be eligible for paid leave under a new federal law, *Families First Coronavirus Response Act (FFCRA)*. Information can be found on the United States Department of Labor’s website, *Families First Coronavirus Response Act: Employee Paid Leave Rights*, available at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

<b>Situation</b>	<b>Can I use Earned Sick Time?</b>
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.

	<i>See also</i> expanded family leave under FFCRA. Employees may elect to use other paid leave for the first 10 days which are unpaid under the FFCRA, but employers may not require an employee to substitute any such leave. <sup>4</sup>
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**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. 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.

Federal assistance may now be available under the new the **Coronavirus Aid, Relief, and Economic Security Act** ("CARES Act"). Massachusetts residents who are not eligible for regular

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<sup>4</sup> Information about the FFCRA can be found on the United States Department of Labor's website, *Families First Coronavirus Response Act: Employee Paid Leave Rights*, available at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>.

unemployment benefits can now apply online for the new Pandemic Unemployment Assistance (PUA) program.

The new federal PUA program provides up to 39 weeks of unemployment benefits who are unable to work because of a COVID-19-related reason but are not eligible for regular or extended unemployment benefits. This includes self-employed workers, independent contractors, gig economy workers, and those with limited work history. Applicants can learn more and apply at [www.mass.gov/pua](http://www.mass.gov/pua).

**11. 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.

**12. Q: I heard there is a new federal law giving workers public health emergency leave and emergency paid sick leave – where can I find more information about that?**

A: This new law, the Families First Coronavirus Response Act (FFCRA), goes into effect on April 1, 2020, and includes public health emergency leave and emergency paid sick leave provisions that affect many employees and employers.

The FFCRA provides up to 12 weeks of public health emergency leave to eligible employees who are unable to work because they must care for their child whose school is closed or whose child care provider is unavailable due to a public health emergency related to COVID-19. The first ten days of such leave may be unpaid but the remaining days must be paid. An employee may elect, but is not required to, use other types of paid leave during the ten-day waiting period that may be unpaid under the FFCRA.

The FFCRA also provides up to 80 hours of emergency paid sick leave to eligible full-time employees who are unable to work for specified reasons related to COVID-19. Part-time employees are entitled to emergency paid sick leave based on the average number of work hours in a two-week period. An employer may not require an employee to use other paid leave already provided by the employer before the employee uses emergency paid sick leave under the FFCRA.

The FFCRA's public health emergency leave and emergency paid sick leave provisions apply to most employers with fewer than 500 employees. However, employers that employ health care providers or emergency responders may elect to exclude such workers from eligibility for this leave. Additionally, employers with less than 50 employees may qualify for an exemption in limited circumstances.

For more information on the FFCRA—including whether an employee is eligible for FFCRA leave, whether an employer is covered by the FFCRA, and how to calculate pay for eligible employees—please visit the following guidance documents from the United States Department of Labor (USDOL):

- FFCRA Questions and Answers: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- FFCRA Employee Paid Leave Rights: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- FFCRA Employer Paid Leave Requirements: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

**13. Q: How is the FFCRA different from the Massachusetts Earned Sick Time Law?**

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. If eligible for both FFCRA leave and Massachusetts earned sick leave, employees may choose to take FFCRA leave first and to save Massachusetts earned sick leave for later use.

To learn more about the MA Earned Sick Time Law, visit the AG's Office overview of the law at [https://www.mass.gov/files/documents/2018/09/21/est\\_faq\\_1.pdf](https://www.mass.gov/files/documents/2018/09/21/est_faq_1.pdf). To learn more about an employer's obligation under the MA Earned Sick Time Law as it relates to COVID-19, please visit the AG's Office COVID-19 guidance document at <https://www.mass.gov/service-details/frequently-asked-questions-about-covid-19-employee-rights-and-employer-obligations>.

**14. Q: Who enforces the FFCRA and who do I contact if I have a question?**

A: The USDOL's Wage and Hour Division administers and enforces the FFCRA's new paid leave requirements. If you have any questions, please contact the USDOL at 1-866-487-9243 or visit [www.dol.gov/agencies/whd](http://www.dol.gov/agencies/whd).

**15. Q. I work for a nonessential business, but my employer wants me to return to work to do maintenance or cleaning work or to fulfill online or phone orders. Do I have to go back to work or risk losing my unemployment?**

A. Employers may require their employees to return to work even though they are not open to the public; however, employees may not go to any bricks-and-mortar place of business and may

not conduct business activities on-site unless the business is following the updated guidelines found here: <https://www.mass.gov/info-details/covid-19-essential-services-fqs>. You must be paid for all hours worked. If you have health and safety concerns, refer to paid leave options, reasonable accommodation, and unemployment insurance resource information contained here: [www.mass.gov/service-details/rights-for-quarantined-essential-workers](http://www.mass.gov/service-details/rights-for-quarantined-essential-workers). For more information about what your employer should be doing to keep employees safe, please visit the [Center for Disease Control's Interim Guidance for Business and Employers to Plan and Respond to COVID-19](#).