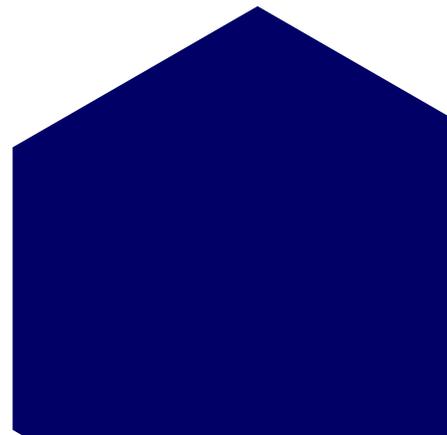
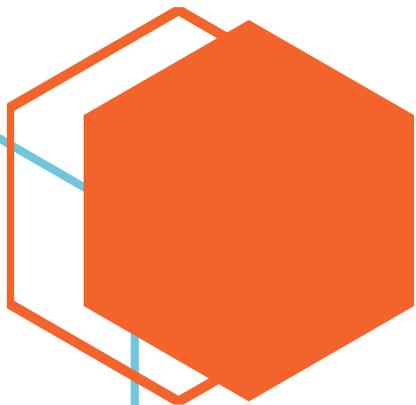




International Lawyers Network

Paid Leave

The following paper aims to succinctly address the question "Are employees are entitled to paid leave due to Covid-19?"





This guide offers an overview of legal aspects of paid leave in the requisite jurisdictions. It is meant as an overview in these marketplaces and does not offer specific legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

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This guide describes the law in force in the requisite jurisdictions at the dates of preparation. This may be some time ago and the reader should bear in mind that statutes, regulations and rules are subject to change. No duty to update information is assumed by the ILN, its member firms, or the authors of this guide.

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Canada - Quebec

In Quebec, no employer is, by statute, required to pay for more than two days of medical leave and this pursuant to Sections 79.1, 79.7 and 79.16 of the *Labour Standards Act* ("LSA") taken together.

An employee, on the other hand, may be absent from work for a period of 26 weeks over a rolling period of 12 months inter alia owing to illness, and see his or her job protected at least to the same extent as anyone else to continue to work. Employers are however urged to bear in mind Section 79.3 LSA which provides that an employee's participation in the group insurance and pension plans "(...) shall not be affected by the absence from work, subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer".

At the end of the period of medical leave the employer is obliged to reinstate the employee in the employee's former position with the same benefits including any increases to which the employee would have been entitled had the employee remained at work.

On the other hand, in the event of layoffs, the employee enjoys no greater benefits than those employees who would have remained at work.

The issue of COVID-19 is not specifically dealt with, *per se*, but the issue may well arise in certain essential industries that have continued to operate notwithstanding the order to cease operations made by the provincial government during the week of March 18. The medical leave provided for at Section 79.1 LSA specifically exempts illnesses covered by Quebec's Workers Compensation Legislation. There have been several COVID-19 infections amongst workers at long-term eldercare establishments and other industries, which, in the fullness of time, may very well be recognized as covered by Workers Compensation.

When covered by Workers Compensation, the rules are slightly different with the employer being obliged to continue payment of wages for five days subject to the decision of the CNESST (Quebec's Workers Compensation Board) as to whether or not it is covered by Workers Compensation Legislation, for eventual reimbursement. There remains the issue of whether, attracting a COVID-19 infection while teleworking at the employer's request would qualify as an industrial illness.

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China

If the employee cannot provide the work for one of the reasons as follows, such employee shall be entitled to the full paid leave:

- Diagnosed with Covid-19 infection;
- Suspected with Covid-19 infection;
- Close contact person (to the individual diagnosed or suspected with Covid-19) during the quarantine for medical treatment or observation period; or
- Due to the relevant epidemic emergency control measures implemented by the government.

But, please note that, upon the expiry of medical observation and quarantine period or when the relevant emergency control measures are ended, where the diagnosed patient needs further medical treatment and/or recuperation, the sick leave will apply.

For other employees whose employer does not resume work, or the employee is unable back to the workplace due to the cutting-off of the public transportation, the employee is entitled to the paid annual leave first. But, when the paid annual leave uses up, the employer and the employee may negotiate on the deduction of the salary or no-pay leave.

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Czech Republic

Even if paid leave is one of the options recommended by the Czech Government for dealing with the current restrictions due to the COVID-19 pandemic, no special types of paid leave or simplification of the procedure for taking leave have been introduced in connection with the current situation in the Czech Republic. The Labour Code shall apply as it usually does.

Employees are not automatically entitled to paid leave due to the COVID-19 situation, nor are they entitled for paid leave longer than stipulated in the Labour Code, employment contract, collective bargaining agreement or internal regulation. Any employee's request for paid leave must be approved by the employer, who decides on the scheduling of paid leave.

Similarly, the employer cannot order employees to take paid leave immediately. Paid leave can be ordered only 14 days in advance, unless agreed otherwise. Therefore, if both parties are willing to resolve this difficult situation by paid leave, a mutual agreement has to be reached.

In agreement with trade unions, and with the consent of the work councils, the employer can order collective paid leave no longer than two weeks, if indispensable for operational reasons of the employer.

Optionally, if an agreement on paid leave is not reached for whatever reason, the parties can agree on remote working or taking unpaid leave.

The employer is not generally obligated to excuse an employee's absence at work due to this reason. If an employee unreasonably refuses to attend work due to fears relating to COVID-19 and the employer has not agreed with him/her on remote working or leave, such absence would be in the worst case considered as an unexcused absence with possible negative disciplinary consequences.

An employer is however obligated to excuse an employee's absence at work if the employee is:

- taking care of a child younger than 13 years of age/disabled person living in the common household who stayed home because the school, or social centre taking care of such person, has been closed (in such a case an employee is entitled to a care allowance from the sickness insurance system). An employee taking care of a child older than 13 years of age must agree with the employer individually on remote working or leave but the employer is not obligated to excuse his/her absence in this case;
- not able to arrive at work because of public transport disruptions (such absence would be considered unpaid leave);
- ordered into quarantine or is incapacitated from work based on a medical statement (during the first 14 calendar days of quarantine or illness an employee is entitled to compensatory salary corresponding to 60% of his/her average reduced earnings. From the 15th day, the employee is further reimbursed through sickness insurance).

Finally, should the employer not be able to assign work to its employees totally or partially due to COVID-19 related reasons (such as the shutting down of many establishments in the retail or gastronomy sectors based on governmental measures, lack of production resources or staff, reduction in sales of products or providing services), the employees will have "obstacles to work on the side of the employer", which means that they would not work, but would be entitled to salary compensation usually varying from 60% to 100% depending on the type of obstacle.

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England

The rights of UK employees are contained in an employment contract (incorporating express rights and implied rights which are derived from the common law) and in statutory rules and regulations laid down by parliament which are mandatory in nature. The entitlement to pay during a period of leave depends to some extent upon the rights set out in the employment contract (since an employer may have agreed certain enhanced rights, for instance, to receive contractual sick pay during periods of sickness absence), as well as on the reason for the employee being unable to attend work. We have considered the applicable position in a range of circumstances below:

(a) The employer is a non-essential business following Government guidance to shut down operations and its employees are unable to work from home.

The employee would be entitled to continue to receive their contractual pay and benefits during such periods, provided they remain fit and able to return to work. An employer may have the option to impose a period of lay-off or short-time working provided this is contained in the employment contract. Failing that, employers would need to agree a variation of the employment contract with the employee's consent to allow for one of the following:

- (i) Furlough – the UK Government has introduced a Job Retention Scheme (JRS) which will reimburse employers for 80% of their employees' normal pay up to £2,500 (plus employer's national insurance and pension contributions on this amount) up until 31st May 2020;
- (ii) Salary reductions;
- (iii) Reduced working hours; or
- (iv) Mandatory holiday.

(b) The employee is unable to attend work because they have symptoms and/or are required to self-isolate.

Where an employee is exhibiting symptoms, is self-isolating because a member of their household has symptoms, or is in one of the vulnerable groups strongly advised to stay at home and who are not able to work from home, then they will be eligible for statutory sick pay "SSP" under new rules introduced on 13 March 2020. They may also be entitled to receive contractual sick pay if their contract of employment provides for this additional entitlement. SSP is £95.85 per week from 6 April 2020 for qualifying employees. Employers with fewer than 250 employees will be entitled to reclaim SSP from HMRC/the UK Government.

Such employees can be placed on furlough when their sick leave or self-isolation ends. However, those employees who are in the 'extremely vulnerable' group (those over 70 years of age and who have an underlying condition), who are shielding themselves in line with public health guidance, can be placed on furlough straight away.

(c) The employee does not have coronavirus symptoms/ is not required to self-isolate but is nevertheless unwilling to work to avoid exposure to COVID-19.

An employee whose place of work remains operational and who has not been requested to self-isolate, whether under WHO guidance or a written request by Public Health England or following a call to their GP or a recognised health expert, and is not demonstrating any of the symptoms of COVID-19, will not be entitled to SSP and will not generally be able to claim salary during their period of leave.

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England (cont'd)

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It is important to examine carefully the reason for an employee's refusal to attend. Employers have legal obligations to provide a safe working environment and must adhere to their responsibilities under the Equality Act 2010. If, for example, the employee has a disability which increases their vulnerability to COVID-19, the employer should consider if it can make reasonable adjustments to the employee's working arrangements. This may include, for example, agreeing to working from home on full pay, or adjusting their workload to accommodate any increased feelings of stress.

It is also important that employers are consistent in payment for self-isolation. Any difference in treatment between employees may give rise to a discrimination claim if it can be linked to a protected characteristic.

(d) The employee is unable to work as a result of caring responsibilities (e.g. due to school/nursery closure or because a dependent has fallen ill)?

If the employee is able to work from home, then they should continue to be paid in full. If not, then the following options would be open to an employer:

- (i) Provided the employee does not undertake any work for at least three weeks then they can be furloughed under the JRS. Note that this would not be open to public funded companies and certain scheme conditions must be met (see our note on the JRS [here](#)).
- (ii) If the employee's requirement to take leave is a short-term emergency until alternative cover can be arranged (i.e. one or two days) then they would be entitled to take unpaid leave to care for a dependent.
- (iii) As mentioned earlier it is important to treat employees consistently and not to discriminate on prohibited grounds.

(e) Can employees use their paid holiday during periods of business closure caused by COVID-19?

Throughout the shut down period, and regardless of whether an employee is furloughed under the JRS, they retain their existing employment rights. This includes the right to maternity pay, parental leave, unfair dismissal protection and paid holiday (which in the UK is a minimum of 28 days paid leave per year for those working full time). For employees who have normal working hours, holiday will be based on their usual contractual pay.

The Government guidance is not clear whether holiday pay will be reimbursed by the Government under the JRS and to what extent. However, the updated guidance from ACAS does seem to suggest that holiday can be taken during furlough. We expect the position on pay to be clarified in the near future.

(f) Can employers instruct employees to utilise paid holiday during a business closure caused by COVID-19?

Employers can institute a period of mandatory paid holiday provided they give appropriate notice which is twice the length of the required period of annual leave. In other words, a two-week notice period would be needed for a one-week period of annual leave. We do not recommend that this is used in respect of staff who are furloughed on the JRS given the uncertainty regarding reimbursement of holiday pay at present.

Please note that this note is based on UK guidance issued as at 9 April 2020 and this position may change.



Germany

These are the rules under German law:

- Employees acquire a statutory claim for ongoing salary payment during the first six weeks of sick leave (see § 3 Para. 1 of the German Continued Remuneration Act; "Entgelt-fortzahlungsgesetz"). Every attempt to reduce the amount of sickness pay by more than symbolic amounts is ineffective. The employees' right for payment does not apply if they caused the sickness intentionally or negligently; it is common understanding that generally speaking an infection with Covid-19 is not treated as culpably caused. In regard to these statutory rules Covid-19 does not create a special legal situation for the employment parties. The entitlement for continued remuneration applies in cases of a Covid-19 infection as well as in cases of any other disease.
- After three days of sickness employees have to visit a doctor and provide the employer evidence of their sickness with a doctor's certificate of incapacity for work. In other words, by submitting this certificate to the employer employees establish a rebuttable presumption of their incapacity for work due to illness. In the course of the current Covid-19 pandemic the National Association of the Statutory Health Insurers and the National Association of Statutory Health Insurance Physicians agreed on 16 March 2020, that until 23 June 2020 doctors are entitled to issue the certificate of incapacity for work without any medical examination of the patient; a phone call with the employee is sufficient. Doctors are entitled to certify incapacity for work for up to 14 days if a patient describes mild complaints in the upper respiratory tract notwithstanding if caused by Covid-19 or merely by a simple cold. Without any doubt this is a great relieve for employees who suffer such mild complaints – and unfortunately also offers the possibility of an abuse to the detriment of the employer.
- According to the rules of the German Protection against Infection Act ("Infektionsschutz-gesetz") the authorities are entitled to order employees quarantine when they are infected with Covid-19. The suspicion of an infection is sufficient for the law to apply. As a financial consequence of such restrictions the respective employees are entitled for continued remuneration payment up to six weeks. If the restriction takes longer employees receive reduced payments equal to sick leave payments from the public health insurance. During the first six weeks that payment is made by the employer, but it is not totally clear who has to bear it in the end. Employers might get those payments reimbursed by the state. On one hand and as described above, § 56 Infektionsschutzgesetz defines that the state shall bear the burden of ongoing remuneration payment. On the other hand, the employer has to pay the employees' salary according to § 3 Entgeltfortzahlungsgesetz anyway. It is safe to assume that this question will finally be answered by the courts.

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Hungary

Employment legal matters are regulated in Hungary by the Act I of 2012 on the Labour Code ("**Labour Code**"). The Labour Code continues to apply also in the time of the current pandemics, though the government of Hungary decided to suspend or change several employment rules for the term of the pandemics and the related emergency by way of implementing Government Decrees. As at the date of preparing this summary, the governmental rules did not affect the Labour Code's provisions regarding paid leave.

Granting paid leave to the employees

According to the Labour Code, employees are entitled to at least 20 working days as paid leave. Extra vacation time between one-ten days applies, depending on the age of the employee. Further, additional days have to be granted in certain cases, for instance, for employees with disabilities. Those with children under the age of 16 receive extra two, four or seven days depending on the number of children.

The employer has to ensure that employees take their paid vacation days by the end of the respective calendar year. Only extra holidays based on the employee's age can be carried over to the next calendar year. Employees who started working in October of a year, or later can take their holidays until March of the next year.

Employees can determine when they wish to take of seven days of their paid vacation. The remaining days are allocated by the employer, after discussion with the employee. Employees should spend 14 consecutive days on vacation, unless it is agreed in the employment agreement or otherwise with the employer. Vacation can be taken by the employee or allocated by the employer, subject to an advance notification of at least 15 days, unless otherwise agreed. This can put employers in a difficult situation, as in case employees do not cooperate, vacation can start only after the expiry of such 15 days.

Alternatives of paid leave

Should the employer decide to stop its operation without allocating the vacation days, and order the employees not to come to work, this would qualify as a stand-by period. During such time, employees are entitled to their salary – even if they do not work – and they have to be ready to take on work, subject to the requirements of the employer.

Should however, the employer become unable to continue its operation due to circumstances beyond its control, for example due to the decision of an authority, or a governmental regulation related to the pandemics, then the employee will not be entitled to salary payment. This situation has, however, be carefully considered, as the pandemics in itself may not constitute in itself a circumstance beyond the employer's control.

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India

Recently, the Ministry of Home Affairs (“**MHA**”) has released an order dated 29th March 2020 (“**MHA Order**”) with respect to the reduction of employees’ wages, which inter alia, states that the employers of all industries or in the shops and commercial establishments, shall continue to make the payment of wages of their workers, on the due date, without any deductions, till the establishments are under closure during the period of their lockdown. Additionally, Ministry of Labour and Employment vide its advisory dated 20th March 2020 (“**Labour Advisory**”), has stated that in the backdrop of such a challenging situation, all the employers of public/private establishments are advised not to terminate their employees and not to deduct the wages of employees/workers during the lockdown period.

It is pertinent to note that while under normal political national scenario, salary reductions can be effected for all categories of employees, by following the due procedure of law, presently, reduction of wages or non-payment of the same cannot be effectuated considering the various advisories and orders issued by the State Governments to enforce the same. While, reduction in wages for employees categorized as ‘**Workman**’, i.e. employees who perform routine functions and do non-managerial jobs, are covered under the Industrial Disputes Act, 1947 (“**ID Act**”), for employees not falling within the ambit of the definition of Workmen, the reduction must be in accordance with their employment contracts.

Nonetheless, considering the present prevailing catastrophic conditions of Covid-19 and consequential lockdown, in addition to the MHA Order and Labour Advisory, many States including but not limited to Delhi, Telangana and Uttar Pradesh, have issued orders that the employers of private and public establishments shall have to (a) consider employees to be on ‘**paid leave**’ or ‘**on duty**’; and (b) pay complete salary to the employees (including contractual and outsourced employees) during the State-specific lockdown period. The employers have been further directed to not reduce or deduct the wages for the lockdown period if an employee take quarantine leave. It must be noted that the intention of the Government is to safeguard the interests of thousands of employees/workers in this unprecedented situation and hence, any action by an employer which puts across a negative impact on an employee, will be deemed to be in violation of the orders/advisories and shall be prosecuted as per the relevant provisions of law.

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India (cont'd)

It is to be noted that the MHA Order and State-specific lockdown orders/directions have been issued under the statutes such as Epidemic Diseases Act, 1897 and Disaster Management Act, 2005, the provisions of which have binding and overriding effect, any violation of the same will attract penalties and can potentially lead to a number of disputes in the future. Thus, in the event an employer intends to proceed with the salary reductions or fails to make complete payment of salary to the employees during such period of leaves, a potential risk may arise due to the non-compliance of the MHA order and Labour Advisory including filing of complaints against the employer, by the employees, with the authorities alleging unfair labour practice and/or for taking such measures in derogation of the MHA Order, which may attract penalty/government action against the employer eventually leading to potential litigation. However, notwithstanding anything contained herein, in the event consent of the employees is obtained with respect to reduction of salary, the same may provide protection to the employer against the potential risks of litigation.

In light of the above, in our opinion all the employers, whether in an industry or a shop or a commercial establishment, are incumbent to pay full wages/salary to its employees/workmen and provide the employees paid leaves for such duration. However, the employees engaged in the capacity of senior level management in a company/organization, may volunteer for a pay cut as a matter of good business practice and healthy growth of the junior and mid-level employees.





The Netherlands

In accordance with Dutch law, an employee is entitled to continued payment of wages if he is unable to carry out activities because of circumstances which must be for the risk of the employer. The question which then arises immediately is who should bear the expense and risk resulting from this global COVID-19 epidemic. Is it a risk to be borne by the employer or a risk to be borne by the employee? Or is it a risk that must be shared by both parties? It is a rather complicated question and in such exceptional situations, current case law is not always clear and also very casuistic. Something like this has never happened previously and for that reason there are no comparable examples which could form a basis for answering this question with a sufficient degree of certainty.

However, the Dutch government decided to intervene for the purpose of safeguarding jobs, and it created a so-called NOW scheme (a temporary emergency measure). This scheme grants wage subsidy to employers for the payment of wages to their employees and it encourages the employers not to dismiss their employees. The subsidy amount depends on the turnover decrease of the company. In the event of a group of companies the turnover of the group within the Dutch borders is looked at. In the most favorable scenario (there is a turnover decrease of 100%) the employer receives 90% of all wage costs, which means that 10% must be paid by the employer himself. Granting subsidy therefore is subject to the condition that no employees may be dismissed for commercial reasons. Should the employer do so nevertheless, then he will have to pay back the subsidy money with 50% penalty.

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Romania

The right to annual paid leave is guaranteed under the Romanian Labour Code to all employees with individual labour agreements and it cannot be subject to any waiver, assignment or limitation.

Moreover, the annual paid leave must be taken effectively (i.e., the employee will not perform work for the employer), and only in limited cases can it be remunerated with payment (and not actually taken).

The COVID-19 pandemic, which has led to the institution of a state of emergency on the territory of Romania, has brought about re-arrangements in the relationship between employers and employees. However, as a general observation, the fundamental right to annual paid leave has not seen substantial amendments (with the exceptions that will be briefly mentioned below).

Therefore, the general rule stipulated in the Romanian Labour Code (*providing that annual paid leave is established by the end of the calendar year before the calendar year for which the scheduling is made*) is still applicable, even under the pandemic situation.

Given that once the scheduling of the annual leave is established, the employee must take the paid leave during the scheduling established beforehand, in the absence of a contrary agreement with the employer, even if such scheduling is made for the period of the pandemic.

However, on the opposite side, the employee cannot be coerced to take paid leave during such period.

Nevertheless, there have been limitations as to the granting of paid leave to Romanian employees during this period in certain sectors (the military, the police, etc.).

In addition, a new law has come into force in this period, Law 19/2020, which stipulates that parents, legal guardians and representatives of children up to 12 years of age or up to 18 years of age, in case of disability, whose school facilities are closed, are entitled, during the entire duration that such school facilities are closed, upon meeting certain conditions and producing certain documents, to an indemnification of 75% of basic salary (but not more than 75% of the average gross salary for 2020, provided by the social insurance budget law), paid by the employer but incurred from a state-owned salaries' guarantee fund.

Thus, if individual working schedules, shift work, work from home or tele-working are not feasible and other conditions are met with regard to the other parent/legal representative, the employer does not have the legal means to deny the granting of such paid days off, as a general rule.

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United States – Overview & New York

The Families First Coronavirus Response Act (“FFCRA”) provides two key leave provisions: the Emergency Paid Sick Leave Act, or EPSLA, and the Public Health Emergency Leave, or PHEL, under amendments to the Family and Medical Leave Act. Both of these provisions provide for paid job-protected leave for workers missing work due to COVID-19-related reasons. Both laws apply to private employers with fewer than 500 employees; however, there are certain exemptions for small employers and health care employers.

Employees may take EPSLA leave for six reasons, one of which overlaps with the PHEL (see number 5, below). An employee is eligible for these leaves only if the employee is also unable to work or telework:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. The employee is experiencing the symptoms of coronavirus and seeking a medical diagnosis;
4. The employee is caring for an individual (need not be a family member) who is subject to an order described in number 1, above, or has been advised to self-quarantine, as described in number 2, above;
5. The employee is caring for a son or daughter under the age of 18 because such son or daughter’s school or place of care has been closed, or such son or daughter’s care provider is unavailable due to the coronavirus; or
6. The employee is experiencing any other “substantially similar condition” specified by the secretary of the U.S. Department of Health and Human Services in consultation with the secretaries of the U.S. Department of the Treasury and DOL.

An employee is eligible for two weeks of paid leave under the EPSLA. Employers must pay full-time employees for up to 80 hours of work, and those working a variable schedule for the number of hours worked during their average work schedule across a two-week period.

The EPSLA for the employee’s own care (reasons 1 through 3, above) is payable at an employee’s regular rate (as defined under the FLSA), up to a maximum of \$511 per day (\$5,110 in the aggregate). The EPSLA for the employee’s care for another person (reasons 4 through 5, above) or reasons to be determined by future regulations (reason 6, above) is payable at an employee’s regular rate, up to a maximum of \$200 per day (\$2,000 in the aggregate).

The first two weeks of leave of EPHL are unpaid. Presumably, an employee would use the EPSLA leave to receive compensation during this time, but employers cannot require employees to use the EPSLA, paid time off or other paid leave during the first two weeks. If the employee remains eligible for the additional 10 weeks of PHEL, the employer must pay two-thirds of an employee’s wages, up to a maximum of \$200 per day (\$10,000 in the aggregate). Both the EPSLA and EPHL paid leave may be recovered in tax credits by the employer.

Several local jurisdictions have also enacted new paid leave laws or expanded existing sick leave, disability insurance, or paid family leave insurance laws for COVID-19 related reasons. New York State now requires paid leave for an employee subject to a mandatory or precautionary quarantine or isolation order. Three California cities - Los Angeles, San Francisco, and San Jose - have passed legislation addressing additional paid leave. Colorado enacted a new paid COVID-19 testing leave, as well.

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United States - Massachusetts

Over the past weeks, the circumstances of the COVID-19 pandemic and government action in response have changed from day to day and moment to moment, as have the operational and financial needs of businesses, and the legislation and regulations designed to support both the needs of business and those of individual employees through this very difficult period. Recent changes to the law have made it possible for employers to take all measures necessary to protect their businesses while also providing for their employees. The following addresses the paid leave available to Massachusetts employees and required to be provided by their employers.

Federal Paid Leave

Amid the COVID-19 pandemic, many American employees are now eligible for federal, COVID-19-related paid leave under the Families First Coronavirus Response Act (FFCRA), which went into effect on April 1, 2020. The FFCRA mandates that most private sector employers with fewer than 500 employees, and all public sector employers, provide their employees with up to 40 hours of paid sick time to care for their own COVID-19 symptoms or those of a family member, comply with a quarantine or shelter-in-place order, or care for a child whose school or childcare provider is closed due to COVID-19. The same employers must provide their employees with up to ten additional weeks of paid family and medical leave, but only to care for a child whose school or childcare provider is closed due to COVID-19. Yet due to exemptions available for certain small businesses and broadly defined "healthcare providers" and "emergency responders," many Americans working for businesses with fewer than 500 employees will still find themselves ineligible for paid leave benefits under FFCRA.

Paid Leave in Massachusetts

Nearly all Massachusetts employees are entitled to take up to 40 hours per year of accrued sick leave from work under the state's Earned Sick Time (EST) Law. For employees of businesses with 11 or more employees, this earned sick time must be paid by the employer. Employees of companies with fewer than 11 employees are still entitled to EST, but the leave may be unpaid. Under the EST Law, employees must accrue one hour of EST (paid or unpaid) per 30 thirty hours worked, which they may use to care for their own medical condition or that of an immediate family member (spouse, child, parent, or parent-in-law), or attend their own medical appointment or that of an immediate family member, among other reasons. Since the COVID-19 pandemic began, the Massachusetts Attorney General's Office has clarified that employees are also entitled to use EST when a healthcare provider or public health official requires or recommends quarantine for the employee or an immediate family member.

Notably, unlike the paid sick time afforded under FFCRA, employees in Massachusetts are not entitled to use EST (paid or unpaid) to care for their child whose school or childcare provider has closed or is unavailable due to COVID-19. Likewise, Massachusetts law does not currently mandate paid family leave for employees, whether COVID-19 related or not, beyond the minimum EST employees of businesses with 11 or more employees may use to care for ill family members. While the Massachusetts Paid Family and Medical Leave Act, enacted in 2019, will eventually offer nearly all Massachusetts employees up to 12 weeks of partially paid leave to care for their own serious medical condition or that of a family member, eligibility for those benefits does not begin until January 2021. However, many employees are eligible for up to 12 weeks per year of family and medical leave under the federal Family and Medical Leave Act (FMLA), which provides unpaid leave for an employee to care for their own serious medical condition or that of a family member, for the birth or adoption of a child, and to attend to certain exigencies arising from a family member's active duty military status. Any federal paid family and medical leave an employee uses under the FFCRA will count toward the 12 weeks of FMLA leave to which the employee may be entitled per year.

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United States – Massachusetts (cont'd)

Many employers in Massachusetts offer paid time off (PTO) policies that provide more than 40 hours of paid leave annually, which the employee can choose to use as sick time, vacation, or personal time. Employers should keep in mind that they cannot require employees to take their PTO (or legally mandated EST) concurrently with emergency paid sick time granted under the FFCRA. However, they can require employees to take PTO, or any other employer-provided leave which could be used for taking care of a child, concurrently with emergency paid family and medical leave under FFCRA. In addition, while fiscal uncertainty may tempt employers to cut costs by reducing permitted PTO, any such reductions must be prospective, as employees are entitled to take leave that they have already accrued, whether as a lump sum benefit or for hours worked.

Furthermore, employers may not retaliate against employees for using EST to which they are entitled. That said, employees using any type of leave, including emergency paid sick time or family leave under FFCRA, are not insulated from workforce reductions such as furloughs or layoffs, provided such action would have occurred regardless of the employee's leave status.

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