



## COVID-19 - Response: Guidance for MA Employers

Dear Clients,

Below is a summary prepared by the Eskow Law Group and Beacon Law Group LLC. Although specific to Massachusetts, there are many similarities to other states and many states are relaxing unemployment rules to allow employees to collect sooner if an office is shutdown.

For details about your specific state including how employees may file, go to the following link, click on your state, and then select the unemployment link.

<https://www.irs.gov/businesses/small-businesses-self-employed/state-government-websites>

Sincerely,

Rosen & Associates, LLP

### **COVID-19 RESPONSE:** **GUIDANCE FOR MASSACHUSETTS EMPLOYERS**

By: Jonathan T. Eskow, Esq. of Eskow Law Group & Elizabeth M. Adler, Esq. of Beacon Law Group, LLC

We all know that COVID-19 has led to challenging times for our society. Employers face many difficult questions and decisions. We wish to provide some present guidance for Massachusetts Employers.

### **Some Possible Scenarios**

Depending upon business (and in some instances, regulatory) circumstances, some employers may need to reduce hours/pay for certain workers on a temporary or ongoing basis. Other employers may be unable to offer work for a period of time, but do not terminate the employment relationship (given the desire to retain the workers combined with the expectation that the workers will soon be offered work). Other employers may decide to terminate the employment of certain workers (in which case standard termination procedures should be followed, including the payout of all wages on the last day of employment, including accrued vacation time). Of course, there are some employers that will be able to pivot to remote work models (discussed below), or that will conduct business as usual. Regardless of employer needs/situations, some employees for whom there is available work may be unable or unwilling to work for a variety of reasons, including but not limited to the desire to self-quarantine, the need to care for children whose schools are closed, or to tend to their own illnesses or the illnesses of family members.

### **Unemployment Benefits**

Under many scenarios, there may be eligibility for unemployment benefits. The following is an excerpt of Governor Baker's March 15, 2020 public statements on this topic:

“We will be relaxing some of the requirements around current unemployment claims. This will allow many of the workers who are affected by closures to get some financial relief faster. We will file emergency legislation that will allow new claims to be paid more quickly by waiving the one-week waiting period for unemployment

benefits that currently exists under state law. We will also file emergency regulations expanding the eligibility around collecting unemployment for people who have been impacted by COVID-19.”

Employers can obtain additional information on the Commonwealth’s website. <https://www.mass.gov/info-details/covid-19-guidance-and-directives#businesses-&-employers-> (click on “Businesses and Employers”). As you’ll see from the website, the in-progress legislation (going through the state legislature on an expedited basis) allows for benefits if (among other possible scenarios): “The workplace is shut down and expects to reopen in four or fewer weeks.” This can then be extended to eight (8) weeks (and possibly longer). As a result, when feasible it will be helpful to workers if any no-work period is initially for no more than four (4) weeks. If workers aren’t being terminated but instead are being placed on a work hold for a period of time, we recommend that you refer to this as a “no-work” period, rather than a layoff.

The Massachusetts Department of Unemployment Assistance may now pay unemployment benefits to an employee who is the subject of a quarantine by a medical professional or civil authority, or who stops working due to reasonable risk of exposure/infection or to care for a family member and does not intend to or is not allowed to return to work. The worker does not need to provide medical documentation and need only be available for work when and as able.

In the various circumstances described above (as well as in the event of termination and substantial reduction of hours), employers should advise employees to file for unemployment benefits, and should provide employees with this link (or a printout of the form found at this link) for more information: <https://www.mass.gov/doc/how-to-apply-for-unemployment-insurance-benefits-form-0590a/download>. Please be careful *not* to make promises or otherwise represent to employees that they are or aren’t eligible for benefits; instead, just notify them that they may (and should) apply. The decision rests entirely with the Massachusetts Department of Unemployment Assistance.

## Pay Issues

General requirements and options for different types of pay are discussed below. Please note that employees may have additional rights under employment contracts and/or employment policies. Similarly, union workers may have additional rights under collective bargaining agreements. Aside from legal requirements, employers are likely to be judged (now and in the future) by their employees' perceptions of whether their employer has gone any extra mile. Those employers that are in the position or do not have the inclination to provide unrequired payments still have the potential to generate goodwill through excellent communications, some measure of transparency as to the employer's business reality, and the sharing of helpful sources of information.

### ●What Wages Must an Employer Pay When Employees Don't Work?

In general (and with certain exceptions):

*Workers who are exempt from the minimum wage and overtime requirements of federal and state law because they meet the so-called "white collar" exemptions (e.g. professional, executive, and/or administrative meeting the legal criteria for exemption):* Salary payments do not need to be made for any full week not worked. For any work week in which the employee provided any services, the worker must be paid their full salary for the entire week. There can be an exception to full-week payment if the employee declined to work for part of the week and did not have available paid time off to cover the missed days.

- *Non-Exempt workers who are paid a fixed salary for a fluctuating workweek* (no fixed schedule, hours can vary from week to week): This involves the same treatment as for "white collar" workers described above.
- *Non-Exempt workers who are paid a fixed salary for a fixed weekly schedule* (e.g. 9:00-5:00): Salary payments do not need to be made for any full week not worked. For any week in which

the employee provided any services, the salary can be prorated based on the number of days worked (e.g. 40% for two days worked out of five).

- *Hourly Workers* must only be paid for hour worked. (If an employee who is scheduled to work three (3) hours or more reports to work, he/she must be paid for a minimum of 3 hours, even if there are less than 3 hours of work is available.)

### ● **Sick Time Pay**

Employees who have accrued paid time off under the Massachusetts Sick Leave Law (employers of 11+) may take sick time because they are ill or are caring for sick family members. Employers can't force employees to use this paid time off for reasons not covered by that law. If the employer provides additional sick time (beyond that required by the Massachusetts law), the applicable policies should govern how and when this can be used.

Employers that want to provide additional support to workers can consider (not mandatory) these potential tools: (i) allowing workers to use earned sick time even though the typical circumstances don't apply (e.g. if the employee wants to stay home to self-quarantine, even though they are not sick); (ii) accelerating the earning of sick time (if it's earned on some accrual basis) to provide employees with access to all or part of the full annual allotment now (the risk is that an employee doesn't stay long enough to have otherwise earned it, in which case the employer can't recoup what's been paid); and/or (iii) granting additional paid sick days beyond the annual allotment. (Please note that the receipt of sick pay in any week is likely to impact unemployment benefits, if applicable, for that week.)

### ● **Vacation Pay**

Employers can permit workers to utilize vacation pay during time off. Employers that want to provide additional support to workers can consider (not mandatory) these potential tools: (i) allowing workers who use vacation pay now to take a certain amount of unpaid vacation later in the year, so that employees don't worry that they won't have

any downtime later in the year; (ii) accelerating the earning of vacation time (if it's earned on some accrual basis) to provide employees with access to all or part of the full annual allotment now (the risk is that an employee doesn't stay long enough to have otherwise earned it, in which case the employer can't recoup what's been paid); and/or (iii) granting additional vacation days beyond the annual allotment. (Please note that the receipt of vacation pay in any week is likely to impact unemployment benefits, if applicable, for that week.)

### **Remote Work**

When this is an option, the employer and employee should both prepare for how this will be effectuated. Ensure that employees have the necessary equipment and supplies, as well as the materials necessary to complete assignments. For roles that don't lend themselves to remote work, consider whether the worker can be re-deployed in other roles, or pivot to projects that have been shelved and awaiting an open schedule for completion.

### **Document Changes**

Be sure to follow up announcements regarding no-work periods, as well as decisions to reduce schedules and/or pay, in writing. These need not be expansive documents, but instead the goal is to memorialize the changes, even in very simple terms, for the employee's information, as well as for the employer's protection. For example, employers will not want to be faced with future lawsuits from employees who were told to stop (or reduce) work, but who instead say that they were not given this mandate and contend that they continued to work at home.

### **Additional Relief and Guidance**

Developments on this topic are emerging rapidly. Federal legislation (Emergency Family and Medical Leave Expansion Act ("Emergency

FMLA”) and the Emergency Paid Sick Leave Act) has passed the U.S. House of Representatives and is awaiting Senate approval. If passed, this will provide further relief, depending upon employer size.

There are many sources of official information for employers regarding the current circumstances, but two that employers may want to consider in particular are the Commonwealth’s website: <https://www.mass.gov/resource/information-on-the-outbreak-of-coronavirus-disease-2019-covid-19> (in particular, see “Guidance and Directives”), and the Interim Guidance for Businesses and Employers from the Centers for Disease Control and Prevention (“CDC”): <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

**[For Further Information:](#)**

If you have any questions about your obligations in light of this global health crisis, please contact:

**Jonathan T. Eskow (by email at [jon@eskowlawgroup.com](mailto:jon@eskowlawgroup.com) or phone at 617-936-0166)**

*The above information is designed to provide a helpful overview of a relevant topic; it does not set forth every facet of the law. It does not constitute legal advice nor should it be construed as such. Please do not take action based on the above information without seeking formal legal advice*

[About Us](#)

[Affiliates](#)

[Publications](#)

[News](#)

[Contact Us](#)

**Rosen & Associates, LLP**  
1800 West Park Drive, Suite 300  
Westborough, MA 01581  
508-926-2400

Reach Out To Us

