

Frequently Asked Questions – Massachusetts COVID-19 Temporary Emergency Paid Sick Leave

REIMBURSEMENT TIMING – APRIL 1 DEADLINE

- 1. The EPSL was effective almost a year ago, so it seems like a lot of work to go back and find all of these claims to get reimbursed by the state. Is it worth the trouble, and what is the best approach?**

We recommend you start with claims made in February, then January, and so on, in reverse order, back to May 28, 2021, given that higher recent incidence of COVID-19 and the likelihood you will have better access to documentation (see further questions below). You may file claims in the Mass Tax Connect portal week by week, so you may want to gather information for a few weeks at a time and then submit them in a batch. Note that the outside deadline for claims to be submitted is April 1, but the fund could run out before then, so we recommend prompt action.

- 2. How quickly are these claims paid?**

Our experience is that checks are issued within 1-2 weeks of submission by the location.

GENERAL

- 1. Does the MA Temporary EPSL apply to our parish/school? Are both lay employees and priests eligible to take EPSL?**

- Yes, the Massachusetts Temporary EPSL applies to all Massachusetts employers and covers all RCAB parishes and schools.
- Priests are considered employees who are eligible for EPSL.
- The law applies to employees who had an absence for an EPSL-covered reason since May 28, 2021.

- 2. Is there a waiting period for new hires? Would substitute teachers and limited part-time employees (cantors, after-school aides, sports coaches) be covered, even if their scheduled hours are sporadic?**

There is no waiting period for new hires. All employees, including substitute teachers, coaches, cantors, etc. are covered by EPSL if they had a qualifying leave that required them to miss scheduled hours.

- 3. Are employees who do not live in Massachusetts but who perform their work remotely for a parish or school (i.e., they do not physically work in Massachusetts) covered?**

It is our view that these individuals would not be covered by MA EPSL. However, they might be covered by laws in the state in which they reside.

- 4. Are employees who do not live in Massachusetts (ex: RI, NH, CT residents) but who work on-site at an RCAB parish or school covered?**

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Yes, they may be covered under the MA EPSL. Employees are eligible if their primary place of employment is in the Commonwealth. An employee’s “primary place of employment” is determined by the worksite or physical location where the employee spent the greatest percentage of work hours (between 1/1/2020 and 4/30/2021). You should not factor into this determination a temporary telecommuting arrangement with an employee. If the employee was hired or began work on or after 5/1/2021, the “primary place of employment” is determined by the worksite or physical location where the employee is expected to spend the greatest percentage of work hours. This topic will be discussed during the webinars of February 17 and 22, so please attend a webinar or listen to the recording available afterwards.

5. How does an employer satisfy the notice obligation under the EPSL?

- a. According to the MA FAQs, there is no requirement to issue the Employee Notice individually. However, in cases where the employer does not maintain a physical workplace, or an employee teleworks or performs work through a web-based platform, notification should be sent via electronic communication or a conspicuous posting in the web-based platform.
- b. We recommend distributing the Employee Notice to all employees in person, via email and/or via U.S. Mail and posting the notice in the workplace in a prominent location.

6. If the pastor tells healthy employees not to come in to work due to positive cases at the parish, can hours paid to those employees be applied to EPSL?

Yes, this would qualify as a quarantine order under which employees can utilize MA EPSL. Those hours are eligible for EPSL up to the number of hours/wages allowed under EPSL.

REQUIRED DOCUMENTATION:

1. What is acceptable documentation of the need for EPSL leave?

- a. There are no express limitations on the medical documentation an employer may collect. Keep in mind that employers must treat health information regarding an employee or employee’s family member as confidential medical records in accordance with applicable state and federal law and must not disclose such information to any third parties without the employee’s express permission. To comply with the Americans With Disabilities Act (ADA) and applicable state laws, any medical documentation received from an employee must be maintained separately from an employee’s personnel record. Positive COVID-19 self-tests (aka home tests or over-the-counter tests) may serve as the basis for using MA COVID-19 sick leave. If a self-test is used, the medical documentation requirement can be satisfied by a statement from the employee accompanied, at the employer’s discretion, by a photo of the positive test. In some circumstances, especially when there is a time lag, it may no longer be feasible to obtain a photo from the employee. Employers should use reasonable discretion taking account of the circumstances.
- b. Documentation collected from employees does not need to be submitted with the reimbursement claim. It should be kept in the employer’s files in the event that verification is needed.

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2. Do parishes/schools have to send request forms & “written supporting documentation” to RCAB HR?

No. These records should be kept at the parish/school in a secure location accessible to authorized personnel only.

3. If employers have doubts about whether the employee’s request is valid, are they allowed to request documentation?

- a. Employers may request documentation whether they doubt the validity of the request or not.
- b. Completion of the Employee Request Form is not required if the parish/school is not requesting reimbursement from the state.
- c. Employers may request that an employee complete the Employee Request Form, but discretion should be used in asking the employee to submit a Form if not seeking reimbursement from the state. We recommend that you request completion of the Form and for supporting documentation in a uniform manner, i.e., request it for all or for none.

4. If employers choose to request reimbursement from the state, are they required to ask employees to complete the Employee Request Form & submit “written supporting documentation”?

Yes. Written medical documentation of one type or another must be **requested** of an employee in order for an employer to claim state reimbursement, assuming there is medical documentation available to support the claim. In situations where a request for COVID sick leave is submitted months after the leave was taken, for example, medical documentation may no longer be available. Here, the state recommends that the employer request an attestation regarding positive COVID test results, but the employer should use discretion depending on the situation.

5. If we do not have documentation/proof of a positive test, can we still seek reimbursement?

- a. Yes, documentation does not necessarily need to be proof of a positive test; it can be a document received from a medical provider, or a statement from the employee if a self-test is used, which may be accompanied by a photo of the positive test, at the employer’s discretion. If an immunization is the reason for the leave, then employers are required to get documentation of the immunization.
- b. This law does not address what documentation is required, and the MA online FAQs advise that employers should use discretion in collecting and maintaining the necessary records to support the specific type of COVID sick leave taken in the event that verification is required. For example, if a leave is taken to comply with a quarantine order issued by a local, state, or federal public health official, a digital or paper copy of the quarantine order should be retained on file.

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6. Would you suggest informing all employees ahead of time that this documentation is needed in case they use a home test?

We find nothing wrong if you choose to inform employees ahead of time that documentation will be required if they should request MA EPSL and if you plan to seek reimbursement from the state.

HOURS CALCULATIONS/PRIMEPAY

1. What is primary, the number of hours or the \$850 maximum?

- a. Neither one is primary. Employers are required to allow the number of hours for which the employees (lay employees and priests) are eligible and to pay them for those hours up to the maximum allowable under EPSL (\$850 including the cost of benefits).
- b. Employers may pay the remainder of the hours (if any) as sick time, in which case the EPSL hours and the employee's sick time can run concurrently.

2. If the employer chooses not to request reimbursement, must they still allow the 40 hours of leave & pay them up to the \$850 max?

Yes, employees must be allowed to take the full number of hours for which they are eligible and be paid for those hours. If the employer is not requesting reimbursement, then employee request forms are not necessary. While you are not required to apply for reimbursement, it is strongly advised that you seek reimbursement to lessen the burden on your parish, school, or other organization.

3. Does the employer have to pay employees more than their regular weekly wages if those wages are less than the \$850 maximum allowed?

No.

4. For employees who earn more than the \$850 max for 40 hours, can we make the rest of the hours unpaid?

- a. If there is no paid time available after the employee receives the \$850 required by EPSL, you would not be required to pay more as long as they are allowed to take the 40 hours (prorated for part-time employees). Exempt employees must be paid their full salary for any week they performed work, even if they do not have any paid time available.
- b. While you are not required to pay for hours beyond 40 (prorated for part-time employees), you may want to if you are able to do so to incent staff to remain home if they are ill. This is consistent with the way we have advised throughout the pandemic.

5. If wages paid to the employee are already at the \$850 maximum, is there a reason to document the cost of benefits in the reimbursement request?

No.

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6. If an employer has already provided paid time off that is not part of an existing PTO bank for employees to get vaccinated, would that count toward the 40 hours?

- a. Yes, if the paid time off was for an employee to get vaccinated or recover from a vaccination and the time granted was on or after May 28, 2021.
- b. If the paid time off was for an employee's family member to obtain or recover from a vaccination, only time on or after October 1, 2021 would be covered.

7. How do we prorate hours for part-time employees?

- a. For employees who regularly work fewer than 40 hours per week, employers must provide leave in an amount that is equal to the average numbers of hours that employee works per week. For example – employee works on average 20 hours week. This would be their maximum hours of EPSL.
- b. For employees whose schedule and weekly hours vary from week to week, employers must provide leave that is equal to the average number of hours that employee was scheduled to work per week over the previous six months.

8. Are the EPSL hours allowed separate from sick hours?

Yes. Employers need to pay EPSL hours before using any other PTO. This topic will be addressed in detail on the webinars of February 17 and 22, so please attend a webinar or listen to the recording available afterwards.

9. What if we paid employees for time out due to COVID-19, but the MEPS code in PrimePay was not used?

This topic will be addressed in detail on the webinars of February 17 and 22, so please attend a webinar or listen to the recording available afterwards.

10. If employees were paid for an EPSL leave and the time was coded as “Other” or “Sick,” can the employer go back and claim that as EPSL reimbursement?

Yes. Any time off taken for an EPSL-covered reason can be reimbursed, subject to the \$850/40 hour maximum per employee.

11. If we use the MEPS code to pay the 40 hours for a sick person but the total is more than \$850, do we have to make an adjustment just to cover the \$850?

This topic will be addressed in detail on the webinars of February 17 and 22, so please attend a webinar or listen to the recording available afterwards.

12. Was the MEPS earnings code set up with PrimePay to accrue sick time and other paid time off?

The MEPS code was not set up to accrue this time due to the absence of guidance on this topic at the time of set-up; however, effective February 14, 2022, the MEPS code will accrue

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benefits. Any prior use of MEPS will be reviewed by Pastoral Center staff and any adjustments needed will be made in PrimePay.

13. Should we use the MEPS Code in PrimePay regardless of whether we place a claim with the state?

We encourage using the MEPS code in PrimePay.

14. Is there a designated email set up for MA EPSL questions or help with manually updating PTO accrual balances?

Please direct any EPSL questions to epsl@rcab.org.

Contact PrimePay (888-697-0021) for help with manually updating PTO accrual balances.