



**Coronavirus Response  
Update**

March 18, 2020

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# CORONAVIRUS RESPONSE

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## Topics for today:

- ✓ What we currently know
- ✓ Recommended strategies
- ✓ Additional Measures in Response
- ✓ Employee Supports
- ✓ Existing Employment Law
- ✓ Department of Labor Guidance on Unemployment
- ✓ Massachusetts Department of Unemployment Assistance
- ✓ Evolving Responses
- ✓ Federal Leave Scenarios, FAQ
- ✓ Small Business Supports

# CORONAVIRUS

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## What we know

A novel coronavirus is a new coronavirus that has not been previously identified. The virus causing coronavirus disease 2019 (COVID-19), is not the same as the coronaviruses that commonly circulate among humans and cause mild illness, like the common cold. Coronaviruses are a family of virus that can cause fever, respiratory problems, and sometimes gastrointestinal issues.

Good news- a majority of individuals recover, just like other similar infections. This virus is far more contagious than similar infections.

The novel coronavirus is thought to spread mainly from person-to-person, generally those within 6-feet of us. It may also be transmitted by touching an infected surface and touching your face or mouth. **A person on average spreads it to 2-3 others.**

Taking steps toward prevention is important to stopping the spread of COVID-19, the disease caused by the coronavirus, and the best way to prevent illness is to avoid being exposed.

**As of 4 PM, March 17, Confirmed cases of COVID-19 in Massachusetts: 218**

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# CORONAVIRUS

## What we know

CATEGORY	NUMBER OF CONFIRMED CASES
<b>County</b>	
Barnstable	2
Berkshire	14
Bristol	5
Essex	8
Hampden	1
Middlesex	89
Norfolk	43
Plymouth	5
Suffolk	42
Worcester	8
Unknown	1

CATEGORY	NUMBER OF CONFIRMED CASES
<b>Sex</b>	
Female	102
Male	116
<b>Exposure</b>	
Biogen and household contacts	102
Local transmission	33
Travel related	24
Under investigation	59
<b>Hospitalization</b>	
Patient was hospitalized	21
Patient was not hospitalized	145
Under Investigation	52

Confirmed Massachusetts cases of COVID-19:

**218**

## **Recommended strategies for employers to use now:**

OSHA calls these “Administrative Controls”

- Actively encourage sick employees to stay home
- Inform and encourage employees to self-monitor for signs and symptoms of COVID-19 if they suspect possible exposure.
- Separate sick employees, send them home
- Emphasize respiratory etiquette and hand hygiene by all employees
- Perform routine environmental cleaning
- Advise employees before traveling to take additional steps
- Limit numbers of people in open air offices to 25 or fewer
- Assess the feasibility of work from home arrangements: Identify critical employees and minimum staffing requirements
- Discourage workers from using other workers’ phones, desks, offices, or other work tools and equipment, when possible
- Maintain a written mandatory cleaning process for any business open to the public

## **Additional Measures in Response to potential COVID-19 exposure:**

Request that Employees who are well but who have a sick family member at home with COVID-19 notify their supervisor and refer to CDC guidance for how to conduct a risk assessment of their potential exposure. Link provided at end of presentation.

**If an employee is confirmed to have COVID-19**, employers should inform employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the Americans with Disabilities Act (ADA).

**Employees exposed to a co-worker with confirmed COVID-19** should refer to CDC guidance for how to conduct a risk assessment of their potential exposure

Massachusetts employers can contact the Massachusetts State Department of Public Health if there are questions about conducting a risk assessment:

## **Employee Supports/Administrative Controls in Response to COVID-19:**

Be aware of workers' concerns about pay, leave, safety, health, and other issues that may arise during infectious disease outbreaks.

Provide adequate, usable, and appropriate training, education, and informational material about business-essential job functions and worker health and safety, including proper hygiene practices and the use of any workplace controls (including PPE). Informed workers who feel safe at work are less likely to be unnecessarily absent. There are links at the end of the presentation.

Many Long Term Disability (LTD) policies have Employee Assistance Plan (EAP) components that can be valuable resources especially during unsettled times.

# CORONAVIRUS

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## EXISTING EMPLOYMENT LAW

### **MA Sick Leave Law.**

Employees earn an hour of sick leave for every 30 hours worked. Employers of 11 or fewer are required to provide the leave without pay. If an employee is absent for 24 or more consecutive work hours, employers can require medical certification

### **Federal FMLA**

Employees of employers of 50 or more in a 75-mile radius, who have worked 1250 hours in the last year, have Job-protected family and medical leave for up to 12-weeks

### **OSHA General Duty Provision**

Occupational Safety and Health Act of 1970 requires employers "To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health." Bear in mind, workers who contract COVID-19 under work related conditions may be eligible for Workers Compensation.

### **EEO/ADA**

"**Direct threat**" is an important ADA concept during a pandemic. During a pandemic, ADA-covered employers may ask such employees if they are experiencing symptoms of the pandemic virus. For COVID-19, these include symptoms such as fever, chills, cough, shortness of breath, or sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA.

## DEPARTMENT OF LABOR GUIDANCE ON UNEMPLOYMENT

According to guidance issued by the U.S. Department of Labor (DOL) on March 12, 2020, states can pay benefits when:

An employer temporarily closes due to COVID-19 and employees can't work.

An employee is quarantined but expects to work when the quarantine is over.

An employee leaves his or her job due to a risk of exposure or infection or to care for a family member.

Federal law doesn't require employees to quit their jobs in order to receive unemployment insurance benefits related to COVID-19.

Employees who are receiving paid sick leave or paid family leave are generally not considered unemployed because they are still receiving pay. They would likely be ineligible for unemployment insurance benefits while receiving such pay.

## MASSACHUSETTS DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

For current unemployment claims:

- All requirements regarding attending seminars at the MassHire career centers have been suspended.
- Missing deadlines due to effects of COVID-19 will be considered good cause
- Lateness will be excused.
- All appeal hearings will be held by telephone only.

Under the DOL guidance,

- DUA may now pay unemployment benefits if a worker is quarantined due to an order by a civil authority or medical professional
- or leaves employment due to reasonable risk of exposure or infection
- or to care for a family member and does not intend to
- or is not allowed to return to work.
- The worker need not provide medical documentation and need only be available for work when and as able.

## MASSACHUSETTS DEPARTMENT OF UNEMPLOYMENT ASSISTANCE

Emergency regulations to allow people impacted by COVID-19 to collect unemployment benefits if their workplace is shut down and expects to reopen.

This applies to all employees (full and part time) who are impacted by such shutdowns.

The following conditions apply to temporary shutdowns:

- Workers must remain in contact with their employers during the shutdown.
- Workers must be available for any work their employer may have for them that they are able to do.
- An employer may request to extend the period of the covered shut-down to eight weeks, and workers will remain eligible for the longer period under the same conditions described above.
- If necessary, DUA may extend these time periods for workers and employers.

If a person contracts the virus for any work-related reason, that person could be eligible for workers' compensation. If you qualify, you can receive payments to partially replace your paycheck and for medical care related to your injury.

**In most cases, a claimant is not eligible for both unemployment benefits and workers' compensation.**

## EVOLVING RESPONSES

### **FEDERAL RESPONSES: Expire 12/31/2020**

- Paid Family Medical Leave

The bill provides 12 weeks of job-protected paid Family and Medical Leave Act (FMLA) leave—of which the first 14 days may be unpaid—for employees who worked for employer for 30 days prior for employers with fewer than 500 employees and has a qualifying reason is eligible (no requirement of 12 months/1250 hours). Provides up to 12 weeks of job-protected leave (paid after the first 10 days)

- Paid Sick Leave

Employers with fewer than 500 employees will be required to provide full-time employees 2 weeks (80 hours) of paid sick leave for specific circumstances related to COVID-19 (e.g., self-isolating, doctors' visits, etc.).

- Emergency Unemployment Insurance Stabilization And Access Act of 2020

would provide \$1 billion in emergency grants to allow states to process and pay unemployment insurance benefits.

### **MASSACHUSETTS RESPONSES:**

- Unemployment Insurance

The state is filing emergency regulations that will allow people impacted by COVID-19 to collect unemployment in the following circumstances:

The workplace is shut down and expects to reopen in four or fewer weeks. Workers must remain in contact with their employer and be available for any work their employer may have for them that they are able to do, but do not otherwise need to be looking for work. An employer may extend the period of the shut-down to eight weeks, and the employees will remain eligible for the longer period under the same conditions described above.

## EVOLVING RESPONSES

### FEDERAL RESPONSES: Emergency Paid Family Medical Leave

Full-time employees may take Emergency Paid Sick Leave for first 80 hours of EFMLA leave so that it is paid

- Employees may also elect to use other accrued paid leave (e.g. vacation and PTO) during the first 10 days. Employer cannot require an employee to substitute such leave After the first 10 days: Compensated at 2/3 of the regular rate
- Pay capped at \$200 per day and \$10,000 in aggregate per employee
- Eligibility for EFMLA and FMLA (for other non-COVID-19 related reasons) is 12 weeks total. This may mean use of EFMLA may affect eligibility under traditional FMLA (or vice versa).

[This may be something the Senate tries to change. Intent is likely to make this “in addition to” traditional FMLA].

- Part-time employees/irregular schedule entitled to be paid based on average number of hours employee worked in prior 6 months, or if employed less than 6 months, average number of hours employee would normally be scheduled to work

## EVOLVING RESPONSES

### FEDERAL RESPONSES: Emergency Paid Family Medical Leave

Employers: No new specific notice requirement. However, under the FMLA, all covered employers must display a general notice (FMLA poster) about the FMLA.

Employees: Where the necessity for leave is foreseeable, an employee shall provide the employer with notice of leave "as is practicable."

- Law goes into effect no later than 15 days after enactment of the Act
- Your business will have 15 days to comply

Employers subject to the requirements are entitled to a tax credit equal to the amount of the paid family and medical leave requirements paid by the employer.

- The tax credits for qualified wages are capped at \$200 per day and \$10,000 per calendar quarter per employee.
- The tax credits are applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified leaves exceed the taxes they would owe.

## EVOLVING RESPONSES

### FEDERAL RESPONSES: Emergency Paid Sick Leave

Employers with 1-499 employees

- Any employee who works for employer is eligible, No minimum days/hours of employment

If the EMPLOYEE is sick, employee is entitled to:

- Full-time Employees – 80 hours of paid sick leave
- Part-time Employees – Paid based on the average number of hours the employee worked for the six months prior to taking this paid sick leave.
- Or, if employed for less than 6 months, the average number of hours per week the employee would normally be scheduled

## EVOLVING RESPONSES

### FEDERAL RESPONSES: Emergency Paid Sick Leave

Must provide paid sick time “to the extent the employee is unable to work (or telework) due to a need for leave because:

At employee’s regular rate Capped at the following levels: \$511 per day and \$5,110 in the aggregate per person for the following qualifying reasons

- (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 symptoms of COVID-19 and seeking a medical diagnosis.

At 2/3 the employee’s regular rate and Capped at the following levels: 200 per day and \$2,000 in the aggregate per person for the following qualifying reasons

- (1) The employee is caring for an individual who is subject to an order or self-quarantine as described above.
- (2) The employee is caring for a son or daughter if school or child care is closed/unavailable.
- (3) The employee is experiencing “any other substantially similar condition” specified by HHS (catch all)

## CAN AN EMPLOYEE SIMPLY REFUSE TO WORK

An employee's right to refuse to do a task is protected if **all of** the following conditions are met:

- Where possible, the employee has asked the employer to eliminate the danger, and the employer failed to do so; and
- The employee refused to work in "good faith." This means that they must genuinely believe that an imminent danger exists; and
- A reasonable person would agree that there is a real danger of death or serious injury; and
- There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.

BE MINDFUL IF EMPLOYEES ACT COLLECTIVELY – AS THAT COULD CAUSE INTERACTION WITH THE NLRA.

## **SCENARIO 1 – EMERGENCY PAID SICK LEAVE**

Sally has been employed full-time for 20 days at a call center which employs 40 people. Sally is not eligible to receive any paid time off under her employer's policies. Sally has a sore throat and a fever of 100.7 and cannot report to work. Sally is waiting to be seen by her doctor.

What benefits is Sally entitled to while she is not working?

- Emergency Paid Sick Leave – 80 hours at her regular rate
- Sally would not be entitled to EFMLA because she was not employed for at least 30 days prior to the first day of her leave

## SCENARIO 2 – EMERGENCY PAID SICK LEAVE

Sally has been employed full-time for 45 days at a call center which employs 40 people. As of today, Sally has accrued three (3) days of Paid Time Off under the employer's Policies. The school where Sally's fourth-grade daughter attends is closed until the end of April. Sally is unable to work from home during this time.

What benefits is Sally entitled to receive during this time?

- Emergency Paid Sick Leave – 80 hours at her regular rate of pay
- Emergency Family and Medical Leave Act – up to 12 weeks of job protected leave.
- The first ten (10) days is unpaid (but paid under Emergency Sick Leave).
- After the 10 days, Sally is paid at 2/3 her regular rate
- Sally may use her 3 days of PTO after the initial 10 days, but she is not required to

# CORONAVIRUS

## SMALL BUSINESS SUPPORT RESOURCES

### **MASSACHUSETTS: Baker-Polito Administration Small Business Recovery Loan Fund**

The \$10 million Small Business Recovery Loan Fund will provide emergency capital up to \$75,000 to Massachusetts-based businesses impacted by COVID-19 with under 50 full- and part-time employees, including nonprofits. Loans are immediately available to eligible businesses with no payments due for the first 6 months. Please complete the application found on MGCC's website, [EmpoweringSmallBusiness.org](https://empowering-small-business.org).

Completed applications can be sent via email to [mgcc@massgcc.com](mailto:mgcc@massgcc.com) with the subject line "2020 Small Business Recovery Loan Fund". MGCC can be reached by email: [mgcc@massgcc.com](mailto:mgcc@massgcc.com)

### **FEDERAL: Small Business Administration**

The U.S. Small Business Administration is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19). Upon a request received from a state's or territory's Governor, SBA will issue under its own authority, as provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act that was recently signed by the President, an Economic Injury Disaster Loan declaration.

**Currently, these Massachusetts counties are eligible by virtue of their proximity to primary affected counties in Connecticut: Berkshire, Hampden, Worcester.**

For additional information, please contact the SBA disaster assistance customer service center. Call 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov). • Visit [SBA.gov/disaster](https://SBA.gov/disaster) for more information.

# CORONAVIRUS

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## FAQ

- If an employee shows up to work with coronavirus-like symptoms, can I require them to go home?
- Can I require an employee who has been out of the office as a result of the coronavirus to provide a doctor's note certifying that the employee is fit to return to work?
- Can an employee refuse to come to work because of fear of infection?
- Does family and medical leave apply to this situation?
- If one of my employees is traveling, may I ask him/her where they are going or where they have been?
- May I instruct employees who have been to a region where coronavirus is prevalent, or who otherwise believe they may have been exposed, to stay home?
- If I instruct an employee not to physically come into the office, do I have to pay him/her when he/she is at home?
- If I require an employee to stay home, or the employee voluntarily chooses to self-quarantine, is the employee entitled to use his/her earned sick time?
- If an employee calls out sick, can I ask if they are experiencing symptoms of the coronavirus?
- If my company is covered by the federal Family and Medical Leave Act (FMLA), are employees entitled to use FMLA leave if they are required to stay home?
- If I force an employee to stay home, or an employee chooses to self-quarantine, can I require the employee to use his/her paid time off?
- What do I do if my supervisee has no sick or vacation time available?

# CORONAVIRUS

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## IN SUM

- This is preliminary information that is changing frequently
- Plan for business interruptions; have a plan in place to have employees working from home.
- Educate your supply chain.
- Attempt to schedule more teleconferences in lieu of travel.
- Maintain written cleaning plan
- Federal Response NOT YET LAW. Possibilities: Getting rid of 500 employee cap, alternative to address cash-flow challenge of employers paying leave wages and then seeking relief via tax credits.
- Can you ask employees to stay at home if they exhibit symptoms of coronavirus or the flu? Yes. Ask them to seek medical attention and get tested for COVID-19.
- Can you ask an employee why he or she missed work? Yes.
- Can you ask them to leave work? • Yes, under most circumstances.



## EMERGENCY RESPONSE RESOURCES



**Bureau of Infectious Disease and Laboratory Sciences: Infectious Disease Division, 617-983-6550; urgent calls and infectious disease reporting 617-983-6800. <https://www.mass.gov/orgs/bureau-of-infectious-disease-and-laboratory-sciences>**



**Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential Coronavirus Disease 2019 <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>**



**WorkShare information for employers: Massachusetts Dept. of Unemployment Assistance alternative to layoffs: <https://www.mass.gov/service-details/workshare-information-for-employers>**



**OSHA Guidance on Preparing Workplaces for COVID-19 <https://www.osha.gov/Publications/OSHA3990.pdf>**



**PANDEMIC PREPAREDNESS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT [https://www.eeoc.gov/facts/pandemic\\_flu.html#secB](https://www.eeoc.gov/facts/pandemic_flu.html#secB)**

**MASS 2-1-1 <https://mass211.org/>**



## CIP RESPONSE TEAM

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**If you have a claim, benefits or Human Resources issue stemming from COVID-19 please email our Rapid Response team at**

**[RAPIDRESPONSE@ASKCIP.COM](mailto:RAPIDRESPONSE@ASKCIP.COM)**

An overhead, top-down view of three business professionals (two men and one woman) sitting around a white table in a meeting. They are looking at documents and a laptop. The image is overlaid with a semi-transparent blue filter. The email address 'rapidresponse@askcip.com' is centered at the top in white text, flanked by two horizontal white lines.

[rapidresponse@askcip.com](mailto:rapidresponse@askcip.com)

**THANK YOU FOR JOINING US TODAY**

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