



LEGAL FOOD HUB

A project of Conservation Law Foundation

Last updated on April 10, 2020

Disclaimer: The authors of this document have made every effort to ensure that it is accurate at the time of publication. Given how rapidly the COVID-19 pandemic response is evolving, we strongly recommend that you check the websites of the Massachusetts Dept. of Agricultural Resources, the Massachusetts Attorney General's Fair Labor Division, and the U.S. Dept. of Labor regularly for the latest information. This document does not provide legal advice or create an attorney-client relationship.

What Farms Need to Know: COVID-19 Employee Sick Time and Leave

What do I do if my farm employee or employee's family member becomes ill during the COVID-19 pandemic?

First, take steps to ensure that your employee is safe and the rest of your staff is protected. You should follow public health guidance provided by the U.S. Centers for Disease Control and Prevention and the Massachusetts Dept. of Public Health.

If your employee or their family member becomes ill or needs other care, your employee will need to take leave from work. The employee has options for leave under Massachusetts law. In addition, he or she may be eligible for paid sick or family leave under recently passed federal law. You will be fully reimbursed for the expense of this leave by the federal government. Your employee can choose to use the federal sick leave first and save the Massachusetts leave for later use.

What sick leave is available to my farm employees under state law?

Under state law, your employees have the right to earn up to 40 hours of job-protected sick leave each year, which they can use when they are ill or to care for a close family member who falls ill. Employees must earn at least 1 hour of sick leave per 30 hours worked.

If you have 11 or more employees, this sick leave must be paid. If you have less than 11 employees, the leave time can be unpaid.

As an employer, you can offer your own sick leave policy that is different than the state requirements, as long as it provides the same benefits as state law requires, or better.

You can learn more about Massachusetts earned sick leave at <https://www.mass.gov/info-details/earned-sick-time>.

What sick leave is available to my farm employees under federal law?

In response to the COVID-19 pandemic, the U.S. Congress recently passed new laws, including the Families First Coronavirus Response Act (FFCRA) and the CARES Act. These laws provide new emergency paid sick leave and expanded family and medical leave that could apply to your employees and be fully reimbursed by the federal government, in addition to any paid or unpaid sick leave that you provide to your employees already.

Paid Sick Leave for Employee Illness: Your employees are eligible for this leave when an employee is unable to work because he or she is quarantined and/or experiencing COVID-19 symptoms and seeking a medical diagnosis. It provides two weeks (up to 80 hours for full time employees) of paid sick leave at the employee's regular rate of pay (or the minimum wage, if it is higher), OR

Paid Sick Leave to Care for Family Member: Your employees are eligible for this leave when an employee is unable to work because he or she needs to care for a quarantined family member or a child whose school or child care provider is closed due to COVID-19. It provides two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay (or the minimum wage, if it is higher), AND

Paid Expanded Family and Medical Leave: Your employees are eligible for this leave when an employee who has been employed for at least 30 calendar days needs to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19. It provides up to an additional 10 weeks of leave at two-thirds the employee's regular rate of pay (or the minimum wage, if it is higher).

An employee can combine 2 weeks of sick leave and up to 10 weeks of family and medical leave for a total of 12 weeks of paid leave.

Note that part-time employees are eligible for paid leave for the number of hours that they would ordinarily work during the leave period.

How do I know if this applies to my farm?

The provisions apply to employers with less than 500 employees. However, you may be able to apply for an exemption available for small businesses. Under this exemption, your business would not have to provide (a) paid sick leave due to school or childcare closures for COVID-19 related reasons and (b) expanded family and medical leave due to school or childcare closures for COVID-19 related reasons.

To claim this exemption, you need to prove that providing this leave would "jeopardize the viability of [your] business as a going concern." An authorized officer of your business must determine that (1) providing this leave would be such a burden on your business expenses that you would cease operating; OR (2) the employee's special skills or knowledge are such that their leave would put the business's financial health or operational capabilities at risk; OR (3) there are not other workers able to perform the services of the employee requesting leave, so that your

business could not continue to operate. You can find more details about this exemption on the [U.S. Dept. of Labor's COVID-19 information page](#).

How will my farm business pay for this leave?

This federal government will fully reimburse you wages you pay during employees' sick leave or expanded family and medical leave. To be reimbursed for this expense, you can:

- *Claim a tax credit:* If you plan to claim a tax credit for your payment of sick leave or expanded family and medical leave wages, be sure to retain appropriate documentation in your records. Consult the Internal Revenue Service (IRS) for forms, instructions, and information about the procedures claiming this tax credit.
- *Apply for a Small Business Administration 7(a) Loan:* You can apply for a SBA 7(a) Paycheck Protection Program loan to cover payroll, health care costs, and other business expenses. These loans are eligible for forgiveness up to the total amount of payroll payments, interest payments on mortgage obligations, rent payments, and utility payments in an 8-week period following loan origination.
- *Reach out to the Farm Services Agency:* You may also want to check with the FSA about loan options during this time, particularly if you have an existing relationship.

Useful Resources

The COVID-19 pandemic and the government response are changing rapidly. We suggest that you consult the following websites regularly for the latest information.

U.S. Dept. of Labor: <https://www.dol.gov/agencies/whd/pandemic>

Massachusetts Earned Sick Time: <https://www.mass.gov/info-details/earned-sick-time>

Massachusetts Frequently Asked Questions About COVID-19: Employee Rights and Employer Obligations: <https://www.mass.gov/service-details/frequently-asked-questions-about-covid-19-employee-rights-and-employer-obligations>

Massachusetts Dept. of Agricultural Resources: <https://www.mass.gov/orgs/massachusetts-department-of-agricultural-resources>

U.S. Centers for Disease Control and Prevention: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

Massachusetts Covid-19 Updates and Information: <https://www.mass.gov/info-details/covid-19-updates-and-information>