

# NORRIS, MURRAY & PELOQUIN, LLC

Legal Counsel to Employers and Schools

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## DESE ISSUES GUIDANCE FOR SUMMER/FALL

With Massachusetts' State of Emergency ending on June 15, DESE announced that all districts and schools will be required to return to in-person learning on a full-time basis for the 2021-2022 school year and that all DESE health and safety requirements will be lifted at that time. For summer programs, DESE did not issue separate guidance and instead encouraged schools to continue to follow the health and safety protocols currently in place for in-person learning.



### CONTACT US

**Leo Peloquin**

lpeloquin@nmplabor.com

**Tim Norris**

tnorris@nmplabor.com

**Melissa Murray**

mmurray@nmplabor.com

**Philip Collins**

pcollins@nmplabor.com

**Brett Sabbag**

bsabbag@nmplabor.com

**Antoine Fares**

afores@nmplabor.com



**nmplabor.com**

## MUNICIPAL EMPLOYERS NOW REQUIRED TO PROVIDE COVID-19 EMERGENCY PAID SICK LEAVE

On May 28, Governor Baker signed legislation requiring all Massachusetts employers, **including municipalities** to provide up to 40 hours of COVID-19 emergency paid sick leave ("EPSL"). This is a shift from April when Governor Baker rejected a prior version of the bill, returning it to the Legislature with an amendment excluding municipalities from the definition of covered employers. The Legislature, however, rejected the Governor's amendment and re-enacted its earlier version. This is the version that was signed into law. Under the new law, employers are required to provide EPSL to employees who are unable to work for the following qualifying reasons:

- An employee's need to self-isolate due to a COVID-19 diagnosis, obtain a diagnosis, care or treatment for COVID-19 symptoms, or obtain a COVID-19 vaccination or recover from an injury, illness, or condition related to the vaccination;
- An employee's need to care for a family member who is self-isolating due to a COVID-19 diagnosis or who needs diagnosis, care, or treatment for COVID-19 symptoms;
- An employee subject to quarantine order or similar determination by the employee's health care provider, or an employee's need to care for a family member subject to a quarantine order or determination by the family member's health care provider;
- An employee's inability to telework because of the employee's COVID-19 diagnosis and the employee's symptoms inhibit his or her ability to telework.

Similar to the provisions of the federal FFCRA, employers are required to provide EPSL in addition to other leave provided by either the employer's policies, CBA, or federal law, and may not require employees to use other forms of leave before taking EPSL, unless required by federal law. The bill's provisions include an EPSL fund to reimburse employers, including municipalities, for the cost of providing paid sick leave. Employers who seek reimbursement through the EPSL fund, however, may not also seek reimbursement through payroll tax credits provided by the American Rescue Plan Act (ARPA).

The Commonwealth's new EPSL provisions are effective immediately until September 30, 2021, or until the fund is depleted, whichever occurs first. Additional guidance is expected in the next few weeks regarding the employer reimbursement application process.

## EEOC ANNOUNCES UPDATED VACCINATION AND REASONABLE ACCOMMODATION GUIDANCE

Also on May 28, the Equal Employment Opportunity Commission ("EEOC") updated its guidance and provided additional information regarding COVID-19 vaccinations in the workplace. The EEOC affirmed its earlier position that mandatory vaccination policies are permissible, provided that employers allow accommodations for employees with sincerely-held religious beliefs and disabilities. The EEOC clarified that employers may ask employees about their vaccination status and require proof of vaccination but that this information must be treated confidentially. Additionally, the updated guidance cautioned employers to consider how a mandatory policy may disparately impact employees including individuals or demographic groups who face greater barriers to obtaining the vaccination than others.

The EEOC also affirmed that employers may be required to provide accommodations to both vaccinated and unvaccinated employees, recognizing that the vaccine may not provide the same level of protection for employees with underlying medical conditions. Examples of reasonable accommodations may include requiring an unvaccinated employee to wear a face covering, continued social distancing, modified shifts, remote work, or temporary reassignment. Pregnant employees who elect not to receive the vaccine may also be entitled to similar accommodations.