

TOWN OF BUCKLAND  
MASSACHUSETTS



COVID-19 PUBLIC EMPLOYEE POLICY

The Town of Buckland recognizes the following protocols and procedures during the current State of Emergency for the Novel Coronavirus (COVID-19) Pandemic.

1. All town buildings will be closed to the public effective midnight March 15, 2020.
2. Should the Town determine that, for the employee's safety and well-being, they not report to work essential employees may be asked to continue to work remotely.
3. If an employee cannot work remotely because of lack of access to the internet or because of the nature of their job responsibilities (e.g., highway department, police department), then that employee may be placed on paid administrative leave.
4. An employee who self-quarantines without a diagnosis or recommendation from their health care provider and can work remotely will be held harmless.
5. An employee who self-quarantines without a diagnosis or recommendation from their must use accumulated sick time. Such employees will not be offered paid administrative leave once sick time accumulation is exhausted.
6. An employee who is diagnosed by their health care provider with COVID-19, or a reasonable suspicion of COVID-19, shall immediately report this information to their immediate supervisor. The employee shall be held out of work for an amount of time as determined by their health care provider or by recommendations from the Center for Disease Control (CDC) or other governmental agency. Written documentation must be provided to the employee's immediate supervisor (fax, email, snail mail, etc.). For this time period the employee may use sick leave or other leave. Employees without enough leave days to cover this period shall be placed on paid administrative leave. An employee on any of these paid leaves shall receive full pay and benefits and otherwise be held harmless.  
This benefit shall be extended, for the duration of this emergency only, to employees who do not currently receive paid sick time. Paid sick time will be limited to the number of hours typically worked by the employee in a given pay period.

## FAQS FOR MUNICIPAL EMPLOYERS ON THE NOVEL CORONAVIRUS COVID-19 March 15, 2020

The novel coronavirus COVID-19 has raised many issues for municipal employers. There are numerous personnel-related questions that arise in the event of a department, building, or government closure, and mandatory or voluntary quarantines. Because of the significant local variations in terms of employee demographics, unionized versus non-unionized staff, and locally-adopted policies, procedures and by-laws, the answers to these questions may not necessarily be the same from community to community. The following is a list of employment-related “Frequently Asked Questions (FAQ)” and responses. The responses to the questions outlined below are, out of necessity, general in nature and may well differ depending upon employee matters in your community and specific factual circumstances. As a result, you are encouraged to contact Town or Special Labor Counsel for specific personnel advice as to how to handle the employment impacts of governmental closures and/or quarantines.

### **Can an Employer require an Employee to go home if the Employee exhibits potential symptoms of COVID-19 or if the Employer has credible information that the Employee or a member of their household has been in direct contact with somebody who has been diagnosed with or is showing potential symptoms of COVID-19?**

If an employee comes to work and the employer has a reasonable belief that the employee is sick because the employee is showing symptoms of COVID-19, an employer may send the employee home. The employer should use caution when making the decision, ensuring that the decision is based on a reasonable suspicion that the employee may have COVID-19, to avoid potential violations of the anti-discrimination statutes, including the American with Disabilities Act (ADA).

The same action can be taken if the employer has credible information that the employee or a member of their household has been in direct contact with somebody who has been diagnosed with or is showing potential symptoms of COVID-19. These decisions should be based upon credible, factual and confirmed information. Employees should be encouraged to self-report, which obviously could be affected by the employer’s decision on how the employee will be treated while on leave. For more information on the symptoms associated with COVID-19, please refer to the Centers for Disease Control and Prevention (CDC) website that can be found at <https://www.cdc.gov/cornoavirus/2019>.

## **Does the Employer have to pay the Employee who is sent home by the Employer?**

The answer depends upon the terms of the employee demographics, unionized versus non-union staff and locally-adopted policies, procedures and by-laws. The answers to this question may not necessarily be the same for each community. In general, an employer may do the following.

**Union employees** – In general, the employer should pay the employee if the employer requires the individual to go home.

**Non-union/Non-exempt (hourly employee)** - The employer does not have to pay the employee under the Massachusetts Wage Act for hours not worked. The employer, however, should consider the implications of requiring an employee to leave work and stay home without pay if that employee is later determined not to be diagnosed with COVID-19. Under the current circumstances, employers should do everything possible to encourage employees who are exhibiting symptoms of COVID-19 or who have been in contact with someone who has COVID-19 to stay home and out of the workplace.

**Non-Union/Exempt (salary) employees** – In general, an exempt employee who is sent home by the employer should continue to be paid the employee's salary. Exempt employees must be paid their salaries even if they work only a few hours during the workweek.

## **Can the Employer require an Employee to use sick leave or other accrued time off for days missed?**

**Union** - If the employer sends the employee home, the employer cannot require the employee to use sick leave or other accrued time off for the days missed. If the employee subsequently tests positive for COVID-19, at that time, the employer may require the employee to use accrued sick time or other accrued leave in order to be paid. If the employee does not have any accrued time remaining, the employee may consider requesting time from a sick leave bank, if applicable.

**Non-Union/Non-Exempt** - If the employee is not a member of a union and is a non-exempt (hourly) employee, the employer may require that the employee use sick leave or other accrued time off to be paid for days missed.

**Exempt Employee** - If the employee is an exempt employee, the employer should not require the employee to use sick leave or other accrued time off for days missed in order to be paid. If the employee subsequently tests positive for COVID-19, at that time, the employer may require the employee to use accrued sick time or other accrued leave.

## **Can the Employer require a “fitness for duty exam” and/or require an Employee to get note from health care provider?**

If the employer has a reasonable belief that the employee has COVID-19, the employer may send an employee to the employer's physician for a fitness for duty examination at the employer's expense. If an employee tests positive for COVID-19 and is out of work as a result, an employer may require the employee to provide a note from a health care provider that the employee is fit to return to work, prior to returning to duty.

**If Employee “self-quarantines,” does the Employer have to pay the employee for time not worked?**

If the employee “self-quarantines” and does not come into work because the employee either has the COVID-19 virus or because the employee has traveled internationally to a country that is deemed by the CDC to have widespread transmission (or has been on a cruise), the employer does not have to pay the employee, and may require the employee to use sick leave or other accrued time in order to be paid.

**Does the Family and Medical Leave Act (FMLA) apply?**

If the employee is otherwise eligible for leave under the FMLA, an employee’s absence from work may be covered under the FMLA if the employee is found to have COVID-19. In general, an employee is not entitled to take FMLA leave to stay home in order to avoid getting sick. Under the current circumstances, an employer should consider conditionally-approving a request for FMLA leave for employees who believe they may have contracted COVID-19, to encourage them to stay home pending testing/verification of whether the employee has the virus.

**If the Employer shuts down, does it have to pay its Employees?**

The answer depends again upon the terms of the employees demographics, unionized versus non-union staff and locally-adopted policies, procedures and by-laws. The answers to this question may not necessarily be the same for each community. An employer may always choose to pay its employees for not working during the closure. In general, an employer may do the following.

**Union employees** – In general, an employer is only required to pay employees for hours worked. However, G.L. c. 150E, § 6 requires employers to bargain with union employees over mandatory subjects of bargaining such as wages, hours and terms of conditions of employment. Employers should not make unilateral changes to these conditions and must provide adequate notice to unions so that they may bargain over issues that may arise. The employer should pay the employee who the employer requires to go home, including during a shutdown even if due to a state of emergency declared by the state or local government entity. Employers should review their respective collective bargaining agreements for any terms that already exist, which may apply during a shutdown or state of emergency. The employer would have to notify the union of the change in condition, namely, sending employees home without pay, and bargain the change.

**Non-union/Non-exempt (hourly) employee** - The employer does not have to pay the employee under the Massachusetts Wage Act for hours not worked. Accordingly, if the employer closes its building(s) and the non-union, non-exempt employees are not working from home during the period of the closure, the employer does not have to pay the employee. The employer should consider the implications of sending employees home without pay. The employer may always choose to pay its employees during the closure or the employee may use accrued leave in order to be paid.

**Non-Union/Exempt (salary) employees** – In general, an exempt employee who is sent home because the work place is closed does not have to be paid and may be “furloughed”. However, we encourage employers to use extreme caution if that employee performs any amount of work while home, since they would need to be paid in that instance for actual work performed. As with other

category of employees, the employer may always choose to pay its employees during the period of the shutdown.

### **May an Employer require Employees to work from home?**

**Union employees** – As set forth above, G.L. c. 150E, § 6 requires employers to bargain with union employees over mandatory subjects of bargaining such as wages, hours and terms of conditions of employment. Requiring employees to work from home may be considered a change in work condition, requiring notice to the union and an opportunity to bargain.

**Non-exempt employees** – An employer should have a process in place for all non-exempt employees who work from home to report their hours, to ensure that the employee is not working overtime, or, if overtime hours are worked, that they are paid. Such processes may include requiring the employee to provide notification when they begin work, when they take breaks and when they are done work for the day, the same as should be done when the employee is physically at work. The employee should be required to submit timesheets for hours worked while at home.

### **If an Employee is diagnosed with COVID-19 and claims it is the result of contact while at work, does the Employee have claim for workers' compensation benefits or benefits under G.L. c. 41, § 111F?**

Typically, the contraction of a contagious disease is not considered a workplace injury. However, an employee may nonetheless apply for benefits. In doing so, the employee will have to show that the employee contracted COVID-19 while at work as opposed to somewhere else in the community.

### **What are the restrictions on sharing identification and information on Employee who potentially has been in contact with or shown symptoms of COVID-19?**

Employers should exercise caution regarding the use and disclosure of employees' medical information, under state law, including the Public Records Law, and the federal Health Insurance Portability and Accountability Act (HIPAA), and their implementing regulations. Absent narrow exceptions to the use and disclosure of employees' medical information, protected health information should not be disclosed.

Please be advised that HIPAA only applies to "covered entities", including medical providers or employer sponsored group health plans. Even if, however, the employer is not considered a "covered entity" under HIPAA, it is important to limit the disclosure of employees' private medical information. Disclosures of employees' medical information should only be made to authorized entities during a public health emergency or with the employees' written authorization.

### **Can an Employer prohibit Employees from traveling internationally and domestically?**

An employer may limit or prohibit an employee from *work-related travel* both domestically and internationally. While an employer may not limit an employee's *personal* travel, an employer may inquire about an employee's travel, and advise the employee that if they travel to a country that CDC considers being at high risk (or take a cruise), they may be quarantined upon their return and sent home from work without pay (or be required to use paid accrued leave).

## **How do we determine who are “essential” employees or personnel, required to work during a government shutdown?**

Unfortunately, there isn't a uniformly-applicable definition of an “essential” employee. For reference purposes, the federal government Office of Personnel Management defines “essential” employees (called “excepted” employees for federal government purposes), to include, but not be limited to, employees who are performing emergency work involving the safety of human life or the protection of property. Generally, essential employees are specifically designated as such by their departments and are expected to carry out their assigned duties regardless of approved closures. Local emergency management plans and/or emergency preparedness and response plans may contain designation of certain employees as essential personnel. Public safety personnel (i.e., police and fire, DPW) are generally considered to be essential, although it is possible that an applicable collective bargaining agreement, employment agreement, charter, or local bylaw, ordinance or policies, might contain express provision(s) addressing this issue. Ultimately, who is “essential” employee will vary from community to community, depending upon your government structure.

***Perhaps most important, remember that this is a fluid situation and advice may change depending on circumstances.***

Please feel free to contact your KP Law Labor and Employment attorney with any questions concerning labor and employment questions, and/or e-mail us at [coronavirusinfo@k-plaw.com](mailto:coronavirusinfo@k-plaw.com). We will be in touch with you as soon as possible.

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