



Published: June 23, 2022

Philadelphia Re-Enacts Emergency Paid Sick Leave Benefits

Seth Bracelin | Millenium Insurance Group | (717) 354-4774 | sbracelin@millig.com

On March 9, 2022, the Philadelphia City Mayor signed into law an ordinance amending the city's existing public health emergency leave requiring covered employers to provide continuing paid COVID-19 leave through December 31, 2023. The law became effective on March 9 and is the third iteration of the COVID-19 paid leave mandate.

Background

On September 17, 2020, Philadelphia passed the Public Health Emergency Leave Bill (the "COVID-19 Leave"), which provided paid "public health emergency leave" to individuals who work within the geographic boundaries of Philadelphia. The COVID-19 Leave expanded paid sick leave benefits to individuals who were not otherwise covered by the Families First Coronavirus Response Act. The COVID-19 Leave expired on December 31, 2020 and was expanded on March 29, 2021. On March 9, 2022, an ordinance was signed into law requiring covered employers

to provide continuing leave through December 31, 2023 (the "2022 COVID-19 Leave"). While there are a few differences from the COVID-19 Leave, the most notable difference in this iteration is the amount of leave that must be provided by employers.

Overview

Under the 2022 COVID-19 Leave, eligible employees are entitled to paid "public health emergency leave." Eligible employees may use this leave for situations when they are unable to work due to one or more of the following:

- A determination from a public official, health care provider or employer that the employee would jeopardize the health of others because of exposure to COVID-19, or he or she is showing symptoms, regardless of whether he or she was diagnosed with or tested positive for COVID-19

- Caring for a family member in a similar situation
- Isolating due to diagnosis of, or testing positive for COVID-19, or isolation due to having symptoms, or to seek or obtain diagnosis
- Caring for a family member who is isolating due to diagnosis of, or testing positive for COVID-19, or isolation due to having symptoms, or to seek or obtain diagnosis
- Caring for a child whose school was closed due to COVID-19
- An employee's need to be vaccinated, including a booster
- An employee's need to recover from a vaccination side effect

Covered Employers and Eligible Employees

The 2022 COVID-19 Leave applies to employers with 25 or more employees (previously the leave only applied to employers with 50 or more employees). To be a covered employee, an employee must have worked for a covered employer for 90 or more days and:

- Works for an employer within Philadelphia;
- Normally works for that employer within the city of Philadelphia but is currently teleworking from any other location due to COVID-19; or
- Works for that employer from multiple locations or from mobile locations, as long as 51% or more of the employee's time is spent working within the city of Philadelphia.

Amount of Leave

Under the 2022 COVID-19 Leave, employers are required to provide less leave than before. Employers must provide the following amounts of paid leave:

- Employees who work 40 or more hours per week are entitled to 40 hours of leave, unless the employer designates more (previously this was 80 hours)
- Employees who work less than 40 hours per week are entitled to leave in an amount equal to the time the employee is otherwise scheduled to work, or actually works, on average in a 7-day period, whichever is greater, unless the employer designates more
- Employees whose weekly schedule varies are entitled to the average number of daily hours the employee was scheduled over the past 90 days of work, including hours where the employee took leave of any type, multiplied by 7.

Rate of Pay

Employers must provide paid leave at the covered employee's regular rate of pay, with the same benefits (including health care benefits) as the employee normally receives from the employer.

Notice Requirements

Employers must provide employees with notice of the need for leave as practicable and as soon as feasible, but only when the need for the leave is foreseeable. Philadelphia's Department of Labor published a model notice satisfying these requirements that can be found at <https://www.phila.gov/media/20220315165758/2022-COVID-19-Pandemic-Paid-Sick-Leave-NOTICE-POSTER-ENG.pdf>. The notice must be conspicuously displayed in the workplace or, if the employer does not have a physical workplace or an employee teleworks, the notice must be

provided through electronic communication or a conspicuous posting in the web-based platform. The notice must also be included in any employee handbook.

Employees are entitled to job restoration to the same position held when the 2022 COVID Leave began. Employers can request an employee submit a self-certified statement stating that leave was taken for a covered reason under the 2022 COVID-19 Leave. Employers cannot require employees to find a replacement to cover their leave, nor can they retaliate against employees who use or request leave.

Coordination with Other Paid Leave

The 2022 COVID-19 Leave is in addition to all other paid leave an employer provides and cannot be reduced by the amount of any paid leave an employee has previously received. Employees may not be required to use other paid leave available before using the 2022 COVID-19 Leave unless state or federal law requires otherwise. In certain situations, as set forth below, employers can use pre-existing benefits to satisfy COVID-19 leave requirements:

- Where employees complete the majority of their work through telework, employers are not required to change existing policies or provide an additional paid leave if the existing policies provide teleworking employees with at least 80 hours of paid leave in 2022 and employees can use such paid leave for the same purposes and under all of the same conditions as set forth under the Ordinance.
- Where an employer's existing leave policy provides 120 hours or more of paid time off in 2022, whether or not such leave is specifically designated as sick leave, if such leave can be used for the same purposes and under all of the same conditions as the 2022 COVID-19 Leave. Additionally, a provision that differs from the previous version of leave provides that, for employers that operate on a 7.5-hour workday and consider an employee working 37.5 hours a week to be a full-time

employee, the amount of leave required to qualify for this exemption is 112.5 hours.

- Where federal or state laws require employees to provide paid leave or paid sick time related to COVID-19, employers may substitute leave under the federal or state law to the extent they coincide and the relevant federal or state law permits such concurrent use of paid leave.
- Where an employer has adopted a policy which provides its employees with additional paid time specifically for use for COVID-19, employers may substitute leave under such employer policy for the 2022 COVID-19 Leave to the extent they coincide.

Employer Action

Employers with employees performing service in Philadelphia should work with labor and employment counsel to review their leave policies and procedures to ensure that they are compliant with the 2022 COVID-19 Leave.