

Workers' Rights Resource Kit

Adapted for the COVID-19 Pandemic

LAST UPDATED OCTOBER 2020



SEGAL ROITMAN, LLP



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SECTION 1

Massachusetts COVID-19 Workplace Safety Standards

Updated October 2020

MARCH 10, 2020

State of Emergency
Declared

MARCH 23, 2020

Non-Essential
Businesses Closed

APRIL 28, 2020

Business Closures
Extended

MAY 18, 2020

Phase 1 Begins

JUNE 8, 2020

Phase 2 Begins

The Massachusetts reopening plan is a four-phased approach to allow businesses, services, and activities to resume, while trying to avoid an increase in COVID-19. Each phase is scheduled to last at least 3 weeks, subject to change based on how key metrics trend. An unfavorable trend may result in Massachusetts returning to an earlier phase.

Under the State's guidance, high-risk employees over age 65, and those with underlying health conditions, should continue to work from home until the phased re-opening is complete.

WHAT BUSINESSES CAN REOPEN?

PHASE	DATE	REOPENING BUSINESSES	
	Pre-May 18, 2020	<ul style="list-style-type: none"> • Essential services • Banks, financial services • In-house services (nannies, babysitting) 	<ul style="list-style-type: none"> • Real estate open houses (with restrictions) • Restaurants (takeout and delivery) • Golf (with restrictions)
PHASE 1	May 18, 2020	<ul style="list-style-type: none"> • Manufacturing • Construction • Firearm retailers and shooting ranges • Home remodeling 	<ul style="list-style-type: none"> • Pet grooming (curbside) • In-home installations (construction related) • Places of worship • Hospitals and community health centers
	May 25, 2020	<ul style="list-style-type: none"> • Auto dealers and wholesalers (curbside pickup and delivery only) • Office space outside Boston • Lab space • Car washes (exterior) • Drive-in movie theaters • Hair salons, barbershops (appointment only) • Libraries (curbside pickup and delivery only) 	<ul style="list-style-type: none"> • Beaches, parks • Some athletic fields and courts • Fishing, hunting, and boating • Outdoor gardens, zoos, reserves and public installations • Outdoor adventure activities • Outdoor fitness classes • Retail (curbside pickup and delivery only) • Other health care providers
	June 1, 2020	<ul style="list-style-type: none"> • Office space in Boston 	
PHASE 2	June 8, 2020	<ul style="list-style-type: none"> • In-home installations (non-construction related) • Auto dealers and wholesalers (showroom browsing with restrictions) • Retail (limited browsing in store) • Child care facilities and day camps • Post-secondary, higher education, vocational tech and occupational schools 	<ul style="list-style-type: none"> • Hotels and other lodgings • Personal services without close physical contact (such as photography, window washers, career coaching) • Restaurants (outdoor seating) • Beer gardens, breweries, wineries, distilleries (if providing seated food service)

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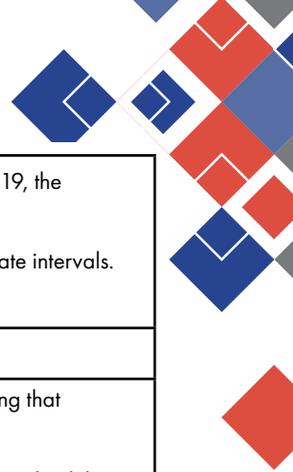


	June 22, 2020	<ul style="list-style-type: none"> Youth (indoor and outdoor) and adult (outdoor only) amateur sports Other outdoor recreation facilities (pools, playground, spray decks, mini golf, go karts, batting cages, climbing walls) Non-athletic youth (under 18) instructional classes Professional sports practices (no games or public admissions) Close contact personal services (such as massage therapy, nail salons, tattoo parlors, electrolysis studios, personal trainers) 	<ul style="list-style-type: none"> Funeral homes Warehouses and distribution centers Driving (behind-the-wheel training) and flight schools Outdoor historical spaces (no events or tours) Fraternal orders (if providing outdoor seated food service) Golf facilities, outdoor driving ranges Restaurants (indoor seating) Fraternal orders (indoor seated food service)
PHASE 3	July 6, 2020	<ul style="list-style-type: none"> Fitness centers and health clubs Overnight camps Museums Aquariums Indoor historic spaces Horse racing tracks and simulcast facilities (no spectators) Moderate capacity theaters and performance venues (indoor and outdoor) Movie theatres (moderate capacity) Non-athletic instructional classes (all ages) Youth and adult amateur sports (indoor and outdoor) 	<ul style="list-style-type: none"> Indoor recreational and athletic facilities Other indoor recreation (batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock climbing) Fishing and hunting tournaments and other amateur or professional derbies Motion picture, television, and streaming productions Casino gaming floors
PHASE 4	To be announced	<ul style="list-style-type: none"> Large capacity theaters and performance venues, concert halls ballrooms, stadiums, arenas Beer gardens, breweries, wineries, distilleries (if not providing seated food service) Amusement parks, theme parks, water parks Saunas, hot-tubs, steam rooms at health clubs, gyms, and other facilities Movie theatres (large capacity) 	<ul style="list-style-type: none"> Bars, dance clubs, nightclubs Fraternal orders (if serving as large capacity venue or bar) Street festivals, parades and agricultural festivals Road races and other large, outdoor organized amateur or professional group athletic events

MANDATORY SAFETY PROTOCOLS FOR ALL WORKPLACES IN MASSACHUSETTS

Social Distancing	Hygiene
<p>All individuals (employees, customers, vendors) should remain at least six feet apart to the greatest extent possible, both inside and outside the workplace.</p> <p>Employers must provide hand washing capabilities throughout the workplace.</p> <p>Employees must wash hands frequently and have adequate supplies to do so.</p> <p>Face coverings or masks are required for all employees.</p>	<p>Employers must provide hand washing capabilities throughout the workplace.</p> <p>Employees must wash hands frequently and have adequate supplies to do so.</p> <p>Employers must regularly sanitize high touch areas (workstations, equipment, screens, doorknobs, restrooms).</p>
Staffing and Operations	Cleaning and Disinfecting
Employers must provide training on social distancing and hygiene protocols.	Employers must establish and maintain specific cleaning protocols.

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<p>Employees who are sick with COVID-19-like symptoms must not report to work.</p> <p>Employers must have a plan for employees who get sick from COVID-19 at work, and a return-to-work plan.</p>	<p>When an active employee is diagnosed with COVID-19, the workplace must be cleaned and disinfected.</p> <p>All common surfaces must be disinfected, at appropriate intervals.</p>
Mandatory Plans	Notice to Workers
<p>Each business must maintain a written control plan to manage re-entry and avoid work and patron exposure.</p> <p>Each business must provide training to employees.</p>	<p>Every employer must post an attestation poster attesting that business has developed a COVID-19 control plan.</p> <p>Employers may post other posters describing rules for maintaining social distancing and infection control.</p>

PLACE AND SECTOR-SPECIFIC SAFETY PROTOCOLS:

City of Boston

Construction

Hotels, Motels, Inns, Etc.

Manufacturing

Office Spaces

Restaurants

Retail Businesses

Additionally, these sector-specific guidelines provide additional requirements for covered workplaces that must be followed to maintain social distancing.

- For instance, during Phases 1 and 2, the occupancy limit for office spaces is 25% of either: (a) maximum occupancy level specified in any certificate of occupancy or similar permit under state building code; or (b) the organization’s typical occupancy as of March 1, 2020.
 - Occupancy limit may be exceeded only based on public health, public safety, or critical services issues.
- During Phase 2, the occupancy limit for retail businesses is the greater of either: (a) 8 persons (including store staff) per 1,000 square feet of accessible, indoor space; or (b) 40% of maximum permitted occupancy specified in its occupancy permit.
 - All occupant counts must include customers and workers.

IF SOME OR ALL OF THESE PROTECTIONS HAVE NOT BEEN IMPLEMENTED AT MY WORKPLACE, WHO CAN I CONTACT?

Massachusetts Attorney General	<ul style="list-style-type: none"> Additional Resources <p style="text-align: right;">Call the Fair Labor Hotline</p> <ul style="list-style-type: none"> Phone: (617) 727-3465 TTY: (617) 727-4765
Occupational Safety and Health Administration (OSHA)	<p>To file a safety and health complaint and request an OSHA inspection, you may do any of the following:</p> <ul style="list-style-type: none"> Submit online complaint form Fax/Mail/Email complaint to Local OSHA office <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk Counties:</p> <p>Boston South Area Office – Braintree 639 Granite Street, 4th Floor Braintree, MA 02184 Phone: (617) 565-6924 Fax: (617) 565-6923</p> </div> <div style="width: 45%;"> <p>Berkshire, Franklin, Hampden, Hampshire, and Worcester Counties:</p> <p>Springfield Area Office 1441 Main Street, Room 550 Springfield, MA 01103-1493 Phone: (413) 785-0123 Fax: (413) 785-0136</p> </div> </div>
Department of Labor Standards	<ul style="list-style-type: none"> MA Department of Labor Standards: DLSfeedback@state.ma.us, (617) 626-6975 Your City or Town’s Local Board of Public Health and the MA Department of Labor Standards: (617) 624-6000

SECTION 1

SAMPLE SAFETY CHECKLIST	YES	NO
Do you have all of the types—and enough – personal protective equipment for your job according to state/local guidance?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have adequate hand washing facilities and adequate time to wash your hands?	<input type="checkbox"/>	<input type="checkbox"/>
Are you able to stay at least six feet away from the people around you?	<input type="checkbox"/>	<input type="checkbox"/>
If you need to be closer than six feet to other workers/ members of the public, do you consistently have protection such as a mask and/or a sneeze guard?	<input type="checkbox"/>	<input type="checkbox"/>
Is your workplace adequately (and regularly) cleaned and disinfected?	<input type="checkbox"/>	<input type="checkbox"/>
Are work stations, shared tools and electronics, bathrooms, locker and break rooms, and high-touch surfaces cleaned regularly?	<input type="checkbox"/>	<input type="checkbox"/>
Do you have access to cleaning supplies to keep your workspace clean?	<input type="checkbox"/>	<input type="checkbox"/>
If there was a COVID-19 exposure in your workplace, has a deep cleaning been performed?	<input type="checkbox"/>	<input type="checkbox"/>
If you feel sick or have a fever, will you be sent home from work?	<input type="checkbox"/>	<input type="checkbox"/>
If you feel sick, have a fever, or test positive for COVID-19, can you stay home?	<input type="checkbox"/>	<input type="checkbox"/>
Can you stay home to take care of a family member who feels sick, has a fever, or tests positive for COVID-19?	<input type="checkbox"/>	<input type="checkbox"/>
If you must stay home because you feel sick, have a fever, test positive for COVID-19, or are taking care of a family member who is sick, has a fever, or tests positive for COVID-19, will you receive pay?	<input type="checkbox"/>	<input type="checkbox"/>
Have you received training from your employer about social distancing and hygiene?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a way for you to provide suggestions about workplace safety and health?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a way for you to raise concerns about workplace safety and health without fear of retaliation?	<input type="checkbox"/>	<input type="checkbox"/>
Have you been retaliated against for speaking up at work about workplace safety and health?	<input type="checkbox"/>	<input type="checkbox"/>
Are you aware of other workers who had COVID-19 symptoms, or tested positive, but were not quarantined or isolated as required by the Commonwealth and recommended by the CDC/OSHA after they became sick?	<input type="checkbox"/>	<input type="checkbox"/>

Questions?

Contact your union, OSHA and/ or the Massachusetts Attorney General. See links mentioned above.

The information provided on this page is intended to provide background only concerning Massachusetts and Federal Labor and Employment Laws and their interaction with COVID-19. This page cannot and does not provide legal guidance or advice with regard to one's specific situation. It is also important to know that laws protecting Massachusetts workers during the COVID-19 epidemic are rapidly changing. The information provided here is accurate as of June 30, 2020, the time the site was last updated. The provision of the information provided on this webpage is not meant to, and does not, create an attorney-client relationship with Segal Roitman LLP. Finally, the information provided here concerning these laws does not constitute an endorsement of any specific Federal or Massachusetts law, regulation, strategy or tactic for protecting workers' rights.

For legal guidance on your particular situation, the Massachusetts Coalition for Occupational Safety and Health (MassCOSH) provides guidance and referrals to Massachusetts attorneys: (617) 825-7233, www.masscosh.org.

SECTION 2

Paid and Unpaid Leave During Illness Related to COVID-19: Emergency Sick Leave Under FFCRA, FMLA, Workers Compensation, and Unemployment Insurance.

Updated October 2020

Employees who take leave to address personal illness have a number of options for job-protected leave under Federal and Massachusetts Law:

The **Families First Coronavirus Response Act (FFCRA)** requires both public and private sector employers with less than 500 employees¹ to provide employees who have been employed for at least 30 days with **80 hours (10 days) of paid emergency personal sick leave** and caregiving leave necessitated by the COVID-19 pandemic.² FFCRA also provides up to **12 weeks of emergency Child care leave** (10 weeks paid, 2 unpaid) to take care for a child who is unable to go to school or day care as a result of the COVID-19 pandemic. Employees may not be discriminated against or retaliated against for using either benefit. Unless extended by Congress, FFCRA's emergency sick leave and family leave benefits will expire December 31, 2020. [See FFCRA Know Your Rights](#)

In addition, the **Federal Family and Medical Leave Act (FMLA)** provides employees with **12 weeks of unpaid leave** over the course of a year where an employee is unable to work because of their **own serious health condition or because they are caring for a spouse, child, or parent's serious health condition**. The FMLA applies to public employers and private sector employers who have 50 or more employees. [See https://www.dol.gov/general/topic/benefits-leave/fmla](https://www.dol.gov/general/topic/benefits-leave/fmla). To be eligible for FMLA leave, employees must have worked at least 1,250 hours of service with the employer during the 12-month period immediately preceding the leave.

Importantly:

- (1) After an employee has exhausted FFCRA emergency sick leave, to the extent they or a family member for whom they are caring remains ill, they can apply for and receive federal FMLA, so long as they are eligible for FMLA and have not exhausted their FMLA benefit for the year they are seeking the benefit.
- (2) While FMLA does not provide paid leave, it does provide job guaranteed leave, meaning that an employer may not terminate an individual for utilizing

this leave and that an employee must be returned to an equivalent position at the end of leave. <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs28a.pdf>

- (3) Additionally, an individual may use vacation time and other paid time off, as well as sick time if allowed by collective bargaining agreement or an employers' policies/practices.
- (4) Health insurance must be maintained, on the same terms as if the employee continued to work, for the period an employee is on FMLA.
- (5) FMLA also contains anti-discrimination and anti-retaliation provisions, protecting workers from mistreatment for seeking protected leave.

To the extent an individual is unable to work due to COVID-19 and is either ineligible, or has exhausted FFCRA and FMLA leave, Massachusetts Unemployment Insurance have been modified to provide unemployment insurance benefits for individuals laid off, furloughed, or otherwise unable to work due to the pandemic. [See UI Know Your Rights](#).

Finally, the **Massachusetts Workers Compensation Law, Massachusetts General Laws, Chapter 152**, provides wage replacement and health care benefits to certain employees who are injured or become sick on the job and are unable to work.

For employees who are totally disabled, the system covers 60% of the employee's average weekly wage and all related medical expenses. An employee must prove workplace exposure in order to be covered by worker's compensation.

Therefore any employee who believes they contracted COVID-19 in the workplace and is seeking Workers Compensation, should:

- Report the exposure to their employer;
- Notify their steward/foreman/safety officer;

¹Employers with less than 50 employees may be exempt from FFCRA if compliance would present an unreasonable hardship.

²FFCRA also provides up to an additional 12 weeks of paid expanded family at 2/3 the employee's regular rate of pay (capped at \$200/day (and a maximum of \$10,000 dollars total per eligible employee) for employees who are unable to work because they are caring for a child whose school or daycare is closed for reasons related to COVID-19.

SECTION 2

- Contact Human Resources for Workers Compensation paperwork;
- Document the workplace exposure/unsafe conditions giving rise to workplace exposure (document crowding, lack of PPE, lack of cleaning supplies, etc)
- Document illness and treatment therefore; and,
- See their medical provider ASAP and provide detailed history of the work environment and exposure.

Importantly, under current Massachusetts law, employees who contract COVID-19 at work are likely to be covered only when the risk of contracting COVID-19 is inherent in their workplaces—i.e., especially likely due to working conditions, the work performed, or contact with other staff/the public—in contrast to the general risk of COVID-19 to all members of the public. Whether or not the risk of exposure to COVID-19 in a workplace is “inherent” depends on specific workplace conditions. E.g., frontline medical professionals, first responders such as EMTs, Police, and Fire, grocery store workers, transportation workers, and others with substantial exposure to the public may, but do not necessarily, work in conditions with an inherent risk of exposure.

Enhanced Benefits & Benefits While Working. If you are unemployed and found retroactively eligible for any type of UI benefits of \$1 or more during the weeks from March 29, 2020 through July 25, 2020, you are eligible for an extra \$600/week for each of those weeks in Federal Pandemic Unemployment Compensation (**FPUC**).

If you are unemployed and received any type of UI benefits of \$100 or more from July 26, 2020 through September 5, 2020, you are eligible for an extra \$300/week in Lost Wages Assistance (**LWA**) retroactively if FEMA funding is still available. Everyone on PUA is automatically eligible. *Note: There is pending legislation to bring everyone on regular UI up to \$100 to get 6 weeks of retroactive LWA or \$1,800.*

While working, wages over 1/3 of the weekly benefit amount (WBA) are deducted. You are not eligible if you earn 133% or more of WBA.

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Regular Unemployment Insurance (UI). Generally, individuals who earned \$5,100 in W2 wages in prior year and left work "without fault" are eligible. Reasons to apply for UI or to refuse work during COVID-19 include: lack of child or elder care, no full-time/in-person school, and worker has a reasonable belief that working creates substantial risk to health and safety of self, child, dependent, family or household member.

Benefit:

- Up to 26 weeks of UI based on formula of 1/2 of weekly wages, capped at \$855/week;
- Up to \$25/week dependency allowance (**DA**), up to 50% of weekly benefit;
- Up to 13 weeks of federal Pandemic Emergency Unemployment Compensation (**PEUC**), retroactive to March 29, 2020 and ends December 26, 2020;
- For certain workers, lesser of 13 weeks or 50% of number of weeks of regular UI of Extended Benefits (**EB**), retroactive to May 3, 2020 (ends when unemployment goes below 5% and other criteria).

If you have used all of your UI benefits and are still unemployed due to COVID-19, you can apply for Pandemic Unemployment Assistance (**PUA**).

Pandemic Unemployment Assistance (PUA). See Section 5: Unemployment Assistance During the COVID-19 Pandemic.

[Apply for PUA](#)

Need additional help/information?

- [MassLegalHelp](#)
- [MassLegalServices.org](#)

SECTION 3

Know Your Rights: Families First Coronavirus Response Act (FFCRA)

Updated October 2020

The Families First Coronavirus Response Act (“FFCRA”), which became effective April 1, 2020, provides key wage replacement protections to individuals who become ill, are quarantined, care for ill individuals and/or provide Child care due to the Coronavirus pandemic. The FFCRA provides two key benefits: emergency sick leave and emergency family and medical leave.

(1) Emergency Paid Sick Leave: Private Employers with less than 500 employees and all public employers are required to pay sick pay to employees who cannot work or telework: 2 weeks of paid sick leave at full pay for quarantine, isolation, or pending diagnosis.

a. Qualifying Employees:

- i. Employee subject to federal, state, or local quarantine or isolation order re: COVID-19;
- ii. Employee advised by a health provider to self-quarantine related to concerns related to COVID-19 (e.g., protected health condition);
- iii. Employee is symptomatic and is seeking a diagnosis;
- iv. Employee is caring for someone in categories i or ii;
- v. Employee is caring for offspring if school/child care closed due to COVID-19 precautions;
- vi. Employees experiencing conditions specified by HHS in consultation with Departments of Treasury/Labor (not defined in statute, but likely reflects possibilities that certain businesses/industries may be required to engage in limited work/partial or full shutdowns).

b. Employees Who May be Excluded from Coverage:

Employers of Health care employees and Emergency Responders may be exempted from emergency sick leave coverage by their employers.

- **Health care employees** include, but are not limited to: workers at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity, as well as workers providing “medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.”

- **Emergency Responders**, is defined broadly and includes employees who are “necessary for the provision of transport, care, health care, comfort, and nutrition of such patients, or whose services are otherwise needed to limit the spread of COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, public works personnel.” Additionally, this definition includes employees “with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.”

c. Eligibility:

- i. All Employees as defined by FLSA and Federal Employees, with a few exceptions;
- ii. Employees are eligible if they have been employed for at least 30 days by their employer, if they qualify (above);

d. Duration of Benefit:

- **Full-time Employees:** 80 hours;
- **Part-time Employees:** Average number of hours worked over a 2-week period (if schedule fluctuates, do 6-month average of hours);

e. Maximum Benefit:

- i. **Personal isolation/quarantine:** Full pay at maximum of \$511/day or \$5110 total;
- ii. **Caregiving isolation/quarantine/child care:** (for ill family member or in absence of child care/school): 2/3rds full pay at maximum of \$200/day or \$2000 total;
- iii. Benefit is based on greatest of Federal minimum wage, State/local minimum wage or Employee’s regular rate of pay as defined by FLSA, i.e. if an individual was paid more than the Federal minimum wage—e.g., \$7.25 an hour, that individual would be entitled to his/her/their regular rate of pay;

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f. Employee protections guaranteeing their right to use emergency sick leave and their freedom from retaliation and discrimination:

- i. Employee cannot be required to find replacement to cover their hours while on sick leave.
- ii. Employee cannot be required to use other accrued sick leave (statutory, guaranteed by employer) before taking this leave.
- iii. Employee cannot be fired, disciplined or discharged for taking this leave or for participating in an investigation/enforcement of the Act.
- iv. This is expressly minimum standards legislation—and does not diminish federal, state, local law guarantees, CBAs, or existing employer policies re: paid sick time (or diminish their pre-existing entitlement upon separation from service).

g. Violations of FFCRA constitute failure to pay minimum wages under FLSA and are subject to FLSA penalties, including liquidated damages.

h. Effective dates: April 1, 2020.

i. Expiration: 12/31/2020.

(2) Emergency FMLA (Child care Only): Bill Amends Key Sections of FMLA to Include Time Out of Work to Care for Children Out of School.

a. Start date and expiration: Effective date of legislation until 12/31/2020.

b. Application: Employers with less than 500 employees.

c. Eligibility: Anyone who has been employed for 30 calendar days by employer for whom leave is requested.

d. Leave is available to individuals unable to work or telework due to absence of Child care.

e. Qualifying events: Employee unable to work due to a need for leave to care for child under 18, if school/ "place of care" closed or Child care provider unavailable.

f. Exemptions: (1) Certain health care providers and emergency responders may be exempted, and (2) small businesses with fewer than 50 employees such that the imposition of these requirements would jeopardize the viability of the business.

g. Blackout period: First 10 days is unpaid leave, but employee may substitute any vacation, personal, or medical or sick leave provided by employer or emergency sick leave provided by FFCRA (see above).

h. Benefit period: 12 weeks maximum (60 days).

i. Paid Leave After Blackout Period: 2/3rds an employee's regular rate of pay (defined by FLSA) for the hours they are regularly scheduled to work (or if schedule varies, average number of hours for last 6 months)—but pay shall not exceed \$200/day or \$10,000 in total (for entirety of leave).

j. Employee Notice Provisions: Employees must provide notice, as much "as practicable," if foreseeable.

k. Job protection/restoration: Applicable to all employers with under 500 employees (except limited exception for employers with less than 50 employees where employer fulfilled a number of obligations to try and keep worker employed).

m. Enactment: April 1, 2020.

n. Expiration: December 31, 2020.

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"I am now collecting Unemployment Insurance for a reason related to COVID-19. Businesses in Massachusetts are starting to reopen. Can my employer force me to return to work?"

Updated October 2020

Massachusetts employers whose businesses were closed because of COVID-19 are being allowed to reopen. This reopening process started in May and will occur in four phases, each phase lasting at least three weeks – or longer if there is another spike in COVID-19 cases. We are now in Phase 3 of the reopening; the schedule for reopening is [here](#).

Until your employer is allowed to reopen, you may continue to stay safely at home and collect Unemployment Insurance (UI).

You MAY NOT refuse to return to work because your UI benefit is higher than the wage you would receive if you returned to work. A program funded by the federal government that provided an additional \$600 per week in UI benefits ended July 25th and another program providing an extra \$300 per week in UI benefits ended September 5th. Additional benefits may become available, and if they do, refusing work on this basis will not be permissible.

But you may remain eligible for UI if DUA determines that your refusal to return to work is "reasonable." DUA [says](#) that "determining what is "reasonable" is a fact-specific inquiry. A general fear of being exposed to COVID-19, without more, is not a reasonable basis for refusing work. However, the employee's own health situation is an important consideration, as are the work conditions and the job the employer offers." **A "reasonable refusal," therefore, could include the employee's situation, the job or work conditions to which the employee is being asked to return, or a combination of some or all of these factors.** More recently, DUA has also said that you can refuse an offer of work if the work is not considered "suitable" (and therefore can be refused without any impact on unemployment benefits) if the worker has a reasonable belief that the job poses a substantial risk to the health or safety of the worker, the worker's child, a member of the worker's immediate family or household member, or the worker's health or safety would be compromised due to an underlying medical or other condition if the worker accepted the job. In each of these situations, the worker has "good cause" to refuse otherwise suitable work.

FACTORS PERTAINING TO THE EMPLOYEE'S PERSONAL OR FAMILY SITUATION.

- Are you over the age of 65 or if you have an underlying health condition that makes you at high risk for COVID-19?
- Have you been diagnosed with or are recovering from COVID-19?
- Have you been exposed to COVID-19 and quarantined?
- Are you caring for an individual ill with COVID-19?
- Is a member of your family or household quarantined as a consequence of COVID-19 even though no actual diagnosis of COVID-19 has been made?
- Do you have symptoms of COVID-19?
- Do you not have child care or is your child's school only open for virtual learning? (Note: If your child's school is open for in-person learning and if you have a reasonable belief of harm to your child, family, or household member, those factors will also be considered.)
- Do you have a reasonable belief that the job poses a substantial risk to yourself, your child, your dependent, or a member of your family or household?

FACTORS PERTAINING TO THE EMPLOYEE'S JOB OR WORK CONDITIONS

If your employer wants you to return to a job that is unsuitable, you MAY choose not to return to work and continue to collect UI. Work is "unsuitable" if it involves different duties or different conditions of employment, like a lower salary, different hours, or if it does not meet mandatory safety practices. Your employer must [certify](#) compliance with these COVID-19 health and safety practices:

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Social Distancing

- All persons, including employees, customers, and vendors should remain at least six feet apart to the greatest extent possible, both inside and outside workplaces.
- Establish protocols to ensure that employees can practice adequate social distancing.
- Provide signage for safe social distancing.
- Require face coverings or masks for all employees.

Hygiene Protocols

- Provide hand washing capabilities throughout the workplace.
- Ensure frequent hand washing by employees and adequate supplies to do so.
- Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout work site.

Staffing and Operations

- Provide training for employees regarding the social distancing and hygiene protocols.
- Employees who are displaying COVID-19-like symptoms do not report to work.
- Establish a plan for employees getting ill from COVID-19 at work, and a return-to-work plan.
- Employers should take measures to ensure employees comply with all [State-issued rules concerning out of state travel](#) for any employer-paid or -reimbursed travel.

Cleaning and Disinfecting

- Establish and maintain cleaning protocols specific to the business.
- When an active employee is diagnosed with COVID-19, cleaning and disinfecting must be performed.
- Disinfection of all common surfaces must take place at intervals appropriate to said workplace.

In addition to these general safety practices, there are specific ones for the kinds of businesses that are being allowed to reopen. They are listed [here](#).

You can report an employer who is not complying with re-opening standards to your local board of health or the state Department of Labor Standards. Instructions on how to file a report are [here](#). You can also notify the Fair Labor Division of the Attorney General's office about non-compliance or if your employer retaliates against you, using [this form](#) or by calling the Attorney General's Labor Hotline at 617-727-3465.

If your employer wants you to return to work and you think you have a "reasonable belief" for refusing to do so, keep these things in mind:

You must demonstrate that you made reasonable efforts to preserve your job. You must show that you took steps to try to keep your job unless your efforts would be futile. For example, if your employer insists that you travel to work rather than continue to telework and you have any of the COVID-19 reasons for your inability to do so, you would be entitled to UI. If you do not have access to child care for your children, you would be entitled to UI. Reasonable efforts also include accepting a leave if offered by the employer. An employer may offer COVID-19 emergency paid sick leave or the Family Emergency FMLA Expansion. You must accept this offer unless the employer is not offering you work at the end of the leave or unless taking the leave will not resolve the underlying problem. You cannot collect UI at the same time you are receiving paid leave (unless the paid leave is less than 1 and 1/3 times your weekly benefit amount, not counting any additional UI weekly add-on benefit). A fact sheet on federal leave is [here](#).

How to Communicate with DUA: If your employer asks you to return to work after your workplace has been allowed to reopen, it is important to let DUA know that your employer has asked you to return to work. If you believe you should continue to stay safely at home for any of the reasons listed above, you should recertify for regular UI for that week by answering "yes" to the question: "Were you offered employment?" You will then receive a questionnaire on the suitability of the work you were offered, which will allow you to explain your reasons for refusing the work. If you are certifying for PUA, for the same reasons, you should answer "yes" to the question that asks "Other than COVID-19 related reasons, were you able and available to work between [certification date] and [certification date]?"

Also, be sure to inform DUA if your reason for not returning to work is that your employer did not offer the mandatory safety practices or follow the guidelines for specific jobs described above.

Eligibility issues will be resolved more quickly if you provide some documentation about your reason for refusing to return to work, such as a letter from your medical provider, a copy of the report you filed about the employer's failure to comply with the health and safety standards, or other proof of your reason not to return to work.

Produced by members of the Massachusetts Employment Rights Coalition:
Margaret Monsell, mmonsell@mlri.org

SECTION 5

Unemployment Assistance During the COVID-19 Pandemic

Pandemic Unemployment Assistance (PUA)

Updated October 2020

In addition to traditional bases for receiving unemployment insurance, which remain in effect, this new program, implemented by the Massachusetts Department of Unemployment Assistance provides temporary income protection for workers who have lost their jobs through no fault of their own and due to COVID-19.

ELIGIBILITY:

In Massachusetts, PUA eligibility is extended to additional individuals who ordinarily do not qualify for UI. Individuals must self-certify that they are otherwise able and available to work, but are prevented from doing so by a circumstance related to COVID-19, including:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care to a household or family member who has been diagnosed with COVID-19;
- A child or other person for whom the individual has primary caregiving responsibility is unable to attend school or another facility as a result of COVID-19 (this includes school that is only available virtually or on a part time basis);
- The individual is unable to reach the place of employment because of a quarantine imposed as a result of the COVID-19 public health emergency;
- The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine;
- The individual was scheduled to start work and does not have a job or cannot reach the job as a result of COVID-19;
- The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19;
- The individual has to quit their job as a direct result of COVID-19;
- The individual's place of employment is closed because of COVID-19; or
- The individual works as an independent contractor and the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her usual work activities, and has thereby forced the individual to stop performing those activities.

Individuals who can telework and individuals who are receiving paid sick or other leave are ineligible for PUA. However, individuals receiving paid sick leave or other paid leave benefits for less than their normal work week may be eligible for PUA. To continue to receive benefits, individuals must certify on a weekly basis that their work continues to be impacted by COVID-19.

BENEFIT AMOUNT:

Eligible individuals may receive up to 39 weeks of unemployment benefits for weeks of unemployment beginning on or after February 2, 2020 and ending December 26, 2020. The maximum weekly benefit is \$855, with an additional \$600 weekly benefit available for the weeks ending April 4, 2020 to July 25, 2020 and an additional \$300 weekly benefit available for the weeks ending August 1, 2020 to September 5, 2020. Although the \$600 is available retroactively, the \$300 is available retroactively only while FEMA funds last. Individuals with dependent children may receive \$25 per week per child up to 50% of their weekly benefit.

HELPFUL INFORMATION:

- [COVID-19 and Unemployment: What You Need to Know](#)
- [Apply for Pandemic Unemployment Assistance](#)
- [Pandemic Unemployment Assistance Benefits](#)
- [Unemployment Assistance for Those Not Eligible for Regular Unemployment Benefits](#)
 - o [Español](#)
- [What You Need to Know and Do About the CARES Act](#)
- [Weekly Unemployment Certification – Certifying Weekly Benefits for Pandemic Unemployment Assistance \(PUA\)](#)
- [SNAP Benefits and Job Loss During COVID-19](#)
- [COVID-19 and MassHealth and Health Insurance](#)
- [Pandemic Unemployment Assistance Identify Verification](#)

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SECTION 6

Accommodations and Legal Protections for Vulnerable Populations and Caretakers During the COVID-19 Pandemic

The Federal Americans with Disabilities Act (ADA), the Rehabilitation Act, and Massachusetts General Laws Chapter 151B³

Updated October 2020

Both Massachusetts and Federal Law require employers to make reasonable accommodations for individuals with disabilities at work, prevent discrimination based on disability and retaliation for seeking protection under these laws, and set forth protections with regard to employer medical examinations and inquiries.

The Massachusetts Reopening Guidelines recommend that individuals that fall into vulnerable categories, including those with certain disabilities, continue to work from home until there is a treatment or vaccine. [See Reopening Know Your Rights Guidance](#). The CDC has also emphasized that employers should provide accommodations or flexibilities to employees who are at higher risk of severe illness. [CDC Interim Guidance for Employers with Workers at High Risk](#).

The EEOC has issued detailed guidance on the ADA and other Anti-Discrimination Protections and COVID-19:

- <https://www.eeoc.gov/wysk/what-you-should-know-about-COVID-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act>

REASONABLE ACCOMMODATION

Eligibility: Disabled individuals may seek a “reasonable accommodation” allowing them to perform all essential functions of their jobs during the COVID-19 crisis.

Reasonable accommodations may include:

1. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position.
2. Modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

Whether or not an accommodation is reasonable, or presents an undue burden, is related to the specific nature, size, and operations of an employers’ business.

Examples: Depending on the nature of an individual’s disability and an employer’s capacity to accommodate them generally, and specifically during the COVID-19 pandemic, workplace accommodations may include: designating one-way aisles; using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers; temporary job restructuring of marginal job duties; temporary transfers to a different position; remote work, or modifying a work schedule or shift assignment to reduce exposure to others in the workplace or while commuting. Employees may request an alternative method of worksite screening due to a disability.

Employees are not entitled to an accommodation under the ADA in order to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition. However, an employer may provide such an accommodation if it chooses to do so and does not engage in disparate treatment.

Employer Medical Examinations and Inquiries:

- During the pandemic, employers are allowed to ask employees if they are experiencing COVID-19 symptoms. For COVID-19, these symptoms may include fever, chills, cough, shortness of breath, sore throat, loss of smell or taste, and gastrointestinal problems. Employers may measure employees’ body temperature.
- Employers may require employees entering the workplace to submit to temperature checks and take a COVID-19 test because an employee with the virus will pose a direct threat to the health of others. Employers can require an employee to leave work if they are sick with symptoms of COVID-19.
- Employers may require a doctor’s note to certify that an individual has recovered and is fit for duty. However, employers may need to rely on local clinics to provide a form, stamp, or email certifying an employee does not have the virus because health care professionals are too busy.

³Massachusetts law prohibits discrimination in the workplace on the basis of race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, pregnancy or pregnancy-related condition, ancestry or status as a veteran. The Massachusetts Commission Against Discrimination (MCAD) enforces the Massachusetts anti-discrimination laws. Employees who are discriminated against may contact MCAD to file a complaint.

SECTION 6

- Employers must keep the identity of an employee who becomes ill confidential, **except:**
 1. employers may disclose the name of an employee who has COVID-19 to a public health agency.
 2. a staffing agency or contractor that places an employee in an employer's workplace may notify the employer and disclose the name of an employee who has COVID-19.
 3. employees may agree to waive confidentiality.

For more information on filing a complaint with the EEOC or the MCAD:

- [File a Discrimination Charge with the EEOC or Call the EEOC](#) at 1-800-669-4000 (TTY: 1-800-669-6820; ASL Video Phone: 1-844-234-5122)
- [File a Complaint with the Massachusetts Commission](#)
- [How to File a Complaint with MCAD During COVID-19 State of Emergency](#)

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA) AND MASSACHUSETTS ANTI-DISCRIMINATION LAWS

Prohibits discrimination in employment based on age. Protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment. The ADEA is enforced by the U.S. Equal Employment Opportunity Commission (EEOC). Massachusetts General Laws Chapter 151B, also prohibits discrimination by Massachusetts employers on the basis of age.

Involuntary Exclusion:

If you believe you are being involuntarily excluded from the workplace, terminated, transferred, or receiving reduced hours as a result of your age during the COVID-19 pandemic, you may have a claim for age discrimination under either state or Federal Law.

Reasonable Accommodation:

There is no right to reasonable accommodation under the ADEA. However, an individual over age 65 with a medical condition may be entitled to reasonable accommodations under the ADA.

Helpful Information:

- [How to File a Charge of Employment Discrimination](#)
- [U.S. Department of Labor – Age Discrimination](#)
- [How to File a Complaint with MCAD During COVID-19 State of Emergency](#)

TITLE VII OF THE CIVIL RIGHTS ACT AND MASSACHUSETTS ANTI-DISCRIMINATION LAWS

Title VII of the Civil Rights Act prohibits discrimination on the basis of race, color, religion, national origin, or sex, including pregnancy, childbirth, or related medical conditions. Massachusetts General Laws Chapter 151B and the Pregnant Workers Fairness Act provide similar anti-discrimination protections.

Involuntary Exclusion of Pregnant Individuals:

An employer cannot single out or exclude an employee from the workplace involuntarily due to pregnancy. Even if motivated by benevolent concern, such an action on the basis of pregnancy (including involuntary leave, layoff, or furlough) is sex discrimination under Title VII of the Civil Rights Act or Massachusetts law.

Pregnancy Accommodation:

A pregnancy-related medical condition, but not the pregnancy itself, may be considered a disability under the ADA. An employee can then request a reasonable accommodation due to the pregnancy-related medical condition under the ADA.

Under Title VII as amended by the Pregnancy Discrimination Act, individuals affected by pregnancy, childbirth, and related medical conditions must be treated the same as others who are similar in their ability or inability to work. Pregnant employees may be entitled to job modifications, including telework, changes to work schedules or assignments, and leave to the extent provided to other employees who are similar in their ability or inability to work.

See also: [Know your rights: FMLA/FFCRA](#)

Caregivers and Family Responsibilities:

Employers may provide telework, modified schedules, or other benefits to employees with school-age children due to school or Child care closures during the pandemic, as long as they are not treating employees differently based on sex or other protected characteristics.

Further Information:

- [Protect Yourself and Your Family from COVID-19](#)
- [Legal Rights of Pregnant Workers Under Federal Law](#)
- [Title VII of the Civil Rights Act of 1964](#)
- [MCAD Guidance – Pregnant Workers Fairness Act](#)

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SECTION 7

Protected Concerted Activity Under Federal And Massachusetts Law

Updated October 2020

Employees in the public and private sector are legally protected when they work together to improve their working conditions. This includes fighting for a safer workplace.

Employees in the private sector have rights under [Section 7 of the National Labor Relations Act](#), and public employees in Massachusetts are protected by [Chapter 150E](#).

Combined, these laws cover almost all Massachusetts employees, even those who are not unionized. They apply when employees engage in “concerted, protected activity” for “mutual aid and protection.”

Generally, this is when:

1. employees work together to improve their working conditions.
2. a single employee encourages their co-workers to take action.
3. a single worker or workers act on behalf of others (with their agreement) to improve working conditions.

It is a violation of law—i.e., an unfair labor practice – for an employer to make a rule prohibiting concerted, protected activity, or to retaliate against employees who engage in such activity.

[Examples of concerted, protected activity](#) may include, but are not limited to, all of the following

- Conversations with co-workers about working conditions or planning to improve working conditions.
- Making complaints to or demands of your employer about working conditions.
- Circulating and signing petitions about working conditions.
- Calling government agencies for help concerning workplace conditions.
- Picketing your own employer for better working conditions.
- Reaching out to community groups, handing out leaflets, marching, holding a rally, contacting the media, posting on social media concerning working conditions.
- Joining a union or acting as a union representative.

Work Stoppages/ Strikes: In the private sector, non-union and unionized employees⁴ have the right to walk off the job to protest unsafe working conditions. Indeed, the U.S. Supreme Court has said that employees who went on strike to protest safety

conditions are protected by Section 7. However, it is illegal for public employees employed by Massachusetts, municipalities, or other public authorities to go on strike.

There are limits to Protected Concerted Activity—to be protected:

- Your protest activity must be about your **working conditions**.
- You must be **working together** with other employees, asking other employees to take action, or acting as your co-worker’s approved representative.
- You must be an **employee**. Independent contractors are not protected under either the NLRA or G.L. c. 150E.
- In the **private sector, supervisors do not have these protest rights**. In general, supervisors are those who hire and fire, authorize pay raises or promotions, participate in disciplining other employees, or who assign and direct work.
- However, **supervisors in the public sector are protected**.
- You should engage in concerted, protected activity only on **non-working time in non-working areas**.
- Finally, if you are a **unionized employee** covered by a collective bargaining agreement, you and your co-workers are likely **covered by a “no strike” clause** or similar limitations on work stoppages. Ask your union for details.

If you believe your right to engage in protected concerted activity have been violated by your employer, you can file an [unfair labor practice charge with the NLRB](#), or with the [Mass.](#)

[Department of Labor Relations](#).

Unionized employees in the private sector have the right to strike unless they are subject to contracts—a.k.a. collective bargaining agreements—have “no strike” clauses prohibiting strikes.

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⁴Unionized employees in the private sector have the right to strike unless they are subject to contracts—a.k.a. collective bargaining agreements—that have “no strike” clauses prohibiting strikes.

SECTION 8

Your Right To Refuse To Work Due To Unsafe Conditions Resulting From COVID-19

Updated October 2020

Under both federal and state law, every employee has a basic right to a safe and healthy workplace. <https://www.osha.gov/workers/>. You also have a right to address any safety concerns without retaliation from your employer. See: [Know your Rights Anti-Retaliation](#). Due to the COVID-19 pandemic, the number of employees facing unsafe conditions at work has risen to an unprecedented level. As of October 13, 2020, the U.S. Centers for Disease Control and Prevention reports that over 7.5 million Americans have been infected with COVID-19 and nearly 215,000 have died. See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

THE RIGHT TO REFUSE WORK

Given these considerations, you may be wondering:

(1) Under what conditions may I refuse to work legally, if I have health and safety concerns related to COVID-19 in my workplace?

And, (2) If I do refuse work legally, what protections will the law provide me?

There are several laws that empower employees to refuse to work when worksite conditions pose a serious risk to their health and safety. However, **these laws have strict and specific requirements for eligibility and limited protections** for workers. Before taking any action you should carefully consider the information provided below, weigh the costs and benefits of your options, develop a plan for action, and whenever possible seek advice from a union or legal counsel.

It is also important to know that while these laws may offer protection for refusing work in your specific circumstances, the laws are enforced by state and federal government agencies that may move very slowly. Practically, you (and/or your co-workers) may not be able to wait for enforcement of these laws.

Generally speaking, employees who refuse work are not paid by their employers for protesting unsafe working conditions.

I. The Right to Strike Under Federal and State Labor Laws. Generally, under the Federal National Labor Relations Act (NLRA), most employees in the private sector have the right to strike—i.e., engage in a work stoppage. See: [section 7 on CPA](#). Employees do not need to belong to a union to go on strike, and it is illegal to fire workers on strike over working conditions such as the failure to remedy worksite hazards or provide personal protective equipment needed to safely perform work.

⁵29 U.S.C. § 143

⁶Protections for public sector employees exist as well and are explained below.

With that said, while you are on strike:

1. Your employer is not obligated to pay you wages.
2. You could be temporarily replaced by your employer.
3. In some cases, you may be permanently replaced. (If you are permanently replaced, you are not technically fired, but you only retain limited rights to a potential reinstatement.)

The right to strike may also be limited by agreement.

Specifically, most unionized employees working under a collective bargaining agreement are prohibited from striking in most cases due to a “no strike” clause in the CBA.

Public employees in Massachusetts are prohibited from striking under Massachusetts Law, G.L. c. 150E.

Importantly, under the Massachusetts unemployment law, individual employees who engage in strikes, even when protected by the NLRA, are generally not entitled to unemployment benefits.

II. The Right to Refuse Work in Abnormally Unsafe Working Conditions under Section 502 of the federal Labor Management Relations Act.⁵ Section 502 provides that employees in the private sector may refuse to work in situations when they are required to work in “abnormally dangerous conditions.”⁶ Section 502 applies to actions by either individuals or groups of employees, and it establishes that a work stoppage due to the presence of “abnormally dangerous conditions” is **not** to be considered a strike.

What protections does Section 502 offer if workers walk off the job because of abnormally unsafe conditions?

An employer is prohibited from permanently replacing a worker/workers due to a 502 work stoppage. Temporary replacements are not prohibited by the statute. In unionized settings, some unionized workers may stop work due to abnormally unsafe conditions without violating a no-strike clause.

Although all 50 states have begun the process of reopening, the pandemic still poses severe safety risks, especially if individuals and/or employers are not strictly following required safety protocols. See: [Know Your Rights reopening guidance](#). If you notice unsafe conditions or practices at your workplace that you think fit the description of “abnormally dangerous,” as explained

SECTION 8

here, you may have the right to refuse to work until those conditions are fixed or eliminated without retaliation from your employer.

WHAT ARE THE REQUIREMENTS TO DEMONSTRATE THAT A WORK STOPPAGE IS PROTECTED UNDER SECTION 502?

In order to establish that a work stoppage is protected under Section 502, one must demonstrate that:

1. The employee or employees had a “good-faith” belief that their working conditions were abnormally dangerous.
2. Their belief was a contributing cause of the work stoppage.
3. Their belief is supported by “ascertainable, objective evidence.”
4. The perceived danger posed an immediate threat of harm to employee health or safety.⁷

Points three and four are the trickiest. Bear in mind that the statute requires more than an employee’s personal belief that conditions are unsafe. **There must be ascertainable and objective evidence of specific, abnormally unsafe conditions**, and the unsafe condition **must pose an “immediate threat of harm.”** In practice, this likely means not only that an employee must at least be aware of supporting evidence that particular working conditions at a jobsite are unusually hazardous—meaning well in excess of routine jobsite and inherent safety risks in the industry, but that these conditions immediately endanger the employee’s personal safety, and that the workplace’s conditions likely violate pre-existing governmental, public health, and/or industry health and safety requirements and/or standards.

Relatively few cases have been brought under this law, and, when cases have gone forward, the courts have generally interpreted this law narrowly based on the specific facts of the case before them.

HOW DO I KNOW IF DANGEROUS CONDITIONS AT MY WORKPLACE WOULD QUALIFY AS ABNORMALLY UNSAFE?

There is no “one size fits all” answer to this question. Generally, abnormally dangerous conditions are those that pose severe safety threats (serious injury, illness, or death) to workers and depart considerably from normal working conditions at a particular workplace.⁸ Whether or not conditions are abnormally unsafe at a workplace must be evaluated on a case by case basis.

In evaluating the safety of your workplace – Massachusetts has issued mandatory guidelines for reopening different workplaces during the COVID-19 pandemic. See: [Know Your Rights](#)

[Reopening Guidance](#). Additionally, the Federal Center for Disease Control (CDC) and the Occupational Safety and Health Administration (OSHA) have issued guidance on the health risks posed by COVID-19 and measures that may be taken to reduce that risk at different types of job sites. [See Know Your Rights OSHA Guidance](#). With that said, OSHA has not set any COVID-19 specific health or safety requirements for any industries or workplaces generally. Additionally, please bear in mind that no court cases have yet defined what “abnormally dangerous” means in the context of COVID-19.

WHAT TO DO IF YOU THINK YOU ARE WORKING UNDER ABNORMALLY DANGEROUS CONDITIONS:

- **Talk to your fellow employees and consider acting together.** In the private sector, when multiple non-supervisory employees engage in protected activity together, they trigger the protection of Section 7 of the NLRA, which can provide you with greater protection than Section 502 alone. See: [Concerted Protected Activity Know Your Rights](#)
- **Consider complementary and alternative strategies that may be effective in addressing the hazardous conditions** such as off-duty leafleting, petitions and other writings demanding safe working conditions, and legal action, in addition to work stoppages, that may be effective in addressing the hazardous conditions. See: [Concerted Protected Activity Know Your Rights/OSHA](#)
- **If you are a union member, contact your union as soon as possible.** In addition to statutory protections under Section 502, the National Labor Relations Act, and OSHA—applying to all workers, as a union member you may have additional workplace health and safety protections in your collective bargaining agreement.
- **Document, document, document.** In order to trigger Section 502 protection, you must provide “objective, ascertainable evidence” of your good faith belief that there are abnormally dangerous conditions. This might include photographs of workplace conditions, correspondence with fellow employees or your employer (in writing is always best), or formal or informal complaints regarding the conditions. If you communicate by text or email, save these on your device or print them out and save them.
- **Consider addressing your safety concerns in writing with your employer first**, as they may be willing to work with you to remedy the problem, and this may allow you other avenues for taking action, should you decide not to engage in a Section 502 work stoppage. See: [OSHA Know your Rights](#). It is illegal for your employer to take adverse action against you for raising safety concerns. See: [Anti-Retaliation Know Your Rights](#).

⁷TNS, Inc. v. N.L.R.B., 296 F.3d 384, 387 (6th Cir. 2002).

⁸TNS, Inc. and Oil, Chem. and Atomic Workers Int’l Union, 329 N.L.R.B. 602, 607 (1999), vacated on other grounds by TNS, Inc. v. N.L.R.B., 296 F.3d at 404.

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- **Do not wait to address your concerns.** Health and safety are on the line, and you may have the most leverage when a hazard is “new.” Additionally, OSHA requires you to file a complaint within 30 days of the event or start of the condition; complaints to the National Labor Relations Board and the State Department of Labor Relations must be filed within six months of the facts giving rise to an unfair labor practice.

THINGS YOU SHOULD CONSIDER BEFORE MAKING THE DECISION TO REFUSE TO WORK

- Even though your employer is prohibited from terminating you for exercising your right to refuse to work under Section 502, they are not obligated to pay you for any time you are not working or to allow you to use vacation or paid time off to cover absences due to the work stoppage.
- Although leaving a job due to reasonable safety and health concerns may be a basis for an unemployment claim, the Department of Unemployment Assistance (DUA) will review your application on a case-by-case basis. When considering whether to refuse to work, keep in mind that it is possible your eligibility for benefits could be denied if DUA deems your refusal to work unprotected by Section 502 (and therefore a strike). Even if you are unsure if you are eligible, you should still apply, and respond promptly if the DUA requests additional information about your circumstances.
- Be aware that most government agencies process claims very slowly, so even if you eventually are granted reinstatement and/or back pay, it often takes a significant amount of time to get to that point.
- A work stoppage under Section 502 is a risky endeavor, success is far from assured, and failure can have serious negative consequences for employees who participate. While work stoppages may be effective in some circumstances, significant consideration should be given to the costs and benefits of taking this action for all workers involved and whether the goals can be achieved through less risky means.

File an Unfair Labor Practice Charge:

Private sector employees can file a charge with your Regional Office of the National Labor Relations Board (NLRB). The form can be found [here](#).

If you have any questions or need assistance filling out the charge form, you can call the Regional Office in Massachusetts at (617) 565-6700.

Public sector employees can file a charge with the Massachusetts Department of Labor Relations. That form can be found [here](#).

III. THE RIGHT TO REFUSE WORK UNDER FEDERAL AND STATE OCCUPATIONAL HEALTH AND SAFETY LAWS

The Federal Occupational Safety and Health Act (OSH Act) contains a provision that prohibits private sector employers from retaliating against employees who exercise their rights under the act, such as making formal or informal complaints regarding health and safety conditions or participating in inspections or investigation. Massachusetts law extends the OSH Act requirements and protections to the public sector and enforces them through the Department of Labor Standards.⁹

OSHA and its state law equivalent also protect employees who refuse work due to health and safety concerns, under different standards than described above. Read more in: [KNOW YOUR RIGHTS OSHA](#)

FILE AN OSHA COMPLAINT:

- Private sector employees can file a complaint directly with OSHA. You can find the form [here](#).
- Public sector employees can file a complaint with the MA Department of Labor Standards [here](#).

⁹ Mass. Gen. Laws c. 149, § 6 1/2

SECTION 8

IV. WHISTLEBLOWER PROTECTIONS FOR MA PUBLIC EMPLOYEES

In Massachusetts, public employees may also seek protection under the Massachusetts Public Employee Whistleblower Act.¹⁰ The Act prohibits employers from retaliating against employees for a number of activities, including “[o]bject[ing] to, or refuse[ing] to participate in any activity, policy or practice which the employee reasonably believes in violation of a law, or a rule or regulation . . . or which the employee reasonably believes poses a risk to public health, safety or the environment.”¹¹ You are also protected if you make a formal or informal complaint of a violation to a supervisor, public body¹², or your employer, among others. An employee’s strongest protection will come when she or he complains about unsafe conditions as they affect the public, although some complaints about unsafe working conditions may also be protected.

If an employer violates the Act, employees are permitted to sue the employer in state court and have the right to a jury trial. The civil lawsuit must be filed within two years of the violation. If the employee prevails, the Act allows the court to order remedies including injunctive relief (such as ordering reinstatement of a terminated employee), monetary compensation (up to three times the lost wages, benefits, and other compensation), and they may order the employer to pay for the employee’s court costs and reasonably attorneys’ fees. You can find the full statute [here](#).

If you have any concerns about health and safety in the workplace, you can also contact the Attorney General’s Fair Labor Hotline at (617) 727-3465, or file a complaint online (includes an option to file anonymously) [here](#).

The information provided on this page is intended to provide background only concerning Massachusetts and Federal Labor and Employment Laws and their interaction with COVID-19. This page cannot and does not provide legal guidance or advice with regard to one’s specific situation. It is also important to know that laws protecting Massachusetts workers during the COVID-19 epidemic are rapidly changing. The information provided here is accurate as of June 30, 2020, the time the site was last updated. The provision of the information provided on this webpage is not meant to, and does not, create an attorney-client relationship with Segal Roitman LLP. Finally, the information provided here concerning these laws does not constitute an endorsement of any specific Federal or Massachusetts law, regulation, strategy or tactic for protecting workers’ rights by the Massachusetts AFL-CIO or the Greater Boston Labor Council.

For legal guidance on your particular situation, the Massachusetts Coalition for Occupational Safety and Health (MassCOSH) provides guidance and referrals to Massachusetts attorneys: (617) 825-7233, www.masscosh.org.

¹⁰ Mass. Gen. Laws c. 149, § 185

¹¹ Id. § 185(b)(3)

¹² In order to be protected for disclosing or threatening to disclose a violation to a public body, you must first notify your supervisor in writing and afford them a reasonable opportunity to correct the activity, policy, or practice at issue.

Occupational Health Standards, Anti-Retaliation Protections & Work-Refusal

Updated October 2020

Under the **Occupational Safety and Health Act of 1970 (OSH Act)**, all private sector employers are required to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” In addition, the Occupational Safety and Health Administration, which enforces the OSH Act, has enacted a series of specific regulations protecting the health of employees in many different industries. **With that said, as of the present date, the Trump Administration has not established any mandatory COVID-19-specific protections for workers.**

1. What should you do if you believe your workplace is unsafe due to COVID-19—e.g., insufficient personal protective equipment, failure to clean consistent with state/federal guidance, etc.?

a. **Document** unsafe working conditions, workplace illness, and/or injuries. For more on addressing workplace illnesses/injuries see: [Know Your Rights Workers Compensation](#)

b. **Notify your employer** of the unsafe working conditions and request that the employer address them as quickly as possible

c. **If the employer fails to address the safety hazard:**

i. Private sector employees may file complaints with **the Occupational Safety and Health Administration** [OSHA complaint link](#).

ii. Massachusetts state and municipal workers may file a complaint with the **Massachusetts Department of Labor Standards (DLS)** [DLS complaint link](#).

iii. **Local Boards of Health**, established by each municipality in the Commonwealth may also accept and investigate safety complaints at businesses within their jurisdiction.

Please note that both OSHA and DLS have received record numbers of complaints since the beginning of the COVID-19 crisis and were already under resource and staffing constraints to address workplace safety issues.

d. **Talk with your co-workers** about safety issues and

consider collective action to persuade your employer to address the health and safety issues. [Know your Rights Concerted Protected Activity](#)

2. What happens if your employer retaliates against you?

Protection from Retaliation: Section 11(c) of the OSH Act prohibits most private sector employers and the U.S. Postal Service from retaliating against employees for exercising a variety of rights guaranteed under the OSH Act. In 2018, the Commonwealth adopted OSHA standards, including 11(c), applying to state and municipal workplaces in the Commonwealth.

Examples of rights protected by Section 11(c) include:

- Filing a safety or health complaint with the Federal Occupational Safety and Health Administration (OSHA).
- Communicating orally or in writing with management personnel about occupational safety or health matters (including asking questions or expressing concerns).
- Requesting safety data sheets.
- Reporting a work-related injury or illness.
- Requesting copies of OSHA standards or regulations.
- Participating in an OSHA on-site inspection.
- Engaging in a justified work refusal (see below).

Retaliation includes a variety of adverse employment actions, including, but not limited to: terminations, demotions, blacklisting, denial of overtime or promotions, denial of other benefits, discipline, failure to hire or rehire, intimidation or threats, reassignment, or a reduction of pay or hours.

SECTION 9

Complaints must be filed quickly: Any employee that wishes to pursue an 11(c) charge must file a complaint within thirty (30) days of alleged retaliation—i.e., within 30 days of when the employee is given notice or should know of the retaliation.

OSHA: To file a complaint with OSHA, an employee, or representative of an employee, may:

- File electronically: www.whistleblowers.gov/complaint_page
- Call 1-800- 321-OSHA (6742) or their local OSHA Regional or Area Office
- Mail, fax, or email their OSHA Regional or Area Office

Upon receipt of a complaint, OSHA will review the complaint to determine whether it is appropriate to conduct an investigation. If OSHA conducts an investigation, it will determine whether the charge has merit and, if so, what relief is necessary. OSHA will pursue enforcement and litigation of its findings as it deems appropriate.

Available Relief may include reinstatement; payment of back pay with interest; front pay; compensation for expenses the employee may have incurred as a result of the retaliation with interest; emotional damages; punitive damages; and certain non-monetary relief.

DLS: To get more information or file a complaint electronically with DLS, an employee, or representative of an employee, may contact DLS at this website:

- <https://www.mass.gov/service-details/report-an-accident-file-a-complaint-or-request-assistance>
- <https://www.mass.gov/doc/complaint-form-for-public-sector-workplaces/download>
- Complaints may also be sent to: safepublicworkplacemailbox@mass.gov
- **DLS's Public Employees' program** can also be contacted at:

Massachusetts Department of Labor Standards
Workplace Safety and Health for Public Employees Program
Taunton Career Center Building
72 School Street
Taunton, MA 02780
Phone: (508) 616-0461 ext. 9488

For further information, see www.whistleblowers.gov.

3. What happens if working conditions are so dangerous that you do not believe it is safe to work?

Work Refusal: OSHA protects employees from retaliation for a justified work refusal. For a justified work refusal under Section 11(c), an employee **must** have:

1. Had a reasonable apprehension of death or serious injury
2. Refused in good faith to perform the task
3. Had no alternative assignment
4. Had insufficient time to have Federal or State OSHA conduct an inspection (or such an inspection has already taken place)
5. Where possible, sought that the employer correct the dangerous condition

If you are considering refusing work assignments under Section 11(c) due to COVID-19, it is important to document and collect evidence supporting each of the above requirements.

Additionally, if you are able, contact your union to discuss the best strategies before moving forward on refusing work.

**Additional resources/assistance:
Occupational Safety and Health (MassCOSH)
(617) 825-7233, www.masscosh.org**

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Protections from Retaliation

Updated October 2020

Most employment laws, including those that protect employees during the current COVID-19 pandemic, provide employees with protection from their employer retaliating against them for exercising rights under the law. Such laws generally protect activities such as the following:

- Filing a legal complaint regarding your employer's violation of your or others' statutory rights.
- Raising internal concerns regarding violation of your or others' statutory rights.
- Exercising one's rights under a law, such as requesting a reasonable accommodation for a disability in light of the COVID-19 pandemic or taking leave to which one is entitled under federal or state law.

In general, these and similar activities are protected when an employee has a reasonable, good faith belief that someone's statutory rights are being violated, even if that belief turns out to be incorrect.

Illegal retaliation in response to protected activities can take many forms, including the following:

- Termination
- Demotion
- Suspension
- Other changes in terms and conditions of employment, such as involuntary transfers and assignment to perform less favorable work.

To recover for retaliation, an employee will have to show that the actions were taken due to the employees' protected conduct and not for some other reason. Examples of statutes providing protection against retaliation that provide COVID-19 related rights include:

- **Families First Coronavirus Response Act ("FFCRA").** Claims may be brought within two years of the retaliation (three years if willful) in state or federal court or with the U.S. Department of Labor. See: [Know Your Rights FFCRA](#).
- **Family and Medical Leave Act ("FMLA").** Claims may be brought within two years of the retaliation (three years if willful) in state or federal court or with the U.S. Department of Labor. See: [Know Your Rights FFCRA FMLA WC UI](#).
- **Americans with Disabilities Act ("ADA"), Age Discrimination in Employment Act ("ADEA"), Title VII Discrimination Claims, and Massachusetts Equivalentents under M.G.L. c. 151B.** Claims for retaliation under federal anti-discrimination laws protecting against discrimination on the basis of age, disability, race, or

nationality and their Massachusetts equivalentents may be brought within 300 days of the retaliation before the Massachusetts Commission Against Discrimination. [Know Your Rights Accomodations](#).

- **Workers' Compensation.** Claims of retaliation may be brought within 4 years of the retaliation in Massachusetts Superior Court. See: [Know Your Rights FFCRA FMLA WC UI](#).
- **Public Employee Whistleblower Claims (M.G.L. c. 149, § 185).** Claims by Massachusetts state employees of retaliation based on reporting a violation of law or a threat to public health and safety may be brought within two years in Massachusetts Superior Court. See: [Know Your Rights FFCRA FMLA WC UI](#).
- **National Labor Relations Act (most private sector), G.L. c. 150A (a small number of private sector), G.L. c. 150E (almost all state and all municipal public sector).** Claims that an employee has been retaliated against—for engaging in protected concerted activity with co-workers for their mutual aid and protection or for union activity must be brought under federal and state law within 180 days of the retaliation at the National Labor Relations Board (NLRB) (most private sector) or the Massachusetts Department of Labor Relations (limited private sector and almost all state and municipal public sector). See: [Know Your Rights CPA, NLRA and G.L. c. 150E](#); [Know Your Rights Work Refusal](#).
- **Occupational Safety and Health Act (private sector) and G.L. c. 149 § 6 1/2 (Massachusetts state and municipal employees).** Claims that an employee has been retaliated against for making safety/health complaints, filing an OSHA (private sector) or Massachusetts Department of Labor Standards (public sector) complaint must be filed within 30 days of the alleged retaliation with OSHA (private sector) or the Massachusetts Department of Labor Standards (Massachusetts and municipal public sector). See: [Know Your Rights OSHA](#).

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Greater Boston Legal Services
Summary of Unemployment Insurance (UI) Benefits During the Pandemic
(current as of 10/15/2020)

 GREATER BOSTON LEGAL SERVICES ... and justice for all	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)
What does this program do?	Provides additional \$600/week in federally funded benefits to anyone getting UI under any program including work share. AVAILABLE BETWEEN 3/29/20 and 7/25/20.	Provides an additional 13 weeks of UI benefits funded 100% by feds. after other state UI benefits run out. AVAILABLE BACK TO 3/29/2020.	Provides up to 39 weeks of emergency UI to workers usually left out. See: www.mass.gov/pua AVAILABLE BACK TO DATE IMPACTED BY COVID-19 ON OR AFTER 2/2/2020.	Permanent federal/state program that “triggers on” during periods of high unemployment. Provides additional weeks of UI benefits funded 100% by feds under CARES for the lesser of 13 weeks or 50% of # of weeks of regular UI. AVAILABLE BACK TO THE LATER OF MAY 9TH OR THE EXHAUSTION OF PEUC.	Provides additional \$300/week in federally funded benefits through FEMA to anyone unemployed since 8/1/2020 who is getting at least \$100 UI (counting dependency allowance) under any program including work share in UI. AVAILABLE BETWEEN WEEK ENDING 8/1 to 9/5/2020 & RETRO until FEMA \$\$ for program runs out.
What types of workers are covered?	Everyone on regular state UI plus everyone getting any federal UI including PEUC, PUA, EB or Work Share.	Workers who have “exhausted” ,i.e., they have used up all rights to regular UI benefits under state or federal law with respect to a benefit year (the 52 weeks after applying for UI) that ended after July 5, 2019 (i.e.,	Covers everyone eligible for state UI who “exhausted” all rights to state and federal UI AND workers who are usually excluded, e.g., self-employed, independent contractors (IC), gig workers, free-lancers, clergy and workers in	All workers who have exhausted rights to regular UI and PEUC and 1) the worker’s benefit year (the 52-week period after applying for regular UI) ended on or after May 9,2020	All workers who are determined monetarily eligible for \$100 or more in UI benefits from any source (including dependency allowance). This

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)
	<p>Non-citizens with SSN and work authorization.</p>	<p>claim filed after July 6, 2018) or the most recent benefit year.</p> <p>Must be actively engaged in work search but states can be flexible because of COVID-19.</p> <p>Non-citizens with SSN and authorization.</p>	<p>religious organizations, part-time workers including college or high school students with part-time jobs OR workers who didn't earn enough or work long enough to qualify and denied state UI as long as these workers are totally or partially not working for COVID-19 related reasons. (See last page below).</p> <p>Non-citizens with valid SSN and alien registration number (showing work authorization) are covered.</p>	<p>2) the worker meets the "20 weeks of earnings test" in base period (the year preceding the claim for regular UI), i.e., (i) earnings exceed 40 X weekly benefit amount (WBA); or (ii) earning = 1.5 times earnings in high quarter of base period; or(iii) had 20 weeks of full-time work in base period.</p>	<p>means that everyone who is getting PUA is eligible.</p> <p>Additionally, as the \$100 weekly benefit amount (WBA) is the amount received at the <u>initial</u> monetary determination, so that subsequent partial earnings that may lower the WBA should not result in ineligibility.</p>
<p>Which workers are excluded ?</p>	<p>Workers who are not collecting some form of state or federal UI benefits.</p> <p>Workers getting extended benefits while in training.</p>	<p>Workers who have not exhausted their state UI benefits.</p> <p>Undocumented workers.</p>	<p>Workers who have not yet exhausted rights to state UI or other federal benefits.</p> <p>Undocumented workers.</p> <p>Workers who can telework (unless DV prevents this).</p>	<p>Workers who have not exhausted rights to PEUC; whose benefit year ended before May 9, 2020, or who do not meet the base period earnings test.</p>	<p>Workers who were determined monetarily eligible for less than \$100 (the dependency allowance counts toward the \$100).</p>

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)
What is the size of the benefit based on?	<p>\$600 per week. This is a flat amount and not prorated when receiving partial UI benefits.</p> <p>Earnings while working are deducted from underlying UI benefits, not from FPUC.</p>	<p>Same as provided under state UI, plus \$600 per week between 3/29/2020 and 7/25/2020.</p> <p>However, at the end of each calendar quarter, the state must check if the individual is still an “exhaustee,” i.e., if the individual had interim earnings, can they establish a new claim and benefit year, possibly reducing the weekly check.</p>	<p>Varies state-by-state. It is the greater of: 1) the state’s UI amount if sufficient reported earnings (maximum in MA is \$855); or 2) 50% of the MA average weekly benefit (AWB) of \$267/week; plus \$600/ week between 3/29/2020 and 7/25/2020 plus \$300/week of LWA when available starting 8/1/2020.</p> <p>After providing documents, workers’ income and dependents are included and benefits may increase up to \$855.</p>	<p>Same as provided under state UI, plus \$600 per week between 3/29/2020 and 7/25/2020 and \$300 per week if eligible from 8/1/2020 until \$\$ runs out.</p>	<p>\$300 a week. This is a flat amount and not prorated when receiving partial UI benefits.</p>
Time period for UI: start and end date?	<p>While receiving UI under any state or federal law between 3/29/20 to 7/25/2020.</p>	<p>13 weeks during 3/29/20 to 12/26/20. However, if individual has earnings that reduce WBA and receives smaller amount, benefits could last longer than 13 weeks.</p>	<p>39 weeks during 2/2/20 – 12/26/20.</p>	<p>Up to 13 weeks. If regular benefits were less than 26 weeks, the maximum is 50% of the number of weeks of regular UI.</p>	<p>While receiving UI from 8/1/2020 until 12/26/2020 or until FEMA \$\$ is used up. However, it appears there are only 6 weeks allotted. Program started for PUA 9/5 and on 9/15 for regular UI, PEUC, EB.</p>

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)
Is this program retro-active?	Retroactive for anyone eligible for UI back to 3/29/20.	Available during time period after someone exhausts all rights to state or federal UI starting 3/29/2020.	Retroactive to date first lost work or impacted by CV back to 2/2/20.	Retroactive to exhaustion of PEUC if other eligibility tests are met.	Retroactive to 8/1/2020 but only if funds from FEMA are still available.
# of weeks available under program.	While on UI from 3/29/20 until 7/25/2020.	Regular state UI (maximum in MA is 26 weeks) + 13 weeks. Non-reduction rule i.e., states cannot decrease the # of weeks of state UI benefits available as of 1/1/2020.	Maximum is 39 weeks plus any additional federal emergency benefit available later. The 39 weeks can be in addition to weeks of PEUC benefits.	Regular state UI up to 26 weeks + 13 weeks of PEUC + up to 13 weeks of EB (50% of # of weeks on regular UI).	While on UI from 8/1/2020 to 12/26/2020 but actual determination depends on when FEMA runs out of \$\$ - i.e., when \$44 billion is spent nationally or when Disaster Relief Fund reserves are less than \$25 billion.

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)
Relationship to state or federal UI benefits	Available to everyone getting a state or federal UI check during 3/29/20 to 7/25/20 even if amount of UI check is \$1.00.	<p>Add-on after exhaustion of state benefits. At end of benefit year, state must determine every calendar quarter if individual is eligible for state UI.</p> <p>Extended Benefits (EB), a shared state/federal program that has now “triggered on” during high employment for 13 weeks, is deferred during receipt of PEUC.</p>	Regular state UI and federal EB are deducted from the 39 weeks of PUA, PEUC benefits are not.	<p>Separate permanent federal/state program. “Triggers on” when insured unemployment rate (IUR) is 120% higher than comparable 13 week period in the last 2 years and is greater than 5%. MA triggered on May 3rd with a week ending date of May 9, 2020. Triggers off when IUR no longer meets above requirements.</p> <p>If on PUA having exhausted PEUC, but go back to UI Online to get EB.</p>	<p>Available to everyone getting a state or federal UI check during 8/1/2020 to 12/26/2020 if the worker’s initial monetary eligibility is for \$100 or more counting dependency allowance.</p> <p>Program will terminate immediately if other legislation (e.g., FPUC extension) is enacted.</p>
How will benefits be distributed?	Through Dept. of Unemployment Assistance either at same time as regular check or separately through UI Online and PUA.	Through Dept. of Unemployment Assistance via UI Online. For those exhausting UI, automatically extended. For those whose benefit year ended, will need to apply for regular UI first. For those who started PUA after exhausting UI, will need to stop PUA and apply for PEUC through UI Online.	Through Dept. of Unemployment Assistance via FAST on-line portal available at www.mass.gov/pua .	Through Dept. of Unemployment Assistance via UI Online.	Presumably same as FPUC (although as \$\$ is from FEMA, requires separate accounting).

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)
Relationship w/ other paid benefits	Cannot get both paid family or other paid leave and UI for same time period (unless reduced amount). Receipt of needs-based benefits does not affect UI check.	Cannot get both paid family leave or other paid leave and UI for same time period (unless reduced amount). Receipt of needs-based benefits does not affect UI check.	Cannot get both paid family leave or other paid leave and UI for same time period (unless reduced amount). When PEUC available, must get PEUC first. Receipt of needs-based benefits does not affect UI check.	Same criteria of other programs. Heightened work search requirements under EB may be modified or suspended in response to pandemic without amending state law.	Probably same as FPUC but not spelled out.
Waiver of (non-fraud no fault overpayments)	Yes, overpayment can be waived if no-fault and “against equity & good conscience.” State can add its own criteria (in MA – “defeat the purposes of benefits.”) However, even if 100% of check is intercepted for an overpayment offset, still entitled to \$600.	Yes, overpayment can be waived if no-fault and “against equity and good conscience.”	No waiver of overpayment.	Yes.	Not spelled out.

	Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)
Offsets from UI benefits?	May be used to offset overpayments in other state and federal UI programs for up to 3 years. However, cannot offset more than 50% of FPUC for state overpayments, but state can choose to offset less.	Can be used to offset overpayment of other state or federal UI benefits up to 50% of UI check.	May use other federal UI payments to recover PUA overpayment.	Cannot find guidance on this.	Other than payments for tax withholding, offsets including for child support payments are not permitted.

 Federal Pandemic Unemployment Compensation (FPUC)	Pandemic Emergency Unemployment Compensation (PEUC)	Pandemic Unemployment Assistance (PUA)	Extended Benefits (EB)	Lost Wages Assistance (LWA)	
Notes	<p>Does not count as income for purposes of Medicaid or CHIP eligibility or public housing, but may count for SNAP (food stamps).</p>	<p>State must identify individuals potentially eligible for PEUC and provide appropriate written notification of potential PEUC entitlement, including filing instructions. This includes notifying individuals who established a benefit year ending after July 5, 2019 (i.e., filed a claim after July 6, 2018) and who exhausted all benefits on this or a more recent benefit year.</p>	<p>Initial application creates “presumptive eligibility” requiring proof later. For individuals not getting a regular paycheck, required proof of income can include W-2s, 1099s, tax returns, pay stubs, bank receipts and billing notices.</p> <p>Advocacy tip: If denied or blocked from completing PUA application, apply for regular UI and if denied, the denial will then permit a successful PUA application.</p>	<p>Feds do not pay EB costs for state and local government entities.</p> <p>State is not required to charge EB to experience rated employers.</p> <p>Reimbursable employers are eligible for reimbursement of 50% of EB cost for any week paid after 3/13/2020 and before 12/26/2020.</p>	<p>MA Grant Application approved 8/21/2020.</p> <p>Self-certification and no documentation required. Like PEUC and EB, most recent job separation does not need to be directly related to COVID-19.</p> <p>Administered by FEMA, therefore, it does not affect SNAP.</p> <p>MA effort underway to increase WBA to \$100 to access LWA.</p>
Sources of Federal Law: Unemp. Ins. Program Letter (UIPL)	<p>CARES, sec. 2104; UIPL 15-20; UIPL 15-20, Change 1; UIPL 15-20, Change 2.</p>	<p>CARES, sec. 2107; UIPL 14-20; UIPL 17-20; UIPL 17-20, Change 1.</p>	<p>CARES, sec. 2102; UIPL 16-20; UIPL 16-20, Change 1; Change 2; Change 3; 20 CFR 625; Minimum amount: UIPL 3-20.</p>	<p>Families First Coronavirus Response Act, sec. 4102, 4105; 26 USC 3304 note; 20 CFR Part 615; UIPL 24-20; UIPL 16-11; UIPL 18-20; UIPL 13-20, Change 1; UIPL 12-09, Change 1.</p>	<p>Robert T. Stafford Disaster Relief, 42 USC 5121 et seq.; Pres. Memo (8/8/2020); FEMA Website: https://www.fema.gov/disasters/coronaviruses/supplemental-payments-lost-wages</p>

Sources of State Law:

Mass. General Laws chapter 151A. The Extended Benefits (EB) program is at G.L. c. 151A, sec. 30A and 430 CMR 4.01(7).

430 CMR 22.00: COVID 19 Emergency Regulations (3/16/2020); updated (8/5/2020).

Dept. of Unemployment Assistance (DUA) UI Policy and Performance Interoffice Memorandum (UIPP) 2020.05 (3/13/20); UIPP 2020.06 (3/18/20); UIPP 2020.07 (4/7/20); UIPP 2020.10 (8/6/2020) (NEW POLICY AVAILABLE SOON).

DUA landing page: www.mass.gov/unemployment

For more information on UI policies, see www.masslegalservices.org that provides access to DUA Adjudication Handbook (policies for regular UI).

For more information about eligibility for MA regular UI plus all these programs, see www.masslegalservices.org/covid-19-and-ui.

Federal sources for state flexibility of regular UI: UIPL 10-20; UIPL 13-20; UIPL 13-20, Change 1; waiting week waiver, UIPL 20-20; improving UI access, UIPL 2-16.

COVID-19 Related Reasons for Regular UI & PUA:

- 1) you were diagnosed with COVID-19 or have symptoms
- 2) a member of your household was diagnosed with COVID-19
- 3) you are caring for a family or household member who tested positive or was diagnosed with COVID-19
- 4) you cannot work because you have been advised by your employer, government order, or health care professional to self-quarantine
- 5) you were laid off, quit, or your place of work closed or reduced your hours due to COVID-19
- 6) you need to care for individual due to age, medical condition or other infirmity and no alternative care is available.

Additional COVID-19 Reasons for Regular UI:

- 1) You have a “reasonable belief” that because of COVID-19, going to work be a substantial risk to yourself, a household or family member (e.g., age or underlying medical condition).
- 2) Even though in-person school is available for your child, you have a reasonable belief that in-person school could harm your child, yourself, or a member of your household or family.

Additional COVID-19 Reasons for PUA:

- 1) A child or other person you are the main caregiver for cannot attend school or another facility as a result of COVID-19 (if school is fully or partially closed for in-person teaching).
- 2) You are self-employed or an independent contractor and COVID-19 has severely limited your ability to perform your normal work
- 3) You do not have a recent history of full-time work and you were either a) scheduled to start a new job with an employer but the job offer was withdrawn because of COVID-19, or b) you became the major support for a household because the household head died as a result of COVID-19.

Additional categories of workers eligible for PUA:

- A. Individuals who have W2 earnings but not enough to be monetarily eligible for regular UI (less than \$5,100 in W2 earnings in prior year)
- B. Individuals who have been denied regular UI and have a COVID-19/PUA reason for being out of work.
- C. Independent contractors, gig workers, Americorps, Peace Corps whose work has been eliminated or substantially reduced due to COVID.
- D. Clergy or religious workers who lost work due to COVID; full-time college or high school students who lost part-time job, & other part-time workers who are all categorically ineligible for regular UI. Note: if these workers have \$5,100 or more in W2 wages, they must apply for regular UI first, get denied, and then apply for PUA.

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