

Maryland Essential Workers' Protection Act
(House Bill 581, Chapter 736 of the Laws of 2021)
Frequently Asked Questions

What is the Maryland Essential Workers' Protection Act and when did it become effective?

The Maryland Essential Workers' Protection Act ("MEWPA" or "Act") was enacted as an emergency bill and became effective under Article II, Section 17(c) of the Maryland Constitution on May 30, 2021. The Act imposes certain requirements on essential employers during an emergency. The Act applies prospectively and does not require an essential employer to pay an essential worker for leave taken before the effective date of the bill.

When does the MEWPA apply?

The MEWPA benefits and protections apply only during an "emergency" which is defined as a catastrophic health emergency as defined under Section 14-3A-01 of the *Public Safety Article* that is the subject of an executive proclamation under Section 14-03A-02 of the *Public Safety Article* and is related to a communicable disease.

Who is an essential employer covered by the MEWPA?

An essential employer is a person that employs an essential worker. The MEWPA applies to essential employers in industries and sectors identified by the Governor or a federal or State agency as critical to remaining in operation during an emergency.

Who is an essential worker under the MEWPA?

An essential worker is an individual who performs a duty or work responsibility during an emergency that cannot be performed remotely or is required to be completed at the worksite and provides services that their essential employer determines to be essential or critical to its operations.

What is required of an essential employer during an emergency?

During an emergency, an employer must (1) provide working conditions that comply with the applicable safety standards adopted by a federal or State agency; (2) subject to availability, provide necessary amounts of safety equipment recommended for usage during the emergency to essential workers at no cost; (3) adopt, maintain and post written protocols to ensure an essential worker's access to information regarding the applicable safety standards in effect during the emergency; and (4) provide or implement any other measures or requirements set by the Governor or a federal or State agency to ensure that general health and safety of essential workers.

What are the procedures and testing for mitigating communicable disease transmission?

The MEWPA requires that during an emergency if any worker at the worksite contracts the communicable disease that is the subject of the emergency, the essential employer is required to take certain steps to minimize the risk of transmission including informing essential workers

that they may have been exposed. The essential employer is required to pay for testing if the essential workers' health insurance or other benefits do not cover the cost of testing unless the essential worker is able to obtain testing free of charge. A positive test result is required to be reported to the Maryland Department of Health.

When is an essential employer obligated to provide paid public health emergency leave?

The law requires that funding be provided by the federal or State government in order for an essential employer to be required to provide paid public health emergency leave. Funding occurs under the MEWPA when the Governor dedicates funding for paid public health emergency leave through the State budget process. An employer is required to provide the paid public health emergency leave beginning on the date the funding is made available to the essential employer.

Does funding through a federal or State tax credit for paid leave trigger an essential employer's obligation to provide paid public health emergency leave?

No. Funding must be dedicated through the State budget process.

If the prerequisites to the MEWPA are satisfied (emergency declared, employer designated as essential employer, essential employer designates position as critical to operations, and funding is allocated), is an essential employee entitled to paid public health emergency leave? Essential employees are eligible for paid public health leave in certain circumstances. An essential employer can require documentation as provided for in the law, and set certain rules related to improper usage. The law does not prohibit an essential employer from providing additional public health emergency paid leave or other types of leave.

Can an essential worker be compensated for unused public health emergency leave when the employee leaves employment?

The law does not require an essential employer to compensate an essential worker for unused public health emergency leave.

Does MEWPA have a prohibition on misclassification of essential workers?

Yes. The law prohibits an essential employer from knowingly misclassifying an essential worker as an independent contractor to avoid paying an essential worker any benefits due during an emergency under the MEWPA.

What are an essential worker's rights if the worker believes the essential employer has violated the Act?

If an essential worker believes that an employer has violated those provisions of the Act governing the use of public health emergency leave, the essential worker may file a complaint with the Commissioner of Labor and Industry.

What remedies are available to an essential worker who files a complaint with the Commissioner?

Upon receipt of a complaint, the Commissioner will conduct an investigation and attempt to resolve the matter through mediation. If the Commissioner determines that the Act has been violated and is unable to resolve the matter through mediation, the Commissioner may issue an order requiring the payment of the value of public health emergency leave and may assess a civil penalty.

What if an essential worker is asked to perform a task that the worker reasonably believes will subject the worker to a risk of serious injury or death and the essential worker has no reasonable alternative?

Under certain circumstances, an essential worker may refuse to perform a task that the worker reasonably believes would subject the worker to serious injury or death and the essential worker has no other reasonable alternative. An essential employer cannot discharge or otherwise discriminate against an essential worker who refuses to perform a task under those circumstances.