



March 19th, 2020

Updated COVID-19 Announcements:

The Families First Coronavirus Response Act has now been signed by the President. There are two provisions providing paid leave to employees who are forced to miss work because of COVID-19.

EFFECTIVE DATE – Begins April 2, 2020.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Expanded Coverage and Eligibility – This takes current law and amends it temporarily.

An individual may take up to 12 weeks of job protected leave to allow an employee, who cannot work or telework, to care for their child under age 18 if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency. This is the ONLY qualifying need for Emergency FMLA.

- This changes coverage typically for 500 and fewer to 50 or more employees.
- It lowers the eligibility requirement for an employee that has worked for their employer for at least 30 days prior to the designated leave which allows them to participate in this leave.
- Healthcare providers and emergency responders are excluded from the leave.
- Businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business.

PAID LEAVE:

FULL-TIME EMPLOYEES – The first 10 days (not 14) may be UNPAID. During the 10-day period, an employee may elect to substitute any accrued paid leave such as vacation or sick leave, to cover some or all of the 10-day unpaid period. After that 10-day period, the employer generally must pay full time employees at two-thirds the employee's regular rate for the number of hours the employee would be typically scheduled. This limits this pay entitlement to \$200 per day and \$10,000 in total PER employee.

PART TIME EMPLOYEES – Employees who work part time are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking the Emergency FMLA.

Employees who have worked less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours that they would normally be scheduled to work.

RETURNING TO WORK

Employers with 25 or more employees will have the same obligation as under the old FMLA to return any employee who has taken Emergency FMLA to the same or equivalent position upon their return. Employers with LESS THAN 25 employees are generally excluded if their position doesn't exist due to the economic downturn caused by a public health emergency during the period of Emergency FMLA. It is expected that the Employer make efforts to return the employee to work for up to a year following the employee's leave.

EMERGENCY PAID SICK LEAVE ACT

Reasons for Paid Sick Leave:

- Subject to a federal, state or local quarantine or isolation order related to COVID-19
- Advised by a health care provider to self-quarantine due to COVID-19
- Experiencing COVID-19 symptoms and seeking medical diagnosis
- Caring for an individual (doesn't have to be limited to just family members) subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns
- Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency OR
- Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor (we don't know what this means either)

Who is Eligible?

- Employers with fewer than 500 employees to provide full-time employees with 80 hours of paid sick leave at the employee's regular rate (or two-thirds the employee's regular rate to care for qualifying reasons 4,5 or 6 above. The change here is an exception for employers who are healthcare providers or emergency responders at their election.

Cap on paid sick leave wages:

- This change places limits on paid sick leave. Paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.

Carryover and Interaction with Other Paid Leave

- This paid sick leave will not carry over to the following year and may be in addition to any paid sick leave currently provided by employers.

Calculating Rate of Pay

- See the section above that discusses this.

Effective Date – April 2, 2020

TAX CREDITS FOR PAID SICK AND PAID FAMILY MEDICAL LEAVE

Refundable tax credit for employers who are required to provide the Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave described earlier. These credits are allowed against the employer portion of Social Security taxes. While this limits application of the tax credit, employers will be reimbursed if their costs for qualified sick leave exceed the taxes they would owe.

Employers are entitled to a refundable tax credit equal to 100% of the qualified sick leave wages paid by employers for each calendar quarter in adherence with Emergency Paid Sick Leave Act. The qualified sick leave wages are capped at \$511 per day (\$200 per day if the leave is for caring for a family member or child) for up to 10 days per employee in each calendar quarter.

Employers are entitled to a refundable tax credit in 100% of the qualified family leave wages paid by employers for each calendar quarter. The qualified family leave wages are capped at \$200 per day for each individual up to \$10,000 total per calendar quarter. Only those employers who are required to offer Emergency FMLA and Emergency Paid Sick Leave may receive these credits.

***NOTE: Employers with fewer than 500 employees will not only need to adhere to the above leave requirements within 15 days, but such employers will also be required to provide notice to their employees through postings and policies.**

Editorial Comments:

If you have already placed your employees on unemployment, this will not apply to you. They are on unemployment and when you are economically able to bring them back to work, they still have their same benefits of sick and vacation that they had when there were placed on unemployment. This type of unemployment is for an interruption of work. This is what most employers have taken advantage of and seems to be economically most effective from what we know. Could the credits end up working better in the long run? We can only make decisions on the facts in evidence currently and this has been what we advised and continue advising. Many states are waiving waiting weeks and trying to make the process more expedient. We have heard that some sites have crashed because of the level of activity.

- **There will be no interest or low interest loans available from the government from what has been discussed but there are no details yet.**
- **It will take time to recover economically – we are aware of that, but it can be recovered by working differently and harder once this has all been resolved. Use your down time to make plans or determine improvements that could be done on the business side that you possibly didn't have connected time to deal with previously.**
- **Interest rates are lower and may continue downwards. Consider debt consolidation or refinancing your mortgage.**
- **The government has been talking about a lot of things to help individuals and businesses alike, so stay tuned. We will try to bring you information as it becomes available.**
- **Owners who are on payroll should consider taking distributions/dividends rather than paychecks for the interim so that you may save on payroll taxes at this point. Taxes can be made up later.**