

# COVID-19 Update

## A Guide for Employers

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Webinar  
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# Overview

- New FMLA Leave
- New Paid Sick Leave
- ADA inquiries
- Teleworking
- Wage and Hour considerations
- Q and A

# Families First Coronavirus Response Act

- Signed by President on March 18, 2020
- Several Major Initiatives:
  - Economic Stimulus Plan
  - Tax Credits
- Emergency Family and Medical Leave Act
- Emergency Paid Sick Leave Act
- Go into effect no later than April 2, 2020
- Expire December 31, 2020

# Emergency Family and Medical Leave Act (EFMLA)

- Employer: Any private employer with less than 500 employees
- Employee: Anyone employed for at least 30 calendar days.
- Expanded FMLA leave **ONLY** applies to an employee who is unable to work (or telework) due to a need for leave to care for a child under 18 years of age if the child's school or place of care has been closed, or the child's ordinary care provider is unavailable, due to a public health emergency.
- Independent of regular FMLA

# Calculating Leave under EFMLA

- **First 10 days** – unpaid
  - EE may substitute other leave; ER may not require
- **Remainder** – **PAID LEAVE**
  - **2/3** of EE's regular rate of pay for number of hours normally
  - EE with a variable schedule – same rate but use a number equal to average number of hours worked over 6-month period
- **CAP: \$200/day and \$10,000 aggregate**

# Job Restoration under EFMLA

- Like that in regular FMLA, unless:
  - ER has less than 25 employees and
  - The position held by the employee no longer exists due to economic conditions or other changes in the operating conditions of the employer that affect employment and are caused by the public health emergency during the period of leave;
  - the employer makes reasonable efforts to restore the employee to an equivalent position; and
  - within a year after the public health emergency concludes, the employer makes reasonable efforts to contact the employee about an equivalent position that has become available.

# Emergency Paid Sick Leave

- Employer: Any private employer with less than 500 employees
- Employee: Anyone employed (even one day)

# Qualifying Reasons and Benefits

EE is unable to work or telework because the employee is:

1. is subject to a Federal, State, or local **quarantine or isolation order** related to COVID-19;
2. has been advised by a **health care provider to self-quarantine** related to COVID-19;
3. is **experiencing COVID-19 symptoms** and is **seeking a medical diagnosis**;

# Qualifying Reasons and Benefits

EE is unable to work or telework because the employee is:

4. is **caring for an individual** subject to an order described in (1) or self-quarantine as described in (2);
5. is **caring for a child whose school or place of care is closed** (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

# How much is the paid leave?

- **80 hours of paid sick leave at the employee's regular rate** (or  $\frac{2}{3}$  the employee's regular rate to care for qualifying reasons 4, 5, or 6 listed previously).
- 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.

# To Recap

**IF** you have :

- a full-time employee,
- who has worked for more than 30 days, and
- cannot telework, and
- needs time off because a child's school or daycare is closed and care is otherwise unavailable:

**THEN:**

The employee shall be paid:

- at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher,
- up to \$200 per day and \$12,000 in the aggregate (over a 12-week period—two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave) and
- Job restoration

# Other Wage & Hour Issues

## **HOURLY (i.e., NON-EXEMPT) EMPLOYEES**

- Paid **only for hours worked**. Employer can choose to pay even during furloughs/work stoppage, but is not required to.

## **EXEMPT (i.e., management) EMPLOYEES**

- Paid on a salary basis (i.e., x per week). IF such an employee performs any work during a designated seven-day workweek, employee must be paid the entire salary.

# DOL Resources

<https://www.dol.gov/agencies/whd/pandemic>

- Fact Sheets
- Questions/Answers for Employers and Employees
- Posters
- Frequently Asked Questions
- Field Assistance Bulletins

# ADA Concerns

- Definition of “Medical Inquiry”
  - Taking an employee’s temperature
  - Interview and question about risk factors
  - Educate about good hygiene, social distancing
- Temperature Screening:
  - 1) establish a consistent process for conducting such checks;
  - 2) mitigate the risk that someone excluded by a temperature check will bring a claim; and
  - 3) assess any other considerations that should weigh into the decision, such as public health.

# QUESTIONS???

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