

## PAID LEAVE FOR COVID-19 RELATED REASONS

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act (H.R. 6201; P.L. 116-127). This Act amended and/or added various federal laws due to the COVID-19 pandemic. This document will cover the provisions relating to paid leave for employees for reasons related directly to the public health emergency relating to COVID-19. These provisions are effective no later than 15 days after the Act was signed by the President, which would be April 2, 2020.

With respect to paid leave, the Act added a new law and amended the Family and Medical Leave Act (FMLA). The new law is entitled "Emergency Paid Leave Act" (EPLA) and the amendment to the FMLA is entitled "Emergency Family and Medical Leave Expansion Act" (EFMLEA). These are two separate Acts addressing only the current COVID-19 national public health emergency with respect to employees or their family members who are affected by the national emergency. Both Acts are effective until December 31, 2020.

### **The Emergency Paid Leave Act:**

This Act applies to **all** employees. It requires an employer to pay up to two weeks (80 hours) of leave to a full-time employee who is **unable to work or telework** for one of the following reasons:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).

(5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.

(6) The employee is 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. [*This reason is likely not going to apply.*]

A part-time employee's pay for the leave is based upon the amount of time the employee would normally work. The Act provides a calculation to determine the hours for part time employees for compensation purposes.

The Act requires the compensation for the paid leave be limited to the following amount:

- For reasons 1,2, or 3: Must be at least the greater of the employee's regular rate of pay or minimum wage. The compensation is capped at \$511 per day of the leave and no more than \$5110 for the two-week leave.
- For reasons 4,5, or 6: Must be two-thirds of the greater of the employee's regular rate of pay or minimum wage. The compensation is capped at \$200 per day of the leave and no more than \$2000 for the two-week leave.

Reasons 1,2, and 3 relate to the employee being affected by COVID-19 and reasons 4,5, and 6 relate to family members being affected by COVID-19 and require the care of the employee, which is why the compensation is lower for those reasons.

The employee **must be unable to work or work from home** due to one of the above reasons. Thus, if the employee is able to work from home, the employee is not entitled to the paid leave.

Under this Act, the employer **cannot** require an employee to take any paid leave accumulated by the employee. This is basically a free two weeks of paid leave required by the federal government.

### **The Emergency Family and Medical Leave Act:**

This Act amends the FMLA to add a section that provides an additional reason for FMLA leave and all the requirements for this additional leave are contained in the added section and expires on December 31, 2020. The requirements of this Act are in addition to and separate from the requirements discussed above relating to the Emergency Paid Sick Leave Act.

The section added to the FMLA is section 110 and applies to employees who have worked for the employer for at least 30 calendar days. The employer is required to provide leave to the employee when the employee is **unable to work or telework** due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency. An employee would be entitled to the regular 12 weeks of FMLA leave for this reason.

The Act requires the first 10 days of the leave to be unpaid, but an employee may elect to use accumulated paid leave for these days. The remainder 10 weeks of the FMLA leave must be paid. The compensation for this portion of the leave is two-thirds of the employee's regular rate of pay but is capped at \$200 per day and

\$10,000 for the 10 weeks or \$1000 per week of the leave. The employee is required to give notice of the leave to the employer as soon as the employee can do so.

The United States Department of Labor, Wage and Hour Division is responsible for the enforcement of both Acts. It is required to provide a notice for the Emergency Paid Sick Leave Act by March 25, 2020, and regulations for both Acts by April 2020.

**Summary**

Reading the two Acts together, all employees who cannot work or work from home are entitled to two weeks of leave for a COVID-19 related reason whether for the employee or for a child or an individual who needs the care of the employee.

The employee may be entitled to additional leave under the FMLA for one of its qualifying leaves including the need to care for a child whose school or child care provider is closed due to a COVID-19 related emergency. The later leave applies to an employee who has worked for the employer for at least 30 calendar days.

Following is a table summarizing the requirements of each Act:

|   | <b>Emergency Paid Sick Leave Act</b>  | <b>Emergency Family and Medical Expansion Leave</b>  |
|---|---|--|
| <b>Eligible Employee</b>  | All Full-time and Part-time Employees   | An employee who has been employed for 30 calendar days   |
| <b>Reasons for Leave (Employee is unable to work or telework)</b> | (1) The employee is subject to a quarantine or isolation order related to COVID-19.<br>(2) The employee has been self-quarantined by a health care provider related to COVID-19.<br>(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.<br>(4) The employee is caring for an individual who is subject to an order described in (1) or has been advised as in (2).<br>(5) The employee is caring for a child if the school or place of care of the child is closed, or the | To care for child under 18 years of age if the child’s school, place of care is closed, or the child’s child care provider is unavailable, due to a public health emergency. |

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|                          | <p>child care provider of such child is unavailable, due to COVID-19 precautions.</p> <p>(6) The employee is experiencing any other similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.</p> |  |
| <b>Duration of Leave</b> | 80 Hours/Two weeks (FT)<br>Regularly Scheduled Hours (PT)  | 12 Weeks   |
| <b>Compensation</b>      | <p>Reasons 1, 2, and 3:<br/>Regular rate of pay not to exceed \$511/day or \$5110 for the leave period</p> <p>Reasons 4, 5, and 6:<br/>2/3 Regular rate of pay not to exceed \$200/day or \$2000 for the leave period</p>  | <p>First 10 days of leave is unpaid (Employee can use accumulated paid days)</p> <p>Next 10 weeks – 2/3 of regular rate of pay not to exceed \$200/day and \$10,000 for the leave period</p> |