



Medical Leave Requirements Under Families First Coronavirus Act

By Erin K. Tenner, Esq.

Continued

Right to Use Vacation and Sick Pay: The new law entitles employees to use vacation and sick pay for the first 10 days of leave (but employees cannot be required to use sick or vacation pay) or allows the employer to provide unpaid leave for the first 10 days of leave.

Paid Leave Requirements: After the first 10 days of leave, the leave must be paid at the rate of two-thirds of an employee's regular rate of pay as determined under the Fair Labor Standards Act, and must be calculated based on the number of hours the employee would normally be scheduled to work with a maximum of \$200 per day and a total of \$10,000 in the aggregate, including all FMLA paid leave taken over past 12 months even if not under EFMLEA.

Notice of Leave: In cases where notice of leave is practicable, the employee must provide such notice as is practicable. Employees can give notice as late as one day after the first day the employee is out. Notice does not need to be written. If information needed for notice is not included, the employer must tell the employee what information is missing from notice and give the employee an opportunity to provide it.

Unpaid Leave: The first 10 days can be unpaid, but the employee may take sick time or vacation time to get paid during that time.

Paid Leave: The employer must provide paid leave after the first 10 days for each employee entitled to leave, but there is a cap on the amount of the paid leave.

Rate of Pay for Paid Leave: The rate of pay is not less than two-thirds of an employee's regular rate of pay.

Hours Required to be Paid: The number of hours the employee would otherwise be normally scheduled to work.

Varied Work Schedules: The employer is required to pay for a number of hours equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes such leave, including the hours for which the employee took leave of any type and if the employee did not work over such period, the reasonable

expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work. If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Effective Dates: This amended version of the Act is effective until October 1, 2020, (when the Act is amended again by an amendment that was passed prior to the Coronavirus pandemic). On October 1, 2020, this law is again amended. This article will only address the amendments that are in effect now until October 1, 2020. Employers have a grace period until May 1, 2020 to comply. The compliance requirement is retroactive, so if you made a mistake before, fix it by May 1.

THE EMERGENCY PAID SICK LEAVE ACT (“EPSLA”)

Length of Employment to Qualify: All employees qualify regardless of length of employment unless they were rehired after being laid off on or after March 1, 2020, in which case they are eligible if they had worked 30 of the last 60 calendar days prior to layoff and were rehired.

Length of Sick Leave: Up to two weeks of paid sick leave. It provides that an employer shall provide to each employee employed by the employer paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (applies to stay at home orders if employee can’t work because of order, but not if business was closed due to order).
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.

Duration of Paid Sick Leave: The duration of the paid sick leave is determined as follows:

1. Full time employees: 80 hours.

2. Part time employees: The average number of hours worked by the employee over a two-week period.

Maximum Pay and Maximum Tax Credit:

\$511 per day and \$5,110 in the aggregate for each employee, when the employee is taking leave due to (EPSLA Section 5102(a)(1), (2), or (3)):

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 (applies to stay at home orders if employee can't work because of order but not if business was closed due to order);
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
3. The employee is experiencing symptoms of COVID-1- and seeking a medical diagnosis.

\$200 per day and a total of \$2,000 maximum if leave is due to (EPSLA Section 5102(a)(4), (5) or (6)):

1. 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).
2. 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.
3. 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.

Priority of Sick Pay: An employee may use the paid sick time under this section before any other paid sick time is applied. Sick time ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time. Paid sick time under this law does not carry over from one year to the next.

Prohibited Acts:

1. Employers may not require employees to find their replacements as a condition of getting the sick time pay.
2. Employers may not require employees to use other paid sick time first, before the sick time provided by this law.
3. An employer may not discharge, discipline, or in any other manner discriminate against any employee who takes leave in accordance with this Act, or who has filed any complaint

or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding.

Enforcement: A violation of this Act shall be treated as a failure to pay minimum wage under the Fair Labor Standards Act. The penalty for each violation is not to exceed \$10,000 and can include imprisonment for up to six months, only if the employer has a prior conviction. In addition, employees can potentially collect their unpaid wages plus the same amount in liquidated damages for failure to pay minimum wage and or failure to pay overtime.

Posting Requirements: Posters required to be posted by employers under this section can be found at <https://www.dol.gov/agencies/whd/ffcra>

This article is not intended to be legal advice. Each situation varies and the laws in this area are fluid and may change or be affected by state laws. For example, the definition of “regular rate” is subject to interpretation under state law if more restrictive than federal law. Consult competent legal counsel to determine your obligations and the rights of your employees.

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