

FAMILIES FIRST CORONAVIRUS RESPONSE ACT APRIL 7, 2020

POSTER REQUIREMENT:

- Employers with fewer than 500 employees must post the FFCRA poster in their workplaces with other employment posters effective April 1, 2020.
- Employers should electronically send the poster to employees who are teleworking.
- Employers should NOT send the poster to employees who are laid off.

EMPLOYER SIZE:

To determine if the employer has fewer than 500 employees, at the time the leave is to be taken, count:

- Full-time and part-time employees within the U.S., District of Columbia, or any Territory or possession of the U.S.
- Employees on leave (i.e., FMLA, workers' compensation, short-term disability)
- Temporary employees who are jointly employed by employer and another employer
- Day laborers supplied by temporary agency

ELIGIBILITY:

- FFCRA is effective April 1, 2020; paid leave is not retroactive
- Employees are eligible for paid sick April 1, 2020 regardless of length of service.
- Employees are eligible for paid expanded family and medical leave after 30 calendar days of employment.
- Employees who are laid off or furloughed are not eligible for paid leave.
- Employees may use paid sick leave and expanded family and medical leave until December 31, 2020.

PAID SICK LEAVE

- Employees are eligible for up to 80 hours (two weeks equivalent) of paid sick leave if the employee is unable to work, **including telework**, for the following reasons:
 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 medical diagnosis
 4. is caring for an individual subject to an order described in (1) or self-quarantine in (2)
 5. is caring for his or her child whose school or place of care is closed (childcare provider is unavailable) due to COVID-19 related reason
 6. is experiencing any other substantially similar condition specified by the U.S. Dept. of HHS.
- Shelter-in-place or stay-at-home orders would qualify for reason #1 of paid sick leave **IF** the employee is unable to work (including telework) due to the order and the employer has work available. If the employer has no work available due to the order, the employee is not eligible for paid sick leave; employee would apply for unemployment.

- To be eligible for paid sick for reason #2, the employee must be directed by a health care provider to stay at home or self-quarantine because the health care provider believes the employee has COVID-19 or is vulnerable to COVID-19, and the employee cannot telework.
- To be eligible for paid sick leave for reason #3, the employee must be seeking a medical diagnosis, or the health care provider advises the employee to self-quarantine. If the employee tests positive, the employee may continue to take leave. The employee is not eligible if he/she is able to telework.
- Caring for an individual in reason #4 means that the individual is unable to care for him or herself and depends on the employee for care and the employee cannot telework. An individual is defined as immediate family member or someone who regularly resides in the employee's home. Also, someone that the employee has a relationship with that depends on his/her care.
- Reason #5 is for the employee's son or daughter who is under age 18 or son or daughter who is 18 or older and has a disability.
- Reason #5 childcare provider is childcare such as a nanny, au pairs, and babysitters. It also includes individuals who provide childcare at no cost, without a license on a regular basis such as grandparents, aunts, uncles, or neighbors.
- Reason #5 a place of care is a physical location includes day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.
- Reason #5 is for employees who need to care for their son or daughter and are not able to work or telework. Employees generally don't need leave if a co-parent, co-guardian, or the usual childcare provider is available to provide the care.
- Reason #6 The U.S. Department of Health and Human Services has not provided guidance.
- Employees who are being paid for workers' compensation, short-term disability, or unemployment compensation are not eligible for paid sick leave.
- Employees who are not able to telework may take paid sick leave intermittently for childcare #5 only if the employer agrees. Employees who are able to telework may take paid sick leave intermittently for any of the reasons if the employer agrees.

EXPANDED FAMILY AND MEDICAL LEAVE

- Employees may only use Expanded Family and Medical Leave due to no other childcare options available. Employees who continue to be sick with COVID-19 should use the legacy FMLA if eligible. They may be eligible for short-term disability insurance.

- Employees may only use a total of 12 weeks of FMLA and Expanded Family and Medical Leave in a 12-month period. If the employee has used 4 weeks of FMLA in January, the employee is eligible for 8 weeks of Expanded Family and Medical Leave.
- Employees may use Expanded Family and Medical Leave due to no other childcare options due to COVID-19 until they exhaust the 12 weeks or until December 31, 2020.
- An employee may use Expanded Family and Medical Leave if they telework and are not able to work due to childcare issues.
- The first two weeks of Expanded Family and Medical Leave is unpaid; however, the employee may use the two weeks of Paid Sick Leave during this unpaid two-week period.
- Benefits continue while the employee is on leave. Employers should continue to withhold benefit payments from the employee's paychecks as if the employee is actively working.

PAYMENT

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 medical diagnosis
 4. is caring for an individual subject to an order described in (1) or self-quarantine in (2)
 5. is caring for his or her child whose school or place of care is closed (childcare provider is unavailable) due to COVID-19 related reason
 6. is experiencing any other substantially similar condition specified by the U.S. Dept. of HHS.
- For reasons #1,2,3, employees are paid 100% of normal wages up to 80 hours; maximum \$511 daily and \$5110 total.
 - For reasons #4,6, employees are paid 2/3 normal wages up to 80 hours; maximum \$200 daily and \$2000 total.
 - For reason #5, employees are paid 2/3 normal pay for two weeks paid sick leave maximum \$200 daily and \$2000 total
 - For reason #5, employees are paid 2/3 normal pay for ten weeks expanded family and medical leave maximum \$200 daily and \$10,000 total

REIMBURSEMENT

- Employers will receive reimbursement for the paid leave and related health plan expenses from their payroll tax liability when they file their taxes, this includes employee and employer share of the payroll taxes.
- Employers will not be eligible for reimbursement for anything extra paid to employees.
- The employer may file IRS Form 7200 for advanced credit.
- This credit applies to all private sector employers, non-profit employers and some public sector employers with fewer than 500 employees.

DOCUMENTATION

- An employee must provide his or her employer documentation in support of Paid Sick Leave or Expanded Family and Medical Leave.
- The signed statement should include (sample attached):
 - Employee's name
 - The date(s) for which leave is requested
 - The COVID-19 qualifying reason for leave
 - A statement representing the employee is unable to work or telework because of COVID-19 qualifying reason
 - Additional documentation depending on reason
 - Government entity which issued the quarantine or isolation
 - Name of health care provider advising on self-quarantine and reason
 - Name and ages of child(ren) needing care, school or place of care, and statement that there is no other suitable person to care for the child(ren)

EMPLOYERS UNDER 50

- Employers with fewer than 50 employees, including non-profit organizations may be exempt from providing Paid Sick Leave and Expanded Family and Medical Leave and for childcare due to school or place of care closures or childcare provider unavailability for COVID-19. An authorized officer of the business has determined:
 - The expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity
 - The absence of the employee requesting leave would entail a substantial risk to the business
 - There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed to perform services
- The employer must comply with the other reasons for Paid Sick Leave.
- The employer is not required to provide legacy FMLA.

HEALTH CARE PROVIDERS EXCLUDED

- The DOL has identified the following employers who MAY be exempted from the Paid Sick Leave or Expanded Family and Medical Leave: anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, employer, or entity. This also includes any individual employed by an entity that contracts with any of the above institutions.

EMERGENCY RESPONDERS

- The DOL has identified the following employees who MAY be exempted from Paid Sick Leave or Expanded Family and Medical Leave: military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, 911 operators, emergency medical technicians, paramedics, emergency management personnel, public works personnel.

UNEMPLOYMENT

- Employees who are laid off or furloughed are not eligible for Paid Sick Leave or Expanded Family and Medical Leave.
- Employees may use PTO during a layoff, but it may impact the amount of unemployment compensation. Employees are required to report all wages earned while on layoff.
- Eligibility and amount of benefit for unemployment or partial unemployment is determined once an employee files a claim.

MISCELLANEOUS

- If an employee is infected with COVID-19 in the workplace, it could be a workers' compensation case.
- What if our business is permitted to be open, but employees are fearful to come to work? Have a conversation with the employee to understand the fear. If the employee is high risk, and a health care provider advises to self-quarantine, the employee may qualify for up to 80 hours paid sick leave. If there is no medical condition, but the employee is fearful because of the news, the employee can take PTO or take a personal leave of absence.

Please be advised that any and all information, comments, analysis, and/or recommendations set forth above relative to the possible impact of COVID-19 on potential insurance coverage or other policy implications are intended solely for informational purposes and should not be relied upon as legal advice. As an insurance broker, we have no authority to make coverage decisions as that ability rests solely with the issuing carrier. Therefore, all claims should be submitted to the carrier for evaluation. The positions expressed herein are opinions only and are not to be construed as any form of guarantee or warranty. Finally, given the extremely dynamic and rapidly evolving COVID-19 situation, comments above do not take into account any applicable pending or future legislation introduced with the intent to override, alter or amend current policy language.