

PUBLIC HEALTH EMERGENCY - Coronavirus Planning

Employment Leave and Compensation Alternatives

03 20 2020

I	<u>Types of available voluntary leave</u>	<u>timeframe</u>	<u>Covered employer</u>
	Traditional Family and Medical Leave Employer-provided sick leave Employer-provided paid time off including vacation Emergency Family and Medical Leave Emergency Paid Sick Leave	ongoing per employer policy per employer policy 04 02 2020 - 12 31 2020 04 02 2020 - 12 31 2020	Government/nonprofit and private w/50+ employees Government/nonprofit and private w/fewer than 500 employees
II	<u>Types of involuntary leave</u>		
	Furlough Layoff	temporary unpaid unrestricted but subject to recall rights	per employer policy unless governed by collective bargaining agreement per employer policy unless governed by collective bargaining agreement
III	<u>Compensated leave</u>		
	Employer-provided sick leave Employer-provided paid time off including vacation Emergency Family and Medical Leave Emergency Paid Sick Leave		
IV	<u>Post-termination compensation</u>		
	Unemployment compensation Severance COBRA	one week waiting period is waived not available when emergency leave wages are being paid extends wages post-termination; delays unemployment benefit but does not diminish amount of award extends group health insurance coverage up to 18 or 26 months; employee pays full premium	

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TYPE OF LEAVE

FMLA

effective period 04 02 2020 - 12 31 2020

Emergency Family and Medical Leave Expansion Act

Requirements

Leave entitlement

s. 102(a)(1)(F)	Entitlement to leave	1 An eligible employee is entitled to a total of 12 workweeks of leave 2 During the Emergency Family and Medical Leave Act effective period 3 Due to a qualifying need relating to a public health emergency Independent of prior use of traditional FMLA leave during the current 12 month administrative period.
s. 110(a)	Definitions	
	<i>Eligible employee</i>	Employee who has been employed (pt or ft) for at least 30 calendar days by the employer granting the leave. <i>Certain health care providers and emergency responders may be excluded by the employer.</i>
	<i>Employer</i>	Any government employer and an employer with fewer than 500 employees (pt or ft). Small employers with fewer than 50 employees (pt or ft) can be exempted if the viability of the business would be jeopardized.
	<i>Qualifying need relating to a public health emergency</i>	Employee cannot work or telework due to need for leave to care for the employee's child under age 18 if the child's school or care provider is closed due to a public health emergency.
	<i>Public health emergency</i>	Emergency relating to COVID19 as declared by a government authority.
	<i>Child care provider/school</i>	Provider who is regularly compensated for child care. School is an elementary or secondary school.
s. 110(b)	Leave compensation	
	Initial ten days	The first 10 days of leave, concurrent or intermittent, may be unpaid. Employee may elect to take accrued vacation, personal, medical or sick leave as a substitute for one or all days of unpaid leave in increments normally recognized by the employer. But see , Emergency Paid Sick Leave Act - up to two weeks of paid sick leave for self and family care available from day 1
	Subsequent days	Paid leave must be offered for each day after the first 10 days of leave.
	Rate of pay	a At least 2/3 the employee's regular rate of pay b Paid over the number of regularly scheduled hours for the employee
s. 110(b)	Variable schedule	Average number of hours the employee was scheduled per day over the prior six month period or the reasonably expected average hours worked at the date of hire.
s. 110(b)	Compensation limit	\$200 per day and \$10,000 in the aggregate.
s. 110(d)	Employment and benefits protection	Standard FMLA employment and benefits protection applies except
	<i>employer with fewer than 25 employees</i>	job and benefit protections do not apply to an employee of an employer with fewer than 25 employees if a the employee takes a public health (102(a)(1)(F)) FMLA leave b the employee's position was eliminated due to changes caused by the public health emergency during the leave c the employer makes a reasonable effort to restore the employee to the same position and benefits d if reasonable efforts fail, the employer tries to reinstate the employee for one year after (the earlier of) the need for leave concludes (e.g., school resumes) or one year after the 12 week leave period ends.
s. 3102 and s. 107	Employer prohibited acts	An employer may not discharge, discipline or discriminate against an employee who takes Emergency Family and Medical Leave or retaliate against an employee who files a complaint regarding the use of leave. Full FMLA remedies will apply including backpay, liquidated damages, costs and attorney's fees.
s. 7001	Private employer tax credit	A private employer will receive a payroll tax credit for 100 percent of the Emergency Family and Medical Leave wage paid in each calendar quarter. The employer will receive an additional payroll tax credit for the employer's group health plan expenses allocable to the qualified wages. The tax credit will be applied in the same quarter during which the Emergency Family and Medical Leave wage-related group health plan expenses are paid.

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TYPE OF LEAVE

Paid Sick Leave

effective period 04 02 2020 - 12 31 2020

Emergency Paid Sick Leave Act

Requirements

Leave entitlement

<p>s. 5102 Entitlement to leave</p>	<p>An employer shall provide to each employee (pt and ft) paid sick time when the employee is unable to work or telework because the employee is subject to a federal, state or local quarantine or isolation order related to Covid19 the employee has been advised by a health care provider to self-quarantine due to Covid19 the employee is experiencing Covid19 symptoms and is seeking a medical diagnosis the employee is caring for a person who is subject to a Covid19 quarantine the employee is caring for the employee's son or daughter whose school or daycare is closed due to Covid19 the employee is experiencing other conditions specified by federal administrative order. The employer of a health care provider or emergency responder can exclude those employees from this requirement.</p>
<p>s. 5110 Definitions <i>covered employer employee health care provider son or daughter</i></p>	<p>Any government employer and a private employer with fewer than 500 employees. Any individual employed by an employer. a physician or osteopath the employee's biological, adopted or foster child, stepchild, legal ward or child of the employee standing in loco parentis who is under age 18 or 18 and older but incapable of self-care because of a mental or physical disability</p>
<p>s. 5102(b) Duration of leave</p>	<p>Full-time employees - 80 hours Part-time employees - the number of hours the employee works on average over two weeks Leave hours do not carryover and will terminate at the start of the employee's next scheduled workshift.</p>
<p>s. 5110(5)(b) Leave compensation</p>	<p>a Emergency paid sick leave compensation is paid at the employee's regular rate of pay and not less than the highest minimum wage rate (federal, state or local) b Calculated over the number of hours the employee would normally be scheduled to work during the applicable two week period</p>
<p>s. 5110(5)c Variable schedule</p>	<p>Average number of hours the employee was scheduled per day over the prior six month period or the reasonably expected average hours worked as of the date of hire</p>
<p>s. 5110(5) Compensation limit</p>	<p>a \$511 per day and \$5,110 total for self care - employee is subject to a quarantine, employee has been advised to self-quarantine or employee has Covid19 symptoms and is seeking a medical diagnosis. b1 \$200 per day and \$2,000 total for care of others - employee is caring for an individual subject to quarantine or advised to self-quarantine, employee is caring for a son or daughter whose school or care facility is closed due to Covid 19, or employee is experiencing a condition federally approved for emergency sick leave. b2 Emergency paid sick leave for care of others is calculated and paid at two-thirds of the employee's regular rate of pay or highest applicable minimum wage (the greater).</p>
<p>s. 5102c Use of paid sick time</p>	<p>Paid sick time is immediately available for use by any employee regardless of the number of days of employment with the employer. The employee can use Emergency Paid Sick Leave first and is not required to exhaust other paid leave beforehand.</p>
<p>s. 5103 Notice required</p>	<p>Employers must post a notice of the Emergency Paid Sick Leave Act requirements in the location where employee notices are posted.</p>
<p>s. 5105 Employer prohibited acts</p>	<p>An employer may not discharge, discipline or discriminate against an employee who takes Emergency Paid Sick Leave or retaliate against an employee who files a complaint regarding the use of Emergency Paid Sick Leave. An employer who fails to provide Emergency Paid Sick Leave will violate the minimum wage requirement of the Fair Labor Standards Act (FLSA) All FLSA remedies and damages can be awarded against an employer who violates the Emergency Paid Sick Leave Act including back pay, penalties, injunctive relief and attorney's fees.</p>
<p>s. 7001 Private employer tax credit</p>	<p>A private employer will receive a payroll tax credit for 100 percent of the Emergency Paid Sick Leave paid in each calendar quarter. The employer will receive an additional payroll tax credit for the employer's group health plan expenses allocable to the qualified sick leave wages. The tax credit will be applied in the same quarter during which the sick leave wages and group health plan expenses are paid.</p>