

This is a summary of the provisions in the legislation enacted on Wednesday, March 18. We understand that this new law raises many questions about administration of these benefit plans. We are working quickly to operationalize these changes and will be providing regular updates to our customers and business partners.

Overview of the Emergency Paid Leave Act

For employers with fewer than 500 employees, the Act provides paid sick leave for Coronavirus (COVID-19)-related absences that are not covered under existing employer-provided paid sick leave programs.

Leave Reasons: The employer must provide employees with employer-paid sick time to the extent that employees are unable to work or telework due to a need for leave because:

- the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19;
- the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- the employee is caring for an individual who is subject to an isolation or quarantine or has been advised to self-quarantine;
- the employee is caring for a son or daughter due to closure of school or place of care, or the childcare provider is unavailable;
- or the employee is experiencing any other similar condition specified by the Secretary of Health and Human Services (HHS) in consultation with the Secretary of the Treasury and the Secretary of Labor.

Duration: The duration of benefits for full-time employees is 80 hours, and for part-time employees, it is the average number of hours worked over a regular two-week period. Paid leave under this provision would not carryover.

Benefit Amount: The amount of sick pay is subject to the following caps:

- \$511 per day and \$5,110 in the aggregate for an employee's own quarantine or isolation order, the employee's self-quarantine under advice of health care provider, or the employee is symptomatic and seeking medical diagnosis, and
- \$200 per day and \$2,000 in the aggregate for caring for an individual who is subject to a federal, state or local quarantine or isolation order; caring for a son or daughter of employee if school or place of care is closed or childcare provider is unavailable due to COVID-19 precautions; or employee is experiencing a similar condition specified by Secretary of HHS in consult with Secretary of Treasury and Secretary of Labor.

Notice Requirement: Employers will be required to post notice of the availability of paid sick leave in the workplace. The Department of Labor (DOL) will provide guidance on the contents of the notice within seven days from enactment.

Non-Retaliation Provisions: The new law includes provisions that make it unlawful for any employer to discharge, discipline, or discriminate against any employee for taking leave under the Act.

Exemption: The bill contains provisions that allow the DOL to exempt businesses with fewer than 50 employees if the imposition of leave requirements would jeopardize business viability.

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Exclusion from coverage: The legislation also grants the DOL power to exclude health care providers and emergency responders from the definition of Eligible Employee.

Employer tax credits: The legislation provides a refundable payroll tax credit to employers to cover 100 percent of the cost of wages.

Overview of the Emergency Family and Medical Leave (FML) Expansion Act

The following provisions of the Emergency FML Expansion Act will apply to employers with fewer than 500 employees.

The Act expands qualifying reasons for leave under the FMLA:

New leave reason: Closed schools/childcare providers: Employees who are unable to work or tele-work due to the need for leave to care for a son or daughter under the age of 18 if the school (elementary or secondary) or place of care has been closed or the childcare provider of such son or daughter is unavailable due to a public health emergency. A public health emergency is an emergency with respect to COVID-19 declared by a federal, state or local authority.

Modifies definition of Covered Employer: Emergency provisions apply to employers with fewer than 500 employees. The bill contains provisions that allow DOL to exempt businesses with fewer than 50 employees if the imposition of leave requirements would jeopardize business viability.

Expands definition of Eligible Employee: Emergency provisions apply to employees who have been employed for at least 30 calendar days by the employer.

Creates potential exclusion of health care providers and emergency responders: Legislation grants the DOL power to exclude health care providers and emergency responders from the definition of eligible employee.

Employer obligations for payment:

- **The first 10 days** of the 12-week FMLA leave period may be unpaid leave, during which time an employee may substitute (but may not be compelled to take) accrued vacation, personal, medical or sick leave.
- **After the first 10 days of leave**, the employer shall provide paid leave for each day at a rate not less than 2/3 of regular rate of pay for the number of hours the employee would normally be scheduled to work. For those employees with varying work schedules, the number of hours should be based upon the average number of hours scheduled over the previous six-month period or the reasonable expectation of hours at time of hire. In no event will the benefit amount for paid leave exceed \$200 per day and \$10,000 in the aggregate.

Notice: The employee should provide notice of the need for leave as soon as practicable.

Documentation: Documentation will be required and may include (1) recommendation from a public health official or health care provider that relevant employee has symptoms or should be quarantined; (2) documentation or evidence of exposure; or (3) notice of school or childcare provider closure.

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Job Restoration: Bill contains job restoration provisions. However, these provisions will not apply to employers with fewer than 25 employees if 1) the employee takes leave under this Act; 2) the position the employee held when the leave began does not exist due to economic conditions or other operational changes the employer had to make due to the public health emergency; 3) the employer makes reasonable efforts to restore the employee to similar position with equal benefits and pay; or 4) if reasonable efforts of the employer fail, the employer should make reasonable efforts during a one year period to contact the employee if an equivalent position becomes available.

Employers subject to Collective Bargaining Agreement (CBA): An employer who is signatory to a CBA may meet obligations under this Act by making contributions to a multi-employer fund plan or program.

Employer tax credits: The legislation provides a refundable payroll tax credit to employers to cover 100 percent of the cost of wages.

Expiration: Provisions expire on December 31, 2020.

Effective date: April 2, 2020 (15 days after March 18, 2020 enactment)