

COVID-19 & Employers

White Paper

FMLA and COVID-19

The U.S. Department of Labor (DOL) has issued Q&As on the federal Family and Medical Leave Act in the context of COVID-19 and other public health emergencies. Under the FMLA, covered employers must provide eligible employees with up to 12 weeks of job-protected, unpaid leave for specified family and medical reasons, which may include the flu where complications arise. Employees on FMLA leave are entitled to the continuation of group health insurance coverage under the same terms as before they took leave.

The Q&As include the following key points, among others:

- The FMLA provides leave for an employee's serious health condition or to care for a family member's serious health condition;
- The FMLA does not provide leave for avoiding the workplace out of fear of contracting a disease.
- The FMLA does not require leave for employees caring for dependents who have been dismissed from school or child care.
- Employers requiring a doctor's note should consider that healthcare resources may be overwhelmed during a pandemic, making it difficult for employees to obtain appointments or verification that they are no longer contagious.

Many of the DOL's answers encourage employers to consider flexible leave policies for their employees. The Q&As also address the application of the Americans with Disabilities Act to employee leave issues.

Emergency Coronavirus Bill:

During the early morning hours of March 14, 2020, the U.S. House of Representatives passed the "Families First Coronavirus Response Act," (H.R. 6201). The bill was passed by the Senate and signed by The President March 18, 2020. The bill contains many provisions that will impact employers. Below are summaries of the bill's provisions relating to paid family medical leave and paid sick leave.

Paid Family Medical Leave

- The bill provides 12 weeks of job-protected paid Family and Medical Leave Act (FMLA) leave—of which the first 14 days may be unpaid—for employees of employers with fewer than 500 employees.
- Employees may use accrued personal or sick leave during the first 14 days, but employers may not require employees to do so.
- This leave benefit covers employees who have been working for at least 30 calendar days.
- Employees may use the leave to care for a (minor) child whose school or place of care has been closed as a result of the COVID-19 pandemic.
- After the first 14 days, employers must compensate employees in an amount that is not less than two-thirds of the employee's regular rate of pay. These pay requirements apply to only the COVID-19-related leave reasons listed above.
- The provisions will go into effect 15 days after the date of enactment and expire on December 31, 2020.

Paid Sick Leave

- Employers with fewer than 500 employees will be required to provide full-time employees 2 weeks (80 hours) of paid sick leave for specific circumstances related to COVID-19 (e.g., self-isolating, doctors' visits, etc.).
- Part-time employees are entitled to the number of hours of paid sick time equal to the number of hours they work, on average, over a 2-week period.
- Employers must compensate employees for any paid sick time they take at their regular rates of pay.
- Employers will be required to post a notice informing employees of their rights to leave.
- As currently drafted, the bill expressly provides that it does not preempt existing state or local paid sick leave entitlements.
- The provisions will go into effect 15 days after the date of enactment and expire on December 31, 2020.

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Unemployment Compensation:

Emergency Unemployment Insurance Stabilization and Access Act section provides \$1 billion in 2020 for emergency grants to states for activities related to processing and paying unemployment insurance (UI) benefits, under certain conditions.

\$500 million would be used to provide immediate additional funding to all states for staffing, technology, systems, and other administrative costs, so long as they met basic requirements about ensuring access to earned benefits for eligible workers.

Those requirements are:

- Require employers to provide notification of potential UI eligibility to laid-off workers
- Ensure that workers have at least two ways (for example, online and phone) to apply for benefits
- Notify applicants when an application is received and being processed and if the application cannot be processed, provide information to the applicant about how to ensure successful processing. States would be required to report on the share of eligible individuals who received UI benefits and the state's efforts to ensure access within one year of receiving the funding. The funding would be distributed in the same proportions as regular UI administrative funding provided through annual appropriations.

Important Websites & Links:

<https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/Families%20First%20summary.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

<https://www.usa.gov/coronavirus>

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