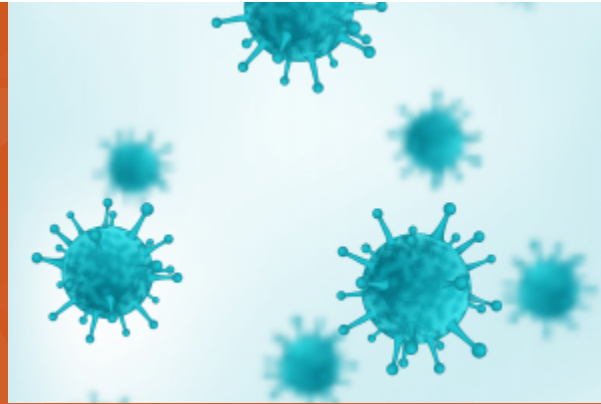


Employment Law Alert: Paid Family Medical Leave and Sick Time

Congress Adopts Emergency Paid Family Medical Leave and Sick Time Standards; Contemplates Payroll Tax Deductions and Cash Payments to Offset Employer Costs

By: Matthew L. Mitchell
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On March 18, 2020, President Trump signed into law the **Families First Coronavirus Response Act** (the “Act”), which aggregates several new laws that apply to private-sector employers and employees affected by Coronavirus-related work disruptions.

The Act takes effect no later than 15 days after enactment, and remains in place until December 31, 2020.

Two significant provisions of the Act include:

THE EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (THE “EFMLEA”)

The EFMLEA creates special, job-protected leave rights for employees. Specifically, the Act expands certain employee protections under federal Family and Medical Leave Act (the “FMLA”).

In general, the FMLA requires employers, with 50 or more employees, to provide employees with 12 weeks of unpaid leave for general, qualified medical and family reasons. The EFMLEA requires **all employers with 500 or fewer employees** to provide **qualified employees** (*employees who have been employed by the employer for at least 30 days*) with up to **12 weeks of partially-paid leave** to address a “**qualifying need related to a public health emergency.**” A “qualifying need” under the Act is defined as:

- The employee has a current diagnosis of COVID-19;
- The employee is under quarantine (including self-quarantine) at the instruction of a health care provider, employer, or local government official;
- The individual is engaged in caregiving for an individual who has a current diagnosis of COVID-19 or is under quarantine; or
- The individual is engaged in caregiving, because of a COVID-19 related closing of a school or other care facility or care program, for a child or other individual unable to provide self-care.

Under the EFMLEA benefit scheme, the first 10 days of a COVID-19 related leave is unpaid (*an employee may opt to substitute accrued vacation, personal, or sick leave during this period, but the*

employer may not require the employee to do so).

If the employee requires additional leave, beyond the 10 days, **due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19**, the employer is required to provide the employee with **partially-paid leave**, paid at the following rate: two-thirds of their regular rate of pay, for up to 10 weeks, **capped at \$200 per day, and \$10,000 in the aggregate.**

If the employee requires additional leave, beyond the 10 days, for any of the other enumerated “qualifying needs” listed above, the employer is required to provide the employee with an additional 10 weeks of *unpaid leave*.

Like the FMLA, EFMLEA leave is job-protected, meaning that employers must restore employees to their prior, or equivalent, positions upon expiration of the need for the leave. *(There are certain limited exceptions to this job-protection rule that apply to employers under 25 employees, and in the event of certain business exigencies.)*

Although the law applies to all employers with fewer than 500 employees, the EFMLEA instructs the U.S. Department of Labor to promulgate rules exempting employers of **50 or fewer** employees that demonstrate a business hardship.

THE EMERGENCY PAID SICK LEAVE ACT (THE “EPSLA”)

The EPSLA requires employers, **with 500 or fewer employees**, to **immediately** provide employees with “**additional paid sick time**” benefits. Specifically, employers must make available 80 hours of paid sick leave for full-time employees (or the equivalent of the average number of hours over two weeks for part time employees) for the following reasons:

1. the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine because of COVID-19;
3. the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. the employee is caring for an individual subject or advised to quarantine or self-isolate;
5. the employee is caring for a son or daughter whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 precautions; or
6. the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

EPSLA paid sick time is paid at the employee’s regular rate for a use described in paragraph (1), (2), or (3); and two-thirds of an employee’s regular rate for a use described in paragraph (4), (5), or (6). Paid sick leave also is capped at \$511 per day and \$5,110 in the aggregate for a uses described in paragraph (1), (2), or (3); and \$200 per day and \$2,000 in the aggregate for uses described in paragraph (4), (5), or (6).

EPSLA paid sick time benefits are only available to employees who are required to miss *available* work because of one of the above enumerated reasons. Terminated or furloughed employees are not eligible for the benefit.

As with the EFMLEA, EPSLA additional paid sick time is job-protected, and employers with fewer than 50 employees may be exempted upon demonstration of a business hardship. Unlike the EFMLEA, an employee is immediately eligible for EPSLA additional paid sick time – there is no 30-day employment requirement.

FINANCIAL IMPACT ON EMPLOYERS

Absent regulations exempting smaller employers, *employers are responsible for paying for these benefits*. The Act, however, includes refundable tax credits for employers that are required to offer FFMLEA or EPSLA benefits.

In addition, Congress is now considering further financial support to businesses affected by Coronavirus disruptions, including payroll tax relief, targeted relief for specific industries, business loan programs, and direct payments to citizens.

The Morse **Employment Law Team** is following this topic closely. Please contact us should you have any questions.

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