

Emergency Paid Sick Leave Act

(Effective April 2, 2020 – December 31, 2020)

- **Covered Employer:** fewer than 500 employees
 - FLSA integrated enterprise analysis is likely to be used to determine number of employees: (1) Related to Each Other, (2) Unified Operation, (3) Common Control, and 4) Common Business Purpose
- **Covered Employee:** No waiting period or minimum length of employment, may be used immediately
- **Reasons for Use:** Paid sick leave to the extent employee is unable to work or telework because:
 - (1) Subject to COVID-19-related federal, state, or local quarantine or isolation order
 - (2) Advised by health care provider to self-quarantine due to COVID-19 concern
 - (3) Caring for individual subject to such an order or advice to self-quarantine
 - (4) Caring for son or daughter if school or child care closed due to COVID-19 precautions
 - (5) Substantially similar conditions specified by Secretary of HHS consulting with Secretary of Treasury and Secretary of Labor
 - (6) Employers of health care provider/emergency responders may elect to exclude employees
- **Hours:**
 - Full-time employees: 80 hours
 - Part-time employees: hours equal to two-week average
- **Rate of Pay:**
 - For employee's own care: employee's regular rate of pay; capped at \$511/day or \$5,110 in total
 - For care of others: two thirds of employee's regular rate, capped at \$200/ day or \$2,000 in total
- **Exclusion:**
 - Employers of certain health care providers or emergency responders may elect to exclude such employees from the application of this rule.
 - The Secretary of Labor has authority to issue regulations exempting small employers (fewer than 50 employees). It is unclear when, or if, this will happen.
- **Miscellaneous:**
 - Cannot require employee to search for or find replacement to cover sick time
 - Cannot require exhaustion of other paid leave first
 - No carryover of unused time and no payout if unused; Requirements expire on December 31, 2020
 - Posting requirement – poster coming from DOL no later than 7 days after enactment
 - No retaliation against employees for using this leave
 - Penalty for non-compliance: Treated as failure to pay minimum wages and subject to liquidated damages and attorneys' fees

Emergency FMLA Expansion Act

(Effective April 2, 2020 to December 31, 2020)

- **Expansion:** In addition to regular FMLA eligibility, leave available for qualifying need related to a public health emergency¹ with respect to COVID-19 declared by a federal, state, or local authority
- **Covered Employer:** fewer than 500 employees
 - FMLA integrated enterprise analysis is likely to be used to determine number of employees: (1) common management, (2) interrelation between operations, (3) centralized control of labor relations, and (4) degree of common ownership or financial control.
- **Covered Employee:** employed at least 30 days
- **Leave:**
 - Unpaid for first 10 days, but employee can elect to substitute vacation, medical or sick leave (including the sick leave in in the Emergency Paid Sick Leave Act)²
 - Paid after first 10 days an amount not less than 2/3 regular rate of pay³ and the number of hours the employee would normally be scheduled to work, not to exceed \$200/day and \$10,000 in total
- **Exclusion:** Employers of certain health care providers or emergency responders may elect to exclude such employees from the application of this rule.
- **Miscellaneous:**
 - For employers with fewer than 25 employees, there are limitations on the requirement of restoration to position⁴
 - Secretary of Labor may issue regulations excluding
 - certain health care providers,
 - emergency responders,
 - small businesses with fewer than 50 employees from these requirements would jeopardize the viability of the business as a going concern

¹ 'Qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

² References Section 102(d)(2)(B), which says employee may elect **or employer may require**, but only includes employee election language.

³ As defined under FLSA 29 USC 207(e), includes details for varying schedule calculations.

⁴ Restoration to position does not apply if the position held when the leave commenced does not exist due to economic changes or other changes in operating conditions that affect public health and are caused by the public health emergency, employer makes reasonable efforts to restore the employee to equivalent position with equivalent benefits and pay, and if those efforts fail, to contact the employee if an equivalent position becomes available for one year beginning either on the date on which the leave concludes or 12 weeks after the employee's leave commences.