

The Act requires employers to provide two new kinds of leave related to COVID-19. Under a portion of the Act called the Emergency Paid Sick Leave Act, employers must pay two weeks of leave to employees for a broad range of COVID-19 related issues. Under a portion of the Act called the Emergency Family and Medical Leave Expansion Act (the "FMLA"), the FMLA is expanded for limited COVID-19 related reasons and employers are required in this instance to provide 10 weeks of paid leave ("FMLA Leave").

I. Short Leave

The new paid sick leave ("Short Leave") applies broadly to COVID-19 related absences, and if employees' qualify, they get two weeks of paid leave. Specifically, all employers are required to provide sick leave for employees who cannot work for any of 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 due to concerns related to COVID-19;
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- (4) The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2);
- (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

The amount of sick leave required to be paid is 80 hours, prorated for part-time employees and capped at \$511 per day and \$5,110 in the aggregate for a use described in paragraph (1), (2), or (3) and \$200 per day and \$2,000 in the aggregate for a use described in paragraph (4), (5), or (6). There is also the ability to pay only two-thirds of compensation if the care is for a general family member, as in (4), (5), or (6) above. The compensation of employees with unpredictable or irregular schedules is determined by a six month look back at the employee's average hours.

Employers cannot require the substitution of existing leave and it does not matter if employers have existing leave: this is a new, required leave that employees have the absolute right to use first, ahead of any other leave. There are other requirements as well. Employers cannot require employees to find their own replacement and there can be no waiting period for new employees to qualify for this leave. Employers must update their policies to provide clarity regarding these rights, and must provide and post required notices.

The new law does allow a tax deduction up to specific caps if this leave is used.

II. FMLA Leave

The second new paid leave comes through an expansion of the FMLA related to COVID-19 which applies to all employers under 500 employees and for any employee who has been employed at least 30 days.

FMLA Leave must be granted if an employee requests such leave based on "qualified need related to COVID-19." Qualifying need related to COVID-19 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 if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19.

Under this FMLA qualifying leave, the first 10 days are unpaid (although the employee will get the Short Leave during this time), but after the first 10 days, for the remainder of the leave, the employer must pay two-thirds of the employee's compensation subject to caps of \$200 per day or \$10,000 in total. The employer must also restore the employee's position unless the employer has less than 25 employees, and the position was eliminated due to economic hardship from COVID-19. The Act also requires employers to update policies and provide notice regarding this new FMLA Leave. There are tax credits for this leave up to certain caps.

Summary

Employers now have two new paid leave requirements for employee leave requests related to COVID-19. The first type of leave, the Short Leave, allows employees to be paid for almost anything related to COVID-19, but the payment is limited to two weeks and is capped. The second leave is an expansion of the FMLA. Here are important take away points:

- Unlike the regular FMLA leaves, this COVID-19 FMLA Leave eligibility applies to all employers with less than 500 employees and includes employees working at least 30 days. It is important to note that the entire FMLA is not expanded in this way: only the new leave related to COVID-19.
- The FMLA leave is limited to requests to care for employee children, not everything related to COVID-19, and only if the employee cannot work or telework. However, the required pay is two-thirds of compensation for 10 weeks with certain caps so it is a significant payment obligation. In addition, as we know, schools nationwide are out, likely for the remainder of the year, so there are many employees who could easily exercise their new right to this leave. Note too, that it applies to any child under the age of 18 whether or not that child actually needs care at home.
- Neither leave applies in the event of a furlough or layoff. It is triggered by the employee request for the leave. This means that if the employer needs to do a furlough and wants to pay its employees, that employer will not get the tax credit.
- Employees may want to rethink their existing leaves in light of the fact that the new required Short Leave is a mandatory, additional paid two week leave.
- If an employee is considering a work force reduction, the employer should think through the timing of those reductions in the context of the new paid leave requirement which will be required under the Act.