

Emergency Family and Medical Leave Expansion Act

(Part of the “Families First Coronavirus Response Act”)

Note: the Emergency FMLA Expansion Act expires December 31, 2020.

OVERVIEW of the EMERGENCY FMLA EXPANSION ACT

The Emergency FMLA Expansion Act requires that certain employers provide up to 12 weeks of leave (*unpaid* for the first 10 days and *paid* for the remaining 10 weeks) to employees who are prevented from working (or teleworking) due to caring for a son or daughter whose school or daycare has been closed or is unavailable because of the coronavirus.

EMPLOYERS SUBJECT TO THE ACT

Private employers with *LESS* than 500 employees and governmental agencies are subject to the Emergency FMLA Expansion Act.

Exclusions:

- Employers of health care providers or emergency responders may elect to exclude such employees from Emergency FMLA Leave.
- The Secretary of Labor may issue regulations that exclude employers with less than 50 employees if providing the Emergency FMLA leave would jeopardize the ongoing viability of the business.

ELIGIBLE EMPLOYEES

To qualify for Emergency FMLA Leave, the employee must be employed for at least 30 calendar days.

QUALIFYING REASONS TO TAKE EMERGENCY FMLA LEAVE

Emergency FMLA Leave is only available to employees unable to work (or telework) because of the need to take care of a son or daughter whose school or daycare is closing or unavailable because of the coronavirus.

EXHAUSTION OF OTHER LEAVE TIME

An employee may elect to substitute any accrued paid time off, including vacation, personal, or sick leave prior to taking the leave time under the Emergency Paid Leave Act. Employers are not prohibited from applying an employee's other accrued leave time (personal, sick, vacation, paid time off) prior to providing paid leave under the Emergency Paid Leave Act.

REQUIRED PAYMENTS

Qualifying employers must provide **12 total weeks** of leave.

- The first 10 days of leave may be **unpaid** (*but, see requirements of Emergency Paid Sick Leave*).
- Employees who take (up to) an additional 10 weeks of leave **must be paid** at a rate of at least two-thirds (2/3) of their regular rate of pay for (up to) the 10 week period they are taking Emergency FMLA Leave.
- The limitations on paid leave per employee are \$200 per day and \$10,000 in the aggregate.

RESTORATION TO POSITION AFTER EXPIRATION OF LEAVE

The traditional FMLA requirement to restore an employee to the original position after expiration of leave is removed for employers with less than 25 employees, provided the employer meets the following criteria:

1. The position no longer exists due to economic conditions or changes in the employer's operating conditions caused by the coronavirus; and
2. The employer makes reasonable efforts to restore the employee to an equivalent position. If no position is available, the employer must make reasonable efforts to contact the employee, for one year, if an equivalent position becomes available.

EMPLOYERS WHO ARE SIGNATORIES TO A MULTI-EMPLOYER BARGAINING AGREEMENT

Such an employer may fulfill its obligations under the Emergency FMLA Act by making contributions to a multi-employer fund, plan or program based on the paid leave each of its employee is entitled to take under the Emergency FMLA Act, provided that such fund, plan or program enables employees to secure pay from such fund, plan or program based on hours worked under the collective bargaining agreement for the paid leave taken under the Emergency FMLA Act.