

Employment Law: Coronavirus Implications

Lu Pham
Pham Harrison LLP
505 Pecan Street, Suite 200
Fort Worth, Texas 76102
817/632-6363
Lpham@phamharrison.com

Families First Coronavirus Response Act

- Signed into law March 18
- Effective April 1 through December 31, 2020
- Only applies to employers with fewer than 500 employees
- Requires employers to provide 2 weeks of paid sick leave for COVID-19 related reasons
- Expands the FMLA to include employers with fewer than 50 employees and to provide pay for the employee, if the employee needs leave to care for a child under specified circumstances

Emergency Paid Sick Leave Act

(Effective April 1, 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

Emergency Paid Sick Leave

(Effective April 1, 2020 to December 31, 2020)

- **Reasons for Use:** Paid sick leave to the extent the 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. The employee is experiencing symptoms of COVID–19 and seeking a medical diagnosis
 4. Caring for individual subject to such an order or advice to self-quarantine
 5. Caring for son or daughter if school or child care closed due to COVID-19 precautions
 6. Substantially similar conditions specified by Secretary of HHS consulting with Secretary of Treasury and Secretary of Labor

Emergency Paid Sick Leave

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- **Paid Hours:**
 - Full-time employees: 80 hours
 - Part-time employees: hours equal to two-week average
- **Rate of Pay:**
 - For employee's own care (reasons (1)-(3)): employee's regular rate of pay; capped at \$511/day or \$5,110 in total
 - For care of other (reasons (4)-(6)): 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).

Emergency Paid Sick Leave

(Effective April 1, 2020 to December 31, 2020)

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;
- 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 1, 2020 to December 31, 2020)

- **Expansion:** In addition to regular FMLA eligibility, leave available for qualifying need related to a public health emergency with respect to COVID-19 declared by a federal, state, or local authority.
- **Reason for Use:** Available to the extent 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
- **Covered Employer:** fewer than 500 employees
 - FMLA integrated enterprise analysis is likely to be used to determine number of employees

IRS & DOL Joint Press Release

Examples

If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.

IRS & DOL Joint Press Release

Small Business Exemption

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. The Department of Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

What About Layoffs?

- Furloughs v. layoff
- If you cannot afford to pay for the wages under this law, what options do employers have regarding laying off employees and re-hiring them later?
- If you have already laid off employees, does this apply to you?
- How does unemployment work in that situation?

Relevant Links

- Employer fact sheet:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- Questions and Answers:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- Unemployment benefits: <https://twc.texas.gov/news/covid-19-resources-employers#unemploymentBenefits>
- Reimbursement of funds -
<https://www.dol.gov/newsroom/releases/osec/osec20200320>