

# COVID-19 UPDATE FOR EMPLOYERS

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## UPDATE ON NEW FEDERAL LAW IMPACTING EMPLOYERS

### EMERGENCY FAMILY MEDICAL LEAVE EXPANSION ACT

Families First Coronavirus Response Act (passed on 3/14/20)

The "Emergency Family Medical Leave Expansion Act" temporarily expands the coverage of the Family Medical Leave Act.

- Adds a "Public Health Emergency" as a qualifying event.
- **Does not** require an employer to grant an employee two 12-week periods of Family Medical Leave.
- **Coverage**
  1. Employers with 500 or fewer employees.  
**\*\* Employers with 49 or fewer employees may seek an exemption if compliance with the leave requirement jeopardizes the viability of the business. The DOL is responsible for implementing regulations for employers to apply for this exemption, but the regs do not yet exist.**
  2. An employee is eligible for Emergency Paid Sick Leave after 30 days of employment, without regard to the number of hours worked during that period.
  3. Full-time and part-time employees are covered.
- **Qualifying Events:** There is only **one** qualifying event: **"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."**
- **Amount of Public Health Emergency Leave**

The Act provides that an employee is eligible for up to 12 weeks of Public Health Emergency Leave.
- **Pay**
  - The first 10 days of leave may be unpaid. An employee may elect to use Emergency Paid Leave or accrued paid time off under an employer's existing leave policies.
  - The employer cannot require the employee to use accrued paid time off under an employer's existing leave policies
  - For any required leave beyond those **10 days**, 2/3 of the employee's regular rate of pay for the number of hours the employee would normally be scheduled to work **CAPPED at \$200 per day and \$10,000 in the aggregate.**
- **Job Restoration**
  - An employer is required to restore an employee to the

same or an equivalent position on the completion of Public Health Emergency leave.

- An employer with fewer than 25 employees is relieved from the requirement to reinstate employees after a Public Health Emergency Leave:
  1. If the position no longer exists due to economic conditions or other changes in the operating conditions of the employer; and
  2. The employer makes reasonable efforts to restore the employee to an equivalent position with equivalent benefits, pay and other terms of employment.

The EFMLA is effective from the date of enactment through December 31, 2020.

**It is important to remember that the provisions specific to a Public Health Emergency Leave DO NOT apply generally to the other qualifying events under the Family Medical Leave Act.**

- **Tax Credits**

- Employers will be allowed a **refundable tax credit** against the employer portion of Social Security taxes.

- The credit equals 100% of the wages paid under Emergency Paid Leaves AND Public Health Emergency Leaves combined for each calendar quarter.

- Employers will be reimbursed for amounts paid that exceed the amount of Social Security taxes the employer would owe.