

PRIMEX³ LEGAL AND HUMAN RESOURCE BULLETIN

Employer Obligations Under Families First Coronavirus Response Act

On March 18, 2020, H.R. 6201, the President signed into law the Families First Coronavirus Response Act to provide employees with paid leave in difficult situations arising from COVID-19. The Act provides this relief through two modifications to the Family and Medical Leave Act (FMLA): **(A) Emergency Family and Medical Leave Expansion Act** and **(B) Emergency Paid Sick Leave Act**.

Effective Date: The Act will be effective April 1, 2020 to December 31, 2020.

Covered Employers: Public employers (regardless of number of employees) and private employers with 500 or less employees.

(A) FMLA Expansion Act

- Eligible full time and part time employees are permitted to take up to 12 weeks of leave if they are unable to work/telework due to a need to take care of their minor child resulting from:
 - *school closure due to a public health emergency; or*
 - *unavailability of a childcare provider due to a public health emergency.*
- A public health emergency is one declared by local, state or federal authorities.
- An employee is eligible if he/she has worked for the employer for at least 30 calendar days.
- The first 10 days of this leave may be unpaid; however, the employee is allowed to use accrued paid leave during this period.
- The rate of pay for this leave is 2/3 the employee's regular rate of pay.
- The cap on the pay is \$200/day; \$10,000 total.

(B) Emergency Paid Sick Leave Act

- Full and part time employees, regardless of the length of their employment, are entitled to receive up to 80 hours of paid sick leave for an absence related to COVID-19 if they are unable to work for any of the following reasons:
 - *1. governmental order that employee quarantine,*
 - *2. health care provider's advice that employee self-quarantine,*
 - *3. employee is symptomatic and seeks diagnosis,*

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- 4. *employee is caring for an individual under either a governmental quarantine order or advice from a healthcare provider to self-quarantine,*
 - 5. *employee is caring for a son or daughter because their school or place of childcare has closed, or their child care provider is unavailable, due to precautions, or*
 - 6. *employee is experiencing another substantially similar condition specified by the Secretary of Health and Human Services.*
- For reasons 1, 2 and 3, paid sick leave is at the employee's regular pay rate, and capped at \$511/day; \$5,110 total.
 - For reasons 4, 5, and 6, paid sick leave is at 2/3 the employee's regular pay rate, and capped at \$200/day; \$2,000 total.

(C) General Rules

- Employers may not require an employee to use other employer provided paid leave, or to find a replacement worker, before providing leave under the Act.
- After the start of leave, an employer may require the employee to follow reasonable notice procedures to support continued paid leave.
- Employers do not have to carry over or pay out unused leave provided by the Act.
- Most employers will be required to restore employees to the same or an equivalent position in most situations. A decision to not restore should occur only after legal consultation.
- Violations will be considered failure to pay minimum wage under the Fair Labor Standards Act, and shall be subject to fines.
- Retaliation is prohibited and subject to penalties.
- Within 7 days of enactment, employers must conspicuously post on their premises, in a place where notices to employees (and applicants) are customarily posted, or in employee handbooks, a model notice to be created by the Secretary of Labor.

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(D) Coordination with Workers Compensation, Disability and Unemployment Insurance

The USDOL has issued the following guidance on how paid leave interacts with other sources of wage replacement:

- May I take paid sick leave or expanded family and medical leave if I am receiving workers' compensation or temporary disability benefits through an employer or state-provided plan?

In general, no, unless you were able to return to light duty before taking leave. If you receive workers' compensation or temporary disability benefits because you are unable to work, you may not take paid sick leave or expanded family and medical leave. However, if you were able to return to light duty and a qualifying reason prevents you from working, you may take paid sick leave or expanded family and medical leave, as the situation warrants.

- May I collect unemployment insurance benefits for time in which I receive pay for paid sick leave and/or expanded family and medical leave?

No. If your employer provides you paid sick leave or expanded family and medical leave, you are not eligible for unemployment insurance. However, each State has its own unique set of rules; and DOL recently clarified additional flexibility to the States (UIPL 20-10) to extend partial unemployment benefits to workers whose hours or pay have been reduced. Therefore, individuals should contact their State workforce agency or State unemployment insurance office for specific questions about eligibility.

Primex³ will update this bulletin when additional helpful information becomes available. Please contact Carol Kilmister, ckilmister@nhprimex.org; Kate Spillane, kspillane@nhprimex.org; or Mike Ricker, mricker@nhprimex.org, if you have any questions about this bulletin or if we can be of assistance.

Please Note: All of our COVID-19 related updates and bulletins can be found on our website at www.nhprimex.org

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