

Summary of the Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act (“the Expansion Act”) provides the circumstances under which an employer must provide unpaid and paid leave to eligible employees. Under the Expansion Act, an eligible employee may take leave if he/she is unable to work (or telework) due to his/her need for leave to care for his son or daughter under 18 years of age if the child’s school or place of care has been closed, or the child care provider of the son or daughter is unavailable due to a public health emergency.

Unpaid Leave: Under the Expansion Act, the first 10 days for which an eligible employee takes leave may consist of unpaid leave. An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave.

Paid Leave: After the first 10 days of leave, an employer shall provide paid leave to the employee. Paid leave shall be calculated based on —

- 1) an amount that is not less than 2/3 of an employee’s regular rate of pay; and
- 2) the number of hours the employee would otherwise be normally scheduled to work.

However, paid leave shall not exceed \$200 per day and \$10,000 in the aggregate.

In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if the employee had not taken leave, paid leave shall be calculated based upon —

- 1) a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type; or
- 2) if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Notice: In cases where the necessity for leave is foreseeable, the employee must provide the employer with as much notice as is reasonably practicable.

Effective Date: The Effective Date is April 1, 2020.

APPLICABLE DEFINITIONS

Employer Threshold: Any private employer with fewer than 500 employees; all public agencies.

Please note that the Expansion Act grants the Secretary of Labor the authority to issue regulations to exempt small businesses with fewer than 50 employees when the imposition of the requirements would jeopardize the viability of the business.

Eligible Employee: an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested.

Please note that the Amendments grant the Secretary of Labor the authority to issue regulations to exclude certain health care providers and emergency responders from the definition of eligible employees.

Child Care Provider: A provider who receives compensation for providing child care services on a regular basis.

Emergency Paid Sick Leave Act

Under the Emergency Paid Sick Leave Act, an employer shall provide to each employee paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

- 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 is seeking a medical diagnosis.
- 4) The employee is caring for an individual who is subject to an order as described in paragraph (1) above or has been advised to self-quarantine due to concerns related to COVID-19.
- 5) The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of the son or daughter is unavailable due to COVID-19 precautions.
- 6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Amount of Paid Leave: Full-time employees are entitled to 80 hours of paid sick leave. Part-time employees are entitled to paid sick leave for the average number of hours that the employee works over a two-week period. The provision of paid sick leave is not contingent upon how long the employee has been employed by the employer.

Calculation of Paid Leave: Paid leave is calculated based on the employee's required compensation and the number of hours the employee would otherwise be normally scheduled to work, except paid sick time shall not exceed –

- 1) \$511 per day and \$5,110 in the aggregate if –
 - a. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
 - b. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 - c. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- 2) \$200 per day and \$2,000 in the aggregate if –
 - a. The employee is caring for an individual who is subject to an order as described in subparagraph (a) above or has been advised to self-quarantine due to concerns related to COVID-19.
 - b. The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of the son or daughter is unavailable due to COVID-19 precautions.
 - c. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Subject to the monetary limits described above (\$511 per day and \$5,110 in the aggregate), an employee shall be paid his/her regular rate of pay or the State/locality minimum wage, whichever is greater, if:

- a. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- b. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- c. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.

Subject to the monetary limits described above (\$200 per day and \$2,000 in the aggregate), an employee shall be paid 2/3 of his/her regular rate of pay or the State/locality minimum wage, whichever is greater, if:

- a. The employee is caring for an individual who is subject to an order as described in subparagraph (a) above or has been advised to self-quarantine due to concerns related to COVID-19.
- b. The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of the son or daughter is unavailable due to COVID-19 precautions.
- c. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

In the case of an employee whose schedule varies from week to week to such an extent that an employer is unable to determine with certainty the number of hours the employee would have worked if the employee had not taken leave, paid leave shall be calculated based upon –

- 1) a number equal to the average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type; or
- 2) if the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.

Prohibited Acts: An employer may not:

- 1) require that an employee search for or find a replacement employee to cover the hours during which the employee is using paid sick time as a condition of providing paid sick time;
- 2) require an employee to use other paid leave required by the employer before the employee uses the paid sick time provided under the Emergency Paid Sick Leave Act;
- 3) discharge, discipline, or discriminate against any employee who takes leave in accordance with the Emergency Paid Sick Leave Act, and has filed any complaint related to this Act.

Notice: An employer must post and keep posted a notice approved by the Secretary of Labor that includes the requirements described in the Emergency Paid Sick Leave Act. The Secretary of Labor shall make a model notice publically available no later than 7 days the law's enactment.

Collective Bargaining Agreement or Existing Employer Policy: Nothing in the Emergency Paid Sick Leave Act shall be construed to diminish the rights or benefits that an employee is entitled to under any Federal, State, or local law; a collective bargaining agreement, or existing employer policy. Further, nothing in the Emergency Paid Sick Leave Act shall be construed to require financial or other reimbursement to an employee from an employer upon the employee's

termination, resignation, retirement, or other separation from employment for paid sick time under the Emergency Paid Sick Leave Act that has not been used by the employee.

Enforcement: An employer that violates the Emergency Paid Sick Leave Act shall be subject to penalties.

Effective Date: The Effective Date is April 1, 2020.