**Corona Virus Update 3/23/20**

**First of all, just how serious this is:** <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>

Don't underestimate this risk. Think health and safety first!

**Mandatory Sick Leave and Paid Family Leave Authorized by Congress and the President**

<https://www.majorityleader.gov/sites/democraticwhip.house.gov/files/COVID-19%20Amendment%20Language%2003162020%20741%20FINAL.pdf> (begins at page 14)

New laws become effective on April 2, 2020.

**Emergency Paid Sick Leave Act**

The Emergency Paid Sick Leave Act mandates that covered employers nationwide provide two weeks of paid sick leave to employees. Employers with fewer than 500 employees are required to provide paid sick leave in accordance with the new law.  Small businesses with fewer than 50 employees are exempt, however, if providing sick leave would "jeopardize the viability of the business." The Secretary of Labor has been tasked with issuing regulations explaining how and under what circumstances that standard is met, although guidance on the subject has not yet been offered.

***Eligibility and Permissible Uses***

Employees are entitled to use paid sick leave under the following circumstances, regardless of how long they have been employed:

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 subparagraph (1) or has been advised as described in paragraph (2), above.
5. The employee is caring for a son or daughter whose school or place of care has been closed, or whose childcare provider 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 in consultation with the Secretary of the Treasury and the Secretary of Labor.

Notably, if an employee is a healthcare provider or first responder, the employer may elect to exclude the employee from these sick leave benefits.

An employee may not be required to use other forms of paid time off prior to using paid sick leave under the Emergency Paid Sick Leave Act, nor may an employer require that an employee find coverage as a condition of providing sick leave

***Amount of Leave and Compensation Owed***

Full-time employees are entitled to 80 hours of paid sick leave.  Part-time employees are entitled to paid sick leave in an amount equal to the hours that particular employee works, on average, over a two-week period.

The calculation of sick leave pay depends on the reason for the leave.  If the employee is using sick leave for the employee's own care (i.e., for reasons 1, 2, or 3, above), then it must be paid at the employee's normal wage rate times the number of hours the employee would normally be scheduled to work.  However, this pay is capped at a maximum of $511 per day (and a total of $5,110 in the aggregate).

On the other hand, if the employee is using sick leave to care for someone else (i.e., for reasons 4, 5, or 6, above), then it must be paid at two-thirds of the employee's normal wage rate times the number of hours the employee would normally be scheduled to work.  This pay is capped at $200 per day (and a total of $2,000 in the aggregate).

Unused paid sick leave does not carry over from one year to the next.  Unused paid sick leave need not be paid out upon separation from employment.

***Notice***

Employers must post, in a conspicuous place, a notice promulgated by the Secretary of Labor regarding the requirements of the Emergency Paid Sick Leave Act.  A model of such notice must be made available by the Secretary within 7 days of the enactment of the statute.  Employers are encouraged to check the U.S. Department of Labor website for a model posting once it becomes available.

***Consequences for Violation of Sick Leave Rights***

An employer may not discharge, discipline, or discriminate against an employee who takes leave under the Act, files a complaint or institutes any proceeding relating to this Act, or testifies (or is about to testify) in any such proceeding.

Violations of an employee's right to sick leave under the Emergency Paid Sick Leave Act will be considered violations of the Fair Labor Standards Act's minimum wage provisions.

***Interaction with State and Local Laws***

The Emergency Paid Sick Leave Act specifies that it does not diminish the rights or benefits to which an employee is entitled under any other laws (whether Federal, State, or local), collective bargaining agreements ("CBAs"), or existing employer policies.  A critical ambiguity in the law as enacted is whether this provision means that benefits under the Emergency Paid Sick Leave Act run concurrently with existing laws, CBAs, and policies, or whether the new federal benefits are in addition to existing benefits.  *That is, the statute does not clearly answer whether a full-time employee who is already entitled, for example, to 24 hours of paid sick leave under the California Healthy Workplaces, Healthy Families Act of 2014 is now entitled to a total of 104 hours of paid sick leave (24 hours under California law plus 80 hours under federal law), or only to a total of 80 hours per the federal statute.*

Prior proposed versions of the bill specified that the federal benefits were in addition to any benefits already provided by employers (whether on a mandatory or voluntary basis), yet such language was stricken prior to the Senate's approval of the final bill.  The removal suggests federal sick leave benefits are therefore intended to run concurrently with existing benefits, but employers will likely have to wait for supplemental legislation or regulatory guidance for clarification.

***Tax Credits for Sick Leave Wages***

Employers may obtain tax credits to ease the financial burden of providing sick leave under the Emergency Paid Sick Leave Act.  The tax credit is applied against the employer portion of Social Security taxes.  The credit is equal to 100% of the qualified sick leave wages.  Such wages are capped at $511 per day if the leave is for the employee's own care, and at $200 per day if the leave is for caring for a family member, for up to 10 days per employee in each calendar quarter.

**Emergency Family and Medical Leave Expansion Act**

The Emergency Family and Medical Leave Expansion Act amends the Family and Medical Leave Act ("FMLA") to add an additional basis for taking job-protected leave.  Generally, the FMLA permits eligible employees of covered employers to take unpaid leave because of the employee's own serious health condition, the serious health condition of the employee's parent, spouse, or child, to bond with a child newly joining the employee's family, for qualifying military exigencies, or to care for family members injured in the course of military service.

***Coverage and Eligibility***

Employers with fewer than 500 employees are covered by the new law and must therefore permit eligible employees to take public health emergency leave.  Like the Emergency Paid Sick Leave Act, businesses with fewer than 50 employees may obtain an exemption if providing leave would "jeopardize the viability of the business."

Employees who have been employed by a covered employer for at least 30 calendar days are eligible for public health emergency leave.  The Act reserves the right of the Secretary of Labor to promulgate regulations excluding "certain health care providers and emergency responders" from the definition of "eligible employee."

***Duration of Leave and Permissible Use***

Under the Emergency Family and Medical Leave Expansion Act, eligible employees can take up to 12 weeks of job-protected leave if they are unable to work (or telework) due to a need to care for a child whose school or place of care has been closed, or whose childcare provider is unavailable, due to the COVID-19 public health emergency.

As with other types of FMLA leave, the employee must provide notice of the need for leave as soon as is practicable.

***Compensation Owed***

The first 10 days of public health emergency leave may be unpaid.  However, an employee may elect to substitute any accrued vacation, personal leave, or medical or sick leave for such unpaid leave.  The remaining 10 weeks of leave must be paid at two-thirds of the employee's regular rate of pay times the number of hours the employee would otherwise be normally scheduled to work.

***Restoration Rights***

Unless the employer has fewer than 25 employees, an employee taking public health emergency leave must generally be restored to an equivalent position upon returning from leave.

***Sunset Provision***

Because the Emergency Family and Medical Leave Expansion Act is intended to address the existing COVID-19 pandemic, eligible employees of covered employers may only take public health emergency leave until December 31, 2020.

 ***Tax Credits for Public Health Emergency Leave***

Employers are entitled to a tax credit equal to 100% of the qualified family leave wages under the Emergency Family and Medical Leave Expansion Act.  Qualified family leave wages are capped at $200 per day for each individual and up to $10,000 per calendar quarter.

**Additional Resources**

**Federal Govt.**

<https://www.coronavirus.gov/>

<https://www.dol.gov/agencies/whd/fact-sheets/70-flsa-furloughs>

<https://www1.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm>

<https://www.dol.gov/agencies/eta/layoffs/warn>

<https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

<https://www.osha.gov/SLTC/covid-19/>

<https://www.osha.gov/Publications/OSHA3990.pdf>

<https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>

<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>

<https://www.irs.gov/retirement-plans/retirement-plan-participant-notices-when-a-participant-stops-working>

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

**State Laws:** <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx> as of 3/20 26 states have adopted Coronavirus specific legislation

**California**

<https://www.edd.ca.gov/about_edd/coronavirus-2019.htm>

<https://www.labor.ca.gov/coronavirus2019/>

<https://www.dir.ca.gov/dlse/2019-Novel-Coronavirus.htm>

<https://advocacy.calchamber.com/2020/03/19/governor-issues-order-to-help-meet-deliveries-suspends-some-layoff-notice-requirements/> (discuss executive order re layoffs)

 <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-EO-motor.pdf>)

<https://www.edd.ca.gov/payroll_taxes/pdf/NoticetoEmployeeastoChangeinRelationship.pdf>

<https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

**Illinois**

<https://www2.illinois.gov/sites/coronavirus/Pages/default.aspx>

<https://www2.illinois.gov/Documents/ExecOrders/2020/ExecutiveOrder-2020-10.pdf>

**New Jersey**

<https://www.nj.gov/labor/worker-protections/earnedsick/covid.shtml>

**New York**

<https://paidfamilyleave.ny.gov/COVID19>

<https://www.governor.ny.gov/paid-sick-leave-covid-19-impacted-new-yorkers/emergency-covid-19-paid-sick-leave>

<https://www.governor.ny.gov/paid-sick-leave-covid-19-impacted-new-yorkers/emergency-covid-19-paid-sick-leave#faqs>

<https://esd.ny.gov/guidance-executive-order-2026>

**Texas**

<https://twc.texas.gov/news/covid-19-resources-employers> (See link to the FAQ)

**Misc. (Lawyers, HR groups, etc.)**

<https://www.lockton.com/insights/post/coronavirus-house-imposes-temporary-paid-leave-and-healthcare-mandates-sena>

<https://s3-us-west-2.amazonaws.com/lockton-corporate-website/Compliance-Alerts/20200316-Coronavirus-bill-table.pdf>

<https://www.tianet.org/dl-file.php?file=2020/03/Families-First-Coronavirus-Response-Act-Cheat-Sheet-FINAL.pdf>

<https://www.sdshrm.org/news/494059/Coronavirus-Pandemic-Impact-On-The-California-Workplace-.htm>

<https://www.sdshrm.org/general/custom.asp?page=COVID19>

<https://swerdlowlaw.com/2020/03/19/coronavirus-emergency-paid-sick-leave-fmla-expansion/>

<https://www.gibsondunn.com/us-employment-law-considerations-for-companies-responding-to-covid-19/>

<https://www.governor.pa.gov/wp-content/uploads/2020/03/20200319-Life-Sustaining-Business.pdf>

<https://www.bain.com/insights/ceo-plan-for-coronavirus-actions-to-take-now/>

**Remote Work**

Don Phin's working at home video [**https://youtu.be/yLSwMhp8STc**](https://youtu.be/yLSwMhp8STc) and LinkedIn article <https://www.linkedin.com/pulse/how-make-best-tough-situation-covid-19-don-phin/>

[Google Makes Remote Desktop Access Easier](https://steveanderson.com/2019/10/10/google-makes-remote-desktop-access-easier/)

[5 Habits for Crafting the Perfect Remote Work Day](https://doist.com/blog/remote-work-habits/)

[A Quick Security Checklist for Remote Workers](https://doist.com/blog/security-checklist-remote-workers/)

[Working From Home Because of Coronavirus? There Are Your Tech Fixes](https://www.wsj.com/articles/working-from-home-because-of-coronavirus-these-are-your-tech-fixes-11583326423)

<https://www.beyondinsurance.com/blog/covid-19-independent-agent-faqs>

<https://hbr.org/2020/03/a-guide-to-managing-your-newly-remote-workers>

**ThinkHR Materials (let me know if interested in access)**

* [**Acknowledgment of Receipt for Company-Issued Property**](https://compliance.thinkhr.com/Portals/2/acknowledgment_of_receipt_for_company_issued_property.doc)
* [**COVID-19 FAQ**](https://apps.thinkhr.com/en-us#!/comply?section=ReferenceHome/SafetyandHealth/COVID19FAQ)
* [**Families First Coronavirus Response Act**](https://compliance.thinkhr.com/ReferenceHome/LawAlerts/2020/FederalLawAlertSpecialMarch2020EditionFamiliesFirstCoronavisResponseAct)
* [**Furlough Letter (COVID-19)**](https://compliance.thinkhr.com/ReferenceHome/FormsandPolicies/ManagementForms/FurloughLetterCOVID19)
* [**Sample Communication to Employees**](https://compliance.thinkhr.com/Portals/2/covid-19_sample_communication_to_employees_march_2020.docx)
* [**Sample Telecommuting Agreement**](https://compliance.thinkhr.com/Portals/2/sample_telecommuting_agreement.doc)
* [**Sample Work from Home Policy**](https://apps.thinkhr.com/en-us#!/comply?section=ReferenceHome/FormsandPolicies/OntheJobPolicies/WorkfromHome)
* [**State Resources**](https://apps.thinkhr.com/en-us#!/comply?section=ReferenceHome/SafetyandHealth/CoronavirusCOVID19Resources)
* [**Telecommuting Checklist**](https://compliance.thinkhr.com/Portals/2/telecommuting_checklist.docx)
* [**ThinkHR Blog: When Business Threats are Contagious**](https://www.thinkhr.com/blog/when-business-threats-are-contagious-10-answers-for-employers-navigating-the-coronavirus/)
* [**Tips to Handle an Infectious Disease Outbreak**](https://restapis.thinkhr.com/v1/contentful/asset-spaces/comply/1EX1Nf7zxv9KVxDZPbHnZi/07912c1d3169906307254aeef14135ed/Tips-to-Handle-an-Infectious-Disease-Outbreak-Comply-20200227.pdf)
* [**Work from Home Agreement**](https://compliance.thinkhr.com/Portals/2/work_from_home_agreement.docx)

**FAQs**

1. Let's assume we have an employee out with Covid-19 symptoms (or mandated isolation). The employee has exhausted his/her PTO/sick time and currently without pay. With the law's start date of April 1st, 2020, is it correct that this employee will not have the emergency sick time available to him/her until April 1st? Answer: Correct. They may however be able to get unemployment or short term disability payments. PS laws starts April 2.
2. Under EPSLA, do we have any idea what exactly is required to demonstrate that "the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis"? For example, if an employee has developed a strong cough, is that enough to qualify? Answer: Don't play MD. Have them contact teledoc. And, they would probably have a fever as well.
3. If an employee is sent home by the company for isolation either due to potential exposure or symptoms, does this meet the requirements for "the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19?" or any other provision such that they could use this emergency sick time? Yes. Anyone who is at home, and not teleworking, and not fired, will most likely be protected.
4. What verification is required from the employee that they or someone else is sick? Answer: so far, that has not been addressed. We will have to wait to see what regs say. Dr. availability is also an issue. For traditional FMLA, there has also been a form-driven process. No word on that yet either.

5.Extended FMLA

Are there special considerations for businesses less than 50 or less than 25 employees?

Recap how small businesses will be compensated.  Tax credit.

What do the bookkeepers need to file and report to state/Federal agencies?

How must we / should we confirm the eligibility test for employees… take their word for it?  Sign an affidavit?

6. Unemployment Insurance

Clarify how the tax relief for small businesses will work, how we will be compensated.

What evidence must we gather to confirm the employee's eligibility.

What is the "proper way to terminate" a staff member to ensure eligibility; any special language or notices?

Determine how the terminations are to be reported and recorded.

7. Sick Leave

Clarify how we will be compensated (e.g., tax relief)

Confirm how the staff member must request the sick leave to ensure COVID-19 eligibility

Determine proper methods to record sick leave related to COVID-19

8.  We own a small business in Southwestern Illinois with 22 full time employees.  The State of Illinois issued a "Stay At Home" Order effective yesterday. How are we supposed to handle our employees?  We also own a small business with six employees in St. Louis County, Missouri which issued a "Stay At Home" order effective tomorrow, Monday.   How do we handle these employees ?

9. I only have 10 employees. My question is in regards to part time hourly workers. I do not have work for them to do and am uncertain if I should lay them off immediately or try to pay them for another couple of weeks. I want them to be able to file for and collect unemployment but if I can pay them and get a tax credit later perhaps I should try to keep them. Not sure what to do. Can I keep some and lay off others? Will there be a tax credit available or is that only apply to full time salaried employees that cant work due to illness? Also, what if I keep them on the payroll event though they are not working and then they get sick. Will I be unable to lay them off?

10. Does the 75 Mi requirement still apply for FMLA?