COVID-19 Related Paid Time Off and Protected Leave

WHAT CAN AND MUST EMPLOYERS PROVIDE

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Infected with, suspected of having, or has symptoms of COVID-19

**PAID TIME OFF**
- Paid sick leave
- Paid vacation
- Unemployment
- Workers’ compensation
- FFCRA paid sick leave

**PROTECTED LEAVE**
- FMLA
- WA PFLA
- ADA
Exposed to COVID-19

**PAID TIME OFF**
- Paid sick leave
- Paid vacation
- Unemployment

**PROTECTED LEAVE**
- None

Workers’ compensation (maybe)
FFCRA paid sick leave (maybe)
Caring For Someone With COVID-19

**PAID TIME OFF**
- Paid sick leave
- Paid vacation
- Unemployment
- FFCRA paid sick leave

**PROTECTED LEAVE**
- FMLA (maybe)
- WA PFML (maybe)
Caring for Children Without School or Daycare

**PAID TIME OFF**
- Paid sick leave
- Paid vacation
- Unemployment
- FFCRA paid sick leave

**PROTECTED LEAVE**
- Extended FMLA (FFCRA)
High Risk Individuals

**PAID TIME OFF**
- Paid vacation
- Unemployment
- FFCRA paid sick leave (maybe)

**PROTECTED LEAVE**
- ADA
High Risk Individuals in Washington

**PROCLAMATION 20-46.2**

- Employees’ choice whether to work
- Medical Verification
  - Only for CDC’s “might be at an increased risk” category
- See [clarifying memo](#)
High Risk Employees

- Offer all available alternative work arrangements
- Allow use of all available paid and unpaid leave and unemployment
- Maintain health benefits
- Cannot take action that would cause permanent loss of job
Employees Afraid To Work

- Can be required to work
- Perceptions matter
Families First Coronavirus Relief Act (FFCRA) Leave

AN OVERVIEW
FFCRA Leave Overview

• Paid sick leave*
• Extended FMLA leave*
• Tax Credits*

*Applies to employers with under 500 employees

*Available April 1-December 31, 2020
Qualifying Reasons for Leave

Unable to work or telework because:

• Subject to a quarantine or isolation order
• Advised by a health care provider to self-quarantine
• Experiencing symptoms of COVID-19 and seeking a medical diagnosis
• Caring for an individual who is subject to a quarantine or isolation order, or who has been advised to self-quarantine
• Caring for their child whose school or childcare has been closed, or childcare provider is unavailable, due to COVID-19
• Experiencing any other substantially similar COVID-19 condition defined by the DHHS
Paid Sick Leave – The Basics

- All employees
- Equivalent of two weeks
- In addition to other paid time off provided
- Employee choice
- Limits on intermittent use
- Limits on documentation
- Cannot require finding a replacement worker
- Beware of retaliation
Extended FMLA Leave – The Basics

- Employed at least 30 days
- School or childcare closure only
- 12 weeks (inclusive of other FMLA leave)
- Partially paid
- Health insurance benefits continue
- Other FMLA provisions apply, except required employer notices
Paying Sick Leave

**AT REGULAR RATE UP TO $511/DAY AND $5,110 TOTAL FOR:**

- Subject to a quarantine or isolation order
- Advised to self-quarantine
- Experiencing symptoms and seeking a medical diagnosis

**AT 2/3RDS REGULAR RATE UP TO $200/DAY AND $2,000 TOTAL:**

- Caring for individual subject to quarantine order or caring for someone advised by health provider to self-quarantine
- Experiencing substantially-similar condition
- Caring for a child whose school or place of care is closed
Paying Extended FMLA Leave

• First two weeks unpaid
  • Can choose to use paid sick time (or other paid time off) concurrently

• Remaining leave paid at 2/3rds regular rate up to $200/day, and $10,000 total

• Based on hours normally scheduled to work
Job Protection

• Former position or a similar position, with equivalent pay, benefits, and other employment terms
• No greater right to reinstatement than if they had been continuously employed
Job Protection – Less than 25 Employees

• Reinstatement not required if:
  • Position no longer exists due to COVID-19
  • No equivalent position is available
  • Make reasonable efforts to notify employee of any equivalent positions that becomes available within one year
Exemptions

• Health Care Employee
• Small Employer (<50 employees)
  • Limited to:
    • Extended FMLA leave
    • Paid sick leave for school or place of care closure
  • Providing leave would “jeopardize the viability of the business as a going concern”
This presentation is based on federal, state and local laws, regulations, guidance, and public health authority recommendations issued as of November 20, 2020. Federal, state and local responses to the COVID-19 public health emergency are constantly changing. We encourage you to seek legal guidance to ensure you have the most up-to-date information.

This presentation is intended to provide general information only. It is not intended to provide any legal opinions or advice applicable to any particular situation and does not create an attorney-client relationship with any attendee or reader.