

Key Coronavirus Emergency Sick Leave Considerations for Employers

Companies and employees impacted by the coronavirus pandemic have a wealth of resources to aid them during the crisis. Understanding which employees are eligible for which benefit will be an important risk management exercise.

By: [Nina Luckman](#) | April 21, 2020

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Poms & Associates, an insurance brokerage based in Los Angeles, is hosting a series of educational webinars addressing the coronavirus. The first in the series, titled “Coronavirus Law,” features Rebecca Torrey, an employment law expert.

The [webinar](#)’s main focus is a discussion of the new federal coronavirus legislation applicable to employers and its components. The Families First Coronavirus Response Act (FFCRA) went into effect on April 2nd and passed with bipartisan support.

“The FFCRA is a very broad law that goes far beyond any obligations to employers, with very huge federal funding appropriations for a variety of programs related to emergency financial support concerning the coronavirus outbreak,” Torrey explained.

Assistance under the FFCRA includes free testing, meals for school-aged children and older or disabled adults, large reinforcements for states to boost unemployment payments, and aid for veterans, among other items.

What Employers Need to Watch

For employers, two pieces of the legislation are particularly important, according to Torrey: Federal Family Medical Leave Expansion and Federal Emergency Paid Sick Leave.

As part of these two major changes, Torrey noted federal tax withholding and payroll tax credits to enable employers with fewer than 500 employees to fund the paid time off, plus protections for employees against retaliation for using the new benefits.

Torrey began drilling down into the details with the Emergency Family Medical Leave Expansion Act first.

“This seems to be the part that has people alarmed because they are fearful that they’re going to have to pay their entire workforce for 12 weeks of leave, and they’re worried that it might apply broadly.”

Good news for employers — that is not the case.

Torrey explained that the expansion only provides emergency leave relating to school closures for employers with fewer than 500 employees. For employers that were able to transition to work from home in response to the stay at home orders issued by most states, there isn’t much concern.

Should this extended FMLA leave apply though, there are two key points to consider.

First, the initial two weeks of the 12 total is unpaid, unless an employee chooses to use accrued sick time or vacation time. An employer cannot require an employee to use that time.

Second, during the ensuing 10 weeks, employers must pay two-thirds of an employee’s regular rate of pay. This is capped at \$200 per day or \$10,000 total over that ten week period.

Part-time employees are also eligible and employers must continue to provide healthcare coverage. Reinstatement to the same position or a similar one after the leave concludes is also protected in the expansion.

What Small Businesses Are Reviewing

For small employers with fewer than 50 employees, the Department of Labor was tasked with establishing emergency guidelines allowing them to apply for an exemption “when compliance would jeopardize the viability of the business as a going concern.”

That guidance is available [here](#). Very small employers (fewer than 25 employees) are not bound to reinstatement under some circumstances, as long as they offer reinstatement within 12 months.

“This is a temporary law; it’s not made to last forever,” Torrey said.

“Who knows what Congress will do, but we all expect at this point that it will sunset or expire at the end of the year.”

The State of Emergency Paid Sick Leave

The other integral component of the FFCRA concerns the Emergency Paid Sick Leave Act, which requires employers to provide two weeks of paid sick leave for coronavirus-related absences equal to an employee's regularly scheduled hours.

This sick leave, again, applies to all employers with fewer than 500 employees and also includes both full- and part-time employees, but as opposed to the FMLA expansion, does not have a 30 day minimum employment time associated with it.

As for the six typical reasons that an employee might use the emergency sick leave, Torrey presented them in the order she believes prescribes to likelihood. Those are as follows:

- Employee is subject to a government quarantine or isolation order due to COVID-19;
- Employee has been advised by a medical provider to self-quarantine;
- Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- Employee is caring for an individual who is subject to a quarantine or isolation order;
- Employee is caring for a child in cases of school closures or interruption of regular childcare; or
- Employee is experiencing another similar condition identified by federal officials (new virus).

Regarding the last item, Torrey described it as a catch-all in case the virus evolves.

The payscale for these benefits, if they are used by the employee for their own COVID-19 reasons, is capped at \$511 per day, \$5,110 in the aggregate.

If the employee is caring for someone else, that drops to two-thirds of their regular rate, with a \$200 per day cap, \$2,000 in the aggregate.

For higher earners, "You can be generous and give more, but you won't get a tax credit for more than \$511 per day," Torrey said.

She also recommended that employers work with their payroll service for the management of the emergency sick leave, "because it has different terms of use and is wiped out at the end of the year."

The payroll service should be able to track this leave differently from regular sick leave and track its allotment.

Vital to this legislation is the fact that the federal government is providing dollar for dollar tax credits for employers up to the limits delineated in both parts of the FFCRA. Guidance from the IRS to that effect is available [here](#).

All covered employers are required to provide notice of the new paid leave in the FFCRA. That poster is available [here](#), and can be distributed via email.

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