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PROUDLY SERVING ARIZONA'S 8TH CONGRESSIONAL DISTRICT

FREQUENTLY ASKED QUESTIONS PAID SICK LEAVE

Q: What is the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act of the Families First Coronavirus Response Act (FFCRA)?

A: The Families First Coronavirus Response Act (FFCRA) requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to the Coronavirus. The paid sick leave and expanded family and medical leave provisions of the FFCRA apply to certain public employers, and private employers with fewer than 500 employees. The Department of Labor's Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements.

Q: When will these benefits take effect?

A: The paid leave provisions were effective on April 1, 2020, and applicants can apply for leave between April 1, 2020, and December 31, 2020.

Q: What is the difference between "paid sick leave" and "expanded family medical leave"?

A: "Paid sick leave" – means paid leave under the Emergency Paid Sick Leave Act. "Expanded family and medical leave" – means paid leave under the Emergency Family and Medical Leave Expansion Act.

Q: What types of employers are covered under this Expanded Family and Medical Leave?

A: The expanded leave applies to employers with less than 500 employees.

Q: Which type of employees are counted for the under the 500-employee threshold?

A: You have fewer than 500 employees if you employ fewer than 500 full-time and part-time employees within the United States. In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold.

Q: What are qualifying reasons for leave under the FFCRA?

A: *An employee qualifies for paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because the employee:*

- 1. Is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;*
- 2. Has been advised by a health care provider to self-quarantine related to COVID-19;*
- 3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;*
- 4. Is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);*
- 5. Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or*
- 6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.*

Under the FFCRA, an employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19.

Q: When am I able to telework under the FFCRA?

A: *You may telework when your employer permits or allows you to perform work while you are at home or at a location other than your normal workplace. Telework is work for which normal wages must be paid and is not compensated under the paid leave provisions of the FFCRA.*

Q: If I am or become unable to telework, am I entitled to paid sick leave or expanded family and medical leave?

A: *If your employer permits teleworking—for example, allows you to perform certain tasks or work a certain number of hours from home or at a location other than your normal workplace—and you are unable to perform those tasks or work the required hours because of one of the qualifying reasons for paid sick leave, then you are entitled to take paid sick leave.*

Similarly, if you are unable to perform those teleworking tasks or work the required teleworking hours because you need to care for your child whose school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, then you are entitled to take expanded family and medical leave. Of course, to the extent you are able to telework while caring for your child, paid sick leave and expanded family and medical leave is not available.

Q: What type of coverage is provided to employees affected by circumstances due to COVID-19?

A: *Generally, the FFCRA provides that covered employers must provide to all employees:*

- Two weeks (up to 80 hours) of **paid sick leave** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or*

- *Two weeks (up to 80 hours) of **paid sick leave** at two-thirds of the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.*

A covered employer must provide to employees that have been employed at least 30 days:

- *Up to an additional 10 weeks of **paid expanded family and medical leave** at two-thirds the employee's regular rate of pay where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.*

Q: If I am home with my child because his or her school or place of care is closed, or child-care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?

A: You may be eligible for both types of leave, but only for a total of 12 weeks of paid leave. You may take both paid sick leave and expanded family and medical leave to care for your child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.

Q: What documents do I need to give my employer to get paid sick leave or expanded family and medical leave?

A: You must provide to your employer documentation in support of your paid sick leave as specified in applicable IRS forms, instructions, and information. Your employer may also require you to provide additional documentation in support of your expanded family and medical leave taken to care for your child whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19. For example, this may include a notice of closure or unavailability from your child's school, place of care, or childcare provider, including a notice that may have been posted on a government, school, or day care website, published in a newspaper, or emailed to you from an employee or official of the school, place of care, or child care provider.

Q: Do I qualify for leave for a COVID-19 related reason even if I have already used some or all of my leave under the Family and Medical Leave Act (FMLA)?

A: If you are an eligible employee, you are entitled to paid sick leave under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA. However, if your employer was covered by the FMLA prior to April 1, 2020, your eligibility for expanded family and medical leave depends on how much leave you have already taken during the 12-month period that your employer uses for FMLA leave. You may take a total of 12 workweeks for FMLA or expanded family and medical leave reasons during a 12-month period. If you have taken some, but not all, 12 workweeks of your leave under FMLA during the current 12-month period determined by your employer, you may take the remaining portion of leave available. If you have already taken 12 workweeks of FMLA leave during this 12-month period, you may not take additional expanded family and medical leave.

Q: If I take paid sick leave under the Emergency Paid Sick Leave Act, does that count against other types of paid sick leave to which I am entitled under State or local law, or my employer's policy?

A: No. Paid sick leave under the Emergency Paid Sick Leave Act is in addition to other leave provided under Federal, State, or local law; an applicable collective bargaining agreement; or your employer's existing company policy.

Q: What is a full-time employee under the Emergency Paid Sick Leave Act?

A: For purposes of the Emergency Paid Sick Leave Act, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week.

Q: What records do I need to keep when my employee takes paid sick leave or expanded family and medical leave?

A: Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits. If you intend to claim a tax credit under the FFCRA for your payment of the sick leave or expanded family and medical leave wages, you should retain appropriate documentation in your records. You should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit. You are not required to provide leave if materials sufficient to support the applicable tax credit have not been provided.

If one of your employees takes expanded family and medical leave to care for his or her child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19, you may also require your employee to provide you with any additional documentation in support of such leave, to the extent permitted under the certification rules for conventional FMLA leave requests. For example, this could include a notice that has been posted on a government, school, or day care website, or published in a newspaper, or an email from an employee or official of the school, place of care, or child-care provider.

Q: I am a public sector employee. May I take paid sick leave under the Emergency Paid Sick Leave Act?

A: Generally, yes. You are entitled to paid sick leave if you work for a public agency or other government employer. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of the United States, a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar government entity.

Q: I am a public sector employee. May I take paid family and medical leave under the Emergency Family and Medical Leave Expansion Act?

A: It depends. In general, you are entitled to expanded family and medical leave if you are an employee of a non-federal public agency. Therefore, you are probably entitled to paid sick leave if, for example, you work for the government of a State, the District of Columbia, a Territory or possession of the United States, a city, a municipality, a township, a county, a parish, or a similar entity. But if you are a Federal employee, you likely are not entitled to expanded family and medical leave.

Q: What agency in the Federal government should I be reaching out to if I have questions as an employer or employee?

A: You can reach out to the Department of Labor's Wage and Hour Division by calling their toll-free helpline: 1-866-4-USWAGE (1-866-487-9243), your call will be directed to the nearest division office for assistance to have your questions answered. You can also access support at webapps.dol.gov/contactwhd/ or at www.dol.gov/agencies/whd/pandemic.

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