

Dear GO-HR friends and clients:

As promised, our goal is to keep you updated as best as possible on COVID-related things that impact you. Here's a summary of the paid sick and FMLA leaves act that was signed into law last night (March 18, 2020). The actual Act is 112 pages and I've included it here for your reading leisure. (After all, we're all going to be quarantined soon enough and you need something to read, right?) Link [here](#). At the end of this summary, I've included a few more key links for reference purposes.

This is my reading and summary, not legal advice. We did compare this to a few legal resources and noted below where there seems to be some still-fuzzy areas. Also, this is a summary of the two leaves only, not the entire 112-page Act.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT:

- It allows that the Act will “take effect not later than 15 days after the dates of enactment.” It was signed on March 18, so that puts it as going into effect no later than April 2.
- Any employee who has worked 30 days is eligible.
- Qualifying leave reasons:
 - Falls under a public health emergency (which we have).
 - The employee *cannot work or telework* (this telework option is key and will help many, but not all, of our employers).
 - Employee has to care for a son or daughter due to the closing of school or a childcare provider (someone who receives compensation on a regular basis, including an “eligible child care provider”) is unable to continue providing service (but if they can telework, they would not be eligible).
- There can be an unpaid leave for initial 10 days. (Employees get to CHOOSE if they want to take their accrued time off in lieu of unpaid, the employer cannot require this. You do, however, get to determine if the first 10 days are unpaid.)
- *This leave is in addition to existing leave policies you might have in place.*
- Beyond the first 10 days, the calculation for payment is *not less* than two-thirds of an employee's regular rate of pay for the hours that the employee would have normally been scheduled to work otherwise.
- This pay cannot exceed \$200 per day and \$10,000 in aggregate.
- If the need for leave is foreseeable, the employee must provide the employer with as much notice as possible.
- This leave is job protected leave, so employees who take the leave must be returned to their same or similar positions. (Exception: For employers with fewer than 25 EEs, if the position is eliminated due to changes as the result of COVID-19 pandemic you would not have to restore the position.)
- This has a sunset provision of December 31, 2020.
- There is a provision that businesses with fewer than 50 employees can try for an exemption if the “imposition of such requirements would jeopardize the viability of the business as a going concern”. There is some debate about what this line ACTUALLY means, but if it is a straightforward as that, the employer will probably have to bear the burden of making this case and not just state across the board that it would endure a hardship. Documentation will be your friend.

EMERGENCY PAID SICK LEAVE:

- It allows that the Act will “take effect not later than 15 days after the dates of enactment.” It was signed on March 18, so that puts it as going into effect no later than April 2.
- Applicable to all employees immediately – no required “on payroll” time.
- Paid *if an employee cannot work or telework* (this telework option is key and will help many, but not all, of our employers).
- Applies to employees – all related to COVID-19:
 1. Quarantine or isolation mandate by federal state, or local government
 2. Employee's medical professional (doctor) has advised self-quarantine
 3. Employee is experiencing signs and symptoms AND is seeking medical diagnoses (this is key)
 4. Employee is caring for an individual who meets one of three previous bullet points

5. Employee is caring for son or daughter of such employee if the school or place of care has been closed or child care provider is unable to provide care
 6. Employee is experiencing any other substantially similar condition specified by Secretary of Health and Human Services in consultation with Secretary of the Treasury and Secretary of Labor
- Duration of paid sick time:
 - Full-time employees – 80 hours
 - Part-time employees - a number of hours equal to the number of hours that such employee works, on average, over a 2-week period
 - Carryover from one year to next – none (and since this has a sundown date of December 31, 2020, it will not carry over into 2021)
 - Sick time ceases after employee returns to work
 - No waiting period. Employees immediately eligible for this.
 - Employee may use this sick time before other paid sick time; however, the employer cannot require the employee to use other paid leave before using this sick leave policy.
 - *This leave is in addition to existing leave policies you might have in place.*
 - Paid sick time means an increment of compensated leave that is calculated based on the employee's required compensation for a normally-scheduled work not to exceed \$511 per day and \$5,110 in aggregate if they meet numbers (1), (2), or (3) above; or they get \$200 per day and \$2,000 in aggregate in aggregate if they meet numbers (4), (5), or (6) above.

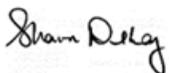
There will be mandatory notification requirements to employees for both of these leaves.

Retaliation against employees for taking these leaves is prohibited.

The key to all of this is that if the employee is not ill and can telework, you likely won't have to worry about these leaves.

There will be tax credits available to employers for leave granted under these two acts, so tracking will be critical. (You'll want to talk to your accountant about this.)

As always, let us know how we can be of assistance.



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