

Coronavirus Employment Update for IAPD Members

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Meet Your Hosts



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Families First Coronavirus Response Act

Highlights:

- Effective 15 days after enactment – ~~April 2~~.
DOL Now says effective date is April 1!
- Provides up to 80 hours of paid sick leave for individuals affected by coronavirus.
- Allows employees to use FMLA leave *with 2/3 pay* if they need to care for a child whose school or childcare is closed due to COVID-19

Covered Employers:

- Private employers engaged in “commerce” with fewer than 500 employees
- All public employers

Covered Employees:

Regular FMLA	Emergency Sick	Emergency FMLA
Employed at least 12 months	<i>All employees – from day 1</i>	Employed at least 30 calendar days
Worked at least 1250 hours in 12 months preceding start of leave		
Employed at worksite with at least 50 employees in 75-mile radius		

Exception:

“Except that an employer of an employee who is a **health care provider** or an **emergency responder** may elect to exclude such employee from the application of this subsection.”

Small business exception

Secretary of Labor has authority to “exempt small businesses with fewer than 50 employees” if requirements would “jeopardize the viability of the business as a going concern.”

May not apply to government bodies

Qualifying Reasons for Sick Leave:

Employee is unable to work (or telework) due to a need for leave because:

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 seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described above or has been advised by a health care provider as described above.
5. The employee is caring for a son or daughter if the child's school or place of care has been closed or the child's child care 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.

Basis for Emergency FMLA leave:

[T]he employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

Amount of Sick Leave:

Full-Time: 80 Hours (max)

Part-time: Number of hours employee works on average over 2-week period

Variable schedules

If hours employee would otherwise work cannot be determined due to variability:

- Use average *scheduled* hours over 6 months (including leave)
- Newer employees – use “reasonable expectation of employee at the time of hiring”
 - *If no agreement – use average hours worked*

Amount of FMLA Leave:

Up to 12 weeks

Does not expand total 12-week FMLA entitlement

Rate of Pay -

Employee sick or directed to isolate:

Greater of:

- "Regular Rate" under the FLSA
- FLSA minimum wage (\$7.25 / hour)
- State or local minimum wage

Rate of Pay -

Caring for child / another individual:

2/3 of regular rate or applicable minimum wage

FLSA Regular Rate

Total Non-Overtime Pay

(Base pay, non-discretionary bonuses, shift premiums, incentive comp, etc.)

Divided by

Total hours worked

FFCRA Regular Rate

Average of regular rates over 6 months prior to employee taking leave (or period worked for employer, if shorter)

Compute by taking *total comp* over prior 6 months and dividing by *total hours*

Maximum Pay

	Rate	Maximum Per Day	Maximum Time	Total Maximum
Sick Leave – Employee illness / isolation	100% of regular rate	\$511	80 hours	\$5,110
Sick leave – Caring for family member / child	2/3 of regular rate	\$200	80 hours	\$2,000
Emergency FMLA- First 10 days	Unpaid (may use other paid leave)	N/A	N/A	N/A
Emergency FMLA - After first 10 days	2/3 of regular rate	\$200	10 weeks	\$10,000

Interaction with other leave

- **In addition to** any leave provided by employers
- Employees *may* use emergency sick / FMLA leave before other leave
- Cannot *require* employees to exhaust other leave

Employee notice – Sick leave:

- *After the first workday* (or partial day).
- May require “reasonable notice procedures in order to continue receiving paid sick time provided under this law.”
- No provision for certification / documentation.

Employee notice - FMLA:

- When the need for leave under the Act is foreseeable, the employee must provide as much notice as practicable.
- No reference in legislation to certification or documentation.

- Sunsets December 31, 2020
- No payout on termination
- No carryover to next year

Employer Prohibitions:

- No discrimination or retaliation.
- Employers may not require employees who take leave to find a replacement for shifts.

Employer Notice Requirements:

- DOL poster – available at:
[dol.gov/agencies/whd/pandemic](https://www.dol.gov/agencies/whd/pandemic)
- Must be posted in the workplace.
- Distribute electronically or by mail to remote workers

Reinstatement Rights:

- **Same as regular FMLA**
(reinstate to same or equivalent position with respect to pay, benefits, terms and conditions)
- **Small employer exception**
 - Fewer than 25 employees
 - Position eliminated for reasons related to public health emergency
 - Employer made reasonable efforts to reinstate employee to equivalent position with similar pay, benefit, and terms and conditions of employment; and
 - The employer makes a reasonable effort to contact a displaced employee about an equivalent position if such position becomes available within 1 year after employee's need for leave ends (or 12 weeks after start of leave)

Enforcement

Enforced under FLSA / FMLA

- Employee lawsuits (*Small employer exception for FMLA*)
- DOL action
- Back wages, liquidated damages, attorney fees
- Statutory penalties

Tax credits NOT available for government employers.

Furloughs and Layoffs

- Neither furlough nor layoff is a legal term of art outside of a CBA

What is a furlough?

- Generally, furlough is someone who is not working or receiving pay, but remains an "active employee" and may receive some benefits

What is a layoff?

- Generally, a layoff is when someone's employment is being terminated
- May have some recall rights – depending on the terms of the CBA

Duty to Bargain

- If laid off or furloughed employees belong to a Union, duty to bargain impact
- Notify exclusive representative as soon as possible
- Engage in impact bargaining if requested

Exempt Employee Furloughs

- Public bodies can furlough exempt employees for less than a week without violating the salary basis test under the FLSA

Unemployment

Generally

- Employees separated from employment through no fault of their own
- Must be able and available for work
- Must register that they are actively seeking employment
- Apply through IDES website

Emergency IDES Rules COVID-19

- Also eligible
 - Laid off or workplace temporarily closed (eligible if plan to return when reopened)
 - Confined to their home due to a government-required or recommended quarantine
 - Confined to their home because of diagnosis for themselves, parent, spouse, or child

CARE Act Additions

- Caring for family member or member of household with COVID-19 diagnosis
- Primary caregiver and need to stay home because school or facility of care is closed
- Can't start scheduled employment due to COVID-19

CARE Act Additions (Continued)

- Became breadwinner due to death of spouse from COVID-19
- Needs to quit because of COVID-19
- Work closed because of COVID-19
- Any additional criteria established by the Secretary of Labor

Applying for Benefits

- Apply online (system is currently overwhelmed; recommend going at off-peak times like late at night or early morning)
- All local offices are closed to the public
- Make sure to register that they are actively seeking work

Benefits and Waiting Period

- Maximums per week: \$471 (single), \$561 (married supporting a spouse), \$648 (child)
- Collect for up to 26 weeks
- No 7-day waiting period under emergency rules

CARE Act Additions

- Additional \$600 per claimant
- Eligible for 39 weeks of compensation
- No waiting period
- Applies to all claims made between January 27, 2020 and December 31, 2020

Forms

- Employers must mail these forms within 5 days of the layoff
 - What Every Worker Should Know About Unemployment Insurance Form
 - Available on IDES' website

Unemployment Offsets

- Disqualifying income:
 - Pay for part-time work*
 - Vacation payout
 - Retirement income
 - Subsidy pay (not severance)
 - Workers Comp
 - Wages in lieu of notice

Reimbursement v. Contribution

- Public Employers have a choice
- Reimbursement: reimburse the State for 100% of the benefits attributable to you
- Contribution: monthly contributions to IDES for potential future claims

- Cannot apply to switch from reimbursement to contribution retroactively to January 1, 2020
- Relief under Federal CARE Act – final approval expected March 27, 2020

CARE Act

- Unemployment reimbursement funds earmarked for government entities
- Reimburse claims made between March 13, 2020 and December 31, 2020
- Secretary of Labor to establish rules

Stay at Home Order

- Effective 5:00 p.m. March 21
- Very broad
- Employers determine who is essential
- Must maintain social distancing for essential employees

- Don't need a letter or certification to travel
 - May want one if employees are concerned with being stopped
 - Local entities decide if green spaces to remain open for recreational use (Chicago Park District and Illinois Parks are closed)

- All roads to remain open
- Not a lock down or martial law

Questions?
