

COVID-19 Coronavirus Response Act

Summary by Amanda L. Stanley, General Counsel

astanley@lkm.org

Updated 3/27/20 --- Please reference the FAQ Document on the League's COVID page which is the far more comprehensive review

Late Wednesday March 18th, President Trump signed the COVID-19 Family First Response Act (H.R. 6201). This is the first of the Federal Government's responses to provide federal assistance. There are several provisions that cities must be aware of and implement asap. This summary is specific to governmental employers.

There are two major provisions of the Act: (1) The Emergency Paid Sick Leave and (2) The Emergency Family and Medical Leave Expansion.

This Act will take effect April 1st and ends on December 31, 2020. Paid leave given before April 1st will not count as this new Emergency Paid Leave or towards the new special category of Covid-FMLA Leave.

Emergency Paid Sick Leave

The Act requires that governmental employers provide each employee, except for healthcare providers or emergency responders, paid sick leave if the employee is unable to work in person or via telework due to the following reasons:

- (1) The employee being 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 a quarantine or isolation order related to COVID-19.
- (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID-19 precautions; or
- (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.

Paid leave must be paid in the following amounts:

- (1) Full Time Employees, 80 hours---for reasons 1,2, and 3 get full pay; for reasons 4, 5, 6 get 2/3rds pay;
- (2) Part Time Employees, a number of hours equal to the number of hours that such employee works, on average, over a 2-week period---for reasons 1,2, and 3 get full pay; for reasons 4, 5, 6 get 2/3rds pay.

There are different caps on the total payment: \$511 per day and \$5,110 in the aggregate for an employee personally subject to quarantine or having COVID-19 symptoms and \$200 per day and \$2,000 in the aggregate for an employee caring for another person.

An employee is only entitled to 2 total weeks. For example, an employee may not take two weeks for self-quarantine and then another two weeks to care for a child.

An employer may not require the employee find a replacement employee to cover the hours during which the employee is using paid sick time AND an employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses this special COVID-19 sick leave. This is a new special extra two weeks of paid leave.

Government employers will not be reimbursed for this through payroll tax credits like private employers will be for personnel costs due to this change. Wages required to be paid under the emergency sick leave provisions will NOT be subject to the 6.2% social security payroll tax typically paid by employers on employees' wages. This is both the employer portion and the employee portion. A city does still need to withhold and match the Medicare Portion. (There is the consensus opinion of the law; however, we are still awaiting IRS guidelines that could change this interpretation)

Each employer will be required to post a notice prepared by the Secretary of Labor. This notice must be placed in a conspicuous place on its premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees or by posting the notice on an external website. Notices are available at

https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

Failure to comply with this Act will be punishable under the Fair Labor Standards Act. It is unlawful to discriminate or terminate any employee for utilizing the leave provided under the Act.

There are special rules for employers with multiemployer collective bargaining agreements.

Emergency Leave Act

The Act expands FMLA and, pertinently for cities, applies it to all government employers regardless of the number of employees. The Act applies to all employees who have been employed at least 30 calendar days except for health care providers and emergency responders.

The new Act extends to each employee 12 weeks of job protected leave if the employee is unable to work or telework because they must care for a minor child if the child's school or place of care has been closed, or if the childcare provider of that child is unavailable due to a COVID-19 emergency.

The first 10 days of leave can be unpaid leave. During this time the employee can opt to use accrued vacation days or other available paid leave. The remaining days of leave, the employee shall receive pay equal to at least 2/3 of their normal pay rate. The paid leave is capped at \$200 per day and \$10,000 in the

aggregate. If traditional FMLA applies to the city, this does not mean all FMLA Leave is now paid leave. It is only this new special category of leave.

Generally, the employee on leave must be restored to his or her prior position; however, this requirement does not apply to employers with fewer than 25 employees if the position held by the employee on leave no longer exists due to economic conditions or other changes in the employer's operating conditions caused by the coronavirus pandemic, and the employer makes reasonable efforts to restore the employee to an equivalent position.

Governmental Employers will not be reimbursed for this through payroll tax credits like private employers will be for personnel costs due to this change. Wages required to be paid under the emergency family leave provisions will NOT be subject to the 6.2% social security payroll tax typically paid by employers on employees' wages. This is both the employer portion and the employee portion. A city does still need to withhold and match the Medicare Portion. (There is the consensus opinion of the law; however, we are still awaiting IRS guidelines that could change this interpretation)

There are special rules for employers with multiemployer collective bargaining agreements.

Failure to comply with this Act will be punishable under the Family Medical Leave Act. It is unlawful to discriminate or terminate any employee for utilizing the leave provided under the Act.

A copy of the bill can be found at

<https://www.congress.gov/bill/116th-congress/house-bill/6201/text#HDC8838D40C3C4652AAF325D708952511>