

HOUSE PASSES COVID-19 CORONAVIRUS LAW: WHAT EMPLOYERS SHOULD KNOW

Presented by:

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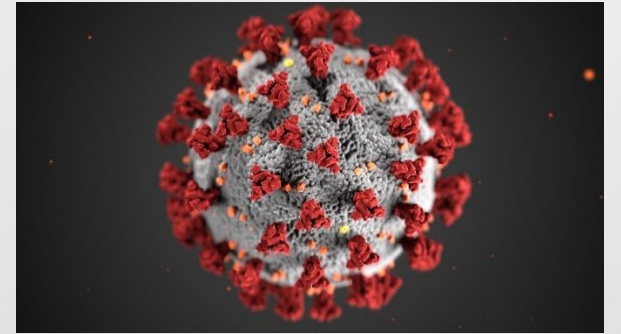
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AGENDA AND HOUSEKEEPING

- Review background of COVID-19 in the workplace
- Families First Coronavirus Response Act
 - Leave Available to Employees
 - Coverage and Employer obligations
- FAQs and Examples
- All participants are muted
 - May type questions in the side navigation panel
 - We will try to answer all questions



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BACKGROUND

- Good news- a majority of individuals recover.
- Coronaviruses are a family of virus that can cause fever, respiratory problems, and sometimes gastrointestinal issues.
- The latest novel coronavirus is being labeled COVID-19.
- The outbreak was first detected in December in Wuhan, the capital of China's Hubei province.
- Spreads through coughs and sneezes like a common cold, but you may acquire the virus after touching a surface containing the virus and touching your face or mouth. A person on average spreads it to 2-3 others.
- Individuals in more than 100 countries have been infected.
- Declared a pandemic on 3/11 and National Emergency on 3/13

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT OVERVIEW

- Passed House on 3/14/2020; House changes made late 3/16/2020 for “technical corrections”
- Not yet passed by Senate, which may pass it today or later this week
- **Paid and Unpaid Leave for Coronavirus-Related Reasons**
 - **Emergency Paid Sick Leave**
 - **Emergency Family and Medical Leave Act (Expands FMLA)**
- **Emergency Unemployment Insurance Stabilization And Access Act of 2020**
 - **Unemployment Insurance Funding**
- **Reimbursement to Employers as Tax Credits**

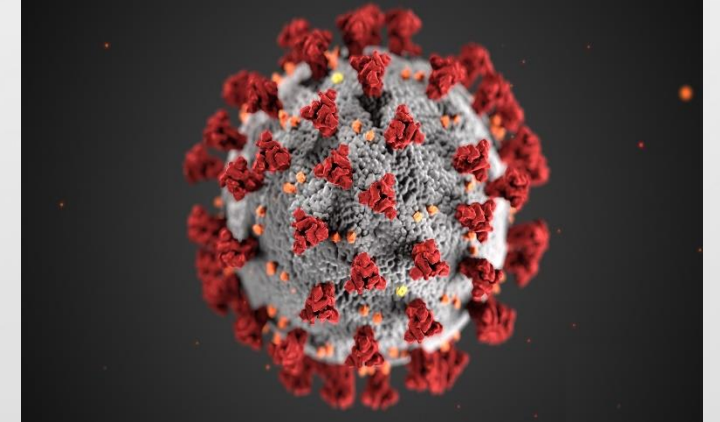
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EMERGENCY PAID SICK LEAVE

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EMERGENCY PAID SICK LEAVE

- **Employers with 1-499 employees**
 - Employees are counted if in the United States, the District of Columbia, or any territory or possession of the United States.
- **Any employee who works for employer is eligible**
 - No minimum days/hours of employment
- **If the EMPLOYEE is sick, employee is entitled to:**
 - Full-time Employees – 80 hours of paid sick leave
 - Part-time Employees – Paid based on the average number of hours the employee worked for the six months prior to taking this paid sick leave.
 - Or, if employed for less than 6 months, the average number of hours per week the employee would normally be scheduled



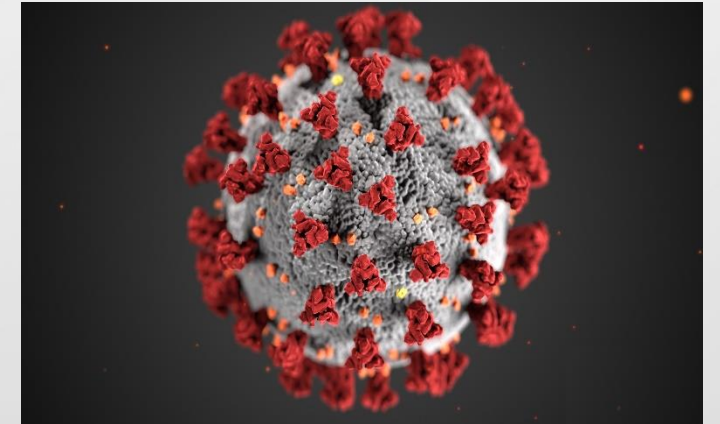
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EMERGENCY PAID SICK LEAVE

Qualifying Reasons

Must provide paid sick time “to the extent the employee is unable to work (or telework) due to a need for leave because:

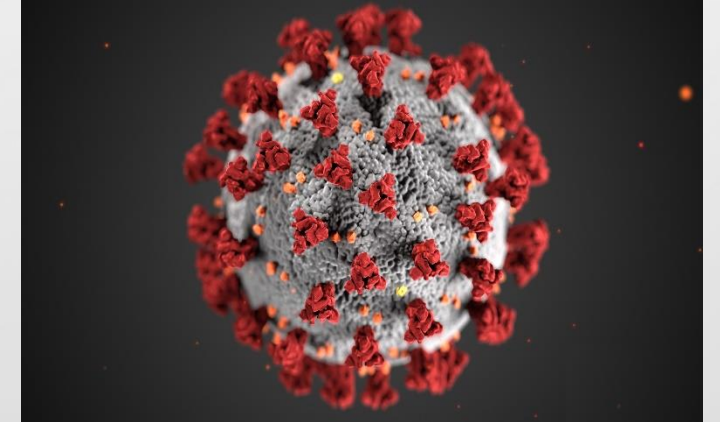
- (1) The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an **individual** who is subject to an order or self-quarantine as described above.
- (5) The employee is caring for a son or daughter if school or child care is closed/unavailable.
- (6) The employee is experiencing “any other substantially similar condition” specified by HHS (catch all).



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EMERGENCY PAID SICK LEAVE

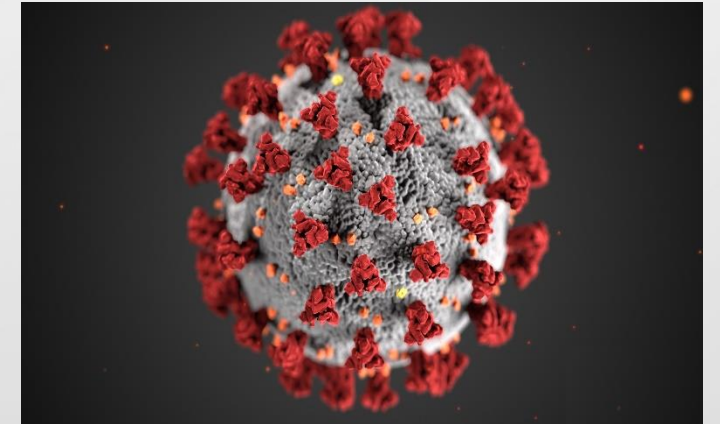
- **At employee's regular rate for qualifying reasons (1), (2) or (3)**
 - Compensated at HIGHER of their regular rate, federal minimum wage or local minimum wage
- **At 2/3 the employee's regular rate for qualifying reasons (4), (5) or (6)**
- **Capped at the following levels:**
 - \$511 per day and \$5,110 in the aggregate per person for qualifying reasons (1), (2) and (3).
 - \$200 per day and \$2,000 in the aggregate per person for qualifying reasons (4), (5) and (6).



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EMERGENCY PAID SICK LEAVE CONT.

- **Exemption**
 - 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 section.
- **Secretary of Labor has the authority for good cause to issue regulations:**
 - To exclude certain health care providers and emergency responders from the definition of “eligible employee”
 - To exempt small businesses with fewer than 50 employees from leave to care for a son or daughter if school or child care is closed/unavailable when the imposition of such requirement would jeopardize the viability of the business as a going concern
 - “As necessary” (catch-all)

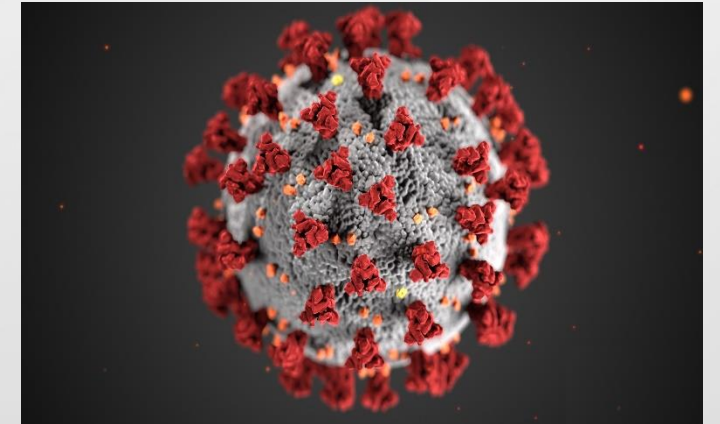


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EMERGENCY PAID SICK LEAVE CONT.

Additional General Rules

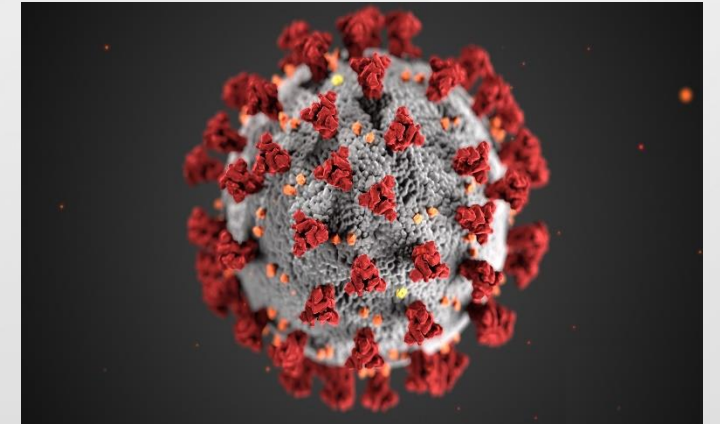
- Sick leave does not carry over
- Employer may not require employee as a condition of paid leave to find a replacement to cover scheduled hours
- Employee may first use this paid sick time under this law before other paid leave
- Employer may not require employee to use other paid leave provided by the employer before using this paid sick leave



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EMERGENCY PAID SICK LEAVE Notice Requirements

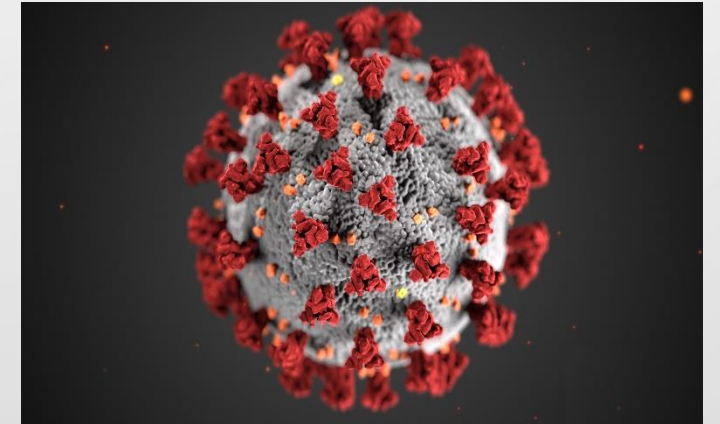
- **Employers:** Employers must post a notice regarding the requirements of the law.
 - The Secretary of Labor is required to make a model notice publicly available no later than 7 days after enactment of the new law.
- **Employees:** After the first workday (or portion thereof) an employee receives paid sick leave, the employer may “require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”
- *Law goes into effect no later than 15 days after enactment of the Act, until 12/31/2020*
 - *Your business will have 15 days to comply*



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EMERGENCY PAID SICK LEAVE Tax Credits

- Employers subject to the requirements are entitled to a refundable tax credit equal to the amount of the qualified paid sick leave requirements paid by the employer per quarter.
- The tax credits for qualified paid sick leave wages are capped at
 - \$511 per day per person for qualifying reasons (1), (2) and (3).
 - \$200 per day per person for qualifying reasons (4), (5) and (6).
- The tax credits are applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified leaves exceed the taxes they would owe.



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Questions?



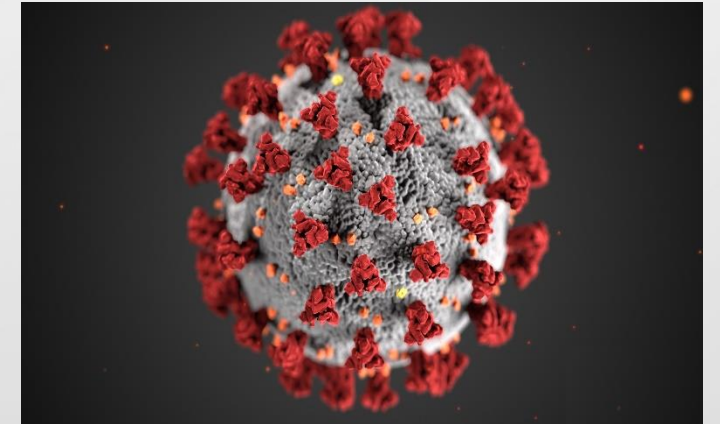
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EMERGENCY FAMILY AND MEDICAL LEAVE

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EMERGENCY FAMILY AND MEDICAL LEAVE ACT

- **Employers with 1-499 employees**
 - Employees are counted if in the United States, the District of Columbia, or any territory or possession of the United States.
 - A corporation is a single employer, rather than its separate establishments or divisions
 - Separate entities will be one employer if they meet either the joint employer or integrated employers tests (as set forth in FMLA regulations)
- **Significantly expands FMLA on a temporary basis**
- **Any employee who worked for employer for 30 days prior to leave and has a qualifying reason is eligible (no requirement of 12 months/1250 hours)**
- **Provides up to 12 weeks of job-protected leave (paid after the first 10 days)**



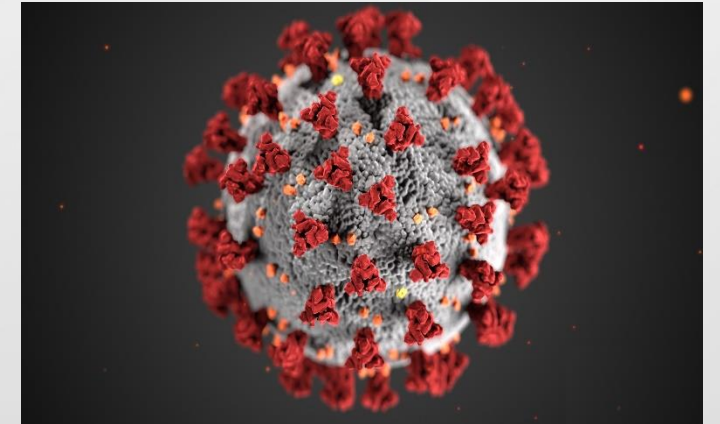
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EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Qualifying Reasons

12 weeks of job protected leave when:

- “The employee is unable to work (or telework) due to the 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.”
- Likely FMLA definition of “son or daughter” will apply.



“Public Health Emergency”

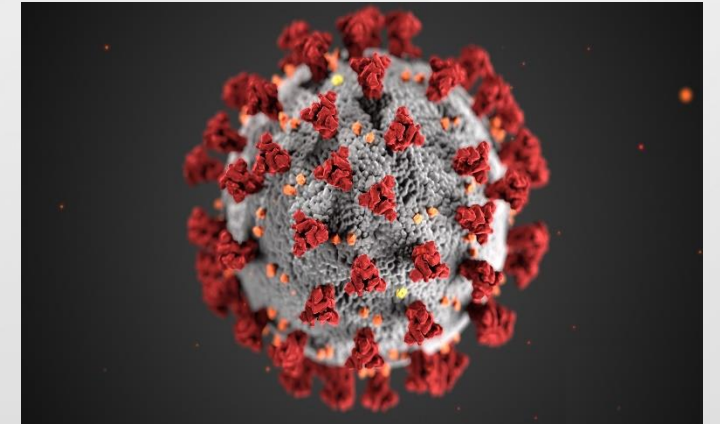
- An emergency with respect to COVID-19 declared by a Federal, State or local authority

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EMERGENCY FAMILY AND MEDICAL LEAVE ACT

How Does it Work

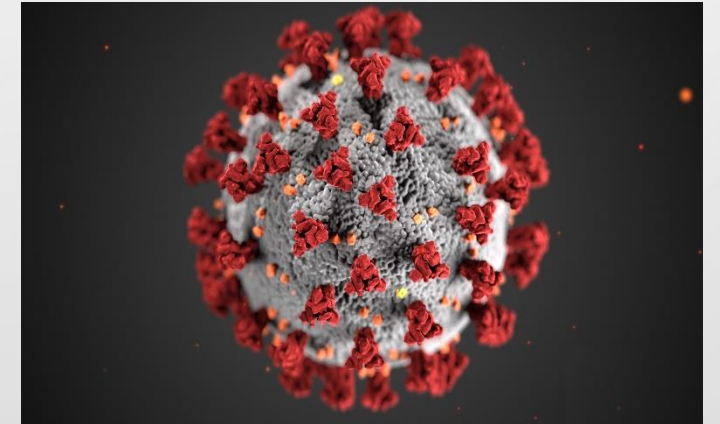
- **First 10 days of EFMLA may be unpaid**
 - An employee may elect to substitute accrued PTO, vacation, or sick leave to cover any portion of first 10 days
 - Employer cannot require an employee to substitute such leave
- **After the first 10 days:**
 - Compensated at 2/3 of the regular rate
 - Part-time employees/irregular schedule entitled to be paid based on average number of hours employee worked in prior 6 months, or if employed less than 6 months, average number of hours employee would normally be scheduled to work
 - **Pay capped at \$200 per day and \$10,000 in aggregate per employee**
 - Bargaining unit employees – apply EFMLA consistent with the CBA



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EMERGENCY FAMILY AND MEDICAL LEAVE ACT

- **Exemption**
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- **Secretary of Labor has the authority for good cause to issue regulations:**
 - To exclude certain health care providers and emergency responders from the definition of “eligible employee”
 - To exempt small businesses with fewer than 50 employees from the new law when the imposition of such requirements would jeopardize the viability of the business as a going concern

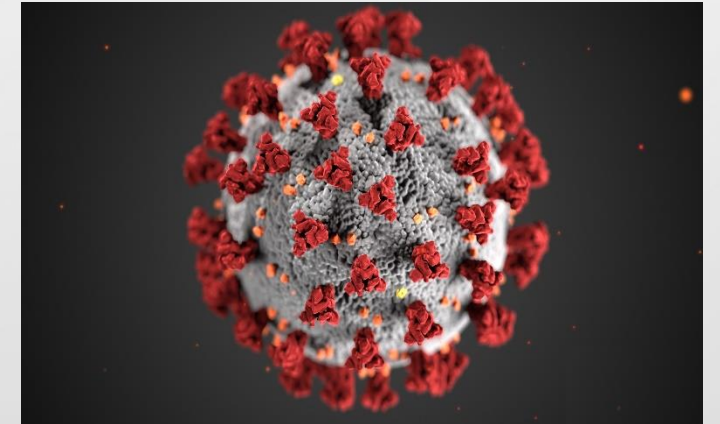


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EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Job Restoration/Reinstatement

- If 25 or more employees, traditional restoration obligation
- If **fewer than 25 employees**, the traditional job reinstatement provisions of the FMLA do not apply **IF** the following conditions are met (note this **does not excuse** provision of E-FMLA):
 - The employee takes E-FMLA
 - The position the employee held when the leave started does not exist due to economic conditions or other changes in operating conditions of the employer (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave
 - The employer makes reasonable efforts to restore the employee to an equivalent position, with equivalent pay, benefits, and other terms
 - If reasonable efforts to restore to an equivalent position fail, the employer makes reasonable efforts to contact the employee if an equivalent position becomes available during the 1 year period beginning on the earlier of (A) the date on which the qualifying need related to a public health emergency concludes; or (B) the date that is 12 weeks after the date on which the employee's leave for E-FMLA commences.

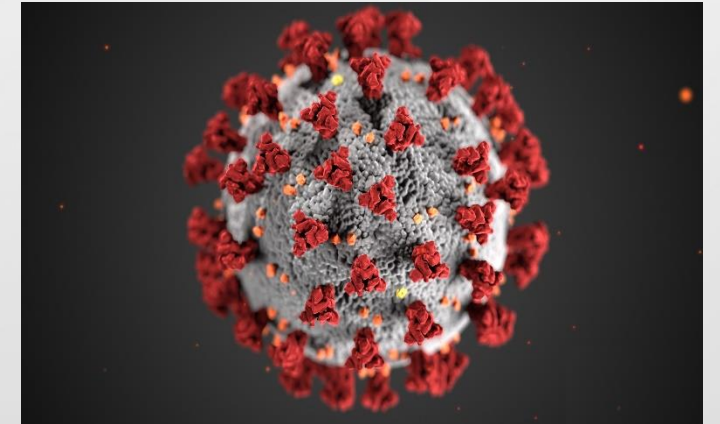


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EMERGENCY FAMILY AND MEDICAL LEAVE ACT

Interplay with Other Paid Leave

- Full-time employees may take Emergency Paid Sick Leave for first 80 hours of EFMLA leave so that it is paid
- Employees may also elect to use other accrued paid leave (e.g. vacation and PTO) during the first 10 days
- Eligibility for EFMLA and FMLA (for other non-COVID-19 related reasons) is 12 weeks total. This may mean use of EFMLA may affect eligibility under traditional FMLA (or vice versa). **[This may be something the Senate tries to change. Intent is likely to make this “in addition to” traditional FMLA].**

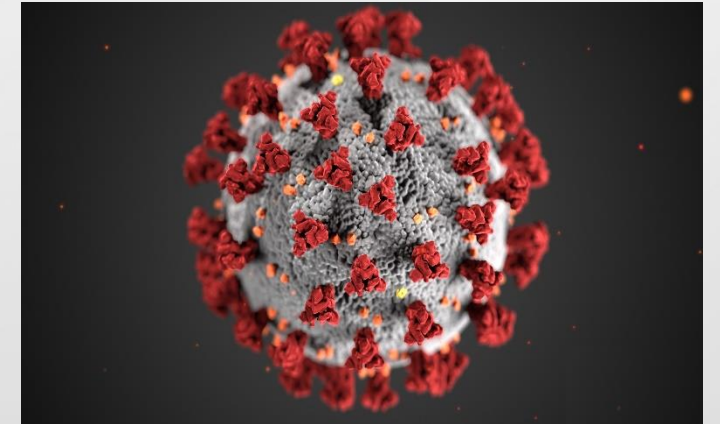


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Notice Requirements

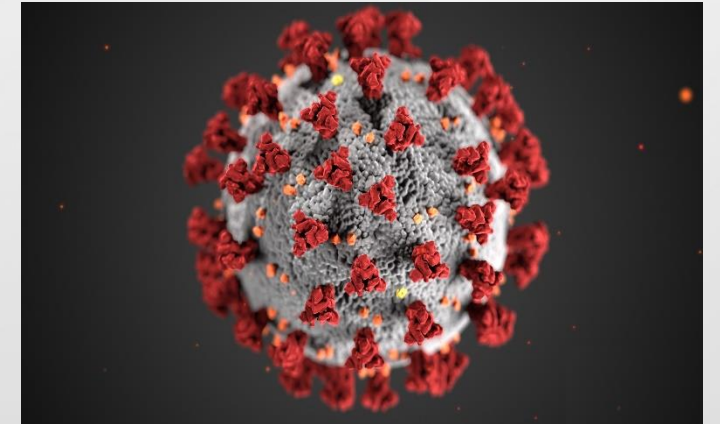
- **Employers:** No new specific notice requirement. However, under the FMLA, all covered employers must display a general notice (FMLA poster) about the FMLA.
- **Employees:** Where the necessity for leave is foreseeable, an employee shall provide the employer with notice of leave “as is practicable.”
- *Law goes into effect no later than 15 days after enactment of the Act*
 - *Your business will have 15 days to comply*



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EMERGENCY FAMILY AND MEDICAL LEAVE ACT Tax Credits

- Employers subject to the requirements are entitled to a tax credit equal to the amount of the paid family and medical leave requirements paid by the employer.
- The tax credits for qualified wages are capped at \$200 per day and \$10,000 per calendar quarter per employee.
- The tax credits are applied against employer Social Security taxes, but employers are reimbursed if their costs for qualified leaves exceed the taxes they would owe.



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A FEW THINGS TO KEEP IN MIND

There is Some Speculation the Senate Will Make Changes Before the Bill is Final:

- Getting rid of 500 employee cap?
- Trying some alternative to address cash-flow challenge of employers paying leave wages and then seeking relief via tax credits.
- ***However, late last night the dynamic seemed to be shifting to the Senate passing the bill as is to focus on other parts of the coronavirus stimulus response***

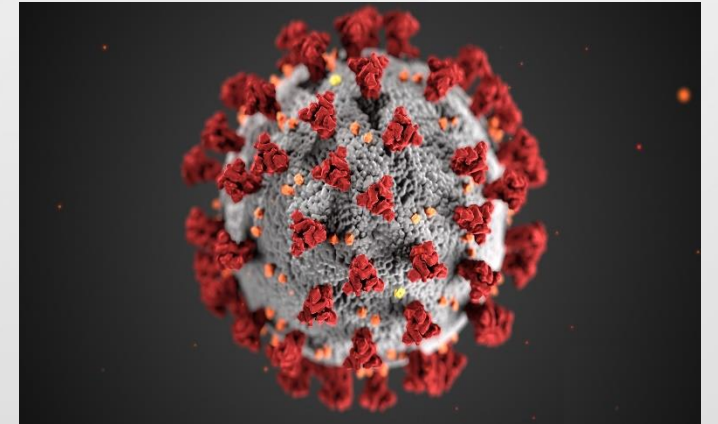
State and Local Laws

- Many states and local jurisdictions have their own paid sick days and family and medical leave laws, which may be in addition to these new federal requirements.
- Many states and locals are working quickly to amend their laws and/or add new requirements as well.

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KEY HEALTH PROVISIONS

- Requires insured and self-insured group health plans to provide coverage for COVID-19 diagnostic testing without cost sharing (including deductibles, copayments and coinsurance)
- Requires insured and self-insured group health plans to cover provider and facility costs associated with COVID-19 diagnostic testing visits



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Questions?



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FREQUENTLY ASKED QUESTIONS

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UNEMPLOYMENT COMPENSATION

- Unemployment Compensation may be available to employees in the event of a shutdown of your business or furlough of employees
- Each state's unemployment insurance agency will determine eligibility
- Proposed Bill includes federal funding to states to offer up to an additional 26 weeks (subject to certain conditions) of unemployment insurance

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CONSIDERATIONS FOR EMPLOYERS

- Plan for business interruptions; have a plan in place to have employees working from home.
- Educate your supply chain.
- Attempt to schedule more teleconferences in lieu of travel.
- Can you ask employees to stay at home if they exhibit symptoms of coronavirus or the flu?
Yes. Ask them to seek medical attention and get tested for COVID-19.
- Can you ask an employee why he or she missed work?
Yes.
- Can you ask them to leave work?
 - Yes, under most circumstances.

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TEMPERATURE CHECKS

EEOC Previous Guidance

If the Centers for Disease Control and Prevention (CDC) or a state or local health authority proclaims a pandemic has spread in an area . . . or if pandemic influenza becomes widespread in the community as assessed by state or local health authorities or the CDC, then employers may measure employees' body temperature.

We are past any type of influenza we have dealt with in the past, so asking about symptoms and temperature testing is defensible under the ADA.



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TEMPERATURE CHECKS

- Provide advance written notice to employees
- Infrared thermometer (less invasive but arguably less reliable)
- Threshold temperature currently indicated by the CDC - 100.4
- Perform in private area (keep social distancing guidelines in tact)
- Have HR (as opposed to supervisors) perform the testing if possible
- If you record temperature, place in separate confidential medical file
- Ask if they have other possible symptoms; a fever is one symptom that may or may not be present



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MASKING THE PROBLEM?

- Under OSHA's respiratory protection standard, a respirator must be provided to employees only "when such equipment is necessary to protect the health of such employees."
- OSHA rules provide guidance on when a respirator is not required: "an employer **may** provide respirators at the request of employees or permit employees to use their own respirators, if the employer determines that such respirator use will not in itself create a hazard" (29 C.F.R. 1910.134(c)(2)).



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MASKING THE PROBLEM?

- The World Health Organization (WHO) has stated that people only need to wear face masks if they are treating someone who is infected with the coronavirus.
- Doctors agree that the best defense is simply washing your hands.
- There are more appropriate measures of defense than wearing a surgical mask or respirator.
 - CDC recommends reserving non-essential respirators for healthcare professionals to prevent shortage of supplies



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CAN AN EMPLOYEE SIMPLY REFUSE TO WORK?

- An employee's right to refuse to do a task is protected if all of the following conditions are met:
 - Where possible, you have asked the employer to eliminate the danger, and the employer failed to do so; and
 - You refused to work in "good faith." This means that you must genuinely believe that an imminent danger exists; and
 - A reasonable person would agree that there is a real danger of death or serious injury; and
 - There isn't enough time, due to the urgency of the hazard, to get it corrected through regular enforcement channels, such as requesting an OSHA inspection.



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SCENARIO I

Sally has been employed full-time for 20 days at a call center which employs 40 people. Sally is not eligible to receive any paid time off under her employer's policies.

Sally has a sore throat and a fever of 100.7 and cannot report to work. Sally is waiting to be seen by her doctor. What benefits is Sally entitled to while she is not working?

- Emergency Paid Sick Leave – 80 hours at her regular rate
- Sally would not be entitled to EFMLA because she was not employed for at least 30 days prior to the first day of her leave

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SCENARIO 2

Sally has been employed full-time for 45 days at a call center which employs 40 people. As of today, Sally has accrued three (3) days of Paid Time Off under the employer's Policies.

The school where Sally's fourth-grade daughter attends is closed until the end of April. Sally is unable to work from home during this time. What benefits is Sally entitled to receive during this time?

- Emergency Paid Sick Leave – 80 hours at her regular rate of pay
- Emergency Family and Medical Leave Act – up to 12 weeks of job protected leave.
 - The first ten (10) days is unpaid (but paid under Emergency Sick Leave).
 - After the 10 days, Sally is paid at 2/3 her regular rate
 - Sally may use her 3 days of PTO after the initial 10 days, but she is not required to

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PRACTICAL TAKEAWAYS

- Encourage employees to wash their hands. Ensure that proper hand washing tools/soap is available.
- Educate your workforce.
- Allow employees to work from home if possible.
- Encourage employees to not touch their faces, eyes, and mouth.
- Increase custodial/sanitizing schedules to the extent possible.
- Encourage employees to contact a doctor if they develop symptoms of the coronavirus and be tested.

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Questions?



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Thank You



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