

COVID-19 FREQUENTLY ASKED QUESTIONS

Family Medical Leave Act (FMLA)/Paid Time Off (PTO)

Am I required to change my existing PTO or Sick Leave policies?

Current employer PTO and/or sick leave policies should remain in place. The FFCRA – Emergency Paid Sick Leave Act (EPSLA) prohibits employers from changing their current PTO or sick leave policies to avoid the EPSLA requirements. Employers cannot reduce their current PTO or sick leave time by the EPSLA leave time.

Emergency Paid Sick Leave Act (EPSLA)

What does the government require in terms of paid time off?

The EPSLA requires all employers with less than 500 employees to offer 2 weeks of paid leave for the following reasons related to the coronavirus:

- Self-quarantine or to seek a diagnosis or preventive care for COVID-19 (full pay)
- Care for a family member who is quarantined or seeking treatment for COVID-19 (2/3 pay)
- Care for a child due to school closure or childcare unavailable due to COVID-19 (2/3 pay)

What is required for full-time employees? Part-time employees?

Full-time employees are entitled to 80 hours of pay and part-time employees are entitled to pay for the typical hours they work in a two week period.

What is the length of service requirement that applies to employees for paid leave under the EPSLA?

There is no length of service requirement for employees to qualify for paid leave under the EPSLA.

Do I have any EPSLA Notice obligations?

Yes. Employers will be required to post a notice regarding the EPSLA. The Department of Labor will be providing a template notice in the near future.

Is there an exemption under the EPSLA for small employers (less than 50 employees)?

No

Emergency Family and Medical Leave Expansion Act (EFMLEA)

What does the FFCRA require in terms of FMLA?

The Emergency Family and Medical Leave Expansion Act (EFMLEA) expands current FMLA provisions to provide for 12 weeks of job protected leave for a public health emergency. This applies to ALL employers with less than 500 employees.

A “qualifying need related to a public health emergency” applies to employees that are unable to work or telework due to a need to care for a child under the age of 18 due to school or childcare closures related to COVID-19.

Do I need to provide for paid leave under the EFMLEA?

Yes. The EFMLEA requires employers to provide 10 weeks of paid leave at 2/3 of the usual pay rate. The first two weeks are unpaid, but employees are able to use available sick, PTO or EPSLA time.

Am I required to provide paid leave for other types of FMLA?

No. For all other FMLA leaves, normal protocol should be followed. Employers may choose to tentatively approve FMLA, allowing employees more time to return the Health Care Provider Certification as health care provider offices are overwhelmed seeing a larger than usual volume of patients.

What is the length of service requirement that applies to employees for the leave under the EFMLEA?

30 days

Is there an exemption under the EFMLEA for small employers?

Small employers with 50 or less employees could receive an exemption from the Department of Labor if the imposition of this expanded FMLA would jeopardize the viability of the business.

What if someone does not qualify for PTO or FMLA?

If you are going to lay off employees, check with your insurance carriers to determine if enrolled employees can remain on the insurance as active employees. If not, COBRA should be offered and normal protocol followed for a reduction in hours.

How does this affect someone who is already out on FMLA?

Typically the leave would continue per normal protocol. It is unclear at this time if the EFMLEA provides an additional 12 weeks if someone has already exhausted FMLA for other reasons previous to the enactment of the FFCRA. Guidance may be issued at a later date regarding job restoration if the employee’s position has been eliminated due to down-sizing or closure.

COBRA

A layoff is a temporary suspension of normal work hours for a group or groups of employees. During this time, employees are not working any hours. What does this mean for health insurance purposes?

If a group or groups of employees are not working the number of hours to satisfy eligibility requirements, it is considered a reduction of hours. Depending on the insurance policy, coverage is lost either the day of the event or at the end of the month in which the event occurred. This would constitute a COBRA qualifying event and COBRA should be offered to the employees.

If I am required to offer COBRA to employees that are laid off, can I pay a portion of the premium?

Yes. COBRA premiums can be paid either in full or partially by employers. If an employer is going to require an employee to continue to pay a portion of the COBRA premium, the employer should require payments similar to FMLA leaves.

Is the federal government offering any COBRA subsidies?

No. At this time there are no federal COBRA subsidies available.

Health Insurance Portability and Accountability Act (HIPAA)

Are employers allowed to ask employees if they have tested positive for or have been exposed to COVID-19?

Employees should report to their employer if they feel they have been exposed or test positive (including family members). Much like ADA disability and accommodation information, this information should be provided to only those employees (including leadership) with a need to know. Access to this information should be limited.

In the employer context, HIPAA only applies to self-funded health plan claim information. If employees report on their own conditions, HIPAA privacy rules do not apply.

Health Insurance Coverage

We sponsor a High Deductible Health Plan (HDHP) that is Health Savings Account (HSA) compatible. Are my employees still able to contribute to the HSA if COVID-19 testing and treatment is covered at full or reduced cost before the minimum deductible is met?

Yes. The IRS issued Bulletin 2020-15 which essentially allows individuals to continue to contribute to an HSA even if COVID-19 testing and treatment is provided at reduced or no cost by the underlying HDHP.

We sponsor a fully insured health plan in the state of Wisconsin. Is the plan required to cover COVID-19 related testing and treatment at no cost?

The Office of the Commissioner of Insurance in Wisconsin (OCI) issued a bulletin on 3/6/2020 encouraging (not requiring) insurers to cover COVID-19 testing and treatment. However, the FFCRA requires all private health plans to provide testing, including the cost of a provider, urgent care and emergency room visits to receive testing at no cost.

We sponsor a self-funded health plan. Is the plan required to cover COVID-19 related testing and treatment at no cost?

The FFCRA requires all private health plans to provide coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center and emergency room visits in order to receive testing at no cost.

Short Term Disability Coverage

Are employees eligible for Short Term Disability (STD) Benefits if there is a lay-off?

For most carriers' fully-insured STD contracts, an individual whose claim is solely due to being placed in quarantine or isolation will not be eligible for STD benefits. But, if the individual has other evidence of disability or has a confirmed diagnosis of COVID-19 he/she may be eligible, depending on the specific facts of the claim.

On short term disability policies that are self-funded, it is at the employer's discretion. In the alternative, employer could offer paid sick days for employees.