



Coronavirus Update

March 16, 2020

Coronavirus legislation: Implementation details

Updated March 18, 2020

Today Congress passed a bill that implements two new fast-tracked temporary paid leave requirements and mandates health plan coverage for coronavirus testing. President Donald Trump has said he will sign it into law as early as Wednesday evening. The table below addresses questions about who the measures impact and how.

Lockton comment: This legislation continues to evolve through regulations. We will periodically update this table to address significant changes.

Temporary paid leave requirements

	EMERGENCY PAID SICK LEAVE ACT	FMLA EXPANSION
Which employers must comply?	Private sector employers with fewer than 500 employees and all government employers. Unclear at present whether the count is made EIN-by-EIN or across a controlled group of businesses.	
Are any employers exempted?	Employers of healthcare workers and emergency responders may opt-out, and the DOL may exempt employers with fewer than 50 employees. Lockton comment: The process of opting out is unclear.	
What is the effective period?	Beginning within 15 days of the law's enactment (as detailed in impending guidance from the DOL) and ending Dec. 31, 2020.	
Which employees are eligible?	All employees, regardless of tenure. Special rules apply to employees under multiemployer bargaining arrangements.	All employees with at least 30 calendar days of employment. Special rules apply to employees under multiemployer bargaining arrangements.
Duration of leave?	Full-time: 80 hours Part-time: Number of hours the employee averages over 2-weeks	12 weeks (first 10 days unpaid, 10 weeks paid, as described below)
For what purposes can leave be taken?	<p>Leave applies when an employee is unable to work (or telework) in the following instances:</p> <p>For an employee who:</p> <ul style="list-style-type: none"> Is subject to a federal, state or local quarantine or isolation related to the coronavirus. Has been advised by a healthcare provider to self-quarantine due to the coronavirus. Is experiencing symptoms of the coronavirus and seeking a medical diagnosis. 	<p>Leave applies when an employee is unable to work (or telework) because they are caring for their child under 18 years of age:</p> <ul style="list-style-type: none"> Whose school has been closed because of the coronavirus. Whose child care provider is unavailable due to the coronavirus. <p>A federal, state or local emergency related to the coronavirus must be declared. A federal emergency was declared beginning Mar. 13, 2020. Lockton comment: A prior version of the bill would have allowed leave for the illness or</p>

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	<p>To care for another individual:</p> <ul style="list-style-type: none"> • When the person is subject to a federal, state or local quarantine or isolation related to the coronavirus. • When the person has been advised by a healthcare provider to self-quarantine due to the coronavirus. <p>To care for the employee's child:</p> <ul style="list-style-type: none"> • Whose school has been closed because of the coronavirus. • Whose child care provider is unavailable due to the coronavirus. <p>Lockton comment: These reasons may be expanded by the Department of Health and Human Services.</p>	<p>isolation of the employee or family member. Traditional FMLA may apply in some instances, but paid leave is not required.</p>
What is the rate of pay during leave related to the employee's own condition?	<p>The greatest of:</p> <ul style="list-style-type: none"> • The employee's regular rate of pay • The federal minimum wage • The state or local minimum wage <p>Up to \$511 per day (\$5,110 total).</p>	None
What is the rate of pay during leave to care for a <i>family member, including a child</i> ?	<p>Two-thirds of the greatest of:</p> <ul style="list-style-type: none"> • The employee's regular rate of pay • The federal minimum wage • The state or local minimum wage <p>Up to \$200 per day (\$2,000 total).</p>	<ul style="list-style-type: none"> • First two weeks are unpaid (but the employee can use paid coronavirus sick leave under the column at left). • Next 10 weeks are paid at two-thirds the employee's regular rate of pay, up to \$200 per day and \$10,000 total.
How does the new leave law impact existing leave policies and requirements?	<p>Coronavirus-related sick leave must be made available in addition to any other accrued sick leave provided by the employer (whether voluntarily, or as required by state or local law). The employee can elect, but is not required, to have this new coronavirus-related sick leave apply before any other sick leave.</p> <p>Existing policies cannot be amended to avoid paying coronavirus-related sick pay in addition to that provided under a current policy.</p>	<p>Expanded FMLA leave must be made available in addition to any other family leave provided by the employer (whether voluntarily, or as required by state or local law). Employees may elect, but are not required, to substitute any paid leave (under an existing employer policy or the Emergency Paid Sick Leave Act benefit at left) for the 10 days of unpaid leave.</p>
Are employees required to provide notice?	<p>After the first compensated sick day, the employer may require the employee to follow reasonable notice procedures to continue receiving sick pay.</p> <p>Lockton comment: Precisely what is "reasonable" is not defined, but expect the rule to be liberally interpreted in favor of the employee.</p>	<p>Only if the leave is foreseeable. Otherwise standard FMLA notice rules apply.</p>

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Rights upon returning to work?	Not specifically addressed, but it appears rights consistent with FMLA apply.	Employers with 25 or more employees: Standard FMLA provisions apply. Employees with fewer than 25 employees: No obligation to restore returning employees to their position if: <ul style="list-style-type: none"> • The employee's position no longer exists due to coronavirus-related economic impacts. • The employer makes a reasonable effort to find a similar position for the employee. And, if no similar position is immediately found, the employer contacts the employee about any new similar positions that become available within one year.
Are employers required to provide a notice?	Yes. They must post a notice where they place other required notices. A model notice is forthcoming from the DOL.	No additional notice requirement.
Do nondiscrimination rules apply?	Employers may not discriminate against employees who request or take leave and may not require employees to find a replacement when requesting leave.	Yes, same as other FMLA-protected leaves.
Can the employee take leave intermittently or must it be continuous?	Not specifically addressed, but it appears intermittent leave is permissible.	Yes, same as other FMLA-protected leaves.
Must payments be made at termination of employment for unused leave?	No	Not specified, but it appears no.

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