

MARKKNUCKLES Associates, Inc.

Human Resource Management Consultants
Wage-Hour, EEO, CRA Title VII, ADA and FMLA Compliance

Families First Coronavirus Response Act, FFCRA Emergency Paid Sick Leave Act

EFFECTIVE Wednesday, April 1, 2020

The FFCRA contains two Acts that provide for unpaid and paid leave. The emergency paid sick time **effective Wednesday, April 1, 2020**, is separate from E-FMLA and would typically be used before the expanded E-FMLA emergency leave. However, the employee can elect to use the following emergency paid sick time during the first two weeks of unpaid E-FMLA leave. (See the separate handout for E-FMLA.)

Emergency Paid Sick Time

Paid Sick Time Requirement: Employers must provide **paid sick time immediately**, with no waiting period, to any employee who is unable to work and unable to telework due to a need to be absent because:

- (1) the employee is subject to a Federal, State, or local quarantine or isolation order due to COVID-19.
- (2) the employee has been advised by a health care provide, HCP, to self-quarantine due to COVID-19.
- (3) the employee has symptoms of COVID-19 and seeking medical diagnosis.
- (4) the employee is caring for an individual who is subject to a quarantine or isolation order due to COVID-19 as described in (1) or advised to self-quarantine as in (2).
- (5) the employee is caring for a “son or daughter of such employee” if the school or place of care has been closed, or the compensated child care provider is “unavailable, due to COVID-19 precautions.” (*)
- (6) the employee “is experiencing any other substantially similar condition” as defined by DHHS, IRS, and USDOL.

Amount of Paid Sick Time Required

Full-time Employees: 80 hours
Part-time Employees: Based on the hours worked on average over a 2-week period. (If hours vary, the average over the last 6 months)

Termination and Non Vesting: The available paid sick time terminates when the employee returns to work after using the leave. It does not carry forward and is not payable upon termination,

Substitution of Other Paid Leave: Employer may not require the use of “other paid leave” before using COVID-19 emergency paid leave.

Paid Sick Time Rate: The employee’s regular rate of pay as defined by FLSA Section 7(e) for purposes (1), (2), and (3). For purposes (4), (5) and (6) the sick time pay is 2/3rds the employee’s regular rate. The employer can pay more.

Regular Rate: For hourly employees the regular rate is the hourly rate, and any incentive payment, production pay, commissions, if such payments are made. (Total compensation divided by the hours worked.) The regular rate cannot be less than the applicable Federal, State or Locality minimum rate whichever is higher.

For salaried employees the regular rate is the salary divided by 40 hours.

Maximum Amount: \$511 per day and \$5110 in the aggregate for absences (1), (2) and (3) above.

\$200 per day and \$2,000 in the aggregate for absences (4), (5), and (6) above.

Definitions

All terms used in the Act, including “employer,” “employee,” “employ,” “person,” “commerce,” “hours,” “regular rate,” are defined by direct reference to the Fair Labor Standards Act, FLSA. The terms “health care provider” and “son or daughter” are defined by direct reference to the Family and Medical Leave Act, FMLA.

Subject Employers

All private employers, for-profit, not-for-profit that employ **one to 499** employees, including those with less than 50 employees, must comply and provide FFCRA paid sick time. All public agencies must comply. “Employer” is defined by the FLSA which includes any business engaged in commerce, any activity effecting commerce, any industry effecting commerce, any FLSA named enterprise and any public agency.

Eligible Employees

All employees as defined by FLSA Section 3 working for an employer on Wednesday, April 1, 2020, are immediately eligible for needed paid leave without a waiting or qualification period. Employee includes all FT, PT, temporary, casual, paid trainees, paid students, and consumers with disabilities paid commensurate wages under an FLSA Section 14(c) certificate. There are NO employee exemptions or exceptions. Employers are not required to provide sick leave to bona fide independent contractors.

An employer of an employee “who is a health care provider or an emergency responder” may elect to exclude such employee from the above paid leave requirement.

(* Small Employer Partial Exemption

The Secretary of Labor by regulation is authorized to exempt small businesses with less than 50 employees from *ONLY* purpose (5) above when the “*imposition of such requirements would jeopardize the viability of the business as a going concern.*” This partial exemption is only from purpose number (5).

The circumstances and criteria to qualify, although not explained in the Act, will be set forth in the forthcoming regulations. The exemption is not automatic.

Payroll Tax Credit

The employer can pay more. The payroll tax credit is available for the paid emergency sick time up to the maximum shown above plus the cost of employer provided health insurance. The credit is taken against the payroll taxes owed by the employer. If the credit exceeds the payroll tax liability, the IRS will refund that amount to the employer. More details coming when the IRS publishes guidelines this week.

More Information Coming

We will be posting updates and guidelines daily. While every effort has been made to provide as many details as accurately as possible, the guidelines are subject to the forthcoming final regulations and guidelines published by the enforcement agencies.

If you have questions, need clarification, please post them on our Facebook page or send them to Info@MarkKnuckles.com. Since many are the same or similar and the answers can help others, we will answer them on our Facebook page. www.facebook.com/markknucklesassociates

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