



NewsFlash®

## COVID-19: Emergency Paid Sick Leave and Expanded FMLA

March 2020



### Top Issues

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#### ■ #covid19

On March 18, 2020, the U.S. Congress passed the Families First Coronavirus Response Act (“Act”). For California public agencies, including K-12 school districts and colleges, the Act includes two provisions that will immediately impact employees affected by the COVID-19 pandemic: the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act (“Emergency FMLA”). These provisions become effective on April 1, 2020, and expire on December 31, 2020.

### Emergency Paid Sick Leave Act

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California public sector employees already receive paid sick leave by statute, contract or both. The Emergency Paid Sick Leave Act adds to these existing sick leaves by allowing employees to take up to 2 additional weeks—or 80 hours—of paid sick leave, prorated for part-time employees, for the following reasons:

1. To obey a quarantine or isolation order;
2. To abide by a health care provider’s recommendation to self-quarantine; To seek a medical diagnosis because the employee is experiencing symptoms of COVID-19;
3. To seek a medical diagnosis because the employee is experiencing symptoms of COVID-19;



4. To care for an individual who is subject to a quarantine or isolation order, or has been recommended by a health care provider to self-quarantine;
5. To care for the employee's minor child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19; 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.

Importantly, Emergency Paid Sick Leave must be made available to employees before using other available leaves. For example, if an employee requests a leave of absence because they tested positive for COVID-19, the employee would be able to use up to 80 hours of Emergency Paid Sick Leave, before having to use any other accrued or extended sick leave.

Unlike regular paid sick leave, however, employees taking Emergency Paid Sick Leave will only receive full pay, not to exceed \$511 per day or \$5,110 in the aggregate, if they are taking leave for reasons (1) through (3), above. Employees taking Emergency Paid Sick Leave for reasons (4) through (6), above, will only be entitled to receive two-thirds of their regular pay, not to exceed \$200 per day or \$2,000 in the aggregate.

## Emergency Family and Medical Leave Expansion Act

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At present, California public sector employees are eligible to take up to 12 workweeks of unpaid FMLA leave if they have been employed with their current employer for at least one year and worked at least 1,250 hours in the preceding 12 months. Eligible employees may take FMLA leave for the birth of their own child; for the placement of a child with the employee in connection with adoption or foster care; for their own serious health condition; and/or to care for their spouse, child or parent with a serious health condition. The new Emergency FMLA law provides an additional reason for employees to take up to 12 workweeks of FMLA leave: to care for their own minor child whose school or place of care is closed, or whose child care provider is unavailable, due to COVID-19.

Unlike the other types of FMLA leaves, employees taking Emergency FMLA need to be employed by their current employers for at least 30 days. Also unlike the other types of FMLA leaves—which are generally unpaid—employees taking Emergency FMLA leave will be paid two-thirds of their regular pay, not to exceed \$200 per day or \$10,000 in the aggregate, for up to 10 weeks. Employees will not be paid for first 2 weeks (or 10 days) of Emergency FMLA leave, unless they elect to use their accrued paid time off, such as vacation time, paid sick leave or extended sick leave. Practically speaking, this means that an eligible employee could use up to 80 hours of Emergency Paid Sick Leave (for reason (5), above) for the first 2 weeks, and then receive two-thirds of his or her regular pay for the remaining 10 weeks of Emergency FMLA.

Many public employers have asked whether this is in addition to—or a mere expansion of—the existing 12 weeks of FMLA leave. Although neither Congress nor the U.S. Department of Labor (“DOL”) has clarified this issue, the text of the Act indicates that employees are entitled to a total of 12 workweeks of Emergency FMLA and regular FMLA leave during a 12-month period. We anticipate that the DOL will release additional information and guidance on or about March 29, 2020, following the conclusion of a public comment period.

The application of the new Emergency Paid Sick Leave Act and new Emergency FMLA leave Expansion Act is very fact-specific, so please make sure to contact your legal counsel for assistance during these rapidly changing times. Please do not hesitate to contact one of our six offices if you need assistance navigating or responding to issues related to Emergency Paid Sick Leave or Emergency FMLA leave.

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