

FMLA CHANGES

29 USCA § 2612

(a) In general

(1) Entitlement to leave

Subject to section 2613 of this title and subsection (d)(3), an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

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(F) During the period beginning on the date the Emergency Family and Medical Leave Expansion Act takes effect, and ending on December 31, 2020, because of a qualifying need related to a public health emergency in accordance with section 110.

New section added at the end of the FMLA:

Public Health Emergency Leave:

Eligible employee = an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested under 29 USC § 2612 (a)(1)(F) (*see F above*).

The following definitions shall apply with respect to leave under section 102(a)(1)(F):

- (A) Qualifying need related to a public health emergency. The term ‘qualifying need related to a public health emergency’, with respect to leave, means the employee is unable to work (or telework) due to a 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.
- (B) PUBLIC HEALTH EMERGENCY – The term ‘public health emergency’ means an emergency with respect to COVID-19 declared by a Federal, State, or local authority.
- (C) CHILD CARE PROVIDER – The term ‘child care provider’ means a provider who receives compensation for providing child care services on a regular basis, including an “eligible child care provider” (as defined in section 658P of the Child Care and Development Block Grant Act)
- (D) SCHOOL – The term “school” means an “elementary school” or “secondary school” as such terms are defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 USC 7801)

The DOL shall have the authority to issue regs to exclude certain health care providers and emergency responders from the definition of eligible employee under section 110(a)(1)(A) and also to exempt small businesses with fewer than 50 employees from the requirements of section

102(a)(1)(F) when the imposition of such requirements would jeopardize the viability of the business as a going concern.

The following rules apply to 102(a)(1)(F):

- Eligible employee is one who has been employed for at least 30 days.
 - This will apply to both full time and part time employees.
- Covers employers with fewer than 500 employees, but to all public agencies regardless of number of employees.
- An employee qualifies for this leave if their need for leave is:
 - Related to a public health emergency (an emergency with respect to COVID-19 declared by a federal, state, or local authority); and
 - They are unable to work or telework due to the need to care for a son or daughter under 18 years old, 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;
 - 1) This would not include regularly scheduled breaks, like spring break, or regularly scheduled closing unrelated to COVID-19.
- Emergency responder may elect to exclude such employee from the application of the provisions in the amendments made under of section 3102 of the Act.
 - There may be exclusions promulgated by the Secretary of the Department of Labor regarding the ability to exclude certain health care providers and emergency responders from the definition of eligible employee under Section 110(a)(1)(A).
 - We are monitoring this and will send out new info that comes out from the DOL.
- (b) Relationship to Paid Leave –
 - (1) The first 10 days may consist of unpaid leave, but the employee may choose to use PTO, vacation, sick, etc. to pay for the first 10 days.
 - (2) An employer shall provide paid leave for each day of leave under the COVID-19 provisions, after the initial 10 days.
 - a. Rate of pay:
 - i. Not less than 2/3rds of an employee’s regular rate of pay, and
 - ii. Based on the number of hours the employee would otherwise be normally scheduled to work
 - iii. In no event shall the paid leave exceed \$200 per day and \$10,000 in the aggregate
 - iv. Varying schedules: The number equal to the average number of hours that the employee was scheduled per day over the six-month period ending on the date on which the employee takes such leave, including hours for which the employee took leave of any type
 - v. If the employee did not work over such period, the reasonable expectation of the employee at the time of hiring of the average

number of hours per day that the employee would normally be scheduled to work

EMERGENCY PAID SICK LEAVE ACT

- Requirement that each employer provide to each employee paid sick time to be used in the following circumstances:
- Full Time Employees:
 - Get 80 of sick leave, to use for a qualifying COVID-19 reason (see list of 6 below)
 - No tenure requirement (applies to brand-new employees)
 - Expires 12/31/2020, the law prohibits this leave type to carry over past 2020
 - No pay out upon termination
 - No requirement that an employee find a replacement to cover their time off
 - After the first day off for this leave type, regular call in procedures shall apply (look to your county policy, or your office policy for call in procedures)
- Part Time employees
 - Get a number of hours equal to the number of hours that such employee works, on average, over a two-week period
 - All the same rules under full-time employees apply
- Qualifying reasons to use this leave bank:
 - When the employee is unable to work **or telework** and they need leave for one of the following reasons:
 - 1) The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - Sick time paid at the rate of 100% of regular wages
 - Cap of \$511 per day / \$ 5,110.00 in the aggregate
 - 2) The employee has been told to self-quarantine by a health care provider;
 - Sick time paid at the rate of 100% of regular wages
 - Cap of \$511 per day / \$ 5,110.00 in the aggregate
 - 3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
 - Sick time paid at the rate of 100% of regular wages
 - Cap of \$511 per day / \$ 5,110.00 in the aggregate
 - 4) The employee is caring for an individual who is subject to an order as described in the first section regarding a government quarantine;
 - Sick time paid at the rate of 2/3rds of regular wages
 - Cap of \$200 per day / \$2,000 in the aggregate
 - 5) The employee is caring for a son or daughter or such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions; or

- Sick time paid at the rate of 2/3rds of regular wages
 - Cap of \$200 per day / \$2,000 in the aggregate
- 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.
- Sick time paid at the rate of 2/3rds of regular wages
 - Cap of \$200 per day / \$2,000 in the aggregate
- Employees may first use this paid leave and **an employer cannot require they exhaust other paid leave before using the leave** under this law.
 - There will be a poster requirement, kept where notices to employees are customarily kept. (Where do you keep your FMLA, minimum wage, and other posters?)
 - The Department of Labor will provide a sample poster within seven days of the enactment of this law.
 - 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 the provisions in the amendments made under of section 3102 of the Act.
 - There may be exclusions promulgated by the Secretary of the Department of Labor regarding the ability to exclude certain health care providers and emergency responders from the definition of eligible employee under Section 110(a)(1)(A).
 - We are watching to see what comes out of the DOL for additional guidance on this exclusion.

The terms “health care provider” and “son or daughter” have the meanings given such terms in 29 USC 2611. (FMLA)