

1. Could you explain your interpretation of how the new legislation works for pay between the 2 acts?

*ANSWER: House Bill 6201, known as the Coronavirus Act, which passed the House and Senate, and was signed into law by President Trump on March 18, 2020, is designed to provide affected workers expanded FMLA protections, expansion of food assistance, unemployment benefits, sick leave and other relief. It also contains further guidance on cost-sharing requirements for COVID-19 Coronavirus for health plans.*

*Specifically, the Emergency FMLA Expansion Act will require employers with fewer than 500 employees to provide employees (who have worked at least 30 calendar days) with up to 12 weeks of job-protected leave if the employee has a “qualifying need related to a public health emergency.”*

*A “qualifying need related to a public health emergency” means an employee who is unable to work (or telework) due to a need for leave to care for a 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. If the need for such leave is foreseeable, the employer must provide notice of leave as soon as practical.*

*The first 10 days of leave would be unpaid. Employees may elect (but employers cannot require) to substitute accrued paid leave during this time. After expiration of the 10 days of unpaid leave, an employer will be required to provide paid leave of an amount equal to at least two-thirds of the employee’s regular rate of pay multiplied by the number of hours the employee would otherwise normally work. However, in no event shall the paid leave exceed \$200 per day, or \$10,000 in the aggregate.*

*The Act includes language allowing the Secretary of Labor to exclude healthcare providers and emergency responders from the definition of employees who are allowed to take such leave, and to exempt small businesses with fewer than 50 employees if the required leave would jeopardize the viability of their business. Should an employee take FMLA leave under this Act, he or she must be restored to their prior position before the leave, subject to certain conditions and limitations for small employers.*

*HB 6201 also includes the Emergency Paid Sick Leave Act, which would require employers with fewer than 500 employees to provide up to 80 hours of paid sick leave to employees who are unable to work (or telework) due to a need for leave because:*

1. *The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;*
2. *The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;*
3. *The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;*

4. *The employee is caring for an individual with is subject to an order described in Paragraph 1, or has been advised as described in Paragraph 2;*
5. *The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care of such son or daughter is unavailable due to COVID-19 precautions; and/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.*

*For full-time employees, the leave would be up to 80 hours. For part-time employees, the leave would be equal to the number of hours that such employee worked, on average, over a 2-week period. The sick leave is paid at the employee's regular rate of pay for qualifying leave under Paragraph (1), (2), or (3), but only 2/3 of the employee's regular rate for qualifying reasons under Paragraph (4), (5), and (6). However, in no event shall the paid sick leave exceed \$511 per day, or \$5,100 in the aggregate for Paragraphs (1), (2), and (3) and no more than \$200 per day, or \$2,000 in the aggregate for Paragraphs (4), (5), and (6) listed above.*

*This emergency leave is in addition to other leave in which the employer may already provide. Employers may not require employees to first exhaust other available paid leave before providing emergency leave under this Act.*

*This portion of the Act does not include a requirement that the employee be employed for at least 30 days in order to be eligible for leave. Paid sick leave under this Act does not carry over and is any unused time under this Act is not required to be paid out to the employee upon termination or separation of employment.*

*For both the Emergency FMLA Expansion Act and the Emergency Paid Sick Leave Act, employers would be entitled to certain tax credits for their employer's portion of payroll taxes for qualified sick leave wages paid to employees, subject to certain limitations.*

2. Does a teller with auto immune disease fall in the "imminent danger" and can refuse to come to work? Does she need a Dr's note?

*ANSWER: Likely no. OSHA's standard for imminent danger is quite high and we do not believe a teller with an autoimmune disease would fall under this specific provision of OSHA.*

3. If an individual is caring for an elderly disabled parent does this fall under the category #4 in the need for leave of work?

*ANSWER: If the elderly disabled parent is not infected with COVID19 or has been advised by a health care professional to self-quarantine due to concerns related to COVID19, the caretaker does not fall under #4 of the Emergency Paid Sick Leave Act.*

4. Are the 80 hours of Emergency Paid Sick Leave Act the same as the 10 days for the extension of the FMLA Leave? Simultaneously?

*ANSWER: They are not the same and come from two separate provisions of the Act. That said, the first 10 days of Emergency FMLA are unpaid. If an employee qualifies for both leaves (i.e. is unable to work due to the need to care for a son or daughter whose school or child care facility is closed due to COVID19), then he or she would be entitled to up to 12 weeks of leave under Emergency FMLA, with the first 10 days unpaid and 80 hours (likely 10 days) of Paid Sick Leave. You can run the Paid Sick leave concurrently with the Emergency FMLA. As a result, that employee would be paid for the entire 12 weeks of leave.*

5. If an employee chooses to travel out of state to a highly infected area, we are requiring that they self-quarantine for 14 days. They can use sick leave and vacation time they have. However, if they do not have any time available they are on their own time and not paid. Does this conflict with the new signed act and FMLA? What if you have an employee who has a family member that has chosen to travel to WA, CA, HI for spring break (one day ago). Does the employer have the option to quarantine our employee for 14 days? If an employee has a family member coming home from a highly affected area such as WA- can we require the employee to self-quarantine as well?

*ANSWER: While an employer cannot prohibit an employee from taking a personal vacation, an employer can initiate a mandatory time away from work policy if an employee takes a personal vacation. This would typically include a period (usually 14 days) away from work, where the employee can either use PTO or take unpaid leave. However, this mandatory time away from work policy would have to comply with the Coronavirus Act, beginning April 2, 2020. Meaning that if they qualify under the provisions of the Act, the Act would have to be followed.*

*It is difficult to say with certainty whether a family member of an employee traveling to an affected area would be sufficient to justify a policy of a mandatory 14-day quarantine. Until further guidance is issued by the EEOC, DOL, or HHS, we recommend employers weigh the circumstances against current guidelines and evaluate their internal policies and procedures.*

6. Are we under any obligation to close our lobbies? If we opt not to, are we exposing ourselves to an endangerment claim by employees?

*ANSWER: Guidance regarding business closures will come via state or local legislation and will likely depend on what the State of Montana considers "essential business." As of the date of our webinar, no guidance that is on point has been issued in MT. However, as a practical matter, an employer should consider whether they can continue to operate their business while minimizing potential exposure for customers and employees.*

7. Is 80 hours of paid sick in addition to paid time an employer currently gives or only if you do not give up to 80 hours currently?

*ANSWER: The 80 hours of Paid Sick Leave under the Act is in addition to any PTO/sick leave/vacation that the employee has accrued under the employer's internal policies.*

8. Clarification please, if you have an employee out of the office currently because they do not have child care, this would fall under the employer's current policy, not the Coronavirus Act, until April 2, 2020? Correct

*ANSWER: The Act does not take effect until April 2, 2020. Therefore, any current leave would fall to the employer's internal policies.*

9. For the 10 days of unpaid leave, can employees utilize time they currently have accrued on the books? Or does that time absolutely have to be unpaid to qualify?

*ANSWER: Employees can elect, but employers cannot require, the use of accrued sick leave for the first ten days of unpaid Emergency FMLA leave.*

10. If a small employer believes they may need to apply for a hardship waiver, do you recommend they do so as of April 2<sup>nd</sup>, or wait until they have a request from an employee? Maybe timing of approval of waiver is unknown?

*ANSWER: The hardship waiver applies only to the Emergency FMLA and will depend on certain circumstances including the number of employees asking for the leave and the viability of the business to operate in light of the leave requests. The DOL is expected to issue additional guidance on the criteria for the hardship waiver. We do not currently recommend applying for a hardship waiver, because you simply won't know how many employees will take the leave or how long it will last.*

11. Can we choose to pay them the 10 days?

*ANSWER: The Act does not prohibit the payment of the first 10 days of Emergency FMLA. However, we recommend that if you choose to pay employees for the first 10 days of Emergency FMLA, that practice is applied in a nondiscriminatory fashion to all employees. Further, since the exact number of employees and length of leave cannot be predicted, we do not recommend employers take that approach at the outset unless they are confident that their cash flow can sustain such payments for an extended period of time.*

12. For the 80 hours employers are required to give to employees for extended leave; we've already implemented this and employee(s) are already using these hours. Since the Act becomes effective 4/2/2020, does this 80 hour requirement "re-set?" So, if employees have already used some or all of their hours before 4/2/2020, are we mandated to give them another 80 hours?

*ANSWER: There has been no guidance on this issue. However, you will likely be required to "reset" their hours effective April 2, 2020 when the Act takes effect.*

13. Along that same timeline, if employees used these hours before the 4/2/2020, are we able to receive the payroll tax relief, or is that only for hours used on or after 4/2/2020?

*ANSWER: Based on the response to the above, the employer would likely not be entitled to a tax credit for any paid sick leave prior to April 2, 2020. However, we will update you if additional guidance is issued that clarifies these questions.*

These issues are continually changing in a time of uncertainty and it is important to be mindful of what is occurring at the federal level as well as the state and local level that may impact you as an Employer and your Employees. It is also important to seek legal and tax advice if you have specific questions or concerns as this document is for informational purposes only and it is not intended to constitute legal or tax advice.