

Employee Rights under the Emergency Family and Medical Leave Expansion Act of 2020

Covered Employers. The Emergency Family and Medical Leave Expansion Act (“Emergency FMLA”) applies to employers with less than 500 employees.

Employee Eligibility Requirements. Employees who have worked for the Covered Employer for 30 calendar days.

New Additional Leave Entitlements. Covered Employers must provide Family Medical Leave (FML) to:

- An employee who 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
- An employee who is unable to work (or telework) because the child care provider of the employee’s son or daughter is unavailable, due to a public health emergency.

These eligibility criteria are in addition to existing FML leave entitlement provided under the Family Medical Leave Act of 1993.

Benefits and Protections.

First 10 Days of Leave

The first 10 days of leave shall be unpaid, subject to the employee’s right to utilize sick, vacation or paid-time-off under employer policy or other law, including the recently enacted Emergency Paid Sick Leave Act. Employees may elect to substitute any accrued paid leave to cover some or all of the first 10-day period.

Leave After 10 Days

A Covered Employer shall provide paid Emergency FML leave for each day of leave after the 10th day of leave.

Amount of Pay

- Full Time Employees. After the first 10-day period, the Covered Employer shall pay full-time employees at two-thirds the employee’s regular rate for the number of hours the employee would otherwise be normally scheduled subject to the limits set by the Emergency FMLA not to exceed \$200 per day and \$10,000 in the aggregate.
- Non-full time employees. Employees who work a part-time or irregular schedule are entitled to be paid on the average number or hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work. Again, subject to the limit not to exceed \$200 per day and \$10,000 in the aggregate.

Requesting Leave. Employees should notify the Covered Employer as soon as possible and, generally, follow the Covered Employer's usual procedures. Employees must provide sufficient information to the Covered Employer so it can determine if the leave qualifies for Emergency FMLA protection. The Covered Employer may require a certification or periodic recertification supporting the need for leave.

Covered Employer Obligations. Once the Covered Employer becomes aware that an employee's need for leave is a reason that may qualify under Emergency FMLA, the Covered Employer will notify the employee if she or he is eligible for Emergency FMLA leave and, if eligible, will provide a notice of rights and responsibilities under Emergency FMLA. If the employee is not eligible, the Covered Employer will provide a reason for ineligibility.

The Covered Employer will notify employees if leave will be designated as Emergency FMLA leave, and, if so, how much leave will be designated as Emergency FMLA leave.

Job Restoration. A Covered Employer with fewer than 25 employees is not required to restore the employee's employment if certain conditions and efforts are undertaken but fail. Those conditions are: (A) the employee takes Emergency FMLA leave; (B) the position held by the employee when the leave commenced does not exist due to economic conditions or other changes in operating conditions of the Covered Employer (i) that affect employment; and (ii) are caused by a public health emergency during the period of leave; (C) the Covered Employer makes reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment; and (D) if the reasonable efforts of the Covered Employer under subparagraph (C) fail, the Covered Employer makes reasonable efforts during the leave period to contact the employee if an equivalent position becomes available.

Enforcement. Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The Emergency FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.