



## COVID-19 Client Update 3-30-2020

### Additional Guidance on Federal Emergency Paid Sick Leave and Emergency Family Medical Leave Expansion Act

New Federal DOL FAQs / clarifications on the Emergency Paid Sick Leave (EPSL) and Emergency-Family Medical Leave Expansion Act (E-FMLEA) programs have been released. Here are some highlights from the DOL's additional FAQs.

- Requesting and Documenting leaves: Employees can be required to submit appropriate documentation to verify their need for EPSL and E-FMLEA. Documentation includes quarantine or isolation orders, doctor's recommendations, or a notice of a school or place of care closure. Definitions on the types of documentation that are acceptable and what information they should contain was also provided.
- What it means to be "unable" to work or telework.
- EPSL and E-FMLEA generally must be taken in full-day increments.
- EPSL and E-FMLEA can only be used intermittently for child-care reasons, and only then with employer consent.
- Employees are not eligible for EPSL or E-FMLEA during furloughs or temporary layoffs.
- Employees are not entitled to "top off" their FFCRA payments with accrued paid time off to get to 100% of pay unless the employer agrees.
- Employers cannot require employees to "top off" their FFCRA payments with accrued paid time off to get to 100% of pay unless the employee agrees.
- Eligibility for E-FMLEA depends on how much leave an employee has already taken under regular FMLA during the 12-month period the employer uses for FMLA leave. Employees may take a total of 12 workweeks for FMLA or E-FMLEA reasons during a 12-month period. If an employee has already taken 12 workweeks of FMLA leave during this 12-month period, there is no additional E-FMLEA available.

Source: Littler Mendelson, P.C. Client Advisory



## Additional Guidance on NYS COVID-19 Paid Sick Leave

### **Number of Paid Leave Days:**

- Paid sick leave days should be counted as **calendar days**, not work days.
- Sick leave should start the first day immediately following the effective date of the order of quarantine.
- Public employers or private employers with 100+ employees must provide 14 days of paid sick leave. This will essentially equal two weeks of paid leave.
- Employers with 11-99 employees, or 10 or fewer employees with a net income > \$1 million must provide employees with 5 days of paid sick leave.
- Employees should receive the pay that they would have received in the 5 calendar days immediately following the effective date of the order of quarantine.
  - **Example:** An employer with 50 employees has an employee who is subject to an order of mandatory quarantine. The employee regularly works Monday – Friday, and the order of quarantine is effective on Tuesday. That employer must provide the employee with paid sick leave for Wednesday through Sunday. However, since the employee does not normally work on Saturday or Sunday, they only need to be paid for Wednesday – Friday.

### **Pay for Sick Leave:**

- Pay should not solely be based on an employee's regular rate, but also must take into consideration overtime, commission, or non-discretionary bonuses that would normally have been paid to that employee.
  - **Example:** An employee earns \$12/hr and regularly earns an average of \$50 in commission per day. That employee's daily rate should be \$146.00 for an 8 hour day.

### **Source:**

<https://www.bsk.com/new-york-labor-and-employment-law-report/new-york-state-issues-faqs-regarding-the-new-covid-19-paid-sick-leave-law>