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Families First Coronavirus Response Act – Update for Public Education Employers Regarding Family and Paid Leave Requirements

March 20, 2020

On March 18, 2020, President Trump signed into law the “Families First Coronavirus Response Act.” This law, among other provisions, expands rights to Family and Medical Leave Act (“FMLA”) leave and provides for paid leave for employees impacted by COVID-19. This update provides guidance about provisions specific to public education employers. The provisions discussed in this update all sunset on December 31, 2020.

These provisions go into effect no later than April 2, 2020. The law directs the Department of Labor (“DOL”) to create informational posters to inform employees regarding available rights found in the law. The DOL is also directed to draft regulations regarding implementation of the law.

On March 20, 2020, the DOL held a webinar to solicit feedback on the contents of the possible regulations. We will update as more information is available.

What we know now:

Emergency Family and Medical Leave Expansion Act

Does this provision apply to public employers such as school districts and community colleges?

Yes, the law applies to “public agencies” as that term is defined in the Family and Medical Leave Act (“FMLA”) – so, it applies to political subdivisions (to include community colleges and school districts).

What does the law require?

Essentially, it expands FMLA protections in two main ways: (1) to provide leave for employees where they are unable to care for minor children because of school or other childcare closures and (2) provides that portions of this leave will be paid.



Which employees are covered?

Different than the regular provisions of the FMLA, any employee who has been working *at least 30 calendar days* prior to the start date of the “qualifying need” is eligible for this emergency leave.

“Qualifying need” includes circumstances where an employee is unable to work (or telework) due to a need to care for a child under 18 years of age if the child’s school or place of care has been closed, or the child care provider is unavailable, due to a public health emergency.

How much leave does it provide?

Up to 12 weeks.

Does the leave have to be paid?

The first 10 days can be unpaid leave. An employee may elect to substitute accrued vacation, personal, medical, or sick leave during this time, but an employer may not require an employee to do so. ***The employee could also utilize the emergency paid sick leave discussed below.***

The remaining *10 weeks of FMLA leave is required to be paid*, at an amount not less than *two-thirds of the employee’s regular rate*, for the number of hours the employee would otherwise be scheduled to work. *The bill limits the amount of required pay for leave to no more than \$200 per day and \$10,000 in the aggregate.*

For employees with schedules that vary week-to-week, the number equal to the average number of hours the employee was schedule per day over the 6-month period ending on the date the employee takes such leave.

Does the law create job-protection rights?

Yes, job-protection applies to this emergency FMLA leave, which means that employers must restore employees to their prior (or equivalent) positions upon the expiration of the leave. While the law does include some exceptions, those apply only to employers with less than 25 employees.



Emergency Paid Sick Leave Act

Does this provision apply to public employers such as school districts and community colleges?

Yes, the law applies to “public agencies” as that term is defined in the FMLA – so, it applies to political subdivisions (to include community colleges and school districts).

What does the law require?

It requires certain employers to provide paid sick leave to employees who are unable to work (or telework) due to the following circumstances:

- The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is caring for an individual who is subject of the above two situations.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- 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 provider of such son or daughter is unavailable, due to COVID-19 precautions.
- 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.

Which employees are covered?

All employees: there is no requirement that an employee have worked for 30 calendar days prior to needing the leave.

How much paid sick leave is available?

- For full-time employees, up to 80 hours.
- For part-time employees, up to the average number of hours the employees normally works in a two-week period.
- Note: these amounts are *in addition* to whatever paid sick leave an employee might already offer.



Is the paid sick leave at the employee’s full rate of pay?

The law limits the amount of emergency paid sick leave available to employees and rates vary depending on the reason for the leave.

Reason	Amount
The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.	Regular pay rate (\$511/day max, \$5110 total)
The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.	Regular pay rate (\$511/day max, \$5110 total)
The employee is caring for an individual who is subject of the above two situations.	Two-thirds (2/3) regular pay rate (\$200/day max, \$2000 total)
The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	Regular pay rate (\$511/day max, \$5110 total)
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 provider of such son or daughter is unavailable, due to COVID-19 precautions.	Two-thirds (2/3) regular pay rate (\$200/day max, \$2000 total) **This leave could be used for the first 10 days of unpaid emergency FMLA leave discussed above.**
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.	Two-thirds (2/3) regular pay rate (\$200/day max, \$2000 total)



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Can an employer require an employee to use their accrued sick leave before using this emergency paid sick leave?

No, the law prohibits employers from requiring employees to utilize other sick leave that may be available through the employer prior to utilizing the emergency sick leave provided by the law.

Can an employer require an employee to find a replacement prior to taking this emergency paid sick leave?

No, employers are prohibited from requiring an employee to find a replacement employee to cover his or her shift prior to taking emergency paid sick leave under this law.

Anything else employers are required to do?

Employers are required to post model notice regarding employee rights under the new law. The DOL has been directed to issue a model notice not later than seven days after the law's enactment.

Are there any penalties for failure to comply?

Yes, the law prohibits employers from retaliation against employees who take emergency paid sick leave in accordance with the law. The law also provides that failure to pay the emergency paid sick leave will be treated as a failure to pay minimum wage in violation of the Fair Labor Standards Act.

Have Additional Questions?

Issues around COVID-19 are fast-changing. Your attorneys at TUETH KEENEY are here to support the education community during this tumultuous and unprecedented time. Please reach out to your TUETH KEENEY attorney with any questions.