

FMLASource® Special Bulletin: COVID-19 Coronavirus and Leave of Absence Administration

March 20, 2020

As the coronavirus continues to spread across the U.S., we wanted to reassure you that FMLASource is prepared to help. We realize that COVID-19 continues to create unique challenges related to leave of absence administration that impact the work of our customers and their employees. We ourselves have instituted our business continuity plan, which includes remote work arrangements where appropriate and other strategies to ensure our services continue without interruption.

Given recent updates and emerging trends, FMLASource would like to share the following considerations around COVID-19 and how they relate to leave of absence administration:

Families First Coronavirus Emergency Bill

On March 18, 2020, President Trump signed into law the [Families First Coronavirus Response Act](#), which, among other things, amends the Family and Medical Leave Act (FMLA) and creates a new federal Paid Sick requirement. These portions of the Act, called the Emergency Family and Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA) respectively, apply to all private employers with fewer than 500 employees as well as to all public agencies regardless of size. The law takes effect on April 2, 2020 and expires on December 31, 2020.

The EFMLEA applies to circumstances in which an employee is unable to work (or telework) due to a need to care for a minor child if the child's school or place of child care has been closed or is unavailable due to a public health emergency. A "public health emergency" is defined as an emergency with respect to COVID-19 declared by a federal, state, or local authority. Note that an earlier version of the bill, which covered several other reasons for leave, was revised. Also note that, unlike the traditional FMLA, this law applies to employees who have been on the employer's payroll for 30 days. EFMLEA also provides details around a paid portion of the leave.

The EPSLA applies for eligible employees who are unable to work (or telework) due to several COVID-19 related reasons. Employees are eligible for this benefit as of their first day of employment. Full-time workers are entitled to 80 hours of paid sick time (less for part-time workers), with pay caps based on the reason for leave.

The team of legal and compliance experts at FMLASource is reviewing the bill and its impact on leave administration services. We will provide an expanded update to customers in the near future.

Access to Health Care Providers and Medical Certifications for FMLA/ADA

Given current projections regarding the availability of health care providers, FMLASource expects that a large percentage of employees in need of FMLA leave – for conditions related to COVID-19 or otherwise – may be unable to access a health care provider to certify their leave within the 15-day window required by the law.

The Centers for Disease Control and Prevention (CDC) has reportedly discouraged employees from going to their health care providers to obtain medical documentation and, by way of example, Orange County California has temporarily banned all businesses from “requiring doctor verification for sick or other leave approval.” The Department of Labor (DOL) regulations state that employers should be mindful that employees must rely on the cooperation of their health care providers ... and [they] “should not be penalized for delays over which they have no control.”

Given these circumstances, effective Monday, March 23, FMLASource is implementing an alternate process for employees who are unable to provide a medical certification within 15 days. Employees who are unable to return a completed form may return an alternate form that will require the employees to confirm that they:

- Cannot see a health care provider within the 15 days, and
- Require a leave of absence for their own or an FMLA-covered family member’s serious health condition
- The amount of time requested for the leave

We will require that employees sign the form attesting that these statements are true and also clarify that the employer reserves the right to request medical certification of the leave at a later date.

FMLA and COVID-19 - FAQs

Our business is shutting down temporarily due to the virus. How does that affect our employees taking FMLA?

If the shutdown will last for one or more weeks, then those days do not count against the employee’s 12-week FMLA leave entitlement. This is true even if the employee clearly would have been on FMLA for all or part of the shutdown.

Does the same rule regarding shutdowns apply if the employer is a school district?

Yes. However, the time would include only virus-related shutdowns, as well as any planned periods in which operations have ceased, such as spring break or summer vacation.

If an employee is forced into isolation because of quarantine but is not sick, is that FMLA?

No. The FMLA applies to an employee with a serious health condition that makes the employee unable to perform the essential functions of the job, including incapacity due to pregnancy and for prenatal medical care. In this situation, the employee does not qualify for the FMLA. Keep in mind, however, that many employers have other company policies that could apply to this situation.

If an employee is forced into isolation because of quarantine because she feels sick or is showing symptoms but cannot see her doctor, is that FMLA?

Possibly. Given the current strain on health care providers and their lack of availability, particularly for non-urgent matters, we have created and initiated a temporary documentation postponement approach, as outlined above.

If an employee cannot come to work because she has an underlying FMLA-qualifying condition that would make her unable to work in an environment in which COVID-19 was present, would her absence qualify under the FMLA?

Possibly, depending on the circumstances. The regulations state that the FMLA could apply to an employee who is “unable to report to work ... because the employee’s health care provider has advised the employee to stay home” because the conditions could render the employee incapacitated due to her underlying FMLA-qualifying condition.

If an employee cannot come to work because he needs to care for a family member who is sick, would that be covered by the FMLA?

Yes. An employee who is needed to care for a family member with a serious health condition would qualify for FMLA leave.

What if an employee cannot work due to caring for a child who is not sick but who is home due to a school closing?

This would depend on the employer. This situation could be covered under the new expansion of the FMLA, which becomes effective on April 2, 2020, as detailed above.

We will continue to provide leave administration related updates regarding COVID-19 as developments occur. Please contact your account manager with any questions.