

## COVID-19 Guidance for Employers

March 23, 2020

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**What is COVID-19?** It is caused by a respiratory virus with properties similar to cold and flu. Symptoms range from mild to severe and include fever, cough, and shortness of breath, beginning 2-14 days after exposure.

**Why the Concern?** It is a "pandemic," which means the outbreak is global, and capable of sustained community spread. Because the virus is new, humans are not immune, contributing to the rapid and widespread infection rate. It has spread throughout the United States. Schools and businesses have closed in an effort to reduce person-to-person contact. This presents many concerns for employers, among them: (1) employees are sick; (2) employees must care for sick loved ones or children whose school has closed; and (3) downturns in work.

Two new federal laws and an executive order signed by Michigan's Governor are designed to address these issues.

### **Changes in Federal FMLA / Paid Sick Leave Laws.**

- **Federal Emergency FMLA:** Temporary amendment to FMLA to give workers with childcare responsibilities paid leave. It is effective from April 2, 2020 through December 31, 2020.
  - **Benefit to employee:** Employers of any size must give employees up to 12 weeks of job-protected leave to care for the employee's child (under 18 years old) if the child's school or place of care is closed or the childcare provider is unavailable due to an emergency with respect to COVID-19.
  - **Payment Calculations:**
    - The first 10 days may be unpaid. During this 10-day period, an employee may elect to substitute any accrued paid vacation or sick leave time to cover some or all of that time.
    - After the 10-day period, full-time employees must be paid at two-thirds their regular rate. Paid leave cannot exceed \$200 per day or \$10,000 in total.
    - Part-time or employees without set schedules are entitled to payment based on the average number of hours the employee worked for the six months prior to the designated leave.
    - 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.
  - **Job Restoration:** Employers with 25 or more employees must return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work. Employers with fewer than 25 employees who eliminate the

employee's position due to COVID-19 while the employee is on leave are exempt, provided that the employer reasonably attempts to return the employee to an equivalent position for one year after the employee's leave.

➤ *Changes from existing law:*

1. Expands the employer threshold for FMLA coverage from 50 or more employees to 500 or fewer employees.
2. Lowers the employee eligibility requirement to cover any employee who has worked for the employer for at least 30 days prior to the designated leave.
3. Decreases the initial unpaid period from 14 days to 10 days.

- Federal Emergency Paid Sick Leave Act: It is effective from April 2, 2020 through December 31, 2020.

➤ *Benefit to employee:* This law requires employers to provide paid sick leave to employees under two sets of circumstances:

1. *The Employee is sick:* Full-time employees (regardless of how long they have been employed with the company) must receive 80 hours of paid sick leave at the employee's regular rate if they are (1) subject to a federal, state or local quarantine or isolation order related to COVID-19; (2) advised by a health care provider to self-quarantine due to COVID-19 concerns; or (3) experiencing COVID-19 symptoms and seeking medical diagnosis.
2. *The Employee is caring for sick loved ones:* Employees must receive 80 hours of paid sick leave at two-thirds of their regular rate if they are: (1) caring for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns; (2) caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency; or (3) 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.

➤ *Payment Calculations:*

- The employee may choose between the 80 hours of paid sick leave instead of the initial 10 days of unpaid leave under the Emergency FMLA.
- Employees who work a part-time or irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked for less than six months prior to leave are entitled to the average number of hours the employee would normally be scheduled to work over a two-week period.

- Paid sick leave wages are limited to \$511 per day up to \$5,110 total per employee for their own use and to \$200 per day up to \$2,000 total to care for others and any other substantially similar condition.
- Funding for paid leave: Employers are entitled to a refundable tax credit equal to 100% of the qualified Emergency FMLA or Paid Sick Leave Act wages paid by employers for each calendar quarter.

**Expansion of Michigan Unemployment Benefits:**

- Eligibility: The expansion basically applies to any employee who is laid off, including due to a COVID-19 related situation such as illness or the need to care for a child or loved one.
- Benefit: Increased from 20 to 26 weeks.
- Application: Eligibility period is increased from 14 to 28 days and online registration is allowed.