

COVID-19 Update from EKA

We have been closely monitoring how Los Angeles City and County, as well as the State, have been responding to the coronavirus COVID-19 (Novel Coronavirus) pandemic. Below is the latest information as of March 17, 2020.

Los Angeles County

For the first time ever during a crisis, the County of Los Angeles is operating under the auspices of the Public Health Officer as opposed to the Sheriff or Fire Chief. All Los Angeles County Departments submitted their Continuity of Operations Plans to the Chief Executive Officer on Monday.

The Board of Supervisors has canceled its regular meetings of Tuesday, March 17, 2020, and Tuesday, March 24, 2020 to determine how best to conduct the people's business while minimizing the spread of COVID-19. The next meeting of the Los Angeles County Board of Supervisors is expected to occur on March 31, 2020 at 9:30 a.m. For the health and safety of all, the Supervisors, County staff and the public will be participating in the meeting remotely (via telephone or computer).

Presiding Judge Kevin Brazile asked the State Judicial Council for the authorization to shut down all LA County courts for three days pursuant to California Government Code Section 6811.5. While consent from the State has not been received, it is expected to be authorized.

Responding to COVID-19 concerns, the Los Angeles Sheriff's Department has taken active steps to reduce the inmate population at jail facilities, essentially releasing people with less than 30 days left on their sentences.

City of Los Angeles

In the City of Los Angeles, bars and nightclubs have closed and restaurants have halted dine-in service and limited their business to takeout orders until March 31, following [an order](#) from Mayor Eric Garcetti. Movie theaters, gyms and fitness centers also will be closed while grocery stores, pharmacies and food banks will remain open. In addition, the City has announced a moratorium on evictions for renters.

Sacramento

The legislature intends to hold floor sessions and committee hearings this week to deal with Coronavirus/COVID-19 and will put across an emergency budget measure authorizing money for the Governor and changes related to school closures and funding. They will then adjourn for three weeks, which places them back in session on April 13. Members have been advised to remain available to convene for emergency votes during those three weeks. Furthermore, they are advising staff/members that they do not believe it is feasible to do remote voting. If they are going to have a session, the legislature must convene in person.

Governor Newsom has asked the legislature for emergency legislative action to fight COVID-19. The text of the letter can be found [here](#). The Governor has also asked the California Public Utilities Commission to monitor measures undertaken by public and private utility providers to

implement customer service protections for critical utilities, including electric, gas, water, internet, landline telephone, and cell phone service on a weekly basis. The full Executive Order can be found [here](#).

SBA disaster loans are now being processed

The county and State have completed the required process to declare the State of California an SBA disaster area, which allows for small businesses in our county to apply for financial assistance through the SBA disaster loan program. The [application link](#) is now open for any California business wishing to apply for a disaster loan related to economic damage from the COVID-19 health crisis.

- **Work Sharing:** This State of California program provides an alternative to layoffs, for those businesses with reduced work or available production through [work sharing](#).
- **Paid Family Leave:** Employees who need leave to take care of children or family issues can also apply for Paid Family Leave (PFL) through State of California EDD. Use [this link](#) to register online. Do not call -- the phone lines are swamped.
- **California iBank** is another source for emergency loans, via [Pacific Coast Small Business Development Corp.](#)

Congress

The U.S. House of Representatives has passed the Families First Coronavirus Response Act, which provides for a limited period of paid sick leave and expands the Family and Medical Leave Act to provide an extended period of unpaid or partially paid leave for a public health emergency ("E-FMLA"). The House has approved the bill, but it still has to be considered by the Senate. This Alert discusses the provisions of the Bill as passed by the House of Representatives to provide a framework for understanding the provisions that are finally enacted. We do not recommend employers make changes to their policies and procedures until the Bill is finalized and enacted, but be aware that federal law may soon require some sort of paid leave for employees impacted by COVID-19. Again, the requirements below may be different from the final law when it is enacted.

Paid Leave Provision

The Emergency Paid Sick Leave Act (the paid leave provision) requires private employers who employ **fewer than 500 employees** (and government employers) to provide paid sick time to employees who take leave under the following circumstances:

1. To self-isolate because an employee is diagnosed with coronavirus
2. To obtain a medical diagnosis or care if an employee is experiencing symptoms of coronavirus
3. To comply with a recommendation or order by a public official or health care provider that the presence of an employee on the job would jeopardize the health of others because the employee was exposed to coronavirus or is exhibiting its symptoms
4. To care for or assist a family member who is self-isolating because the family member has been diagnosed with or is exhibiting symptoms of coronavirus and needs to obtain medical diagnosis or care

5. To care for a family member if a public official or health care provider determines that the presence of the family member in the community would jeopardize the health of others because the family member has been exposed to or is exhibiting symptoms of the coronavirus
6. To care for a child if the school or place of care has been closed, or the child's childcare provider is unavailable, because of coronavirus

Who is Entitled to Paid Leave?

Full-time employees are entitled to 80 hours of paid sick time, while paid sick time for part-timers is equal to the average number of hours the employee works over a two-week period. Paid sick time must be made available to all employees, no matter how long their tenure. There is no carryover from year to year for this paid sick time, and once the employee returns to work the employer is not required to provide any further paid sick leave as required by the Act. Employers cannot require an employee to find a replacement before allowing the employee to take this paid sick time.

Pay During Leave

If time off is taken for self-care, employees must be compensated at the higher of (1) the employee's regular rate of pay, (2) federal minimum wage, or (3) the local minimum wage. If time off is taken to care for a sick family member or a child who is not in school, employees must be compensated at two-thirds of their regular rate of pay.

Effect on Existing Paid Leave

Federal paid sick time is *in addition to* any paid sick leave available under existing policies, including state and local paid leave laws. Employers may not change their existing policies to avoid paying additional leave. Employees may first use this paid sick time before using any other leave.

Required Notice

Employers will be required to post an approved notice once the Secretary of Labor makes it available.

Employee Protections and Employer Penalties for Non-Compliance with the Paid Leave Provisions

The Act prohibits employers from discriminating against an employee who takes this emergency paid sick leave and has filed any complaint, instituted or caused to be instituted any proceeding under the Act, or has testified or is about to testify in any such proceeding. Employers who fail to provide this paid sick time or who terminate an employee for discriminatory reasons as set forth above will be considered in violation of the FLSA and subject to the FLSA's penalties, including payment of back pay, liquidated damages and attorneys' fees.

Available Tax Credits

To ease some of the financial burden of compliance, the Act provides for a limited employment tax credit equal to the amount that an employer pays to an employee under this provision, up to \$511 for any day of absence for the reasons numbered 1, 2 or 3 above, or \$200 for any day of absence for the reasons numbered 4, 5 or 6, above, up to a maximum of ten days per employee for the year. The employer's total credit is also included in its income.

EXPANSION OF FMLA LEAVE FOR PUBLIC HEALTH EMERGENCIES

In addition to the Emergency Paid Sick Time Act, the Families First Coronavirus Response Act also contains an Emergency Family and Medical Leave Expansion Act (the "E-FMLA"). The E-FMLA expands the protections of the Family and Medical Leave Act to add Public Health Emergency Leave. These amendments are effective through December 31, 2020 and provide for leave due to a public health emergency qualifying need (i.e., coronavirus).

Qualifying Reasons for Leave

"Qualifying need related to a public health emergency" means leave needs to be taken:

1. To comply with a recommendation or order by a public official or health care provider that the physical presence of the employee on the job would jeopardize the health of others because the employee was exposed to or is exhibiting symptoms of coronavirus and the employee is unable to both perform the job and comply with the recommendation
2. To care for a family member if a public official or health care provider determines that the presence of the family member in the community would jeopardize the health of others because of exposure to coronavirus or the exhibition of symptoms of coronavirus
3. To care for an employee's son or daughter under 18 if the school or place of care has been closed, or the child's childcare provider is unavailable because of coronavirus

Pay During Leave

The Act provides for a combination of unpaid and paid leave. The first 14 days of E-FMLA may be unpaid, but an employee may elect to substitute any accrued vacation, personal leave, or medical or sick leave for unpaid leave. For many employees, that leave period will be paid as a result of the Emergency Paid Sick Time Act. After 14 days, employers shall provide partial *paid* leave for each additional day of leave at an amount that is not less than two thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work. For employees who have weekly working hours that fluctuate, the employer is allowed to take an average over a six-month period.

Exemptions and Special Treatment

The Secretary of Labor has the authority to exempt certain employers, including health care providers, emergency responders, and businesses with under 50 employees. Exemptions will be granted only if the leave requirement would jeopardize the business as an ongoing concern.

Whether the Secretary of Labor will grant such exemptions is unknown. Importantly, employers with fewer than 50 employees cannot be sued for violations of the E-FMLA provisions. A signatory to a multiemployer collective bargaining agreement may fulfill its obligations by making contributions to a multiemployer fund, plan or program equal to the paid leave to which its employees are entitled under these emergency leave provisions while working under the multiemployer CBA, if the fund, plan, or program enables employees to secure pay based on the hours they have worked under the multiemployer CBA when taking paid leave under the amendments.

Tax Credits

As with the Emergency Paid Sick Time Act, employers may claim a limited employment tax credit equal to payments made to employees for E-FMLA leave, subject to a maximum per employee of \$200 for each day of qualifying leave and \$10,000 per employee annual total. Also like the credit for Emergency Paid Sick Time benefits, any credit amount is added to the employer's income for the year. Unlike the credit for Paid Sick Time, however, there is already a general business credit available to certain employers who provide paid FMLA leave, and the new credit is not allowed with respect to any wages for which the general business credit is allowed (that is, "double dipping" is not permitted).

Effective and Sunset Dates

These amendments take effect not later than 15 days after the date the law is enacted and sunset at the end of the year.

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