

New Employment Legislation in Response to COVID-19 Pandemic

On March 18, 2020, President Trump signed legislation affecting employees' rights under the Family and Medical Leave Act (FMLA) and paid sick leave. The two provisions, the Emergency Family & Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA), are a part of the Families First Coronavirus Response Act and will be effective on April 1, 2020, applying to leave taken between April 1 and Dec. 31, 2020. The main provisions of the new laws are as follows:

EFMLEA

Coverage:

- Applies to employees who have been employed for at least 30 days
- Applies to employers with fewer than 500 employees
- Excludes employers who employ certain health care providers and emergency responders
- Excludes small businesses with fewer than 50 employees if complying would jeopardize viability of the business

Benefits:

- Additional basis for leave: A qualifying need related to public health emergency, which means employee is unable to work or telework due to a need for leave in order to care for the son or daughter under 18 years of age if school or care facility is closed or unavailable due to public health emergency
- Paid leave for each day of leave after an employee takes 10 days of leave, for up to 10 weeks of paid FMLA leave
- No less than two-thirds of an employee's regular rate of pay, based on the number of hours the employee would otherwise be normally scheduled to work
- First 10 days of leave may be unpaid leave
- The employee can substitute accrued vacation leave, personal leave or medical or sick leave for unpaid leave

*Paid leave is not required to exceed \$200/day or \$10,000 in the aggregate

*The calculation for employees on a variable schedule is different

EPSLA

Coverage:

- Applies to all employees regardless of time employed
- Applies to employers with fewer than 500 employees, but does not specifically exempt small businesses with fewer than 50 employees
- Applies to most government employees

Benefits:

- Paid sick leave of up to 10 days for absences caused by COVID-19, self-isolation, quarantine for self or family member and/or school closures causing the employee to be unable to work or telework
- 80 hours of pay for full-time employees and wages for part-time employees based on the number of hours an employee works on average over a two-week period

Covered Reason for Leave	Rate of Pay	Cap on Payments
1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))).	\$511 per day and \$5,110 in the aggregate
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))).	\$511 per day and \$5,110 in the aggregate
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	The employee's regular rate of pay (as determined under section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e))).	\$511 per day and \$5,110 in the aggregate
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).	Two-thirds of the employee's regular rate of pay	\$200 per day and \$2,000 in the aggregate
5. 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 of the employee's regular rate of pay	\$200 per day and \$2,000 in the aggregate
6. 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 of the employee's regular rate of pay	\$200 per day and \$2,000 in the aggregate

- No carryover of sick leave to another year
- No need for the employee to search for a replacement employee
- Employer cannot require employee to use other paid sick leave provided by employer first before using this leave

*If the employer has a reduction in force or layoff, neither EPSLA or EFMLEA would apply

Georgia Unemployment Benefits Expansion

The Georgia Department of Labor (GDOL) has adopted an emergency Rule 300-2-4-0.5 Partial Claims, effective March 16, 2020. The rule requires all Georgia employers to file partial claims online on behalf of their employees for any week during which an employee (full-time/part-time) works less than full time due to a partial or total company shutdown caused by the COVID-19 public health emergency. The rule remains in effect for 120 days. During this time, employees for whom a partial claim has been filed are NOT required to report to a (GDOL) career center, register for employment services or look for other work.

All partial claims must be filed by employers online in the Employer Portal. Employers should submit claims after the payment week-ending date, and after seven days, repeat the process for each week during which the employee works less than full time due to a partial or total company shutdown cause by the COVID-19 public health emergency. Finally, any employer found to be in violation must pay to the Commissioner the full amount of benefits paid to the employee.

The GDOL provides several circumstances in which employers should not file a partial claim. These include employees who:

1. will be paid for the temporary layoff period (e.g., paid salary, paid sick leave, paid vacation or paid family leave);
2. are/were on scheduled leave prior to the layoff period (e.g., a leave of absence or medical leave);
3. are employed by a temporary agency and currently working at your place of business;
4. were employed in another state in the last 18 months (employees should be directed to apply for unemployment benefits online); and
5. were employed with the federal government or on active military service in the last 18 months (employees should be directed to apply for unemployment benefits online).

If you wish to further discuss these changes in response to COVID-19 or have any questions, please contact Swift Currie attorneys:

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The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.