

## Question and Answer Log

From the March 20, 2020 BYOL Webinar

1. Are health care agencies EXEMPT from the EPSL?

Health care agencies are not per se exempt. The US Department of Labor may issue regulations to exclude certain agencies. This has yet to be determined at this time.

2. Are taxes credits available for 500+ employers?

No.

3. Are there any exemptions for the paid sick leave based on the number of employees?

The US DOL may choose to exempt small business of fewer than 50 employees when the requirements would jeopardize the viability of the business. However, this DOL option has yet to be undertaken at this time.

4. Are there any loopholes in the language of the regulation that would allow an employee to qualify for Leave or Sick time because they personally feel like being at the workplace poses a risk of infection, even if they are not symptomatic or have been exposed to someone who is symptomatic? And if they have been exposed to someone who is symptomatic but not confirmed, would they be covered if they choose to self-quarantine?

Neither the expanded FMLA nor EPSL allows people to take time on the fear of getting sick. However, if someone has a need to self-quarantine due to exposure or as otherwise in accordance with CDC guidelines or public health agency, then that may qualify.

5. Are there tax credits for employers on any wages paid from this new law passed?

Tax credits against the Social Security employer contributions liability would apply. The amount of the credits would equal the amount for Paid FMLA and Emergency Paid Sick Leave payments made to employees in accordance with the expanded FMLA and Emergency Paid Sick Leave Act. Credits that exceed the total Social Security employer contribution liability would be refunded to the employer. Those details have yet to be determined as of the date of the webinar.

6. At what point should employers request employees to apply for FMLA?

Under FMLA, employees merely need to notify you of reasons why they need to be away from work and if those reasons qualify as reasons under FMLA, then the employer would then need to proceed with their FMLA administrative responsibilities. The employee does not need to mention FMLA by name.

7. Can employers pay over the \$200 amount are we prohibited to paying more than the sick leave caps?

An employer could choose to do this, but such additional payments would not qualify for tax credits to later remit against their Social Security employer contribution responsibility.

8. Can furloughed employees collect unemployment?

While that can vary from state to state, generally yes.

9. Can the 80 hour sick pay kick off the 12 weeks of FMLA...meaning can they work together?

The Emergency Paid Sick Leave can be used for six enumerated reasons:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order to quarantine or has been advised by a health care provider to quarantine.

(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 childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.

(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.

To the degree that the reasons to use paid sick leave overlap with reasons for time off under the FMLA, then yes it could be used by the employee at the onset of a FMLA leave. However, that is up to the employee to use it. An employer cannot compel an employee to use their paid sick time that they earn under this law.

10. Can the FMLA coincide with paid emergency sick time after the 10-day waiting period?

The 10-day waiting period only applies to FMLA leaves where qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency. After the 10 days, paid FMLA is available for days 11 and beyond at a rate of 2/3's of their regular rate of pay up to a limit of \$200/day (or an aggregate of \$10,000). The question of whether emergency paid sick leave can be used to make up the difference between the \$200 and their full rate of pay has yet to be clarified. However, under FMLA regulations, once leave is already paid for, additional paid leave typically cannot also be added unless both the employer and the employee agree. Whether that standard will apply, again, has yet to be clarified.

11. Can we require medical documentation for employees who need to take FMLA under this new Act?

The law does not address this question specifically. However, other parts of the original FMLA allow for reasonable documentation. How that will apply here is a detail that hopefully will be ironed out by future guidance, but employers are encouraged to be flexible.

12. Can we take from our existing sick pay policies to make an employee whole if they hit the limits?

The question of whether emergency paid sick leave can be used to make up the difference between the \$200 and their full rate of pay has yet to be clarified. However, under FMLA regulations, once leave is already paid for, additional paid leave typically cannot also be added unless both the employer and the employee agree. Whether that standard will apply, again, has yet to be clarified.

13. Can you clarify the amount of pay for EE vs family member? I thought it was full pay for EE illness and 2/3 for family members

Under the emergency paid sick leave, there are 6 enumerated reasons:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(4) The employee is caring for an individual who is subject to an order to quarantine or has been advised by a health care provider to quarantine.

(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 childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.

(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.

**For reasons 1 through 3, pay is at 100% of their regular rate of pay up to the \$511 cap and an aggregate of \$5,110. For reasons 4 through 6, pay is at 2/3's of their regular rate of pay up to the \$200 cap and an aggregate of \$2,000.** So, pay levels are indeed different depending upon the reason of use.

14. Can you clarify the FMLA 12 Months/30 day standard? Must be Employed for 12 months, but actively working for past 30 days?

Time off for a Public Health Emergency Leave under FMLA (that is - qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.) allows for employees to take time

for this purpose upon being employed by an employer for at least 30 calendar days. For other FMLA reasons, the customary 12 month/1,250 hour standard would apply.

15. Can you define Healthcare company and how it is covered under this law, would home health care and healthcare staffing be exempt?

Under the US DOL may choose to certain health care providers. However, this DOL option has yet to be undertaken at this time nor has there been any guidance of who could conceivably be exempted should the DOL decide to do so.

16. Can you please explain how an employee is eligible after 30 calendar days, but has to be employed for 12 months?

Public health emergency leave is a 30 calendar day standard. Other leaves are a 12 month/1250 hour standard.

17. Can you please speak to health privacy issues regarding notifying employees if a colleague has been tested for COVID-19 or has been diagnosed with COVID-19? If someone has been diagnosed, does the employer have an obligation or the ability to inform co-workers? If so, with or without a specific name attached?

If an employer has reason to believe that an employee has been diagnosed, they should take measures to evaluate the employee's whereabouts in the workplace during the 14 day period immediately preceding the onset of symptoms or otherwise known to have the condition (whichever is earlier) in order to gauge what responsive measures should be taken to clean up potentially infected areas and identify scope of employee communication. Disclosing the identity of the employee is discouraged, rather the focus should be informing employees who may have come into contact that there is an employee who has tested positive, that you have identified them as someone who may have come into contact, and that they should consult with their health care provider on next steps, and monitor symptoms. Self-quarantine may also be an option provided that is in accordance with CDC guidelines as well.

18. Can you review unemployment furloughs vs lay-offs, eligibility, pay out of vacation pay, etc.?

Furloughs are measures that employers take to remove an employee from a schedule for a period of time and are not earning wages or a salary, but they remain employees of the organization (as such there is no obligation to pay out vacation pay at the onset of a furlough). By contrast, a lay off is severing the employment relationship with the employee, which depending upon state law may also require you to pay out earned but unused vacation pay. In both situations, unemployment eligibility may be an option though to what degree may vary depending upon state law.

19. Confused on FMLA. Do we have to pay for 12 weeks?

No, paid FMLA only applies to the public emergency leave alone. Other FMLA reasons are unpaid (unless the employee or the employer utilize paid time for those other reasons to make some or all of that leave paid due to such use).

20. Currently have an employee out on FMLA, if we furlough or layoff, how does that impact her in this time?

FMLA protects employees from adverse action or retaliation. However, FMLA will not protect someone if they would have lost their job if that had been continuously working. Therefore, it comes down to the criteria or rationale behind who you decided to furlough or layoff that will determine if there is potential risk or not.

21. Didn't I read that if you are under 50 you can apply for exemption though?

Under the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act, the DOL may craft regulations to allow for under 50 sized businesses to be exempt. That has yet to be finalized or adopted by DOL. Therefore, at this time those companies are still covered.

22. Do these new regulations affect how to proceed with furloughs or layoffs due to economic/business conditions?

You need to be mindful not to use the potential of employees exercising their rights under these new laws as a means of singling out individuals for layoffs or furloughs specifically.

23. Do we need to retro pay employees who are currently out?

No. The law takes effect on 4/2 and applies prospectively. Earlier versions of the bill had a retroactive component. They did not make it into the final version.

24. Do you think we can give the 80 hours starting now instead of 4/2? Or if we did that, would we have to give another 80 to the same person again 4/2?

You could be more generous if you wanted to. The law does not address that situation.

25. Does "healthcare workers" also apply to Direct Care staff working in 24-hour residential care?

The expanded FMLA allows employers of an employee who is a health care provider or an emergency responder may elect to exclude such employee. However, that has yet to be clarified at this time.

26. Does an employer have to request a doctor's note stating they are required to be isolated for them to qualify for the paid sick leave?

Those details have yet to be defined though FMLA in general allows for reasonable documentation. Again, employers should be flexible given the access limitations to health care and the rise of telehealth options.

27. Does pay under FMLA also come out of a separate bank of time than the employee's normal banked sick time?

The Paid FMLA and Emergency Paid Sick Leave are additional forms of pay that an employer provides beyond their existing paid time off banks.

28. Does the emergency paid portion of this expanded FMLA only apply to employers of 500 or less employees? I read that employers of 500+ employees are not subject to the emergency paid leave. Please clarify.

That is correct. The new measures only apply to companies with 500 or fewer employees.

29. Does the pay for expanded FMLA only apply to COVID related situations, or all FMLA absences?

Pay under the expanded FMLA only applies to Public Health Emergency Leave (the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency). Emergency Paid Sick Leave on the other hand is available for the six enumerated reasons set forth earlier in this document. Other FMLA reasons would not be paid (unless other available paid time off was substituted to make such unpaid leave paid for).

30. Does the regular pay include overtime? Or is it only straight time.

Regular rate of pay is based upon the Fair Labor Standards Act and as a result may include additional forms of pay beyond an employee's base rate.

31. Does this apply to employers with one, two, or three employees?

Unless otherwise exempted by later DOL regulation, yes.

32. Eligible for fmla after 30 days, not 12 mos?

30 calendar days for public health emergency FMLA leave. 12 month/1250 hours for other forms.

33. Employees are already having absences; does the FMLA and Paid Sick Leave apply to any absences prior to 4/2/20?

No.

34. FMLA is the full pay rate or Emergency paid sick is the full rate?

Public Emergency FMLA Leave is at 2/3's pay and is available after the first 10 days (which can be unpaid). Emergency paid sick leave is at 100% regular rate of pay for first three reasons set forth in the law, and 2/3's the regular rate of pay for reasons 4 – 6.

So, to break it down further:

Public Health Emergency FMLA Leave: 2/3's pay up to \$200 cap (or \$10,000 in the aggregate/available starting on day 11 of such a FMLA leave);

Emergency Paid Sick Leave:

(1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

(2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

For reasons 1-3 above, pay is at 100% regular rate of pay up to cap \$511 per day and \$5,110 in the aggregate

(4) The employee is caring for an individual who is subject to an order to quarantine or has been advised by a health care provider to quarantine.

(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.

(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.

For reasons 4-6 above, pay is at 2/3's regular rate of pay up to cap \$200 per day and \$2,000 in the aggregate.

35. For the FMLA section, is it still 16 weeks for CT (realizing that the law is changing to 12 weeks)

These new federal requirements do not change that which you have to comply with under existing state law.

36. For the sick leave point, can employees elect to use their PTO over the emergency sick time to get their full pay?

Yes, employees may choose which time banks to use first. An employer cannot compel an employee to use time banks in a certain order when it comes to the use of Emergency Paid Sick Leave.

37. Has the MA legislation been passed that waives waiting period?

Yes.

38. We currently provide our staff with 40 hours of paid sick time. Does the new requirement of 80 hours of paid sick time mean I have to now provide 120 hours of paid sick time or just an additional 40 hours to bring the total to 80?

Yes – the Emergency Paid Sick Leave is additional time that an employer needs to provide beyond their existing sick time. Thus, for full time employees, that would be an additional 80 hours.

39. How are companies expected to pay for this?

I cannot respond to that but that is a company's responsibility. Though, as mentioned in the webinar, you can later offset that in the form of tax credits towards your Social Security contribution obligations.

40. How do these rules apply to employees that are out on leave that started prior to 4/2?

The law does not apply to time taken pre 4/2.

41. How do we determine 2/3 pay? Do we look at the employee's last 2 weeks of average work hours? Or, is it what the employee was working before this all happened?

For employees with varying schedules, you average their hours over the past six months (when it comes to identifying Emergency Public Health FMLA), and over the past two weeks (when it comes to Emergency Paid Sick Leave).

42. How does the \$10,000 limit work with the \$511 and \$200

The \$10,000 aggregate only works towards the time taken for Emergency Public Health FMLA, not time taken for Emergency Paid Sick Leave purposes. The aggregates for Emergency Paid Sick Leave are \$511/day (up to \$5,110 in the aggregate) and \$200 / day (up to \$2,000 in the aggregate).

43. How does the FMLA changes work with Rhode Island TDI/TCI?

Whether an employee chooses to exercise their rights under FMLA, TDI, or TCI will be up to the employee. The FMLA expansion is separate from options an employee may have elsewhere under state law. Whether the state of RI chooses to incorporate guidelines in the wake of these new federal measures is unknown.

44. How does this new FMLA connect to anyone who is currently on FMLA. For example if a person has already been on FMLA for 6 weeks, does that mean they only have 6 left?

The changes/additions do not change that (with the exception of injured service member reasons), that an employee otherwise only has 12 weeks of leave available in a 12 month period.

45. How long are these new changes effective for?

The newly Emergency Public Health FMLA and Emergency Paid Sick Leave currently are set to expire on 12/31/2020.

46. How will the tax credits work? What reporting will be required?

For the monies paid out for Emergency Public Health FMLA and Emergency Paid Sick Leave, employers can apply for tax credits that are applied against their obligations toward Social Security contributions with any amounts that exceed their liability being refunded back to the employer. However, the mechanics of how that will have yet to be defined at this time.

47. I heard conflicting information about federal tax returns, that paying taxes due was extended, but not filing individual returns. You just said that filing was also extended to July 15. I just want to confirm that has also been extended.

Federal tax day has been pushed back to July 15 (from April 15).

48. If a company has closed and put employees on furlough so that the employees can file for unemployment, what happens if an employee is diagnosed during the furlough with the virus, are they able to switch to FMLA?

That situation has not been addressed in the law. Whether DOL guidance addresses that is another matter.

49. If a company is forced to close - such as a fitness center - are they required to pay the sick leave for full time employees?

No – there is not requirement to pay out unused sick time to employees upon termination or lay off.

50. If a company pays for short-term disability policy for their full-time employees, does the company still have to offer full-time employees the paid FMLA?

As Emergency Paid FMLA applies to taking time off due to childcare issues, I question whether it would be covered under STD.

51. If a person falls under the modified FMLA eligibility, can we pay them the 2 weeks of coronavirus sick time and then switch to the 2/3 hourly rate after the 2 weeks?

The reason in your question would fall under the Emergency Paid Sick Leave law not the Expanded FMLA law and on that point, an employee decides alone whether to use their Emergency Paid Sick Time or other sick time (or paid time off) that they might otherwise have coming from you.

52. If already on FMLA, do I now have to pay that person?

No – Unless they are using existing paid time off that, they may have already available under your policies. The pay requirements under Emergency Public Health Emergency FMLA and Emergency Paid Sick Leave do not apply until 4/2.

53. If an employee is going on FMLA for something that is NOT COVID-19 related, does the "old" FMLA still apply (not paid??)

Yes.

54. If employee takes sick leave prior to April 2 (for the purposes defined in the act), can we count this time off towards the 80 hours defined in the Act?

Though undefined, when FMLA was first adopted, DOL had indicated that time taken prior to the law's inception could not count towards their FMLA benefit. Therefore, if they follow this same approach, I would say the answer is no.

55. If furlough or layoff is being considered, how to we handle someone who is out on emergency sick leave? Do you send a furlough/layoff notice during or after paid leave?

Again, Emergency Public Health FMLA and Emergency Paid Sick Leave would not protect someone from furlough/layoff if they had been continuously employed. Therefore, you could send the notice like you would for others. However, in light of the protections against adverse action and retaliation that are built into these laws, your business rationale or criteria as to why and how people were identified for furlough or layoff would then come into question.

56. If our business is shut down by the state or federal government, does that make our employees eligible for emergency paid sick leave?

That is not an enumerated reason under the Emergency Paid Sick Leave law.

57. If RI does not have paid FMLA, do we have to pay FMLA for the new reason relating to school closures?

That is an added reason under the federal FMLA and if your business is covered due to its size then it would apply to you.

58. If shelter in place order -- are employers required to pay employees? If so, what are the mandates?

That is not an enumerated reason under the Emergency Family and Medical Leave or Emergency Paid Sick Leave.

59. if the employer is already closed, do they still qualify if the child's school is closed?

That has yet to be clarified.

60. If there is a lockdown, is paid emergency sick and/or FMLA likely to apply for employees who aren't sick/caregiving and cannot telework?

No.

61. If we are still closed after the effective date and we are paying 100% for as long as we can. Can we submit for the tax credit on the 2/3rds payment. This is a business that serves vulnerable individuals with disabilities.

Tax credits can only be submitted for payments made due to reasons in accordance with the Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act and only

in accordance with the thresholds set forth in those law. Payments for other reasons or payments beyond those thresholds would not be eligible for tax credits.

62. If we offer remote work for our FMLA or sick leave eligible folks, at full pay, do we also have to provide the CV fmla or sick leave? I believe it says The term 'qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

While such arrangements may negate being able to use the Emergency Paid FMLA or one of the Emergency Paid Sick Leave reasons, the person may have the ability to use the Emergency Paid Sick Leave for the other enumerated reasons under that law.

63. If you have under 50 employees, do you still follow the emergency paid sick leave?

Yes – unless otherwise exempt (should DOL issue regulations for such exemptions – which has yet to occur).

64. IS it still a quarantine if it is voluntary or does there need to be a diagnosis?

Under the Emergency Paid Sick Leave Act, quarantines can apply in cases of diagnosis or Public Health Order.

65. Is the family leave tax-exempt under the family first ace?

There is not such indication either way on that subject.

66. Is the paid FMLA only paid for COVID19 related absences? Or any FMLA reason?

Paid FMLA leave is only available for a 'qualifying need related to a public health emergency', with respect to leave, means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency."

67. Is the paid sick leave in place of paid FMLA or concurrent?

Emergency Paid Sick Leave may run concurrent if it is taken during time where the FMLA is otherwise unpaid.

68. Is the unemployment waiting period being waived in CT, too or just MA and RI for now?

Waiting periods for unemployment benefits have been waived.

69. Is there any benefit if employees are just afraid to come to work for fear of catching it? Are unemployment benefits available for this?

No.

70. Is there paperwork that the employee needs to complete for the additional 80 hours?

A model notice will be available by DOL not later than 7 days after the law's enactment. Whether that model notice provides detail on this question is yet to be determined.

71. It seems like employees who need leave due to care for a child due to their school or daycare closing would be covered under both the FMLA expansion Act and Sicks Pay Leave Act. Would they be able to use the paid leave from the Sick Pay Leave act to cover them for the 10 day waiting period under the FMLA Expansion Act??

Yes – if it is available, though that is up to the employee if they want to do that.

72. It's not clear on the slide. Is the paid portion of FMLA only for people with childcare workers or other reasons as well?

Pay under the expanded FMLA only applies to Public Health Emergency Leave (the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency).

73. Just to be clear, if you are an employer over 500 people, you are not obligated to honor the new FMLA guidelines. Technically, you are exempt & utilizing this is voluntary/up to you?

Correct. Also, if you did it, you couldn't count that time against their 12 week FMLA allotment since it isn't a covered reason for your business (should employee seek to go out on FMLA for other reasons).

74. Many of the provisions say if "diagnosed" many employees are self-quarantine but doctors will not see them. Which benefits are to be paid to them based on this situation?

The quarantine reasons would be reasons to use Emergency Paid Sick Leave.

75. Please address how to count # of employees. W2s?

Employees are based upon those on your payroll whether they are working or not. This can include full time, part time and temporary employees.

76. What qualifies as "care"? Do they have to go to a doctor or would they qualify if they sought care by calling a hotline or going to a pharmacist?

Care is not defined in the Emergency Paid Sick Leave Law, and it could be discussed further by virtual of DOL guidance but that is not guaranteed. I imagine it would be looked at broadly (which is how FMLA looks at the issue).

77. So they can use paid sick leave as a wage replacement and collect unemployment at the same time?

No. Double dipping would not be an option under state unemployment laws.

78. To clarify, the sick leave can be used for the first 10 days prior to FMLA starting on the 11th day?

If you are referring to the childcare reason, yes, that is how it could work; assuming the Emergency Paid Sick Time has not already been used for one of the other enumerated reasons. Though it is up to the employee to decide if they want to use that benefit within the first ten days or other paid time off available from you that may also qualify.

79. We are a global organization; we have less than 500 employees in the United States however more than 500 globally. Do our employees qualify for paid family medical leave?

You look at your employees on your payroll for this purpose.

80. We are just over 500 employees (504), is the recommendation to follow these guidelines even though we are not required to?

I would not follow these additional measures unless you are covered.

81. We have a remote workforce now, but people with kids home can no longer work fulltime; does FMLA cover reduced hours? Does it matter if salaried or hourly?

Whether the new reason under the FMLA can be taken intermittently or not has yet to be defined at this time.

82. We have been considering a furlough, are you able to speak to reduced hours in regard to exempt salary employees as a possibility instead of a furlough so those employees can partly work while collecting unemployment?

If a salaried exempt employee is working a part of the week, they should be getting paid their salary for the full week. Deducting from an employee's earned salary due to a slowdown in an impermissible deduction under the Fair Labor Standards Act. However, lowering their base salary for future work and doing that on an open ended basis would be permissible. Whether such a material reduction would allow the employee to partial unemployment benefits would depend upon the state.

83. We have small company less then 25 employees. We are working. What is an employee does not want to come to work out of fear. What are our obligations

Such a situation is not a covered reason that would protect someone from staying out. Accordingly, you could hold them accountable if you wanted to for not performing their responsibilities. Whether state stay at home orders moving forward change this option is of course another matter.

84. What happens to employees benefits during an emergency leave? Will employee still pay their portion of their premium?

Yes – employees would only be responsible for their share of the premium.

85. What if employee needs the leave if they are sick for themselves and care for family member/care for child because school is closed? Can they take both at the same time?

Employees can take FMLA for multiple reasons within the same 12 month period. Whether this is possible will depend upon the timing of the reasons.

86. What if our "full time" is 35 hours, not 40? Will we still have to provide 40 hours?

For purposes of the Emergency Paid Sick Leave Law, full time employees get 80 hours of time. There is no other language that alters that amount of benefit for full time employees.

87. What if the employee staying home for childcare closure can do some hours via telecommuting?

The language under the Public Health Emergency Leave under the expanded FMLA says: "the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed". While logistically they may be able to work from home, if these circumstances inhibit them from working, they conceivably could still go out on the new FMLA reason.

88. What is the difference between the FMLA leave for childcare and the sick leave for childcare purposes?

The reasons are the same. It is just that if out on the FMLA, pay would not occur until day 11 of the FMLA and then in accordance with its pay levels, (2/3's pay up to \$200/day and an aggregate of \$10,000). Emergency paid sick leave can be used starting the first day they are out for that purpose it pay level is different (2/3's pay up to \$200/day up to an aggregate of \$2,000).

89. While we are being told to relax our policies regarding documentation supporting leave. Will the government require supporting leave documentation to receive tax reduction/reimbursement?

Not specified at this time.

90. Will employers need to request proof of parent relationship with the Emergency FMLA expansion childcare benefit?

Not specified at this time.

91. Will there be a new FMLA application?

Unknown at this time.

92. Wow. So just to clarify: This is federally reaching, will be enacted April 1, and employers will have to offer an ADDITIONAL 80 hours of paid sick time

Yes unless otherwise exempt by later DOL regulation.

93. If I have someone needing childcare coverage TODAY ... they do not apply for the emergency Sick Leave TODAY?

No, these provisions do not take effect until 4/2.

94. Are any of these federal benefits retro prior to April 2<sup>nd</sup>

No. Earlier versions of the bill had a retroactive provision. That did not make its way into the final version.

95. What notification requirements are there for employers to give employees? Written, poster, etc...?

There will be a poster available within 7 days of its enactment that will need to be posted. Other notification has not been specified at this time.

96. Medical certifications waived-self attestations OK?

Not been specified either way at this time. You may want to be flexible on this issue.

97. I was under the impression the employee would be applying directly through the SSA. This makes it sound as the payment will be coming directly from the employer. Can you clarify?

Payments are to be made by the employer. You can then apply for tax credits on what you paid in accordance with the law to SSA. [Earlier versions of the bill had different payment mechanisms.]

98. If they take the leave how long do they get to take as of 4/2/20 since it goes to 12/31/2020?

The entitlements here run until 12/31/2020. How leaves are handled that remain in progress post-12/31 have not been clarified at this point in time.

99. How do we avoid discrimination against employees on FMLA in regards to furlough vs lay off?

Have a non-discriminatory business reason behind your criteria in who you selected for furlough that is not tied to an employee exercising their rights under FMLA.

100. Can you please answer my question about employers with 500+ employees not being subject to the Act's paid leave requirement?

They are not subject to the Public Health Emergency Paid FMLA requirement.

101. Is the new Paid FMLA only apply to absences for the new reason (care of children due to closures) or does paid FMLA apply to FMLA absences related to own or family member's illness?

Only for the new reason. Payment for other reasons would be based on using paid time off that an employee may have available through their employer (i.e. the use of existing vacation, sick or personal time).

102. What if an employee is working 2 days, then home 3 days to care for their child? Would it be the 3 days we do 2/3 pay?

The paid time would only be triggered if the employee were unable to work.

103. Are union employees treated the same as nonunion?

There are no distinctions between union and non-union employees. Depending upon your agreement, there may be provisions in the contract that would automatically allow you to adopt the provisions without negotiation (i.e. – give beyond what is already in the contract). If you are unwilling to do that, then there would be a need to bargain over the effects (since these are allocations you would have to provide by law).

104. Sounds like under 25 should treat like 500 or less???

Unless otherwise exempt by later DOL regulation – yes.

105. The FMLA doesn't pertain to companies over 500, what about the sick time?

Same thing – both the paid FMLA and Emergency Paid Sick Leave apply to employers with fewer than 500 employees.

106. Can we choose to pay more than 2/3 of the pay under Emergency paid sick leave?

That is up to you but as written, you would not get to claim that as additional tax credits against your Social Security liability.

107. So between now and April 2nd employees must use pto or employer can opt to pay them at a rate they elect to pay is that correct

Prior to 4/2, employee may or an employer may require the use of existing PTO.

108. Do we issue FMLA notice Eligibility and Designation for each of these new requirements?

There has not been details on this point. I would be careful however; on this to the degree Emergency Paid Sick Leave is used. General federal FMLA allows employers to require employees to use paid time. With Emergency Paid Sick Leave, you cannot compel its use.

109. What are the maximum UI benefits in Massachusetts and is it different due to being unemployed due to coronavirus?

Maximum weekly benefit amounts are set by each state every year and typically tied in some form to a state's average weekly wage. For Massachusetts, the maximum weekly benefit is \$823/week.

110. Do you anticipate the need for sick leave or fmla will be mostly on the honor system - particularly because it is so difficult to work with the medical system right now?

Documentation details have yet to be specified at this time – though I would hope reasonable requests would be allowed.

111. How does the 2/3 rate of pay work for exempt staff?

Though not addressed, I would expect that a reasonable approach would be taking the weekly salary and dividing it by the numbers of day an exempt employee customarily works a week. Once that amount is for what a day is worth, take two-thirds of that amount.

112. What is the timeframe to get them the pd sick time? Immediately or when? Cutting a manual check?

Though not specified, I would expect it would be in accordance with you payrolls that occur after the time is taken. Again, hopefully guidance addresses this issue.

113. Re FMLA pay, what if they haven't fully consumed their Paid Sick Time pay at the ten-day mark? Can the ee double-dip?

Remember, the Emergency Paid Sick Time covers more than the Public Health Emergency FMLA reason. I therefore do not see double dipping as an option by the employee.

114. Thanks! Also, I assume this Federal mandate overrides RI TDI/TCI? Or should I direct ees to collect that first then the Fed mandate kicks in?

This does not have a bearing on employee's options to see benefits under state law.

115. What if we are right on the line of 500 employees (495 to be exact)? What happens if in a couple of weeks we are then just over the 500 mark?

The threshold is set by looking at the following: 'fewer than 500 employees'.....for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year'. Thus, if you had fewer than 500 employees, going over 500 would not immediately exclude you from coverage.

116. How does this apply to employees who are working remotely?

The law covers both in-office employees and remote workers. If the employee is incapable of working remotely due to the covered reasons manifesting themselves, then utilizing this time can still be an option (unless later guidance dictates otherwise).

117. Is there any qualifications an employee must meet to stay home with their child... i.e. if there is another spouse at home, can they still take the time off?

No – no prerequisites specified.

118. What if our Sick leave policy is more generous than the Emergency Paid leave?

The Emergency Paid Sick Leave Act requires providing such time in addition to that which an employer already has – regardless of how generous that may be.

119. So if someone has to take FMLA that has nothing to do with Covid-19, they are held to the old FMLA. Or does this change everything?

Old FMLA may still be an option for other reasons that qualify under the old law.

120. What about FMLA for school closures once the normal school year ends?

Not a covered reason as the closure is not due Public Health Emergency or Order in that instance.

121. One of the biggest question we are facing is whether to ask someone to self-quarantine if they have close contact with someone with symptoms associated with COVID-19 but there is no diagnosis due to limited testing ability. Should we tell them to self-quarantine for 14 days even if our employee has no symptoms?

I would only suggest self-quarantine in accordance with prevailing CDC guidance on the subject.

122. Can an employee ask for 2 weeks of sick pay for reasons 1-3, and then come back for sick pay for reasons 4-6?

Hours available under the Emergency Paid Sick Leave Law (80 hours for full-time/prorated for part-time based upon prior 2 week average) is for use for any of the six reasons. If they use their allotment, no additional time is available under that law.

123. Hi, should we require a doctor's note about covid-19 if someone wants to stay home and when they can return to work

You can always require a fitness for duty before they return to work. Be mindful of state sick leave laws for getting documentation for other purposes.

124. Do we have to track this FMLA like we do other FMLA?

Not specified but it would be advisable to ensure they are only getting what they are entitled to and you likewise are only providing paid FMLA where appropriate as well.

125. If an employee is out on FMLA, do we still have to provide benefit (health insurance)?

Yes.

126. Can we require use of all personal time PTO, personal etc. before they take emergency?

No.

127. 500 or fewer in one location or multi-location?

Look at all locations

128. So after the 80 hours of paid leave there is no other paid benefit except they are able to stay on FMLA? Is this correct?

They may choose to uses paid time off that may have available under your other paid time off programs (vacation, sick, personal....depending upon the reason of use – STD may come into play if it is for their own condition).

129. It seems like everyone that would be eligible for the FMLA expansion Act would be eligible for the Paid Sick Leave Act so no one would really have to wait the waiting period.

Not exactly – if an employee used all of their Emergency Paid Sick Leave for one of the other enumerated reasons (other than the need to stay home for child care), and then later need to go out for the child care reason, then the waiting period would kick in before the paid FMLA benefit for that reason kicks in on day 11.

130. is there a definition of childcare? Is it biological or adopted only? what about Foster children?

CHILD CARE PROVIDER.—The term ‘child care provider’ means a provider who receives compensation for providing child care services on a regular basis, including an ‘eligible child care provider’ (as defined in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n)).

Furthermore, the time here must be for a son or daughter, which as defined can include biological, adoptive, foster child or one that you are otherwise standing in a loco parentis role over.

131. We lay off 90% of our workforce and they just started back in mid-March. If we all have to shut down for 2-4 weeks, and lay people off, will the 30 days restart when we come back to work?

The 30-calendar day standard has yet to be clarified on such a point. I would say no, otherwise people could be let go and rehired simply to avoid them not being entitled to the benefit.

132. Please confirm: an employer has 4 employees... that employer pays this Paid Leave?

Yes – unless otherwise deemed exempt due to later DOL regulation.

133. Is this FMLA 12 weeks in addition to normal FMLA?

No – it is an additional reason that can be taken under the 12 weeks afforded under FMLA.

134. Does the paid sick leave apply to all employees regardless of length of service

Yes – length of service does not matter. Whether they are full time or part time does affect how much Emergency Paid Sick Time that they can get.

135. Did I read somewhere there is a possibility of exemption still for the smallest?

DOL has the right to consider adopting regulations to carve out small employers and what conditions would need to be fulfilled for that to apply. However, that has not happened as of now and until that were to occur, there wouldn't be such an exemption.

136. This new FMLA law doesn't apply to businesses that have had to close because of COVID-19, right?

There is not an exclusion for that. How it would apply in that situation is unknown.

137. Are companies planning to pre-load the 80 hours of paid sick time?

For full-time employees – all 80 hours must be immediately made available – it cannot be earned pro-rata over time.

138. Is it an either or situation between FFCRA vs unemployment. Can company choose?

Employees are the ones to decide if they want to go out on FFCRA or not. Not the company. Whether someone chooses to file for unemployment – again – is up to the employee (though as previously mentioned)

139. With the new FFCRA (FMLA) not taking place until 4/1 - will that cover employees self-quarantined before that date?

The self-quarantined measures could be covered reasons under the Emergency Paid Sick Leave Law and if they are still in progress once the law takes effect, then it may very well apply to that time off 4/2 and beyond.

140. For the FMLA (30 Days) does that include just current employees or temporary employees (through staffing agencies as well)?

Open question but for other FMLAs, time working for you through a staffing agencies has been credited towards service time. Whether that is adopted here as well is not fully defined, but I would not be surprised.

141. Employees can use personal time to fill-in the 1/3 pay gap, yes?

Not addressed, but if earlier FMLA regulations are any indication, then it would need to be with both employer and employee mutual consent.

142. Does the family member need to live in same house and/or be a dependent of employee

For Emergency Paid Sick Leave purposes, that is not a requirement.

143. If someone calls out sick what do you recommend for changes in sick notices such as any day out vs after 3 days out

Neither the Emergency Family and Medical Leave Expansion Act nor the Emergency Paid Sick Leave Act changes state sick leave laws. According, employers should be care on limitations on documentation requirements for employees being out less than 3 days if a state sick leave law prevents a doctor's note that merely is to excuse the time missed. You can still seek a fitness for duty note to ensure that the employee is fit to resume their duties and does not otherwise pose a direct threat to the safety of others or of themselves.

144. #6 is that due to a case at the school or just the state closing the schools.

No because reason #6 is under the Emergency Paid Sick Leave Law is attributable to "similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor." These agencies would not involved in closing of schools. School closings are set forth in reason #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.

145. The law says "within 15 days" from enactment, or is it a firm start on 4/2?

4/2 is the date. I think the language was set up the way it was in case circumstance warranted having to move up the date due to pressing issues without going back to the drawing board legislatively (after all, this is a pandemic that seems to be changing all the time here. But that is just my thought on the question).

146. My payroll company sent out a direct that under the new FMLA the first 14 days are unpaid. Is it definitely 10 days?

14 days was the period under an older version of the bill – it is 10.

147. We currently offer 4 weeks of paid sick leave. Is this 12 weeks in addition to this???

12 weeks is available under the Emergency Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act provides 80 hours of time to full-time employees and a pro-rated amount of time to part-time employees. These entitlements are separate from and in addition to paid sick that you may provide.

