

## **The Emergency FMLA Expansion Act**

Effective April 1, 2020, this federal law amends the Family and Medical Leave Act to provide eligible employees of public employers, including school districts, and private employers with fewer than 500 employees, with up to 12 workweeks of job protected leave related to a public health emergency.

In contrast to the usual FMLA eligibility requirements (1250 hours worked in the 12 months immediately preceding the leave and employment with the school for at least one year), an employee must be employed by the school for at least 30 days to be eligible for this leave. The expanded FMLA leave is available to an eligible employee who is unable to work due to the need to care for a son/daughter less than 18 years old whose school or day care is closed or unavailable due to a public health emergency arising from COVID-19.

The first 10 days of this leave may be unpaid at the employer's discretion, but the employee may elect to use their sick, personal or vacation time accruals during this time. The remaining 10 weeks of expanded FMLA leave is paid at 2/3 of the employee's regular compensation not to exceed \$200 a day and \$10,000 in the aggregate.

This law is temporary. It sunsets and expires on December 31, 2020.

## **The Emergency Paid Sick Leave Act ("Act")**

Effective April 1, 2020, this federal law requires public employers (and private employers with fewer than 500 hundred employees) to provide employees with paid sick or family leave for specified reasons related to COVID-19.

The Act provides that public schools provide employees with:

- *Two weeks (up to 80 hours) of **paid sick time** at the employee's regular rate of pay* where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- *Two weeks (up to 80 hours) of **paid sick time** at two-thirds the employee's regular rate of pay* because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

Eligible Employees and Notice:

All school district employees are eligible for two weeks of paid sick time for specified reasons related to COVID-19.

Where leave is foreseeable, an employee should provide notice of leave to the employer as is practicable. After the first workday of paid sick time, an employer may require employees to follow reasonable notice procedures in order to continue receiving paid sick time.

Qualifying Reasons for Leave:

An employee qualifies for paid sick time under the Act if the employee is unable to work (or unable to telework) due to a need for leave because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

Duration of Leave:

For reasons (1)-(4) and (6): A full-time employee is eligible for 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period.

Note that for reason (5), a full-time employee is eligible for 80 hours of leave under the Emergency Paid Sick Leave Act and up to 10 additional weeks of leave under the Emergency FMLA Expansion Act.

Calculation of Pay:

For leave reasons (1), (2), or (3): employees taking leave are entitled to pay at either their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

For leave reasons (4), (5) or (6): employees taking leave are entitled to pay at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

Note:

Employers CANNOT require the employee to use other paid leave provided by the employer.

This law is temporary. It sunsets and expires on December 31, 2020.

**New York State COVID-19 Paid Sick Leave:**

This state law was passed on March 18, 2020. Effective immediately, it requires New York State public schools to provide at least 14 paid sick days to employees under a precautionary or mandatory order of quarantine or isolation issued by NYS Department of Health, a local board of health or other government agency authorized to issue such orders due to COVID-19.

This paid leave is available to all employees and is “without loss” to the employee’s accrued sick leave. An employee on this leave is paid their regular pay in an amount up to \$2883.92 per week.

**New York State COVID-19 Paid Family Leave:**

This state law expanded the NYS PAID FAMILY LEAVE ACT to include school closures due to COVID-19. It applies only if the school district has opted into NYPFL. Most if not all of the school districts in the Genesee Valley BOCES have not opted into this program and do not have to be concerned with the details of this Act.

**Conclusion:**

These laws complement each other. For example, an employee who cannot work because his/her child’s school is closed due to the coronavirus is eligible for 12 weeks of expanded FMLA leave, the first 10 days of which would be unpaid. But the employee would also be entitled to two weeks of leave at 2/3 pay under the Emergency Paid Sick Leave Act. So in practice, the employer would designate the leave as FMLA qualifying so that the FMLA leave would run concurrently with the Emergency Paid Sick Leave Act. The employee would get up to 12 weeks of paid leave, the first two weeks being covered by the FMLA and the Emergency Paid Sick Leave Act (but paid pursuant to the EPSLA) and the next ten weeks being covered and paid under the FMLA.

**Next Steps:**

1. At this time, Districts must post a notice explaining the expanded FMLA leave provisions and the federal Emergency Paid Sick Leave Act conspicuously on their premises. You can view the DOL poster at:

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

2. Districts should begin thinking about amending their FMLA policy to reflect the changes under the Emergency FMLA Expansion Act and federal Emergency Paid Sick Leave Act. This is not an immediate concern if you are currently paying employees on leave during the emergency school closure.

Please feel free to contact the Labor Relations Service if you need assistance with these laws or other labor issues.