



COVID-19 New Policy, New Reality



The New Orleans Regional Black Chamber of Commerce was established in 2006. The NORBCC has a very diverse membership base of 600+ and we are steadily increasing in membership and presence in the 10-parish region that we serve: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Tangipahoa, and Washington.

**Kelisha Garrett, Executive Director**

NOLA SHRM is proud to be the local affiliate of the Society for Human Resources Management (SHRM), with more than 550 local members. Since 1949, NOLA SHRM has served as a resource for local human resources professionals and businesses providing a forum for personal and professional development on issues related to human resource management, promoting fellowship, and offering various networking experiences to keep our members engaged and current on industry trends.



Perry Sholes – President 2020

# COVID-19 New Policy, New Reality

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Current Business Statuses – What is happening with the business world because of the pandemic?

Layoffs vs. Furloughs

Closings

Reduced Staff

Keeping Staff Safe

Pertinent Provisions of the FFCRA

Emergency Family and Medical Leave Expansion Act

Emergency Paid Sick Leave Act

Frequently Asked Questions

What Can We Anticipate Next

AGENDA



# Current Business Statuses – What is happening with the business world because of the pandemic?

- ▶ Layoffs vs. Furloughs
  - ▶ Layoffs –
    - ▶ A few *months* of separation;
    - ▶ the employee typically becomes eligible for unemployment;
    - ▶ benefits can continue for a defined period
  - ▶ Furlough –
    - ▶ A few *weeks* of separation;
    - ▶ the person remains an active employee;
    - ▶ benefits typically remain active;
    - ▶ the employer intends to re-hire

# Closings and Reduced Staff



## Reduced Hours/Pay/Staff

Hours for workers or pay for workers reduced uniformly to save costs and extend the life of the business



## Reductions in Force (RIF)

Permanent separation, no intention to rehire

# Keeping Staff Safe

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Emphasize proper hygiene, such as disinfecting hands, surfaces, face masks



Physical distancing, reducing frequency, proximity, and duration of contact between people, sanitizing work spaces



Develop a plan for protections employees that may combine both immediate actions, as well as longer term solutions.

Working remotely  
Installing physical barriers  
Installing drive-through window for customer service



# Insurance Update

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## **DOI Announced Rule 37:**

Telemedicine: Reduction in exclusions

## **DOI Announced Rule 40:**

Suspension of Cancellation of Insurance Coverage



**Insurance Companies:** Elimination of Deductibles or covering 100% of COVID-19 Medical Expenses. Check with your Broker or Insurer



**COBRA:** 18 Months continuation. 90 days to accept. 100% of the Cost.

**HEALTHCARE.GOV:** Life Event = SEP/Documentation

**MEDICAID:** Based on Income

# Families First Coronavirus Relief Act

- ▶ Two Important parts:
  - ▶ Division C: Emergency Family and Medical Leave Expansion Act (EFMLEA)
  - ▶ Division E: Emergency Paid Sick Leave Act (EPSLA)

# Original Family and Medical Leave Act (FMLA)

Eligible employees of covered employers to take up 12 weeks of unpaid, job-protected leave for *specified family and medical reasons*.

- **Covered Employer:**

- private employers with 50 or more employees
- State and local government employers (no minimum number of employees)

- **Eligible Employee:**

- Employees who have worked at least 12 months and 1250 hours *prior* to the start of the leave AND employed at a worksite with 50 employees within a 75 mile radius.

## FMLA qualifying reasons

- Birth of a child
- Placement of a child with the employee for adoption or foster care
- To care for the employee's spouse, child, or parent with a serious health condition
- Employee's own serious health condition
- Any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on "covered active duty."



# Division C: Emergency Family and Medical Leave Expansion Act (EFMLEA)

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Adds to the FMLA list of qualifying reasons.

- Section F: Qualifying need related to a public health emergency
- An employee may leave work if he/she is unable to work due to a **need for leave to care for a son or daughter** under 18 years if the child's **school or place of care** has been **closed**, or if the childcare provider is **unavailable**, for reasons related to COVID-19.

12 weeks of leave total. EFMLEA does not provide and additional 12 weeks.

- Leave counts against employee's entire 12 week allotment.



## Division C: Emergency Family and Medical Leave Expansion Act (EFMLEA)

- ▶ Changes the definition of **covered employer** from “employers with 50+ employees” to “employers with less than 500 employees.”
  - ▶ Includes public sector employers (with no minimum)
  - ▶ Minimum threshold of 50 still applies to all other qualifying reasons covered by the FMLA
- ▶ Changes definition of **eligible employee** from “employee that has worked 1250 hours during the 12 months prior AND at a worksite with 50 employees in a 75 mile radius” to “employee that has been employed for at least 30 calendar days.”
  - ▶ 30 days do not have to be consecutive

# Division E: Emergency Paid Sick Leave Act (EPSLA)

Grants 80 hours of paid sick leave to full-time and part-time employees that are unable to work due to COVID-19 related reasons.

This is in addition to any paid leave the employer may provide.

Employers cannot require employees to exhaust PTO before EPSLA.

How does this affect  
employers?



# Benefits To Employees

## Expanded FMLA

- ▶ 12 weeks of FMLA leave for a qualifying need related to a public health emergency

## Emergency Paid Sick Leave Act

- ▶ Provide paid sick leave to an employee who is unable to work or telework because of qualified reasons



# Reasons For Taking Leave

## Expanded FMLA

- ▶ Circumstances where an employee is unable to work (or telework) to care for a minor child if the child's school or place of childcare has been closed or is unavailable due to a public health emergency.

## Emergency Paid Sick Leave Act

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 because of COVID-19;
3. The employee is **experiencing symptoms** of COVID-19 and is seeking a medical diagnosis;
4. The employee is **caring for an individual** subject or advised to quarantine or isolation;
5. The employee is **caring for a son or daughter whose school or place of care is closed**, or child care provider is unavailable, due to COVID-19; or
6. The employee is experiencing **substantially similar conditions** as specified by the Secretary of HHS

# Pay Requirements

## Expanded FMLA

- ▶ The first 10 days are unpaid.
  - ▶ The employee can use accrued paid leave or EPSL.
- ▶ Remaining 10 weeks: 2/3 of regular rate of pay for regular number of hours the employee would otherwise work
- ▶ Max benefit: \$200 per day (\$10,000 total)

## Emergency Paid Sick Leave Act

- ▶ Full-time employees: 80 hours at regular rate of pay. If caring for a family member, 2/3 the regular rate.
- ▶ Part-time employee: average number of hours worked over a 2-week period.
  - ▶ Employer cannot require the employee to use accrued leave under an employer policy first
- ▶ Max benefit: depends on the reason for the leave.
  - ▶ \$511/day (\$5,110 total)
  - ▶ \$200/day (\$2,000 total)

# Job Restoration Requirements

## Expanded FMLA

- ▶ Employee must be restored to same or equally equivalent position upon return
- ▶ Employer must make reasonable efforts to contact a displaced employee for up to one year after they are displaced if an equivalent position becomes available

## Emergency Paid Sick Leave Act

- ▶ N/A

# Documentation/Compliance

## Documentation

- ▶ Employer must develop some method of TRACKING employee request, declinations, payments, etc. Burden of Proof
- ▶ Some room to request proof
- ▶ Retaliation rules apply

## DOL Resources

- ▶ Posters
- ▶ FMLA Forms

### EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

#### ▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- 75% for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 75% for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

#### ▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). An employee who has been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

#### ▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- |   |   |
|---|---|
| 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;              | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a health care provider to self-quarantine related to COVID-19;                       | 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.                           |
| 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); |   |

#### ▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employees may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employees in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

For additional information  
or to file a complaint:  
**1-866-487-9243**  
TTY: 1-877-889-5627

[doi.gov/agencies/whd](https://doi.gov/agencies/whd)



WH-02-PLV-0028



# Documentation/Tax Credit

## 44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?

An Eligible Employer will substantiate eligibility for the sick leave or family leave credits if the employer receives a written request for such leave from the employee in which the employee provides:

The employee's name;

The date or dates for which leave is requested;

A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and

A statement that the employee is unable to work, including by means of telework, for such reason.

[https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#family\\_leave](https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs#family_leave)

# Documentation/Tax Credit

## **44. What information should an Eligible Employer receive from an employee and maintain to substantiate eligibility for the sick leave or family leave credits?**

In the case of a leave request based on a quarantine order or self-quarantine advice, the statement from the employee should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee.

In the case of a leave request based on a school closing or child care provider unavailability, the statement from the employee should include the name and age of the child (or children) to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.

# Small Business Exemption

## **FAQ # 58. When does the small business exemption apply to exclude a small business from the provisions of the Emergency Paid Sick Leave Act and Emergency Family and Medical Leave Expansion Act?**

A small business may claim this exemption if an authorized officer of the business has determined that:

- ▶ Expenses and financial obligations exceeding available business revenues
- ▶ Absence of the employee or employees...entail a substantial risk...because of their specialized skills, knowledge of the business
- ▶ Not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee

### **General Rule/Affect on the Small Business**

- ▶ Cease operating at a minimal capacity



# Frequently Asked Questions



## Frequently Asked Questions

1. Does time paid for sick leave or time away related to COVID-19 prior to April 1 count toward FFCRA requirements?
  - ▶ No
2. Can an employer deny sick leave if the employer had given sick leave for a reason identified in the EPSL prior to the Act going into effect?
  - ▶ No. The EPSLA imposes new leave requirements that is effective April 1, 2020.
3. Do days worked as a temporary employee count toward the 30-day eligibility period?
  - ▶ Yes

## Frequently Asked Questions

4. Can an employer send home an asymptomatic employee who has been in contact with someone who was confirmed to have COVID-19?
  - ▶ Yes.
  
5. Can an employer send home an employee who is exhibiting symptoms of COVID-19?
  - ▶ Yes. The employer has to apply this uniformly and non-discriminatorily.
  
6. Should employers require that an employee have a doctor's note prior to returning to work?
  - ▶ No. This would be unduly burdensome to healthcare providers.

## Frequently Asked Questions

7. Can an employer terminate an employee because they are seeking leave under EPSLA?
  - ▶ No. EPSLA has an anti-retaliation provision.
8. If an employer is not covered by FFCRA, can they require use of paid time off for any absences?
  - ▶ Yes. The employer can apply a valid internal policy consistently.
9. Does the employer have to pay workers during site closures or other time spent away from work due to COVID-19?
  - ▶ Non-exempt (hourly) – only required to pay for hours worked
  - ▶ Exempt (salary) – generally, must be paid full weekly salary if any work is performed during the week

## Frequently Asked Questions

10. Is COVID-19 considered a disability under the ADA?
  - ▶ No.
11. Should an employer disclose the names of employees who test positive for COVID-19?
  - ▶ No.
12. What should an employer do if an employee shows symptoms of COVID-19?
  - ▶ Send the employee home to follow CDC recommendations.
13. What is the impact on employee health coverage during a workforce reduction or layoff?
  - ▶ Employers with 20+ employees: COBRA coverage will trigger. However, coverage may be extended as part of a severance package



QUESTIONS?

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  - ▶ [COVID-19 Tools and Resources](#)





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