

## COVID-19 FREQUENTLY ASKED QUESTIONS #1

### Paid Sick Leave and Emergency FMLA

**Q. Under the Families First Coronavirus Response Act (FFCRA), are libraries with less than 50 employees exempt?**

**A. No.** The FFCRA applies to all public employers. **However**, employers with less than 50 employees can claim an exemption if they can show any of the following<sup>1</sup>:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are 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 or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

**Q. Our full-time employees work 35 hours per week. Under FFCRA's paid sick leave provisions, do we have to pay our full-time employees 80 hours of sick time, even though our full-time employees normally work only 70 hours per two weeks?**

**A. Likely no.** The Department of Labor has stated that a full-time employee is defined as someone who is normally scheduled to work more than 40 hours per week. This interpretation has not yet been formally documented in federal regulations, so it could be subject to change. Assuming it remains as is, an employee who normally works 35 hours per week would be entitled to 70 hours of paid leave.

**Q. With regards to emergency FMLA, are all employees who have been employed for at least 30 days eligible for this leave?**

**A. Yes.** The law applies to all part-time and full-time employees.

**Q. Can leave under the FFCRA be taken intermittently?**

**A. It depends.** If an employee is teleworking, the employer may allow the employee to take paid sick leave intermittently. The employer may also allow the employee to take paid sick leave intermittently if the employee is not teleworking but needs to take paid sick leave to care

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<sup>1</sup> We are still awaiting formal regulations from the Department of Labor (DOL), but the DOL has indicated that it will utilize this test.

for a child whose school or place of care is closed, or whose child care provider is unavailable, because of COVID-19 related reasons.

However, paid sick leave must be taken in full-day increments (not intermittently) if the employee is not teleworking and the leave is being taken because the employee:

- is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- is caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Under these circumstances, the employee must continue to take paid sick leave each day until he or she either (1) uses the full amount of paid sick leave or (2) no longer has a qualifying reason for taking paid sick leave.

**Q. Does an employer need to provide an employee with 12 weeks of emergency FMLA leave and 12 weeks of leave under the “regular” FMLA (for a total of 24 weeks)?**

**A. No.** Employees are eligible for 12 weeks total of emergency FMLA and “regular” FMLA leave during the FMLA year. The employee’s use of emergency FMLA leave will reduce the amount of FMLA leave an employee can take for other reasons during the applicable FMLA year.

**Q. Is there a recommended method of tracking paid sick leave and emergency FMLA?**

**A.** It is recommended that an employer use whatever method the employer currently uses to track FMLA or other leave.

**Q. We have to post a notice about the FFCRA, but we are all working remotely. Can we email the notice to our employees?**

**A. Yes, you can email the notice to your employees.** According to the Department of Labor, an employer may satisfy the posting requirement by emailing or direct mailing the notice to employees, or by posting the notice on an employee information internal or external website.

**Q. Does the FFCRA allow us to receive any tax credits from the federal government?**

**A. No.** The tax credits cannot be paid to government employers, such as libraries.

**Q. The FFCRA refers to Social Security for the wages and/or credit portions. Since public libraries do not pay into Social Security, nor do we pay Social Security taxes as an employer, would this apply to us?**

**A. No, these provisions do not apply to public libraries.**

### Unemployment Insurance

**Q. If we furlough staff so that full-time employees can retain health insurance, will the furloughed staff still be able to collect unemployment?**

**A. Yes.** An executive order issued by Governor DeWine expands flexibility for Ohioans to receive unemployment benefits during Ohio's emergency declaration period. An employer's decision to continue to provide health insurance will not impact employees' unemployment benefits.

**Q. If we lay off our staff, can our employees maintain their health insurance coverage?**

**A. Yes.** There are two ways that an employer can provide health insurance to former employees. The first option is to terminate the employees and start their COBRA benefits immediately. An employer can subsidize the premium cost of the COBRA benefit for former employees on a non-taxable basis.<sup>2</sup> The second option is to terminate the employees but delay the loss of their health insurance coverage for a period of time, such as two months. After this period of time, the former employee would receive COBRA benefits. Before selecting this second option, however, the employer should obtain written acceptance from its insurer.

**Q. Have any laws been passed that would help laid-off public employees to continue to receive health insurance?**

**A. See response to prior question.**

**Q. Has there been any discussion about public employers continuing to pay employees rather than layoffs to alleviate stress on the unemployment system?**

**A. No.** Not at this time. The federal government is expected to provide significant funds to help alleviate the stress on the unemployment system.

**Q. If our employees have accumulated sick leave and vacation, and they are laid off, do they have to use this up before applying for unemployment?**

**A. No.** Employees who have accumulated sick leave and vacation do not have to receive these benefits before applying for unemployment. Unused vacation pay, however, may be deducted from the employees' weekly benefit amounts.

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<sup>2</sup> For high-earning employees, it is recommended that this amount be taxed.