

Human Resources Update

Review New Federal Legislation Before Making Any Changes to Your Workforce

By Dawn Perri, Patti D'Alton and Brett Settles

As the nation copes with economic and legislative changes brought on by COVID-19, companies are analyzing their workforce and have either already made changes, or will be looking to make changes shortly. Before making any final decisions, however, it's important to be fully abreast of the legislative changes and compliance requirements.

With the help of your employment counsel, it is important for you to review and update your Family and Medical Leave Act (FMLA) and sick leave policies. Any changes should be promptly communicated to your employees in writing. We also recommend including a question and answer portion for clarity. The Department of Labor (DOL) has recently created an [Employee Rights](#) flyer that can be distributed to your employees.

The following is a summary by category of the changes and how they might affect you.

The Families First Coronavirus Response Act (H.R. 6201) – Provides emergency family leave and paid sick leave in limited circumstances, as well as paid sick leave for employees affected by COVID-19.

Paid Sick Leave

Signed into Law	March 18
Purpose	Expands Unemployment Benefits and offers coverage to workers who are not eligible for traditional Unemployment Insurance.
Employer Eligibility	Employers with fewer than 500 employees, and public agencies with at least one employee.
Employer Requirements	<p>Employers who are subject to the Families First Coronavirus Response Act (FFCRA) must provide up to 80 hours of paid sick leave and expanded Family Medical Leave to eligible employees.</p> <p><u>Paid Sick Leave</u></p> <p>Q: How much leave is required?</p> <p>A: Covered employers must provide full-time employees with up to 80 hours of paid sick leave if the employees are unable to work (or telework) due to COVID-19. Part-time employees are entitled to paid sick leave based on the number of hours the employees work, on average, over a two-week period.</p> <p>Q: What are the qualifying reasons for leave?</p> <p>A: Qualifying reasons for this paid sick leave include:</p>

	<ol style="list-style-type: none"> 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 healthcare 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 either number 1 or 2 above. 5. The employee is caring for his or her son or daughter 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 as specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor. <p>Q: What are the pay requirements?</p> <p>A: Paid sick leave taken for reasons 1, 2, 3 above must be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, up to a maximum of \$511/day. An employee taking leave for reasons 4, 5, 6 must be compensated at two-thirds of his or her regular rate of pay, or minimum wage, whichever is greater, up to a maximum of \$200/day.</p> <p>Q: What if the employee has other paid leave available?</p> <p>A: An employer may not require an employee to use other types of paid leave provided by the employer before the employee uses the paid sick time available under this law.</p> <p>Q: What employees are eligible?</p> <p>A: All employees are eligible, and paid sick leave hours can be taken immediately, regardless of the duration of the employee's employment.</p>
Employer-Restricted Practices	<p>Employers cannot:</p> <ul style="list-style-type: none"> • Require an employee to find a replacement to cover his or her scheduled work hours. • Retaliate against any employee who takes leave in accordance with the Act. • Retaliate against an employee who files a complaint or participates in a proceeding related to the Act — including a proceeding that seeks to enforce the Act.
Effective Date	April 1, 2020
Expiration Date	December 31, 2020

The Emergency Family and Medical Leave Expansion Act (EFMLA)

Purpose	EFMLA amends the current Family and Medical Leave Act (FMLA), allowing leave for eligible employees who can't work (or telework) because their minor child's school or childcare service is closed due to a COVID-19 emergency declared by a federal, state or local authority.
Employee Eligibility	Employees who work for an employer with fewer than 500 employees and who have been on the payroll for at least 30 calendar days.
Benefits	<p>Paid Leave</p> <p>The first 10 days of this leave may be unpaid; however, employees may elect to substitute available paid time-off, such as vacation, personal or sick leave, during this time.</p> <p>After the initial 10 days, employers must pay eligible employees at least two-thirds of the employee's regular rate of pay (as defined under the Fair Labor Standards Act) based on the number of hours the employee would otherwise have been scheduled to work. These paid family leave benefits are capped at \$200 a day (or \$10,000 total).</p>

Potential Exemptions

Employee Exemption	Employees on furlough or who have been terminated (either before or after April 1) are not eligible for paid sick leave or EFMLA.
Employer Exemptions	<p>Businesses with fewer than 50 employees may be exempt from providing EFMLA and/or paid sick leave for absences associated with reason 5 above (caring for a child whose school or place of care is closed) "when the imposition of such requirements would jeopardize the viability of the business as a going concern."</p> <p>To elect this small business exemption, employers should document why their business with fewer than 50 employees meets the criteria set forth by the Department of Labor, which we anticipate will be addressed in more detail in forthcoming regulations. Employers do not need to send any materials to the DOL for purposes of seeking the exemption. Note that businesses with fewer than 50 employees will still be responsible for providing paid sick leave for absences associated with reasons 1, 2, 3, 4 and 6 above, regardless of whether they qualify for the small business exemption.</p> <p>The EFMLA provisions generally require employers to reinstate employees in the same job or an equivalent position when they return to work, but there is an exception for employers with fewer than 25 employees if the employee's position has been eliminated due to economic conditions or other changes in operating conditions of the employer caused by COVID-19, and the employer is unable to reinstate the employee to an equivalent position.</p> <p>An employer who employs a healthcare provider or an emergency responder may elect to exclude the employee from the benefits of the Act.</p>

Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – Expands Unemployment Benefits and offers coverage to workers who are not eligible for traditional Unemployment Insurance.

Purpose	Part of the recently-passed CARES Act, the Pandemic Unemployment Assistance (PUA) program was created which is effective through December 31, 2020 to help those not traditionally eligible for Unemployment Insurance (UI).
Employee Eligibility	Workers who are not eligible for UI could be eligible for PUA. These workers include self-employed individuals, independent contractors, those with limited work history and those who are unable to work as a result of the coronavirus public health emergency.
Effective Date	April 1, 2020
Expiration Date	December 31, 2020
Unemployment Insurance Benefits	<ul style="list-style-type: none"> • An additional \$600/week payment to each UI or PUA recipient through the end of July 2020. • Provides funding for the 1st week of unemployment for states to waive the traditional “waiting week” before benefits begin. • Provides an additional 13 weeks of unemployment to help those who remain unemployed after weeks of state unemployment are no longer available.

Next Steps

The new legislation was put together quickly so there will be guidance and further interpretation from the Department of Labor shortly. Be sure to stay up-to-date. You can also refer to [the DOL’s Questions and Answers fact sheet](#).

As you may be reviewing your workforce at this time due to the state of the economy, it is important to see which employees may now be protected under these updates before any decisions are made in order to prevent potential implications.

Contact Us

Please reach out to our HR professionals with any questions about this or anything else pertaining to your workforce and let us help you navigate through these difficult times.

Dawn Perri
 Chief Human Resources Officer
dperri@pkfod.com | 914.341.7046

Patricia E. D’Alton, PHR
 Director of Human Resources
pdalton@pkfod.com | 914.421.5640

Brett P. Settles
 Director of Human Resources
bsettles@pkfod.com | 914.341.7071

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