



COVID-19 FMLA EMPLOYEE LEAVE EXPANSION

**Resource Guide for Body Shops
And Other Small Businesses**



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The COVID-19 crisis has shaken the world in more ways than we had anticipated in every aspect of our lives, from how we interact socially to how we manage our business. In the world of Human Resources, managing employee leave is a challenging task for any organization under normal circumstances, but today's circumstances do not qualify as normal. Depending on the size of your organization, you may be subject to federal and state laws governing various forms of protected leave such as FMLA, military leave, ADA leave, jury duty, or you may offer your employees other forms of leave that are generous but not legally required. For the purpose of this brief discussion, we are only focusing on FMLA leave.

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Why just FMLA? That's because the Families First Coronavirus Response Act (FFCRA) has expanded FMLA leave by providing some additional temporary benefits. At Industrial Finishes & Systems, we are navigating through these uncharted territories, adjusting, adapting, and learning as we go. In anticipation of these new legislations, we proactively took a multi-pronged approach to prepare our organization. **First** and foremost, we adopted the FMLA Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus) as recommended by the Society of Human Resource Management. This model policy is available to SHRM members at www.shrm.org. **Second**, we developed a specific payroll code to keep track of sick leave specifically related to the COVID-19. **Third**, we developed a simple, yet effective internal online system to gather the required information from our employees relating to any and all sick leaves. **Finally**, we have been educating our employees through weekly updates and Q&A sessions for supervisors and managers.



With regard to Emergency Paid Sick Leave (E-PSL), the FFCRA has provided two specific provisions: **1.** The implementation of the Emergency Paid Sick Leave (E-PSL), and **2.** The implementation of Emergency Family and Medical Leave (E-FMLA). The Emergency Paid Sick Leave (E-PSL) gives qualified employees up to 80 hours of additional paid sick time if the employee is unable to work (or unable to telework) due to a need for leave because:

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 subject to an order described in (1) or self-quarantine as described in (2).

5 The employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or ►

6 The employee 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.

The Emergency Family and Medical Leave Act (E-FMLA) act covers employers with fewer than 500 employees (FMLA covers 50 or more employees). Employee eligibility occurs at 30 days of employment prior to the designated leave (FMLA eligibility is 1,250 hours during the 12 months prior to the leave). Protected leave remains up to 12 weeks, however, a portion of the leave is partially paid, and includes an additional qualifying event: "Allows an employee who is unable to work or telework to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency."



At Industrial Finishes & Systems, many of our customers have fewer than 50 employees. These customers may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as an ongoing concern. To qualify for this exemption, small businesses should document why their business with fewer than 50 employees meets the criteria set forth. Criteria for exemption is expected sometime in April.

As for paying employees during the E-PSL and E-FMLA, the act provides very specific guidelines to which you'll want to pay attention. The act also provides specific guidelines for part-time employees or those who have not worked for 6 months. Employees may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave. In all cases, the pay provided cannot be less than the greater of your location's or federal minimum wage.

The U.S. Department of Labor (DOL) issued temporary regulations for the Families First Coronavirus Response Act (FFCRA) on April 1st. These regulations state that employees must give notice to their



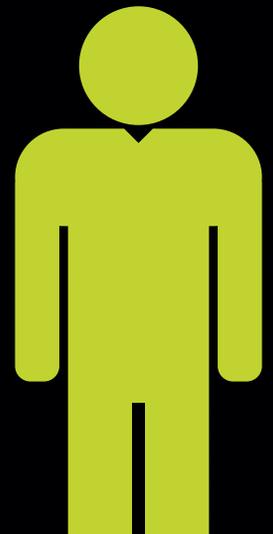


“An employee requesting leave because he or she is self-quarantined must provide the name of the health care provider making the quarantine recommendation”

employers of the need to take leave and must provide supporting documentation for requests for paid sick leave and emergency family and medical leave. The notice can be after the first workday or portion of a workday for which an employee receives paid sick leave to continue to receive such leave. The DOL said the employee must provide a signed statement containing: The employee's name, the date(s) for which leave is requested, the coronavirus-qualifying reason for leave, and a statement that the employee cannot work or telework because of this reason. Employees must also provide the name of the government entity that issued the quarantine or isolation order to which the employee is subject if that is the reason for paid sick leave. An employee requesting leave because he or she is self-quarantined must provide the name of the health care provider making the

quarantine recommendation. Someone caring for a person who is quarantined must provide either the government entity that issued the quarantine or isolation order or the name of the health care provider who advised the individual to self-quarantine.

The Department of Labor requires an individual requesting expanded family and medical leave to also provide more information that we would normally require of our employees. For example, if a school closes or a childcare provider is unavailable, the statement from the employee should include the name and age of the child or children, the name of the school or place of care that has closed or is unavailable due to coronavirus reasons, and a statement that no other person will be providing care for the child during the period for which the employee is receiving family medical leave. With the care of a child older than 14 during daylight hours, a statement that special circumstances exist requiring the employee to provide care. 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 government entity ordering the quarantine or the name of the





health care professional advising self-quarantine.

If the person subject to quarantine is not the employee, that person's name and relation to the employee shall be provided.

It's important to remember that the normal FMLA certification rules apply to an employee's own serious health condition related to the coronavirus and to the employee's need to care for a spouse, son, daughter or parent with a serious health condition. If an employee fails to give proper notice, the employer should give the employee notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

"Employers intent on claiming a tax credit must maintain documentation..."



Employers intent on claiming a tax credit must maintain documentation to show how the employer determined the amount of qualified sick and family-leave wages paid to employees, including records of work, telework, qualified sick leave and qualified family leave as well as documentation on how the employer determined the amount of qualified health plan expenses allocated to wages.

Now back to reality. This is a lot to digest for anybody, including HR professionals. That is why at Industrial Finishes & Systems we rely on trusted sources like the US Department of Labor website and our own legal counsel. We also created an online template using Microsoft Forms to help us gather and process sick leave requests. If your organization runs on a Microsoft Platform, you may already have access to Forms, which is a very user-friendly program that even I can operate. You can find a variety of tutorials on YouTube on how to create an online questionnaire using MS Forms. You can also create the same questionnaire on Google Docs or other online platforms. There is always the good ol' fashion pen and paper. Whatever methodology or vehicle that you use to collect this data, just be sure to protect it as it will likely contain medical information.

I strongly recommend that you consult your accounting and legal teams as you develop your own in-house program, especially if you plan on asking Uncle Sam for tax credits and other benefits offered by these stimulus programs.



About the Author:

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