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***PAID LEAVE OBLIGATIONS  
FOR LOCAL GOVERNMENT EMPLOYERS UNDER  
NEW FEDERAL COVID-19 LAWS***



***WORKPLACE GUIDANCE WEBINAR SERIES***

# COVID-19 Paid Leave Obligations for Public Employers

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Presented By:  
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# DISCLAIMER:

These materials were prepared by the law firm of Reminger Co. LPA for attendees' reference during this seminar. This presentation, these materials, and related discussions are informational and educational in nature and are not intended to provide legal advice for any specific situation. Professional advice should be obtained before attempting to address any particular legal situation or problem. Furthermore, because requirements at the federal, state, and local levels are continually changing during this COVID-19 pandemic and some rules/regulations are industry-specific, please consult counsel prior to relying on the information contained herein.

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# TODAY'S AGENDA

1. Basic overview of the Families First Coronavirus Response Act ("FFCRA").
2. Public employers' obligation to provide emergency Paid Sick Leave ("PSL").
3. Public employers' obligation to provide Emergency Family Medical Leave ("EFML").
4. Special considerations and distinctions for public employers verses private employers.

FAMILIES FIRST  
CORONAVIRUS  
RESPONSE ACT

BASICS

- Effective April 1 to Dec. 31, 2020
- Imposes new *paid* sick leave & *paid* family medical leave obligations
- Applies to State Government and Political Subdivisions of the State (i.e. cities, villages, townships etc.)



FAMILIES FIRST  
CORONAVIRUS  
RESPONSE ACT

BASICS

- *Paid Sick Leave ("PSL")*: Requires **up to 80 hours of *paid* emergency sick leave** for six COVID-19-related qualifying reasons.
- *Emergency family medical leave ("EFML")*: Provides **12 weeks of job-protected *paid* emergency family medical leave** for those unable to work due to childcare obligations from closed school or daycare



# ELIGIBLE EMPLOYEES

- ALL employees are *immediately* eligible for **PSL**.
- Employees *employed for 30 calendar days* are eligible for **EFML** (including time as a “temp”).
- Unable to work *for qualifying reason(s)*.

# PAID SICK LEAVE – “PSL”

## - Qualifying Reasons -

- (1) Subject to federal, state, or local **quarantine** or **isolation order**
- (2) Subject to **self-quarantine** advised by health care provider
- (3) Experiencing **COVID-19 symptoms** *and* **seeking diagnosis**
- (4) Caring for another individual** who is subject to (1) or (2)
- (5) Caring for son/daughter due to school or daycare closure**
- (6) Experiencing other “substantially similar condition” specified by HHS Sec.



# EMERGENCY FAMILY MEDICAL LEAVE – “EFML”

## - Qualifying Reason -

- Employee is unable to work or telework due to the **need to care for a child** (son or daughter) because the child’s **school or place of care has been closed** or childcare provider is unavailable.

# AMOUNT of LEAVE

## PSL

- Essentially **2 workweeks**
  - **Full-time employees** - normally scheduled 40 hours a week or more - entitled to **80 hours of PSL**
  - **Part-time employees** - normally scheduled less than 40 hours per week - entitled to PSL for **average number hours worked in 2-week period**

## EFML

- A total of **12 workweeks** between April 1, 2020 and December 31, 2020
  - **First 2 weeks/10 days of EFML "UN-Paid"** (*Subject to employee option to substitute PSL or accrued PTO, vacation, personal, or sick leave*)
  - **Subsequent 10 weeks/50 days of EFML are Paid**
- For number of hours employee "would otherwise be normally scheduled to work"

# RATE of PAY for LEAVE

## Certain PSL

- Where based on (1) a government quarantine, (2) healthcare-advised self-quarantine, or (3) COVID-19 symptoms or diagnosis - **paid at employee's "regular rate" of compensation** per FLSA

## Certain PSL & ALL EFML

- Where "caretaker" leave, based on (4) providing care for another quarantined individual, or (5) for childcare due to school/daycare closure – **paid at 2/3 regular rate**

# LIMITS on PSL & EFML

## PSL:

- **\$511 per day** or **\$5,110 in aggregate** per employee for leave due to (1) government quarantine, (2) healthcare quarantine, (3) COVID-19 symptoms/diagnosis
- **\$200 per day** or **\$2,000** in aggregate per employee for leave due to (4) caregiving, (5) childcare/school closure

## EFML:

- **\$200 per day** or **\$10,000** in aggregate per employee
- Effectively \$12,000 aggregate once PSL included

# Enforcement & Penalties

Anti-retaliation protection (against discharge, discipline, or discrimination) for taking leave / filing complaint / testifying

**PSL** - considered *unpaid minimum wages* subject to **FLSA penalties**:

- Unpaid wages
- Liquidated “double” damages
- Attorneys’ fees
- Injunctive relief (reinstatement)
- Administrative enforcement by DOL Wage & Hour Divis.
- Civil lawsuit by employee(s)

**EFML** - subject to traditional **FMLA penalties**:

- Lost wages, salary, & benefits
- Liquidated “double” damages
- Attorneys’ fees
- Injunctive relief (reinstatement)
- Administrative enforcement by DOL

# Emergency Responders Exemption

Public entities, may exclude “emergency responders” from PSL and EFML requirements.

***Emergency responders*** are defined as “any employees who are necessary for the provision of transport, care, health care, and comfort of patients, or whose services are otherwise needed to limit the spread of COVID-19.”

# Specific Categories of Emergency Responders Identified by the DOL

- Law enforcement officers;
- Correctional institution personnel;
- Firefighters;
- Emergency medical personnel;
- Emergency management personnel;
- 911 operators; and
- Public works personnel.

This is not an exhaustive list.

## Other Distinctions and Commonly Asked Questions

- Public entities are not entitled to the tax credit created by the FFCRA to offset the cost of paid leave.
- Immunity Defenses are not applicable to the penalties created by the FFCRA.
- Employer can have employee telework, if employee is able.
- Leave for childcare related reasons is not available if another suitable person is available to render care.



Your Questions

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# QUESTIONS?

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## Future Presentations

**Tues. July 28, 2020 @ 2:00 pm**

*Workers Compensation Considerations for COVID-19  
in Ohio, Kentucky, & Indiana*

Ronald Fresco, Mark Bush, & Alex Beeman

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