

NEW MEDICAL LEAVE AND SICK PAY LAWS *updated on 4/13/20*

The IRS will offset the cost of sick leave for church employees who need to stay home: On March 18 a bill affording paid leave for employees with offsetting payroll tax credits passed into law. This bill goes into effect on April 2, 2020.

Employers can provide paid leave for staff who are sick (even if not infected with COVID-19) or who need to care for family members and recoup these costs through payroll tax credits from the federal government. This will allow ministries to keep staff on payroll without forcing them to choose between their paycheck and public health measures to combat the virus.

These changes come in the form of two provisions:

1. A brand new Federal paid sick leave law – the Emergency Paid Sick Leave Act (EPSLA) – Designed for employees who are directly impacted by illness or must care for a child because the school or childcare facility is closed by providing 2 weeks of paid leave.
2. An emergency expansion of the Family Medical Leave Act (FMLA) – Designed for employees who need to miss work because they need to care for someone else by providing 10 weeks of paid leave.
3. In some, cases, employees will be eligible for **BOTH** sets of benefits so ministry employer would be subject to the combined payment limits from both laws.

What if our ministry can't continue to function with staff on paid leave? Are we forced to comply with these laws?

Employers with less than 50 employees may be exempt if the required leave would jeopardize the viability of their business. In other words, ministries may be exempt from a requirement to provide sick leave if this causes the ministry to no longer operate. The qualifications are still vague and the department of labor (DOL) is drafting emergency guidance and rules to articulate the standard. More information about this will be forthcoming as it becomes available.

EPSLA - Employees may take paid sick leave because they are unable to work or telework due to:

1. Federal, state or local quarantine or isolation orders related to COVID19
2. Advise from their health care provider to self-quarantine due to COVID-19
3. Displaying COVID-19 symptoms and seeking a medical diagnosis
4. Needing to care for an individual subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine due to COVID-19 concerns
5. Caring for the employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency. (President Trump declared a national public health emergency on March 13.)
6. Experiencing any other substantially similar condition certified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.

Who is Eligible for Emergency Paid Sick Leave Act (EPSLA)?

- Any employee may access paid sick leave regardless of how long they have worked for the employer.
- Full-time employees receive 80 hours of paid sick leave at the employee's regular rate of pay if they qualify under 1,2 or 3 above.
- Full-time employees receive 2/3rds of the employee's regular rate of pay if they qualify under 4,5 or 6 above.

What are the payment limits for EPSLA?

- The max required to be paid out and reimbursed by the federal government for 1,2, or 3 above, is limited to \$511 per day up to \$5,110 total per employee.
- The max required to be paid out and reimbursed by the federal government that can be paid out for 4,5 or 6 above is \$200 per day up to \$2,000 total.
- Part-Time employees are paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave. Employees who have worked less than six months are entitled to the average number of hours the employee would normally be scheduled over a two-week period.
- An employer may not require the employee to exhaust employer-provided leave prior to taking paid sick leave under the new law.

Who is Eligible for Emergency Expansion Benefits of the Family Medical Leave Act (FMLA)?

- An employee who is unable to work because the child's school or place of care for a son or daughter who is under 18 years of age provider is unavailable because of the public health emergency.
- A childcare provider. This is someone who is paid to provide childcare on a regular basis, such as a nanny, babysitter or au pair. Grandparents who watch children for free and stay at home parents are not included in this definition.
- Any employee who has worked for the employer for 30 calendar days.

How Much Does the Employer Need to Pay?

- Max per employee is \$200 a day and \$10,000 in total.
- Employers must provide up to 10 weeks of paid leave to the employee under FMLA for a qualifying public emergency health (PEH) need.
- The pay is 2/3rds of the employee's normal wage or hours normally scheduled to work.
- Part-Time employees are paid based on the average number of hours the employee worked for the six months prior to taking paid sick leave.
- Employees who have worked less than six months are entitled to the average number of hours the employee would normally be scheduled over a two-week period.

Other Considerations

- Employee must provide employers with as much advance notice as possible.
- An additional tax credit may be available based on costs to maintain health insurance coverage for the eligible employee during the leave period.
- An employee's first 10 days of qualifying leave may be unpaid, but the employee can choose to use employer provide accrued paid leave, but the employer can't require this be used.

How do we obtain Reimbursement from the IRS for complying with EPSLA and FMLA Expansion?

1. When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.
2. Employers who pay employees under the federal paid sick leave or emergency expanded Family Medical leave act will be able to retain an amount of the payroll taxes equal to the amount paid, rather than deposit them with the IRS.

3. The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
4. If there are not sufficient payroll taxes to cover the cost of qualified sick and childcare leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests has not yet been released but is being expedited for release.
5. To claim this credit, we recommend hiring a payroll company to assist in completing this form. Please contact your district office for recommendations.

Examples

- *If an eligible employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining \$3,000 on its next regular deposit date.*
- *If an eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in taxes, the employer could use the entire \$8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining \$2,000.*

How does this apply to ministers?

- Ministers are considered self-employed for social security and medicare purposes and employees for federal income tax purposes which presents a unique situation for the application of these provisions. The church is paying the salary, but the social security and medicare withholding is being paid by the minister. The application of this policy will need to be handled on case by case basis. If you have questions regarding the application, please contact your District Office.