



DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 826

RIN 1235-AA35

Paid Leave under the Families First Coronavirus Response Act; Correction

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Temporary rule; correction and correcting amendment.

SUMMARY: The Department of Labor published in the Federal Register on April 6, 2020, a temporary rule to implement public health emergency leave under Title I of the Family and Medical Leave Act (FMLA), and emergency paid sick leave to assist working families facing public health emergencies arising out of Coronavirus Disease 2019 (COVID-19) global pandemic. The leave is created by a time-limited statutory authority established under the Families First Coronavirus Response Act (FFCRA), and is set to expire on December 31, 2020. The FFCRA and the temporary rule do not affect the FMLA after December 31, 2020. Through publication of this document, the Department corrects certain preamble and regulatory text.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through December 31, 2020. This rule became operational on April 1, 2020.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor published a temporary rule in the Federal Register on April 6, 2020 titled, Paid Leave under the Families First Coronavirus Response Act. 85 FR 19326. The temporary rule contained an incorrect calculation of hours worked in a particular scenario (page 19329), a paragraph within the preamble describing regulatory text that was erroneously included (page 19338), along with incorrect cross references in §§ 826.20 (page 19349, in the third column), 826.22 (page 19350, second column), and 826.100(d) (page 19355, first column) of the regulatory text. Additionally, the Department is inserting omitted titles in § 826.30(d) and (e) (page 19352, first column); inserting a comma in § 826.30(b)(3) to make a citation more accurate (page 19351, second column); correcting the reference to 5102(a)(2) in § 826.30(c)(1)(iii) (page 19351, third column); and making two corrections to the text of § 826.50(d) (page 19353, second column). The Department is capitalizing a defined term for consistency with the remainder of the definition section (page 19348, third column). Finally, the Department is correcting a date in § 826.70(e) and deleting § 826.70(f) (page 19354, first and second columns) to be consistent with the remainder of the regulations. This action makes the necessary corrections in the regulatory text and preamble.

Corrections to Preamble

In rule FR Doc. 2020-07237, published on April 6, 2020 (85 FR 19326), make the following corrections:

1. On page 19329, in the first column, correct by revising “7.5 hours” to “6.5 hours.”
2. On page 19338, in the second column, under “III. Discussion” part G is corrected by deleting the final paragraph under the heading “G. Leave to Care for a Child Due to School or Place of Care Closure or Child Care Unavailability – Intersection between the EFMLEA and the FMLA”.

List of Subjects in 29 CFR Part 826

Wages.

For the reasons set out in the preamble, the Department of Labor corrects 29 CFR part 826 by making the following correcting amendments:

PART 826—PAID LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

1. The authority citation for part 826 continues to read as follows:

Authority: Pub. L. 116-127 sections 3102(b) and 5111(3); Pub. L. 116-136 section 3611(7).

§ 826.10 [Amended]

2. In § 826.10(a), remove “Subject to a quarantine or isolation order” and add in its place “Subject to a Quarantine or Isolation Order”.

3. In § 826.20, revise paragraphs (a)(7) and (b) to read as follows:

§ 826.20 Paid leave entitlements.

(a) * * *

(7) *Caring for an individual.* An Employee may take Paid Sick Leave for the reason described in paragraph (a)(1)(iv) of this section if the Employee is unable to perform work for his or her Employer and if the individual depends on the Employee to care for him or her and is either:

(i) Subject to a Quarantine or Isolation Order as described in paragraph (a)(1)(i) of this section; or

(ii) Has been advised to self-quarantine by a health care provider as described in paragraph (a)(1)(ii) of this section, because of a belief that—

(A) The individual has COVID-19;

(B) The individual may have COVID-19 due to known exposure or symptoms; or

(C) The individual is particularly vulnerable to COVID-19.

* * * * *

(b) *Qualifying reason for Expanded Family and Medical Leave.* An Eligible Employee may take Expanded Family and Medical Leave because he or she is unable to work due to a need to care for his or her Son or Daughter whose School or Place of Care has been closed, or whose Child Care Provider is unavailable, for reasons related to COVID-19. An Eligible Employee has need to take Expanded Family and Medical Leave for the purposes of this paragraph (b) only if no suitable person is available to care for his or her Son or Daughter during the period of such leave.

* * * * *

4. Revise § 826.22 to read as follows:

§ 826.22 Amount of pay for Paid Sick Leave.

(a) Subject to paragraph (c) of this section, for each hour of Paid Sick Leave taken by an Employee for qualifying reasons set forth in § 826.20(a)(1)(i) through (iii), the Employer shall pay the higher of:

(1) The Employee's average regular rate as computed under § 826.25;

(2) The Federal minimum wage to which the Employee is entitled; or

(3) Any State or local minimum wage to which the Employee is entitled.

(b) Subject to paragraph (c) of this section, for each hour of Paid Sick Leave taken by an Employee for qualifying reasons set forth in § 826.20(a)(1)(iv) through (vi), the Employer shall pay the Employee two-thirds of the amount described in § 826.24(a).

(c) The limitations on payments are as follows:

(1) In no event shall an Employer be required to pay more than \$511 per day and \$5,110 in the aggregate per Employee when an Employee takes Paid Sick Leave for qualifying reasons set forth in § 826.20(a)(1)(i) through (iii).

(2) In no event shall an Employer be required to pay more than \$200 per day and \$2,000 in the aggregate per Employee when an Employee takes Paid Sick Leave for qualifying reasons set forth in § 826.20(a)(1)(iv) through (vi).

5. In § 826.30, revise paragraphs (b)(3) and (c)(1)(iii) and the heading for paragraph (d) and add a heading for paragraph (e) to read as follows:

§ 826.30 Employee eligibility for leave.

* * * * *

(b) * * *

(3) An Employee who has been employed by a covered Employer for at least thirty calendar days is eligible for Expanded Family and Medical Leave under the EFMLEA regardless of whether the Employee would otherwise be eligible for leave under the FMLA. Thus, for example, an Employee need not have been employed for 1,250 hours of service and twelve months of employment as otherwise required under the FMLA, see § 825.110(a)(1) and (2) of this chapter, to be eligible for leave under the EFMLEA.

(c) * * *

(1) * * *

(iii) The definition of “health care provider” contained in this section applies only for the purpose of determining whether an Employer may elect to exclude an Employee from taking

leave under the EPSLA and/or the EFMLEA, and does not otherwise apply for purposes of the FMLA or section 5102(a)(2) of the EPSLA.

* * * * *

(d) *Exclusion by OMB from EFMLEA.* * * *

(e) *Exclusion by OMB from EPSLA.* * * *

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6. Revise § 826.50(d) to read as follows:

§ 826.50 Intermittent leave.

* * * * *

(d) *Calculation of leave.* If an Employee takes Paid Sick Leave or Expanded Family and Medical Leave intermittently as the Employee and Employer have agreed, only the amount of leave actually taken may be counted toward the Employee’s leave entitlements. For example, an Employee who normally works forty hours in a workweek and only takes three hours of leave each work day (for a weekly total of fifteen hours) has only taken fifteen hours of the Employee’s Paid Sick Leave or 37.5% of a workweek of the Employee’s Expanded Family and Medical Leave entitlement.

7. In § 826.70, revise the section heading and paragraph (e) and remove paragraph (f) to read as follows:

§ 826.70 Leave to care for a child due to School or Place of Care closure or child care unavailability – intersection of EFMLEA and the FMLA.

* * * * *

(e) An Eligible Employee can take a maximum of twelve workweeks of Expanded Family and Medical Leave during the period in which the leave may be taken (April 1, 2020 to

December 31, 2020) even if that period spans two FMLA leave twelve-month periods. For example, if an Employer's twelve-month period begins on July 1, and an Eligible Employee took seven weeks of Expanded Family and Medical Leave in May and June, 2020, the Eligible Employee could only take up to five additional weeks of Expanded Family and Medical Leave between July 1 and December 31, 2020, even though the first seven weeks of Expanded Family and Medical Leave fell in the prior twelve-month period.

8. Revise § 826.100(d) to read as follows:

§ 826.100 Documentation of need for leave.

* * * * *

(d) To take Paid Sick Leave for a qualifying COVID-19 related reason under § 826.20(a)(1)(iv) an Employee must additionally provide the Employer with either:

- (1) The name of the government entity that issued the Quarantine or Isolation Order to which the individual being care for is subject; or
- (2) The name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19.

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Signed at Washington, D.C. this 8th day of April, 2020.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

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