

Questions from April 2, 2020 COVID 19 Webinar



Updated 4.13.20

- 1. FMLA requires an employer to "designate" leave in order to reduce leave entitlement; can an employer use the standard FMLA designation or should we update it to either EFMLA or FMLA?**

Specifically mark the forms that it is EFMLA and the reason why along with supporting documentation.

- 2. Is the 2 weeks EPSL in addition to the FFCRA 12 weeks? Total 14 weeks?**

No, the total is 12 weeks – 2 Emergency Paid Sick Leave and additional 10 of Emergency FMLA.

- 3. What if an employee has someone at home that is sick/diagnosed? Can we force them to stay home?**

It is recommended that you contact your county health department for specifics. Here is a link to what the CDC recently issued where you can find some of these answers. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

- 4. We are requesting a note from the doctor for release to work for any illness. Is that okay? For example, someone calls in sick with a cough, we are requiring a medical note to return.**

That is fine. The Act in no way restricts our ability to require a note.

- 5. Do you know if CalPERS removed the 1000-hour limit for temporary or part time employees too?**

On March 4, 2020, Governor's Executive Order N-25-20 was issued, which lifts the work hour limitations and wait period requirements for retired annuitants. View the Circular Letter: Governor's Executive Order N-25-20. There are no changes with the requirements for independent contractors. Part time and temporary staff have not been addressed.

- 6. What if a high risk employee doesn't want to come to work and their position does not have anything to do from home. They don't qualify for Emergency leave correct? Can we make them use their accrued leave?**

Correct, they do not qualify for any emergency leave and they would have to use accrued vacation or sick.

- 7. If you are not under a doctor's order, you were sick but not tested for covid-19. How do you get a doctors notice to return to work when you weren't under a doctor's care? Right now trying to get a hold of doctors is**

crazy unless you are really sick. Under these conditions can the employer require the note?

Yes, you can still require a note, although there is no requirement to do that – it is up to you.

8. We have a single parent employee who is now having to pay for childcare due to school closure. Can he use EPSLA to stay home & help alleviate the need for daycare?

Yes, he can.

9. Does the EFMLA apply to dependent adults (disabled)?

No. EFMLA is only for school closures for children under 18.

10. Can the employer say you cannot take leave if you qualify due to the fact that they will allow you to telecommute?

If the employee meets one of the 6 criteria outlined in the Act, they must be allowed to take leave. If they meet one of the reasons, it means they cannot work, so whether they telecommute or not is irrelevant.

11. We have 11 employees - not subject to regular FMLA - but we offer it as a courtesy, do we have to allow E-FMLA?

Yes, all employers with 500 or less employees fall under this Act.

12. Can you give an example of an "isolation order" that would qualify for #1?

The federal government orders all businesses to shut down and all citizens not to leave their homes

13. Is it ok if the employer decides on full day increments for intermittent leaves?

Intermittent expanded family and medical leave should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take expanded family and medical leave on Mondays, Wednesdays, and Fridays, but work Tuesdays and Thursdays, while your child is at home because your child's school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons, for the duration of your leave.

The Department encourages employers and employees to collaborate to achieve flexibility. Therefore, if employers and employees agree to intermittent leave on a day-by-day basis, the Department supports such voluntary arrangements.

14. I think one thing that needs to be discussed is the benefits eligibility for someone off work for COVID related issues, not child care, and run out of the 80 hours of EPSL and continue to be off work.

JPIA Benefits department is working on that. Different carriers have different requirements so it can be confusing. As soon as the information is gather, they will communicate it.

15. How are people dealing with this 80-hours in their Payroll programs? Are they paying as sick leave or are they paying as regular pay?

We can ask first if anyone is even using it yet.

16. Can a District go above and beyond the Paid Sick Leave and implement a sick leave policy that covers all employees that call out sick during this timeframe and not have them use their own sick bank?

Yes, of course. You can always be more generous than the law requires.

17. Has there been any guidance on what to do if an employee has already used FMLA, for instance for Maternity leave, and now needs EFLMA leave for daycare being closed. Would it be the employer's decision to lay this person off or have them go unpaid?

The Act does not allow for additional FMLA time if an employee has already exhausted that leave in the last 12 months. That said, it would be a good idea to have a conversation with the employee to see how they might be accommodated. I laid off or put on a "no pay" status, they would qualify for unemployment

18. What if a high risk EE is not "necessary" to the operation and wants to work?

This employee should be treated as any other employee. Though we have heard about 'high risk' conditions, that does not give the agency permission to force them to stay home. Must be careful not to treat them differently because of an underlying medical condition – can become a discrimination issue.

19. Could you clarify if a temporary employee is eligible for the emergency sick leave pay (80 hours)?

Anyone that has worked for the district prior to district changes because of COVID-19 qualifies for Emergency Paid Sick Leave; employees qualify for EFMLA if they have worked for the district for 30 days and meet the required criteria.

20. Can we not have our lobby's locked down so there is not that direct contact with customers?

Yes. In fact, it is a very good idea to protect staff.

21. Are tax credits related to COVID-19 available to Special District's?

Public agencies are not eligible for the tax credits and therefore must provide the paid leave without any corresponding deduction against payroll tax. The bill does not differentiate between public entities that pay Social Security and those that do not. The law imposes a blanket exclusion on all public agencies.

22. For an employee with a non-COVID19 illness which included a fever, can the employer require a doctor's note clearing the employee prior to allowing them to return to work? What period of time post fever is appropriate to allow prior to allowing the employee to return?

It is recommended that you contact your county health department for specifics. Here is a link to what the CDC recently issued where you can find some of these answers. <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

23. As irrigation districts we are always exempt, so if we decide to close because we are not currently running water, we could not access these leave benefits?

No, if the district closes, the benefits are not available.

24. I've seen where the Act is effective April 1 but have also seen materials that the new law would take effect within 15 days after enactment. Please advise.

The law goes into effect April 1, 2020. The Act was passed 15 days prior to that date.

25. Is the Sick Paid Leave Act something that the employer has to apply for, or does the employee apply for this?

The employees apply to the district for the time off and the district pays that employee.

26. Aren't most of the agencies you represent going to be considered Essential so we won't be able to use these leave benefits?

Though agencies are seen as essential, you must examine each position and consider if it is essential. The copy clerk would probably not see as essential

but the treatment managers probably would be. The Act does caution exempting large numbers of people from receiving these benefits. It should be done with much thought and rarely.

27. If our District does not provide FMLA, does the EFMLA still be used?

Yes, this Act applies to all employers with 500 or less employees.

Is the 80 hours of the Emergency Sick Pay paid at regular rate of pay?

Yes, at the regular rate of pay as defined by Fair Labor Standards Board.

28. Some employees are working half in the office and half at home? What is the trigger or line in the sand that an employee has to work from the office?

There are no minimum hours an employee must work from the office or from the home. It is your decision and dependent on your specific needs.