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**Frequently Asked Questions
Regarding New Federal Leaves Related to COVID-19**

I. New Federal Leaves Related to COVID-19 – Generally

A. What are the new types of federal leave related to COVID-19?

The new types of federal leave are Emergency Sick Leave and Emergency FMLA. They are available for eligible team members in certain circumstances beginning April 1, 2020 and expiring on December 31, 2020.

B. How long must a team member have been employed to be eligible for the new federal leaves?

Team members are eligible for Emergency Sick Leave regardless of when they began employment. Team members must be employed for at least 30 days to be eligible for Emergency FMLA.

C. Who is a “son or daughter” for purposes of the new federal leaves?

For purposes of Emergency Sick Leave and Emergency FMLA, the FMLA’s definition of “son or daughter” applies. The term means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability.

D. Are team members in certain jobs excluded from eligibility for the new federal leaves?

Yes. Consistent with the federal government’s authorization, the employer has excluded “health care providers” and “emergency responders” as defined by the U.S. Department of Labor (USDOL) from eligibility for Emergency Sick Leave and Emergency FMLA.

The USDOL defines “health care provider,” in part, as “anyone employed at any doctor’s office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care

provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, [e]mployer, or entity” and including “anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments.”

The USDOL defines “emergency responder,” in part, as “anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.”

E. The federal act creating Emergency Sick Leave and Emergency FMLA places daily and aggregate caps on the dollar amounts that employers are required to pay when a team member takes those leaves. Will the caps be applied?

No.

F. Are part-time team members eligible for the new federal leaves?

Yes, part time team members are eligible, including non-benefit-eligible hourly and intermittent team members who would not normally receive paid leave time.

II. Emergency Sick Leave – Generally

A. The team member is under a stay-at-home or shelter in place order. Does that order make the team member eligible for Emergency Sick Leave?

A team member is eligible for Emergency Sick Leave when the team member is unable to work or telework because the team member is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 that prevents the team member from working or teleworking. Most “shelter in place” and “stay-at-home” orders exempt government activities, and therefore would not make the team member eligible for Emergency Sick Leave.

B. Are part-time team members eligible for this paid leave?

Yes. When their circumstances qualify, part-time team members are eligible for two weeks of Emergency Sick Leave. If the part-time team member has a normal weekly schedule, he or she is entitled to up to the number of hours of Emergency

Sick Leave equal to the number of hours that the team member is normally scheduled to work over two workweeks. If the part-time team member lacks a normal weekly schedule, the number of hours is calculated in accordance with the USDOL temporary regulation.

C. May a team member take two weeks of Emergency Sick Leave for one qualifying circumstance and then additional Emergency Sick Leave for another qualifying circumstance?

No. A team member may take no more than two weeks – up to 80 hours – of Emergency Sick Leave, regardless of the number of qualifying circumstances the team member experiences.

D. May a team member take Emergency Sick Leave intermittently?

If the team member is unable to telework, then the team member may only take Emergency Sick Leave intermittently to care for his/her son or daughter whose school or place of care is closed, or whose child care provider is unavailable, because of reasons related to COVID-19.

If the team member is able to telework, the team member may use Emergency Sick Leave intermittently, regardless of the reason for the Emergency Sick Leave.

E. Do team members have to exhaust pre-existing employer-provided leave prior to qualifying for Emergency Sick Leave?

No.

F. Can a team member retroactively apply Emergency Sick Leave to an absence that occurred before April 1, 2020?

No.

III. Emergency Sick Leave: two weeks – up to 80 hours – at regular rate of pay

A. Under what circumstances is a team member eligible for two weeks – up to 80 hours – of Emergency Sick Leave at the team member’s regular rate of pay?

A team member (who is not a “healthcare provider” or an “emergency responder”) is eligible for Emergency Sick Leave at his/her regular rate of pay when he or she is unable to work or telework because:

(a) the team member is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 that prevents the team member from working or teleworking (most “stay-at-home” orders exempt government work activities);

(b) the team member has been advised by a health care provider to self-quarantine, either because the employee has or may have COVID-19 or because the employee is particularly vulnerable to the virus; or

(c) the team member is experiencing any of the symptoms of COVID-19 (fever of 100.4° or above, dry cough, shortness of breath, or any other COVID-19 symptoms identified by the federal Centers for Disease Control and Prevention) and is seeking a medical diagnosis.

B. What documentation is required for a team member to take Emergency Sick Leave under the circumstances described in response to the question above?

The documentation required from the team member includes the team member's name, the dates for which leave is requested, the qualifying reason for the leave, and a statement that the team member is unable to work or telework because of the qualified reason for the leave. The team member must also provide the name of the government entity that issued the quarantine or isolation order or the name of the health care provider who advised the team member to self-quarantine due to concerns related to COVID-19.

IV. Emergency Sick Leave: two weeks – up to 80 hours – at two-thirds of regular rate of pay

A. Under what circumstances is a team member eligible for two weeks – up to 80 hours – of Emergency Sick Leave at two-thirds of the team member's regular rate of pay?

A team member (who is not a "healthcare provider" or an "emergency responder") is eligible for Emergency Paid Sick Leave at two-thirds of his/her regular rate of pay when he or she is unable to work or telework because the team member is caring for an individual who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19 or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or the team member is providing care to a son or daughter if the school or place of care of the son or daughter has been closed, or if the child care provider of the son or daughter is unavailable, for reasons relating to COVID-19.

B. What documentation is required for a team member to take Emergency Sick Leave under the circumstances described in response to the question above?

The documentation required from the team member includes the team member's name, the dates for which leave is requested, the qualifying reason for the leave, and a statement that the team member is unable to work or telework because of the qualified reason for the leave. Additionally, the team member must fulfill one of the following two requirements:

1. If the team member is caring for an individual who is subject to a qualifying order or who has received qualifying advice from a health care provider (as discussed in IV(A) above), then the team member must also provide the name of the government entity that issued the quarantine or isolation order to which the individual being cared for is subject; or the name of the health care provider who advised the individual being cared for to self-quarantine due to concerns related to COVID-19; OR

2. If the team member is providing care to a son or daughter whose school or place of care has closed, or whose child care provider is unavailable (as discussed in IV(A) above), then the team member must also provide the name of the son or daughter being cared for, the name of the school, place of care, or child care provider that has closed or become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the team member takes Emergency FMLA leave.

C. Can a team member use accrued comp time, annual leave, sick leave, or borrowed leave to supplement the two-thirds Emergency Sick Leave payment received?

Yes, a team member can choose to supplement the two-thirds Emergency Sick Leave payment with comp time, annual leave, sick leave, or borrowed leave.

D. Can team members be required to use their accrued State leave to supplement their two-thirds Emergency Sick Leave payment?

No.

E. Does Emergency Sick Leave count against the team member's 12-week FMLA entitlement?

No. However, a team member who is eligible for Emergency Sick Leave because he/she is caring for his/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, also necessarily qualifies for Emergency FMLA leave. Therefore, in this circumstance, these leaves run concurrently. And leave taken under the Emergency FMLA does count against the team member's 12-week FMLA leave entitlement.

V. Emergency Family and Medical Leave Expansion Act (Emergency FMLA)

A. Which team members are eligible for Emergency FMLA?

Team members who have been employed for at least 30 days and who are not excluded under the definition of "healthcare provider" or "emergency responder."

B. Under what circumstances can an eligible team member take Emergency FMLA?

An eligible team member qualifies for Emergency FMLA when he/she is unable to work or telework due to a genuine need for leave to care for a son or daughter whose school or child care provider is closed or unavailable for reasons related to COVID-19.

C. How much leave time is available for eligible team members under the Emergency FMLA?

An eligible team member may take up to 12 weeks of leave under the Emergency FMLA. *But see* FAQ H below.

D. Is leave that is taken under the Emergency FMLA paid leave?

The first two weeks of leave taken under Emergency FMLA are unpaid, but a team member may utilize the new Emergency Sick Leave, as well as available State Leave Related to COVID-19 (see Leave Guidance Memo), to be paid during this two-week period. Federal law requires that use of Emergency FMLA, from the third week forward, be paid at two-thirds of the team member's regular rate of pay.

E. Can a team member use accrued comp time, annual leave, or sick leave, or borrowed leave to supplement the two-thirds payment received under the Emergency FMLA?

Yes, a team member can choose to supplement the Emergency FMLA's two-thirds payment with comp time, annual leave, sick leave, or borrowed leave.

F. What documentation is required for a team member to take Emergency FMLA leave?

The documentation required from the team member includes the team member's name, the dates for which leave is requested, the qualifying reason for the leave, a statement that the team member is unable to work or telework because of the qualified reason for the leave, the name of the son or daughter being cared for, the name of the school, place of care, or child care provider that has closed or become unavailable, and a representation that no other suitable person will be caring for the son or daughter during the period for which the team member takes Emergency FMLA leave.

G. Does Emergency FMLA leave count against the 12-week entitlement for FMLA?

Yes. For example, if a team member takes two weeks of Emergency FMLA, the team member will only have ten weeks of FMLA leave available for FMLA purposes during the 12-month counting period.

H. If a team member is absent for a serious health condition under the FMLA, would that team member have potential eligibility for Emergency FMLA coverage during the same time period?

No.