

To all Contributing Employers

Effective April 1, 2020

**Family & Medical Leave Act (FMLA)
and
Emergency Family & Medical Leave Expansion Act (EFMLA)**

FMLA – Coverage and Eligibility

As you are aware, the Family and Medical Leave Act became effective on August 5, 1993 for non-bargaining employees and February 4, 1994 for bargaining employees.

In brief, the law requires employers with 50 or more total employees to grant leaves of absence of up to 12 weeks in a year to eligible employees for family or medical leave under certain conditions. Eligible employees are those who have worked at least 1,250 hours for the particular employer –during the previous 12-month period. Among the Act's provisions is the requirement that employers continue to provide eligible employees with health coverage during the leave of absence.

FMLA – Reason for Taking Leave

Unpaid leave must be granted for any of the following reasons:

To care for the employee's child after birth, or placement for adoption or foster care; to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or for a serious health condition that makes the employee unable to perform the employee's job.

A serious health condition is defined as, an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a health care provider.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

EFMLA – Coverage and Eligibility

The threshold number of employees for FMLA coverage is expanded for this particular situation. All employers with fewer than 500 employees (not 50 or more as with normal FMLA) are covered. Employee eligibility requirements are loosened as well. Instead of having to have worked 1,250 hours in the preceding 12 months, EFMLA applies to any employee who has been employed for at least 30 days and who is on leave for specified reasons related to COVID-19. Eligible employees are entitled to up to 12 weeks of EFMLA. The first two weeks of EFMLA leave are unpaid, and thereafter up to 10 weeks of EFMLA are paid at two-thirds the employee's regular rate of pay. EFMLA and FMLA leave may not exceed a total of 12 weeks within a year. *If an employer has 500 or more employees, then they are not currently covered by EFMLA.*

EFMLA – Reason for Taking Leave

An employee may take EFMLA leave only when they are unable to work because they must care for the employee's child who is under the age of 18 years, if the child's school or place of care has been closed or the child's care provider is unavailable due to an emergency related to COVID-19. Note that this leave is independent of EPSL.

Small Business Exemption: The Secretary of Labor is authorized to exempt small businesses with fewer than 50 employees from its requirements if the viability of their business is in jeopardy. The authorization process is still in development.

Right to Reinstatement: EFMLA remains protected leave. An employee must be returned to the same, or an equivalent position. Employers with less than 25 employees are exempt if the position no longer exists due to economic conditions or other changes in operating conditions caused by the COVID-19 emergency. Exempt employers must make reasonable efforts to contact the employee if an equivalent position opens within a year.

Effective April 1, 2020 under both FMLA and EFMLA employers will contribute a monthly amount per qualified employee based on the current Health and Welfare contribution rate of \$8.50 per hour (increasing to \$9.00 per hour effective June 29, 2020) multiplied by **141** hours. Employer contributions for employees on leave are to be remitted on the same monthly reporting form used to remit contributions on behalf of other employees and are due on the date specified in the collective bargaining/participation agreement. The names of employees on leave should be marked "FMLA or EFMLA" with the appropriate Health and Welfare contribution as indicated above. For more information on this or other topics please visit our website at <https://www.LFAO.org>.

For a full description of both the FMLA and EFMLA please visit the following websites: <https://www.dol.gov/agencies/whd/fmla> & <https://www.dol.gov/newsroom/releases/whd/whd20200401>