



## **COVID-19 – ONE PAGE Q&A – EMERGENCY PAID SICK LEAVE ACT (SICK LEAVE)**

### **Which employers have to comply with the Sick Leave provision?**

Any employer with fewer than 500 employees is subject to the Sick Leave provision which goes into effect April 1, 2020 and lasts until December 31, 2020

### **Who is an eligible employee?**

All employees regardless of how many days the employee has been employed

### **When does an employee qualify for the Sick Leave provision?**

If an employee is unable to work (or telework) due to the need to be absent because the employee:

1. is subject to a Federal, State, or local quarantine order related to COVID-19
2. has been advised to self-quarantine by a health care provider due to concerns regarding COVID-19
3. is experiencing symptoms of COVID-19 and seeking a medical diagnosis
4. is caring for an individual who is described in (1) or (2) above
5. is caring for his/her child whose school or daycare is closed (or child care provider is unavailable)
6. is experiencing other substantially similar conditions specified by the Secretary of HHS

### **How much Sick Leave is an employer responsible to pay an employee?**

An employer will be responsible to pay employees for two weeks (up to 80 hours total)

### **How much does an employer need to pay an eligible employee under the Sick Leave provision?**

An employer who has an employee who is eligible for the Sick Leave as a result of (1), (2), or (3) in the list above calculates the paid Sick Leave by multiplying the employee's average hours times the employee's regular rate of pay. This type of Sick Leave is capped at \$511 per day and \$5,110 in the aggregate.

An employer who has an employee who is eligible for the Sick Leave as a result of (4), (5), or (6) in the list above calculates the paid Sick Leave by multiplying the employee's average hours times two-thirds of the employee's regular rate of pay. The Paid Sick leave is capped at \$200 per day and \$2,000 in the aggregate.

### **What is the employee's regular rate of pay?**

Employees are entitled to their average regular rate of pay over the previous six months or, if greater, the greater applicable minimum wage rate that applies between the Federal and applicable State minimum wage laws. The tips or commissions earned by employees need to be included when calculating the employee's regular rate of pay.

### **How does an employer determine an employee's average hours of work if the employee's schedule varies?**

An employer who has an employee with a varying schedule should take a six month average looking back from when the leave starts. During its calculation the employer must include hours the employee was on leave of any type. If an employee has not been employed for the six months, the employer is instructed to use the reasonable expectation of what the employee would normally be scheduled to work.

## **How are employers supposed to be able to afford these payments?**

Employers can immediately begin to use two new refundable payroll tax credits that are intended to reimburse the employer dollar for dollar for the cost of providing the required COVID-19 payments for Sick Leave. An employer will be able to offset the amount they pay to employees under the Sick Leave provision by not paying withheld federal income taxes, the employee share of the Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees. If an employer is paying out more under the Sick Leave provision than its payroll tax liability, the employer can file for a refund with the IRS and expect a refund within two weeks (apparently). More details on this should be released this week.

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