COVID-19 RESPONSE
March 30, 2020

In response to the COVID-19 pandemic, the State and Federal governments have taken actions to aid businesses and people affected by the crisis, and to mitigate the effects. This brief summarizes some of the actions taken so far as they relate to municipalities as employers.

Federal Actions

Congress passed, and the President signed, The Families First Coronavirus Response Act (Public Law No. 116-126) on March 18. It has an effective date of April 1. Two provisions relevant to employment are in effect through the end of 2020:

- Emergency Paid Sick Leave Act (EPSLA)
  - Applies to all public sector employers with 1 or more employees.
  - Employees are immediately eligible for leave, no matter how long employed.
  - Leave only available to the extent the employee cannot telecommute or work from home ("WFH").
  - Eligibility reasons for EPSLA:
    1. Employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
    2. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
    3. Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
    4. Employee is caring for an individual who is subject to a quarantine or isolation order or has been advised by a health care provider to self-quarantine.
    5. Employee is caring for a son or daughter because the child’s school or place of care has been closed or the child’s childcare is unavailable due to COVID-19 precautions.
    6. Employee is experiencing any other substantially similar condition specified by the U.S. Department of Health & Human Services.

NOTE: EPSLA does not define “quarantine or isolation order.” The CDC, however, does explain the explicit authority for such. It is the opinion of some municipal law attorneys that a shelter in place or stay at home order, such as the one issued by
Governor Lamont, does not qualify as an official quarantine or isolation order that triggers EPSLA. Consult your own municipal attorney for further guidance.

- Amounts of Leave Available
  - Up to two weeks (80 hours, or a part-time employee’s two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:
    - 100% for qualifying reasons #1-3 above, up to $511 daily and $5,110 total;
    - 2/3 for qualifying reasons #4 and 6 above, up to $200 daily and $2,000 total; and
    - Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 2/3 for qualifying reason #5 above for up to $200 daily and $12,000 total.
  - A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

- No carryover.
- May not require the employee to find a replacement before allowing the employee to take paid time.
- Employee may first use the paid sick time before other leave.
- Employer cannot require Employee to use other paid leave provided by the Employer to the Employee before the Employee uses the paid sick time.
- This leave cannot run concurrently with other accrued leave.
- Failure to provide leave is an FLSA violation:
  - Fines, imprisonment up to 6 months
  - Amount of leave not paid
  - Liquidated damages for willful violations
  - Attorneys’ fees
  - Retaliation Prohibited
  - Cannot discharge, discipline or in any other manner discrimination against an employee who takes leave or who files a complaint

- Emergency Family and Medical Leave Act (eFMLA)-Note, this is an amendment to the FMLA. All FMLA requirements are still applicable unless noted otherwise.
  - Applies to all public sector employers, irrespective of number of employees
  - Provides for paid leave
  - Available only for employees who:
    1. Have been employed a minimum of 30 days (including those working part time);
    2. Cannot WFH; AND
    3. Must be home to care for a minor child whose school has closed because of COVID-19
  - Healthcare and emergency responder exceptions apply.
  - Up to 12 weeks
    - First 10 days (2 weeks) are unpaid
• May substitute EPSLA for this unpaid period
• May substitute accrued leave (if not using EPSLA)
• NOTE: An employer cannot require use of accrued time before EPSLA. Therefore, you may only use accrued leave if the employee chooses. An employee who chooses to use accrued leave before EPSLA would be entitled to 14 weeks combined between eFMLA and EPSLA. Thus, it is recommended that EPSLA be used first whenever possible.

  o 10 weeks paid
    • Must be paid at least 2/3 salary, capped at $200 per day, $2000 total.
    • May require use of accrued leave for remaining 1/3 of salary.
    • Based on current interpretation of eFMLA and FMLA, may require accrued leave to run concurrently with 10 weeks of eFMLA if the employer’s regular FMLA policy otherwise permits it.

  o Emergency Responders and Healthcare Worker Exemptions
    • Available for both EPSLA and eFMLA.
    • Does not exempt all employees; only those who are healthcare workers or emergency responders.
    • It is the employer’s chose to take the exemption.
    • “Emergency responder” is not defined. However, FLSA defines “first responder” as:
      ▪ “police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; and other similar work.”
      ▪ “Heathcare worker” has the same meaning as it does under the FMLA.

  o Leave under the FMLA remains available for all employees as it otherwise would had this new law not been passed.
    • The employer’s regular FMLA policy continues to apply.
    • If the employee requires leave because the employee is himself sick, or because he must care for someone who is sick, the FMLA would provide up to 12 weeks of unpaid leave.
    • The first 10 days (2) weeks, the employer can substitute with payment under the EPSLA.
• The remaining 10 weeks would be taken unpaid, unless the employers’ policy allows for substitution of accrued leave.

State Actions
Governor Ned Lamont has issued many executive orders to deal with the COVID-19 crisis, since his public health and civic preparedness emergency declarations on March 10. Emergency orders pertaining to municipal employers are:
  • Executive Order 7K suspends non-critical Workers’ Compensation Commission operations.
  • Executive Order 7L suspends the restrictions on reemployment by municipal retirees in the MERS system, enabling municipalities to meet critical staffing needs by temporarily rehiring those former employees while still allowing them to collect their retirement payments.

All executive orders from the Governor pertaining to COVID-19 can be found here.

Resources
• US Department of Labor guidance on EPSLA and eFMLA, including mandatory posters
• State of Connecticut COVID-19 page
• Federal Government COVID-19 page
• CCM’s COVID-19 Resource page
• National League of Cities (NLC) COVID-19 Resources
• CCM Webinar by FordHarrison on what municipal employers need to know

For More Information
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