

Top 10 Questions from our 3/20 COVID-19 Webinar:

1 Are these new leave options in addition to existing PTO plans available for employees?

Yes – the paid sick leave is additional to anything you already have in place for your employees as this is in response to the COVID-19 pandemic. If employees have already used all their leave, they would now have an additional 80 hours of paid sick leave available or now potentially Expanded FMLA to use depending on the situation.

2 Does this mean an employee has traditional 12 weeks of FMLA and now 12 additional weeks?

No. Everything we've seen and read is that you can't stack the traditional FMLA amounts with these new COVID-19 FMLA coverage so the typical FMLA limits would apply. If FMLA runs out, the employee may need to look at unpaid, unprotected leave as an option.

3 What can we ask employees about symptoms and/or notes from doctors?

During a Pandemic, ADA-covered employers may ask employees who call in sick if they are experiencing symptoms of the pandemic virus, according to the EEOC. These symptoms include fever, chills, cough, shortness of breath, and sore throat. Employers must maintain all information about employee illness as a confidential medical record in compliance with the ADA. Asking about these symptoms would be fine but don't ask about symptoms of other conditions. As an aside – you can send employees home if they are demonstrating symptoms of COVID-19 as well and ask them to speak to a doctor.

4 Can we force employees to use up their existing PTO before these plans?

As an Employer – no. The new Expanded FMLA and paid sick leaves need to be made available to your employees. They may choose to use their own accrued PTO but you cannot force them to use it. This likely would be where an employee doesn't want the first 10 days to be unpaid and may choose to use their own PTO instead.

5 How do we get these plans set up?

We will be able to support your Time Off needs through the Payroll Support team with setting up the needed information. You can reach out to our team via Support@PayrollNetwork.com and we can coordinate the plan setup. Please keep in mind the legislation has shared that you should offer these starting 4/2/2020.

6 Who is eligible for these new paid sick leave/FMLA benefits?

Qualification depends on a couple of factors – employer size is one element as the new paid sick leave and FMLA apply to companies with fewer than 500 employees. Employers that may be exempt are health care workers and emergency responders and companies with fewer than 50 employees may also be exempt. All employees are eligible for the paid sick leave regardless of tenure. FMLA expansion is available to all employees with at least 30 days of employment. For the paid sick leave, full-time employees get 80 hours and part-time employees get their average hours worked over a 2-week span.

7 What is the effective period? When do these plans go into effect?

April 2nd, 2020 is the effective date so our understanding is no tax credits would be eligible/applied for anything that happens before 4/2. As a result – companies should use their existing policies for anything that's taking place between now and 4/2. We'll see if they provide any additional clarity here in the coming days about retroactive use, etc.

8 What defines an employer size if they are spread across multiple states/locations?

From what we've seen and heard here – if a company has multiple locations but they are all operating as a cohesive company with the same policies across all locations, then they may be treated as a company with 500+ employees. If individual locations have different sets of rules/policies, that may drop them below the 500-employee mark and create a situation where these new benefits do apply to them. We're waiting for more clarity here and in this case a company should check with their attorney to see if these new benefits apply to you.

9 Can someone working from home also take FMLA?

The FMLA is only for people that are unable to work (or telework). If an employee can work from home, our understanding is that they should do so instead of taking paid sick leave or FMLA.

10 How does Short Term-Disability impact these new leave plans?

Our understanding is that short term disability benefits would not come into play until the employee no longer has access to paid sick leave. We'll look to see if they give any additional clarity here in the coming days.

REMINDER – we at Payroll Network are not legal attorneys, and the information provided here is not legal advice. Please consult with your legal counsel for specific questions and guidance.