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Frequently Asked Questions

Emergency Family and Medical Leave (EFMLA) Expansion Act and Emergency Paid Sick Leave Act (EPSLA) and COVID-19 MI Unemployment Insurance Program

This week new laws aiming to provide initial relief to American workers in the wake of the coronavirus pandemic were passed. These laws require that certain employers provide emergency paid leave under the Family and Medical Leave Act as well as emergency paid sick leave and set new eligibility standards for unemployment insurance benefits.

When do these new laws go into effect and when do they expire?

- These laws were enacted on Wednesday March 18, 2020 and go into effect on Thursday April 2, 2020
- These laws expire on December 31, 2020.

Why were these new laws enacted and what are they designed to accomplish?

- In order to lessen the economic impact of the COVID-19 public health emergency on United States workers and their families, Congress has required small employers (fewer than 500 employees) to provide certain unemployed workers with two-thirds of their wages for up to 12 weeks if their unemployment is directly caused by the public health emergency.

How will my employer pay for these benefits?

- Congress has recognized that small employers will also experience economic losses during this public health emergency. The federal government will be providing small businesses with direct payments, guaranteed loans and substantial tax credits so that your employer will be able to continue paying you a portion of your wages during your period of unemployment which has been caused by the public health crisis.

The Emergency Family Leave Act

Am I eligible for EFMLA benefits?

- You must be a full time or part time employee of a private or public employer which has 500 or less employees when the law was enacted.¹
- You must be employed for at 30 days prior to the start of your leave.
- If you are an employee of a health care provider or an emergency responder, your employer may but is not required² to pay you EFMLA benefits.
- The EFMLA does not apply to large employers with more than 500 employees.

What EFMLA benefits am I eligible to receive?

- If you take a leave because of a “qualifying need related to a public health emergency”, your employer is required to pay you two-thirds of your regular rate of pay (capped at \$200 per day and \$10,000 total aggregate) starting on the 11th day of your leave.
- “Qualifying need” means that you are unable to work or telework due to the need to care for your dependent child(ren) under 18 if the school or place of care has been closed or their care provider is unavailable because of a public health emergency.
- The first 10 days of your EMFLA leave are unpaid. However, at your election, you may use accrued vacation leave time, personal leave or medical or sick leave time to cover this unpaid time.

What is the duration of my paid EFMLA benefits?

- Your paid leave can last 12 weeks continuous or intermittent during a 12-month period provided you can establish an on-going “qualifying need” for the leave.

How will I be paid if my schedule varies from week to week?

¹ The new law permits the Sectary of Labor to exempt employers with fewer than 50 employees from the requirement of the EFMLA.

² This new law allows health care providers and emergency responders to determine at their own discretion whether to exclude an employee from the benefits of this law.

- If because of your part-time varied work schedule, your employer is unable to determine with certainty the number of hours you would have worked if you had not taken a leave, your employer will calculate your benefits by looking at the average number of hours worked per day during the 6 months before the start of your leave. If you worked less than 6 months before the start of your leave, your employer will calculate your hours based on its reasonable expectation of hours worked per week at your time of hire.

Do I have to give notice to my employer before I start my leave?

- If the need for your leave is foreseeable, you will be required to provide your employer with timely notice of your intention to take a leave under the EFMLA.
- The law is not strict and only requires a reasonable effort on your part to provide your employer with timely notice of your need for a leave.

Am I entitled to be restored to my former position at the end of my leave?

- If your employer has 25 or more employees at the time you request restoration to the job held at the time you started your leave, your employer is required to restore you to that job or to an equivalent job.
- If your employer has fewer than 25 employees at the time you request to be restored to your job, your employer may but is not required to restore you to your former position if the position held by you at the start of your leave no longer exists because economic or operational conditions caused by the public health emergency occurring during the leave.
- If your former position is no longer available because of economic or operational conditions, your employer must make reasonable efforts (but is not required) to place you in an equivalent position.
- If your former position is no longer available and despite your employer's reasonable efforts to find you an equivalent position you are unable to be rehired, your employer must make reasonable efforts to contact you if an equivalent position becomes available within one year of the earlier of the end of the public health emergency or 12 weeks after the commencement of your leave. If your employer contacts you about an opening, your employer may but is not required to rehire you.

Do I still have rights to an unpaid leave under the Family Medical Leave Act (FMLA)?

- The EFMLA does not replace your rights under the FMLA which was enacted in 1993. The EFMLA is intended to supplement your existing FMLA rights.
- In order to be eligible for FMLA benefits, you must have worked for at least one year for a private or public employer who has 50 or more employees and you must have worked at least 1250 hours before the commencement of the leave.
- Under the FMLA, you may take a total of 12 *unpaid* workweeks of leave during any 12-month period because of
 - your serious health condition that makes you unable to perform the functions of your position;
 - the birth of a child and in order to care for such newborn;
 - the placement of a child with you for adoption or foster care; or
 - the need to care for your spouse, child, or parent, if such spouse, child, or parent has a serious health condition.

Is my employer required under the EFMLA to pay for my health insurance coverage while I am on leave?

- The EFMLA does not require your employer to continue your health care coverage unless you also qualify for an unpaid leave under the FMLA. If you qualify for a regular FMLA leave, then your employer is required to continue your health insurance coverage for the duration of your leave at the level and under the conditions coverage would have been provided if you had continued in employment continuously for the duration of such leave.

How Do I apply for EFMLA benefits?

- You should provide your employer with an email or other form of written request for EFMLA benefits. Your request must be dated, and it must establish the “Qualifying need” for the EFMLA benefit. This means that your written communication should explain that you are unable to work or telework and must care for your dependent child(ren) under 18 if their school or place of care has been closed or if their childcare

provider is unavailable because of a public health emergency. Your written request should be specific naming your child(ren), date of birth and identity of their school or care provider. Your employer may ask for documentation to support your request and if the request is reasonable you should comply as quickly as possible.

How do I enforce my rights under the EFMLA?

- If your employer denies your request, you should first ask your employer to reconsider its initial denial your request. You may wish to then secure the advice of a qualified attorney who may be able to negotiate for you a resolution of the dispute without legal action.
- If your employer has 50 or more employees and violates your rights under the EFMLA by denying a proper request, you may file a lawsuit in federal or state court for lost compensation/benefits and reinstatement to your former job or an equivalent job or you may [file an administrative claim with the United States Department of Labor \(USDOL\)](#). If your employer has 50 or more employees, you are not required to file a claim with any agency before filing a lawsuit in court.
- If your employer has fewer than 50 employees and your rights under the EFMLA have been violated, your remedy is limited to an administrative complaint with the USDOL. If your employer has fewer than 50 employees, [an administrative complaint with the USDOL](#) is your sole and exclusive remedy.

Can my employer retaliate against me for requesting benefits under the EFMLA or FMLA?

- No. You are protected against retaliation by your employer if you request FMLA or EFMLA. The types of retaliation which are prohibited include termination, demotion, suspension, harassment, transfer to less favorable work assignments or locations or any other retaliation which would dissuade the average worker from pursuing rights under these laws.

The Emergency Paid Sick Leave Act (EPSLA)

Am I eligible for paid sick time under the EPSLA?

- All qualifying employees regardless of length of service are eligible for paid sick time pursuant to the EPLSA. (You qualify as long as you have worked at least one day.)

- Your employer shall provide you paid sick time—immediately—to the extent you are unable to work or telework due to a need for a leave because of one or more of these six reasons:
 1. You are subject to governmental quarantine or isolation order related to COVID-19.
 2. You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 3. You are experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 4. You are caring for an individual who is subject to an order as described in paragraph (1) above or has been described in paragraph (2) above.
 5. You are caring for your child if the school or place of care of your child has been closed, or the child-care provider of your child(ren) is unavailable because of COVID-19 precautions.
 6. You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

Is my employer required to provide me with paid sick time?

Your employer is required to provide you with paid sick time under the EPSLA if:

- Your employer employed more than 50 and fewer than 500 employees as of the time the EPSLA is enacted, and
- Your employer is a public entity or a private enterprise that employs one employee or more and is engaged in commerce or in an industry or activity affecting commerce.

Employers of agricultural workers on small farms, some seasonal employees, some domestic workers including some personal companions and babysitters may be exempt from paying sick time under the EPSLA.

How much will I receive and for what period?

- If you are a full-time employee, you will be eligible for 80 hours of paid sick leave under EPSLA.
- If you are a part-time employee, you will receive paid sick leave for the average length of time you typically work in a two-week period.
- Once your need for paid sick time ends, the paid sick leave terminates on your next scheduled shift.
- You will be paid the greater of: 1) your regular rate of pay or 2) federal minimum wage or the minimum wage in effect in the State or locality where you are employed. However, this pay is subject to the following maximum limits:
 - You cannot receive more than \$511 per day and \$5,110 in the aggregate if:
 - your leave is because you personally are subject to a governmental quarantine or isolation order related to COVID-19;
 - You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - You are experiencing symptoms of COVID-19 and seeking a medical diagnosis; or
 - You are experiencing any other substantially similar condition.³
 - You cannot receive more than \$200 per day and \$2,000 in the aggregate if
 - your leave is needed to care for an individual who is subject to a governmental imposed quarantine or isolation order;
 - the individual you are caring for has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
 - You are caring for your child(ren) if the school or place of care of your child(ren) has been closed or their child-care provider is unavailable because of COVID-19 precautions.
- Additionally, if your paid sick time is related to caring for a family member, the calculation of the wage you are due will be limited to two-thirds of the greater of: 1) your regular rate of pay or 2) federal minimum wage or the minimum wage in effect in the State or locality where you are employed.

³ This would be defined in a subsequent regulation or rule established by specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

- If you work a varied part-time schedule, and because of that schedule your employer is unable to determine with certainty the number of hours you would have worked if you had not taken a leave, your employer shall calculate your benefits by looking at the average number of hours worked per day during the 6 months before the start of your leave. If you worked less than 6 months before the start of your leave, your employer will calculate your hours based on its reasonable expectation of hours worked per week at your time of hire.

Can my employer require me to find a replacement to qualify for paid sick leave?

- No. The law prohibits your employer from requiring you to find your replacement as a condition to receiving sick leave benefits under EPSLA.

Do I have to use other paid leave benefits provided by my employer before receiving EPSLA benefits?

No. Assuming you qualify for EPSLA benefits, you may first use EPSLA benefits followed by other employer provided paid leave benefits or vice versa. EPSLA benefits do not replace but instead supplement what your employer has already provided you. Your employer may not require you to use other paid leave benefits before using your EPSLA.

Can my employer discriminate against me or retaliate against me if I take a sick leave?

- No. Your employer is prohibited from discharging, disciplining or in any manner discriminating against you or retaliating against you because you took a sick leave or filed a complaint or participated in a governmental investigation related to an EPSLA request.

How Do I apply for EPSLA benefits?

- You should provide your employer with an email or other form of written request for EPSLA benefits. Your request must be dated, and it must establish one or more of the 6 reasons for a qualifying EPSLA benefit. Your written request should be specific with adequate detail to supporting your request. Your employer may ask for documentation to support your request and if the request is reasonable you should comply as quickly as possible.

How do I enforce my rights under the EPSLA?

- If your employer denies your request, you should first ask your employer to reconsider its initial denial of your request. You may wish to then secure the advice of a qualified attorney who may be able to negotiate for you a resolution of the dispute without legal action.
- If the United States Department of Labor (USDOL) determines that your employer willfully failed to pay you sick time that you were eligible to receive, your employer could be fined \$10,000 for each violation and imprisonment up to 6 months.
- If your employer violates your rights under the EPSLA, you may file a lawsuit in federal or state court for lost compensation, or you may [file an administrative claim with the United States Department of Labor \(USDOL\)](#). If you prevail and you can prove the denial of paid sick leave was willful, you will be entitled to receive two times your economic losses and receive an award of attorney fees.

Can my employer retaliate against me for requesting a leave under the EPSLA?

- No. You are protected against retaliation by your employer if you request a paid leave under EPSLA. The types of retaliation which are prohibited include termination, demotion, suspension, discipline, harassment, transfer to less favorable work assignments or locations or any other retaliation which would dissuade the average worker from pursuing rights under these laws. Your employer can be fined up to \$10,000 per violation, face imprisonment and be required to compensate you for your economic losses and two times your losses if the discrimination or retaliation was willful.

Can I collect benefits under the EFMLA and EPSLA for the same leaves?

- Yes. These new laws have been enacted to complement each other. You may be eligible for paid sick leave even if you have worked for your employer for only 1 day provided your leave is based on one or more of the qualifying reasons for the leave.
- If you qualify under the EFMLA, your first 10 work-days of the EFML time off is unpaid but you can collect paid sick leave for 80 hours or 10 work days. If your absence for work exceeds 80 hours, and you wish to continue receiving pay from your employer, you

will have to qualify for a EFMLA and if you qualify, you can receive payments for 12 weeks with caps of \$200 per day and an aggregate amount of \$10,000. Although the qualifying reasons are different under the two new laws, there is considerable overlap.

If I am an independent contractor, can I qualify for benefits under the EFMLA and EPSLA?

- Possibly. If you are an independent contractor, you may still qualify for benefits under the EFMLA and EPSLA provided that you can establish that the independent contractor status is a mere label and that you perform your work as an employee. You should seek the advice and guidance of a qualified attorney.

What should I do if I miss work or if my employer takes action against my employment for medical reasons, including coronavirus, and the employer is not covered by the EFMLA or EPSLA?

- You should consider seeking the advice and counsel of a qualified employment attorney, even if you are not covered by these new laws. It is possible that you may be protected by other employment laws even if these new laws do not apply to your specific situation.

COVID-19 MI Unemployment Insurance Program

Temporary Changes to Federal Law. In response to the coronavirus outbreak, Congress passed the Emergency Unemployment Insurance Stabilization Act of 2020. To participate, states must demonstrate that they have taken steps to ease eligibility requirements and access to unemployment compensation for claimants, including waiving work search requirements and the waiting week.

On March 16, 2020, the Michigan Governor issued an executive order expanding unemployment eligibility, extending benefits, and easing restrictions and requirements for claimants seeking unemployment compensation.

- **Can I receive unemployment benefits if I have to leave work because my kids are out of school?**

Yes. Unemployment benefits are now available to workers with unexpected family care responsibility, including childcare responsibilities due to school closures.

- **Can I receive unemployment benefits if I have to leave work to care for a sick family member?**

Yes. Unemployment benefits are now available to workers with unexpected family care responsibility, including when a worker is forced to care for a loved one who is ill.

- **Can I receive unemployment benefits if I am off work due to my own illness?**

Yes. Benefits are available to workers who are (1) sick, quarantined, or immunocompromised and (2) do not have access to paid family medical leave.

- **Can I receive unemployment benefits if I am sick and laid off from work?**

Yes. Unemployment benefits are available to workers who are sick, quarantined, or immunocompromised and are laid off.

- **Can I receive benefits if I work in the public health field and I become ill?**

Yes. Unemployment benefits are available to first responders in the public health community who become ill or are quarantined because of exposure to COVID-19.

- **How many weeks of benefits can I receive?**

The executive order temporarily extended the number of weeks from 20 to 26 weeks.

- **Can I collect state unemployment benefits and federal paid sick leave benefits at the same time?**

No. Employees can obtain unemployment or federal paid sick leave benefits, but not both. If you have the choice, you should ask your employer to place you on unpaid or paid leave of absence to preserve your right to receive federal paid sick leave benefits.

- **Am I required to register for work?**
 - No. At this time, claimants are not required to register for work. Your application for benefits will be used to satisfy the work registration requirement when you file your claim.

[Here is the link to the Michigan Unemployment Insurance Agency.](#)

About Pitt McGehee Palmer and Rivers PC.

Pitt McGehee has represented employees in their disputes with their employers for more than 28 years. As the premier employment law and civil rights litigation firm in Michigan, Pitt McGehee's 10 trial attorneys have successfully prosecuted complex cases on behalf of employees on a state and nationwide basis.

The attorneys at Pitt McGehee are available to assist employees who have been impacted by the COVID-19 public health emergency. Our attorneys and staff are working remotely to make sure our clients and the public have full access to our legal services during this crisis.