Calculating Rate of Pay for Emergency FMLA and Emergency Paid Sick Leave

**Special Rules**

- Employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from Emergency FMLA and Emergency Paid Sick Leave.
- Secretary of Labor may exempt small businesses with fewer than 50 employees.
- Employee notice to company of need for leave – as soon as practicable.
- Employee may use Emergency Paid Sick Leave before any other employer-provided paid time off.
- Employee may not require employee to use other paid time off before Emergency Paid Sick Leave.
- Emergency Paid Sick Leave does not preempt any local paid sick leave requirements that already exist.
- No year-end carryover of unused Emergency Paid Sick Leave.
- Unused Emergency Paid Sick Leave is not paid out upon separation of employment.
- Employees may not retaliate against employees for use of Emergency Paid Sick Leave.
- Employee cannot be required to find replacement.

**Calculating Rate of Pay for Emergency FMLA and Emergency Paid Sick Leave**

- Full time employees: Regular rate of pay, hours normally scheduled to work.
- Part time employees, variable hour employees: Average number of hours employees worked for six months prior to taking leave.
- Employees with less than six months of service: Average number of hours the employee would normally be scheduled to work over two-week period.

**Note:**

- Federal government employees are covered by Title II of the Family and Medical Leave Act, therefore no eligible for Emergency FMLA.
- All public agencies are subject to Emergency FMLA.
- Under the Families First Coronavirus Response Act (FFCRA), employers are required to provide paid leave.

**Unpaid Leave**

- Emergency FMLA: Up to 12 weeks of job-protected leave.
- Emergency Paid Sick Leave: Up to 12 weeks - paid at 2/3 of the employee’s regular rate of pay.

**Reasons for Being Away from Work**

- Employee cannot be required to find replacement.
- Employers may not retaliate against employees for use of Emergency Paid Sick Leave.
- Unused Emergency Paid Sick Leave is not paid out upon separation of employment.

**Effective April 2020**

- **Emergency FMLA**
  - **Reason for Being Away from Work**
    - Employee notice to company of need for leave – as soon as practicable.
    - Employee may use Emergency Paid Sick Leave before any other employer-provided paid time off.
    - Employee does not preempt any local paid sick leave requirements that already exist.
    - No year-end carryover of unused Emergency Paid Sick Leave.
    - Unused Emergency Paid Sick Leave is not paid out upon separation of employment.
    - Job restoration at end of Emergency FMLA.

- **Emergency Paid Sick Leave**
  - **Reason for Being Away from Work**
    - Employee notice to company of need for leave – as soon as practicable.
    - Employee may use Emergency Paid Sick Leave before any other employer-provided paid time off.
    - Employee is not required to use other paid time off before Emergency Paid Sick Leave.
    - Emergency Paid Sick Leave does not preempt any local paid sick leave requirements that already exist.
    - No year-end carryover of unused Emergency Paid Sick Leave.
    - Unused Emergency Paid Sick Leave is not paid out upon separation of employment.
    - Employee may not retaliate against employees for use of Emergency Paid Sick Leave.
    - Employee cannot be required to find replacement.

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