

## The People Part of Covid-19

As we all step into unprecedented territory, many of you are having to maneuver through things you didn't even think about less than a week ago. Can my employees work from home? How do I keep operations running? I am now shut down; how do I help my employees during this time of unexpected unemployment? And so much more.

We are dealing with reality vs. compassion and regulations vs. caring. SDAO has developed this summary document for you to try to help you with the "people" part of your business. In addition, our friends at CityCounty Insurance Services shared a summary document they developed that we can also provide to you.

Please know, this landscape we are currently in is changing rapidly and almost hourly. We encourage you to keep in touch with all of your resources to be kept abreast of the most current information. We don't have all the answers at this time, but will continually update our website and provide communications to you as the nuances become clearer.

As you know, Gov. Kate Brown ordered Oregonians to stay home through an executive order issued Monday, March 25<sup>th</sup>, and banned all non-essential gatherings, no matter how small, to try to slow the spread of the novel coronavirus after crowds of people descended on the state's beach towns and hiking trails over the weekend, despite pleas to stay home. What happens to your employees?

First, if you can accommodate telework, it would be a good consideration. If you cannot, and you must have people on a leave without pay status, there is new temporary legislation in place that you need to be aware of to be compliant.

**The Families First Coronavirus Response Act** has added additional temporary protection for the employees of Oregon who qualify. This legislation goes into effect April 1, 2020 and sunsets December 31, 2020. It consists of two components; Emergency Family and Medical Leave and Temporary Emergency Paid Sick Time. This legislation may be modified over the next weeks, so be sure to look out for any changes.

Legislation	What you should consider
<p><b>Emergency Family and Medical Leave – General</b></p> <ul style="list-style-type: none"><li>a. Applies to ALL employers with fewer than 500 employees</li><li>b. Allows the Secretary of Labor to exclude health care providers and first responders and employers with fewer than 50 employees if the leave would jeopardize the viability of the business</li><li>c. Employee will have to have been employed 30 calendar days to be able to take EFML and both full and part time employees are eligible to receive up to 12 weeks of EFML</li><li>d. Employers must post and provide notice to employees about their rights under the Act as provided by the Department of Labor. This link will take you to their page and highlighted area about COVID-19 <a href="https://www.dol.gov/agencies/whd/pandemic">https://www.dol.gov/agencies/whd/pandemic</a> As of the development of this summary, a poster isn't available.</li></ul>	<p>This applies to your organization if you are a health care provider or first responder or have less than 50 employees, be aware of this caveat.</p> <p>Review your staffing to see if you have any employees who have been with you for less than 30 days that may not be eligible for EFML</p> <p>Keep an eye out for the posting/notice you have to provide as developed by the Department of Labor. It should be available relatively soon. Provide notice to your employees of this new legislation.</p>

### Emergency Family and Medical Leave – Reasons and Coverage

- a. EFML is intended to cover an employee who is unable to work or telework due to a need for leave to care for a child (under 18) **of the employee** if the school or place of care has been closed or the child care provider of said child is unavailable due to a public health emergency.
- b. There are no minimum hours worked requirement.
- c. EFML is limited to “an emergency with respect to COVID-19 declared by federal, state or local authority”.

### Emergency Family and Medical Leave – Compensation

- a. The first 10 days of EMFL is unpaid. The employee can choose to use their sick, vacation, comp or any other paid leave for those ten days. The employer cannot require the employee to use accrued leave hours to cover the 10 days.
- b. After the first ten days, employers must provide paid leave for each additional day off.**
- c. The rate the employer must compensate an employee at after the first 10 days, is at a rate of at least 2/3rds of their regular rate of pay for the number of hours the employee would have been regularly scheduled to work. This is subject to a cap of \$200.00 per day and \$10,000 in the aggregate.

### Emergency Family and Medical Leave – Job Protection

- a. Employers with less than 25 employees are not required to reinstate employees at the end of the leave if the positions the employee held when leave commenced don't exist due to economic conditions or other changes in operating condition of the employer that; a) affect employment and b) are caused by a public health emergency during the period of leave.
- b. However, employers with less than 25 employees must make reasonable efforts to reinstate the employee and if unable to, the employer must contact the affected employee(s) if an equivalent position becomes available within a year.

Manage any request for EFML as per the eligible criteria listed.

You may want to develop a specific EFML request form for your staff to utilize.

This is different from FMLA in that your employee doesn't have to work a minimum number of hours to be eligible. Any use of EMFL is for the COVID-19 pandemic eligible reasons.

Be sure to be tracking time for EFLM correctly and document the 10 days of unpaid leave having been exhausted prior to moving into a paid status.

Track the employee time to ensure that correct and documented date upon which paid time is calculated from.

Work with your payroll to ensure timely payment of appropriate salary for those on EFML.

Establish a plan for getting the employees back to work, such as a communication plan. Let employees know how you will be reaching out to them to let them know of any return to work dates.

Look at your various positions and as needed, determine which positions could be considered equivalent to each other.

- c. The Secretary of State will be given authority to exclude certain health care providers and emergency responders from this requirement.
- d. The Secretary of State will be given authority to exempt small businesses with fewer than 50 employees, when “the imposition of such requirements would jeopardize the viability of business is going concern”.

**Temporary Emergency Paid Sick Time – General**

- a. Applies to all public employers with 1 or more employees.
- b. Allows the Secretary of Labor to exclude health care providers and first responders and employers with fewer than 50 employees if the leave would jeopardize the viability of the business.
- c. Employers must post and provide notice to employees about their rights under the Act as provided by the Department of Labor. This link will take you to their page and highlighted area about COVID-19 <https://www.dol.gov/> As of the development of this summary, a poster isn’t available.
- d. Employees may take sick time regardless of how long the employee has been employed by the employee.
- e. Employers cannot:
  - I. Employers who already offer paid sick time cannot substitute their existing sick time policies for the 80 hours require by this law; they must provide 80 hours in addition to their existing sick/PTO policies.
  - II. Change existing paid sick time or PTO policies to avoid being subject to the additional 80-hour requirement.
  - III. Require employees to use other accrued, unused sick/PTO before using the additional 80 hours.
  - IV. Require employee to search for or find a replacement employee to cover their hours as a condition of using paid sick time.

**Temporary Emergency Paid Sick Time – Reasons and Coverage**

It allows **full time employees** to take up to 80 hours of **employer paid sick time** for the following:

This applies to every employer.

Keep an eye out for the posting/notice you have to provide as developed by the Department of Labor. It should be available relatively soon. Provide notice to your employees of this new legislation.

Be aware that the sick time provided is for all employees regardless of how long they have worked for you.

Suggestion: Establish a separate sick leave bank for employees in which you “load” 80 hours. Then they can be sure to draw from the correct bank.

Do not change any of your sick time/PTO policies in response to the Temporary Emergency Paid Sick Time.

Don’t have employees use their accrued sick leave/PTO before using the additional 80 hours for the reasons outlined.

- a. Employee is subject to federal, state or local quarantine or isolation order related to COVID-19 - capped at \$511 per day and \$5,100 in the aggregate.
- b. Employee has been advised by a health care provider to self-quarantine due to concerns relate to COVID-19 - capped at \$511 per day and \$5,100 in the aggregate.
- c. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis - capped at \$511 per day and \$5,100 in the aggregate.
- d. Employee is caring for an individual who is subject to an order as described in 1 or 2 – paid at 2/3rds the employee’s rate and capped at \$200 per day and \$2,000 in the aggregate.
- e. Employee is caring for a child of employee if school or place or care of the child is closed or the child care provider of child is unavailable due to COVID-19– paid at 2/3rds the employee’s rate and capped at \$200 per day and \$2,000 in the aggregate.
- f. Employee is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services in consultation with the Treasury and the Secretary of Labor – paid at 2/3rds the employee’s rate and capped at \$200 per day and \$2,000 in the aggregate.

**Part time** employees make take “a number of hours equal to the number of hours that such employee works, on average, over a two-week period”.

Paid sick time ends beginning with the employee’s next schedule shift immediately following the end of their need for time off due to one of the reasons listed.

Review the reasons that employees can utilize the additional 80 hours of sick time. Determine/establish your system for documentation purposes, such as requiring a doctor's note. Review your current policies and we suggest mirroring what your current policies and practices are.

Work with your payroll to establish correct compensation between a, b, and c vs. d, e and f.

Determine for your part time staff, their average number of hours over a two-week period.



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## **COVID-19 LEAVE WORKSHEET**

This worksheet is intended to help make sense of the Federal Emergency Paid Sick Leave Act (EPSLA), the Federal Emergency Family and Medical Leave Expansion Act (EFMLEA), and a new regulation relating to the Oregon Family Leave Act. Please also see the “COVID-19 Policy” available in the COVID section of the H2R Toolbox.

### Quick facts and notes:

- EPSLA and EFMLEA become effective on April 1, 2020, and sunset on December 31, 2020.
- BOLI amended its OFLA regulations and, as of March 18, 2020, an eligible employee may take OFLA to care for a child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official. This regulation is set to expire on September 13, 2020.
- Employers can choose to be more generous than these laws, but they must at least meet these requirements.
- If you have a question about how these laws interact with your collective bargaining agreements, speak to your labor counsel.

## COVID Leave Request Decision Tree:

If an employee requests leave for a COVID-related reason, ask yourself the following questions:

- Can the employee work from home? If so, work out a telecommuting agreement with the employee. See sample telecommuting agreement in the COVID section of the H2R Toolbox.
- If the employee cannot work remotely, either due to the reason for leave (e.g., ill, taking care of someone ill, or school closure) or the nature of their job, what is the employee's stated reason for needing leave? Consult Chart A to determine which laws, if any, apply.
- Make a list of the laws that apply.
- For each law, consult Chart B to determine if the employee requesting leave is eligible.
  - Exemptions: Under the EPSLA, an employer may elect to exclude health care providers and emergency responders from eligibility. There may end up being similar exemptions under the EFMLEA. There are no health care provider or emergency responder exemptions under Oregon Sick Time, OFLA, or pre-existing FMLA. Call CIS if you have a question about this.
  - It is important to note that an employee diagnosed with a confirmed case of COVID-19 may still qualify under standard FMLA and/or OFLA as a serious health condition for themselves or their family member. For instance, an employee might qualify for EPSLA for paid leave and then FMLA for a serious health condition. If so, employers should follow the normal family medical leave process.
- For EFMLEA and OFLA, consider amount of leave available. Except in limited circumstances, employees are only entitled to 12 weeks of FMLA or OFLA leave during a leave year. Does the employee have OFLA and/or FMLA leave still available? If yes, determine how much.
- Once you've determined that the employee is eligible, determine how he or she will be paid. Consult Chart C.

**Chart A: Which Leave Law(s) Applies?**

<b>Need for Leave</b>	<b>FMLA</b>	<b>EFMLEA</b>	<b>OFLA</b>	<b>OR Sick Time</b>	<b>EPSLA</b>
1. Subject to a local, federal, or quarantine or isolation order	No	No	No	Depends. See OAR 839-007-0020(6)	Yes
2. Has been advised by a medical provider to self-quarantine due to COVID-19 concerns	No	No	No	Yes. OAR 839-007-0020(6)(b)	Yes
3. Is experiencing symptoms of and is seeking medical care for symptoms of COVID-19	Yes, if meets definition of "serious health condition"	No	Yes, if meets definition of "serious health condition"	Yes	Yes
4. Is caring for an individual for any of the foregoing reasons	Yes, if individual fits definition of family member	No	Yes, if individual fits definition of family member	Yes, if individual fits definition of family member	Yes
5. Is caring for a child whose school has been closed, or whose childcare provider is unavailable, due to a public health emergency related to COVID-19	No	Yes For son or daughter as defined in FMLA; under 18; "school" means elementary and secondary schools	Yes For child as defined in OFLA; "school" is not defined	Yes	Yes
5. Are experiencing any other "substantially similar condition"*	Yes	No	Yes	Yes	Yes

\*Definition to come.

**Chart B: Which employees are eligible?**

<b>FMLA</b>	Employees who work at a site with 50 or more employees and who have worked 1250 hours for the employer within the last 12 months
<b>EFMLEA</b>	Employees who have worked for the employer at least 30 days immediately prior to need leave. Exception for "health care providers" and "emergency responders."*
<b>OFLA</b>	Employees whose employer has 25 or more employees and who have been employed for at least 180 days for an average of 25 hours per week
<b>OR Sick Time</b>	Everybody! Paid leave is required for employers who have 10 or more employees; unpaid leave is required for employers with fewer than 10 employees. 90-day waiting period for new employees.
<b>EPSLA</b>	All employees immediately. Potential exception for "health care providers" and "emergency responders."*

\* These terms were not defined by the law. We will update this chart once we have more information.

**Chart C: To what pay is the employee entitled?**

<b>EFMLEA</b>	First 10 workdays unpaid (but employee can choose to use accruals); after that at least 2/3 of employee's regular pay during the leave, up to a maximum of \$200/day and \$10,000 total.
<b>OR Sick Time</b>	Up to 40 hours; prorated for part-time. Pay regular rate unless employer has fewer than 10 employees (then, just unpaid).
<b>EPSLA</b>	Up to 80 hours; prorated for part-time. Pay regular rate, up to a maximum of \$511 per day and \$5,100 total for three reasons identified in law (see sample COVID-19 Policy). Employees must be paid 2/3 of their regular rate, up to a maximum of \$200 per day and \$2,000 total for three different reasons identified in the law (see sample COVID-19 Policy).
<b>Accrued Leave</b>	Follow employer policy to cover absences that are not covered by other leave laws.

**Once an employee becomes eligible for pay under either of the new federal laws, the employer cannot require the employee to use accrued leave (i.e. standard sick and vacation time) before using the paid sick time provided under new federal laws. An employee can, however, use accruals to cover the first 10 unpaid days of Emergency FMLA leave.**