

# Leave Laws: Compliance, Coordination, and Best Practices

# Objectives



- Overview of required leave policies and recent changes in response to COVID-19
- Recent developments in federal paid sick leave
- ADA Best Practices
- How the Paid Medical Leave Act interacts with other laws
- Discretionary leave laws

# COVID-19 Employment Status

Permanent Termination	Temporary Leave/Layoff (with or without leave)	Employed and Working (Remotely or in Person)
Employment has ended; no longer active on payroll.	Employee is still active on payroll, whether paid or unpaid, but not working.	Employee is working, either remotely or in person.  *If working in person, then must be given a written designation notice, identifying their role as critical infrastructure worker or minimum basic operations worker

# Legally Required Leave Policies

- What are the various leave laws?
  - Family and Medical Leave Act (FMLA)
    - » Emergency Family and Medical Leave Expansion Act (EFMLEA)
  - Emergency Paid Sick Leave Act (EPSLA)
  - Americans with Disabilities Act (ADA)
  - Michigan Persons with Disabilities Civil Rights Act (PDCRA)
  - Michigan Paid Medical Leave Act (PMLA)

# Family and Medical Leave Act

- Covered Employer: Employs 50 or more employees
  - Remember to use the integrated employer test
- Eligible Employee: works for a covered employer, has worked for at least 12 months and for at least 1250 hours.
  - Michigan has long been a state that applies an equitable test in favor of employees. If an employer who isn't covered by FMLA offers FMLA, it can be bound by FMLA provisions.
  - Important to be aware of when a company becomes a covered employer and offer FMLA benefits at that time.



– Times may be changing...

# Family and Medical Leave Act

- Qualifying Reasons for Leave:
  - Birth or placement of a child for adoption (applies to women and men equally)
  - a serious health condition of employee
  - to care for certain family members with a serious health condition
  - qualifying exigency arising out of employee's select family member if a member of the military on covered active duty

# Emergency Family and Medical Leave Expansion Act (EFMLEA)

- Amended through the Families First Coronavirus Relief Act (FFCRA)
- Takes effect April 1, 2020
- The amendment expands FMLA to include employees who have worked for an employer with less than 500 employees (except if fewer than 50 employees and viability of business jeopardized)
  - Integrated employer test

# Emergency Family and Medical Leave Expansion Act

- Employees must be employed for at least 30 days to use FMLA based on inability to work (or telework) due to:
  - **Need to care of son or daughter under 18 years of age if school or place of care has been closed or child care is unavailable due to public health emergency related to COVID-19.**



# Emergency Family and Medical Leave Expansion Act

# Notice of FMLA Eligibility

Employer must notify employee of FMLA eligibility within 5 days of acquiring knowledge that an employee may be eligible for FMLA leave



# COVID-19 Employment Status

Permanent Termination	Temporary Leave/Layoff (with or without leave)	Employed and Working (Remotely or in Person)
<p>Not eligible for FMLA or EFMLEA</p>	<p>Refer to regulations when published</p> <p>See DOL Q&amp;A #23 and 24</p> <p>If, prior to or after Apr 1, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.</p>	<p>Eligible for FMLA (1 year, 1250 hours, 50 employees in 75-mile radius) for qualifying reason.</p> <p>Eligible for EFMLEA if employed for at least 30 days to care for child under expanded reason.</p>

# Emergency Paid Sick Leave Act

- Applies to employers with fewer than 500 employees (except if fewer than 50 employees and viability of business jeopardized)
- All employees, regardless of how long they have worked for employer.
  - Full-time: 80 hours
  - Part-time: the average number of hours that the employee works over a two-week period



# Emergency Paid Sick Leave Act

- Employees may use paid sick leave for the following 6 reasons:
  - **Employee is subject to a Federal, State, or local quarantine or isolation order related to coronavirus**
  - Employee has been advised by a health care provider (as defined by the FMLA) to self-quarantine due to concerns related to coronavirus
  - Employee is experiencing symptoms of coronavirus and seeking a medical diagnosis
- Employees using leave for the above reasons will be paid at their regular rate of pay or minimum wage (whichever is higher), up to \$511 per day and \$5,110 in the aggregate.

# Emergency Paid Sick Leave Act

- Employee is caring for an individual who is subject to an order of quarantine as described in the first and second reasons above
- Employee is caring for employee's son or daughter (as defined by FMLA), whose school or place of care has been closed, or the childcare provider is unavailable, due to coronavirus precautions
- Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and Secretary of Labor)
- Employees using leave for the above reasons will be paid at two-thirds their regular rate of pay or minimum wage (whichever is higher), up to \$200 per day and \$2,000 in the aggregate.

# Emergency Paid Sick Leave Act

- After the first day, employers may require reasonable notice procedures to continue receiving paid sick leave.
- Employees must not be required to find a replacement for shift.
- Employers may not require employees to use other paid leave before using paid sick leave.
- May not discriminate or retaliate against employees using leave under this law.
- This leave does not diminish benefits under other laws, CBAs, or existing employer policies.

# COVID-19 Employment Status

Permanent Termination	Temporary Leave/Layoff (with or without leave)	Employed and Working (Remotely or in Person)
Not eligible for EPSL	Refer to regulations when published  See DOL Q&A #23 and 24  If, prior to or after Apr 1, your employer sent you home and stops paying you because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it is required to close pursuant to a Federal, State, or local directive.	All eligible



## Unemployment Benefits

- Unemployment insurance benefits are intended to support employees in between jobs by providing payments of up to \$362 to eligible employees through Michigan's Unemployment Insurance Agency ("UIA").
  - Individuals are generally eligible if terminated from employment (unless they voluntarily resigned or engaged in gross misconduct).

# Unemployment Benefits – Executive Order 2020-24

- Expansions (Effective March 16 – April 22, 2020):
  - Must apply within 28 days (instead of 14) of last day worked
  - Benefits continue for 26 weeks (instead of 20)
  - Employees are not required to show the UIA that they are seeking alternate work because the UIA has deemed for all individuals that due to COVID-19, suitable work is unavailable.
  - Benefits for employees who are laid off or on leave will not be charged to an employer's account.

# Unemployment Benefits – Executive Order 2020-24

- Individuals will be eligible for benefits if they have left work involuntarily, are laid off, or placed on leave of absence because of:
  - Self-isolation or self-quarantine in response to elevated risk from COVID-19 due to being immunocompromised;
  - Displaying the symptoms of COVID-19;
  - Having contact in the last 14 days with someone with a confirmed diagnosis of COVID-19;
  - The need to care for someone with a confirmed diagnosis of COVID-19; or
  - A family care responsibility as a result of a government directive (if on leave, however, there is an exception to eligibility if the individual is already on sick leave or receives a disability benefit).

# Unemployment Benefits – CARES Act

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking medical diagnosis
- A member of the individual's household has been diagnosed with COVID-19
- The individual is providing care for a family member or member of their household who has been diagnosed with COVID-19.
- A member of their household for which they have primary caregiving responsibility is unable to attend school or another facility that has been closed as a direct result of the COVID-19 public health emergency and because of this closure they are unable to work.

# Unemployment Benefits – CARES Act

- The Individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19
- The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19
- The Individual was scheduled to commence employment and does not have a job or was unable to reach the job as a direct result of the COVID-19 epidemic
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19

# Unemployment Benefits – CARES Act

- The individual has quit his or her job as a direct result of COVID-19
- The individual's place of employment is closed as a direct result of the COVID-19 epidemic
- Individual meets any other criteria established by the Secretary for unemployment assistance
- Is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation and meets the eligibility requirements for unemployment benefits.

## Unemployment Benefits

- This program will cover self-employed workers (including gig workers and independent contractors), part-time workers, and those with limited work histories.
- The \$600 per week payment and the extension of unemployment for an additional 13 weeks will be state-administered but fully federally funded.

# COVID-19 Employment Status

Permanent Termination	Temporary Leave/Layoff (with or without leave)	Employed and Working (Remotely or in Person)
Eligible for unemployment	Eligible for unemployment	Not eligible



# Unemployment Benefits – CARES Act

- Benefits are extended for a total of 39 weeks (inclusive of state benefits) from January 27, 2020 – December 31, 2020.
- Self-employed individuals are eligible.
- Individuals having ability to telework with pay or who are otherwise receiving paid sick leave or other paid leave benefits are not eligible.
- Provides additional \$600 as unemployment benefits
- although federally funded, this amount will come through the state, effective through July 31, 2020

# Americans with Disability Act (ADA) & Michigan Persons with Disabilities Civil Rights Act (PWDCRA)



# “Person with Disability”

## Essential Functions & Reasonable Accommodations



# Breakfast Bites

Leave Laws: Compliance,  
Coordination, and Best Practices



# Michigan Paid Medical Leave Act

- Applies to employers with 50 or more employees
- 40 hours of paid leave to eligible employees
  - Non-exempt who worked an average of 25 hours per week in prior calendar year, subject to other exceptions
- Accrual or lumpsum



# Michigan Paid Medical Leave Act

- **Employees may take paid medical leave for any of the following:**
  - Physical or mental illness, injury, or health condition of the employee or his or her family member
  - Medical diagnosis, care, or treatment of the employee or employee's family member
  - Preventative care of the employee or his or her family member
  - Closure of the employee's primary workplace by order of a public official due to a public health emergency
  - The care of his or her child whose school or place of care has been closed by order of a public official due to a public health emergency
  - The employee's or his or her family member's exposure to a communicable disease that would jeopardize the health of others as determined by health authorities or a health care provider

# Michigan Paid Medical Leave Act

- **For domestic violence and sexual assault situations, employees may use paid medical leave for any of the following:**
  - Medical care or psychological or other counseling
  - Receiving services from a victim services organization
  - Relocation and obtaining legal services
  - Participation in civil or criminal proceedings related to or resulting from the domestic violence or sexual assault

# Discretionary Leave Policies

- What types of policies are out there?
  - Leave of Absence
    - » Paid
    - » Unpaid





## Leave of Absence

- Outside of legally-required leaves, employers may also provide the benefit of a discretionary leave of absence.
- Seeing this as a viable option for employers who do not want to terminate employees during an economic slow down
- Allows employees who are not receiving pay to stay on the payroll and possibly continue to receive benefits
- A leave of absence policy is an important policy to have in the employee handbook because it will provide guidance when faced with an employee who is seeking more leave.

## Notices Required

- Employee Rights Poster (EFMLEA and EPSLA)
  - FMLA notices to employees requesting leave
- Michigan Paid Medical Leave Poster
- Oakland County Executive Order
- Wayne County Public Health Order

# Practical Applications for Leave

- Evaluate eligibility for federal paid sick leave and EFMLEA
  - Is employer subject to the act?
  - Is employee subject to the act?
  - Eligible reason to use leave?
  - Determine amount of pay

# Practical Applications for Leave

- **FMLA Leave:** Regardless of whether eligible for the federal paid leave:
  - Issue an FMLA Notice of Rights and Eligibility with the reason and time period the employee is requesting.
  - Continue benefits for the FMLA approved period.

# Practical Applications for Leave

- **Paid Sick Leave:** If the employee is eligible for the federal paid leave:
  - Continue benefits during this period over which employee uses paid sick leave.
  - Document the reason for leave
- **Unemployment Benefits:** After an employee has exhausted the federal paid sick leave (or if they are otherwise not entitled to paid sick leave), he or she may be eligible for unemployment if his or her physician recommends quarantine based on an underlying immunocompromised state. The employee could apply for unemployment at that time.

# EMPLOYEE ENTITLEMENT

Employee Circumstance	Come to work?	Emergency Paid Sick?	Emergency FMLEA?	PMLA
Positive COVID-19	No	Yes, up to \$511	No	Yes
Symptoms of COVID-19	No	Yes, up to \$511	No	Yes
Symptoms similar to COVID-19	Physician*	Yes, up to \$200	No	Yes
Caring for COVID-19	Physician*	Yes, up to \$200	No	Yes, if family
Caring for child whose school is closed by gov't order/childcare unavailable due to COVID-19		Yes, up to \$200	<b>Yes</b>	Yes
At risk of severe illness based on underlying medical condition	Physician recommend*	Possibly, if quarantined, up to \$511	No	Possibly