

Federal Emergency Paid Leave and Expanded Unemployment Benefits: How does it all work?

Presented by:

Suzanne W. King
Pierce Atwood LLP
617.488.8159
sking@pierceatwood.com

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Agenda

- Federal Emergency Family and Medical Leave Expansion Act (“EFMLEA”)
- Federal Emergency Paid Sick Leave Act (“EPSLA”)
- Unemployment Benefit Expansion
 - Maine
 - Massachusetts
 - New Hampshire
- Applying these programs in the real world

Emergency Family and Medical Leave Expansion Act

- Applicable to employers with fewer than 500 employees
- Provides up to **12 weeks** of job protected leave to be used to **care for a child under 18 if the child’s school or place of care has been closed, or the child-care provider is unavailable**, due to the coronavirus.
- Emergency family and medical leave is paid at rate of **2/3 of employee’s regular pay but capped at \$200/day or \$10,000 in aggregate**
- First two weeks are unpaid!
- Employers may opt out of the paid leave for employees who are health care providers or emergency responders
- Employees are eligible if they have been employed for 30 calendar days

Emergency Paid Sick Leave Act

- Emergency Paid Sick Leave for **two weeks** when employee is unable to work or telework and:
 - Complies with a recommendation from health care provider to self-isolate;
 - Complies with a Federal, State, or local quarantine or isolation order;
 - Seeks a diagnosis or care for coronavirus symptoms;
 - To care for an individual who is subject to a health care provider recommendation to isolate or a government quarantine or isolation order;
 - To care for a child whose school or place of care has been closed or child care provider is unavailable, due to coronavirus;
 - Or any other substantially similar condition.

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Emergency Paid Sick Leave Act

- Two week paid sick leave is
 - **100% of regular pay, capped at \$511/day; \$2,555/week; and \$5,110 in the aggregate, when for self care, and**
 - **2/3 of regular pay, capped at \$200/day; \$1,000/week; and \$2,000 in the aggregate, when for care of others**
- Employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time
- Available to all employees regardless of length of service (with exception for health care providers and emergency responders)
- Notice must be posted

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EFMLEA and EPSLA

- Both apply only to employers with fewer than 500 employees
- Paid by employer but reimbursed by the government through a tax credit
- Effective within 15 days of enactment

EXPANDED UNEMPLOYMENT BENEFITS

Maine

- Effective March 17, 2020
- Employee must remain able and available to work for, and maintain contact with, the employer
- Employee is:
 - Under a temporary medical quarantine or isolation restriction to ensure that the employee has not been affected by the subject condition of the state of emergency and is expected to return to work;
 - A demonstrated risk of exposure or infection;
 - Temporarily laid off due to a partial or full closure of the employee's place of employment as a result of the state of emergency and is expected to return to work once the emergency closure is lifted;
 - Needed to care for a dependent family member (this includes school closures)
- The one-week waiting period is waived for an employee who is dislocated or temporarily laid off as a result of the state of emergency.
- Usual cap applies: \$455/wk without dependents, \$667/wk with dependents

Massachusetts

- Effective March 10, 2020, one-week waiting period waived
- New regulations create a "stand-by status":
 - Claimant is temporarily unemployed because of a lack of work due to COVID-19, with an expected return to work date
 - For a maximum of 8 weeks, but that can be extended "due to a COVID-19 infection at the employer's place of business that causes the employer to close or severely curtail operations for a longer period of time"
 - Employees must remain in contact with their employer and must be available for all hours of **suitable work** offered by the employer
 - In determining whether work is suitable, the department will consider whether a claimant has a **condition** that prevents claimant from performing essential function of position
 - Condition means a request to a claimant from an employer, a medical professional, a local health official, or any civil authority that the ee or member of immediate family or household member be isolated or quarantined as a consequence of COVID-19, even if claimant/family/household member has not actually been diagnosed with COVID-19.
- Usual cap applies: \$823/wk

New Hampshire

- Effective March 17, 2020
- Unemployment benefits are available if employee:
 - Has a current diagnosis of COVID-19;
 - Is quarantined (including self-imposed), at the instruction of a health care provider, employer, or government official, to prevent the spread of COVID-19;
 - Is caring for a family member or dependent who has COVID-19 or is under a quarantine related to COVID-19; or
 - Is caring for a family member or dependent who is unable to care for themselves due to the COVID-19 related closing of their school, child care facility, or other care program.
- One-week waiting period is temporarily suspended
- In the event the federal government passes any legislation establishing similar benefits, NH UI shall immediately terminate and benefits will be paid under federal program
- Usual cap applies: \$427/wk

APPLYING THESE PROGRAMS

IN THE REAL WORLD

Double Dipping?

Employers must pay the required leave to employees who elect to use federal leave even if the employee would also qualify for unemployment.

Unemployment statutes take into account partial wages received from the employer, so employees will not qualify for unemployment at the same time as they are receiving paid leave benefits.

How Does This Work?

Employee makes \$15/hr (\$600/wk) and needs 10 weeks of leave to care for child due to school cancellation

- EPSLA – Employer pays 2/3 of wages for 2 weeks subject to cap of \$200/day and \$2000 total (i.e., ee receives \$400/week)
- EFMLEA – Employer pays 2/3 of wages for 8 weeks subject to cap of \$200/day and \$10,000 total (i.e., ee receives \$400/wk)

EPSLA: Emergency Paid Sick Leave

EFMLEA: Emergency Family and Medical Leave Expansion Act

How Does This Work?

Employee makes \$15/hr (\$600/wk) and needs 10 weeks of leave to recover from her own COVID-19 illness

- EPSLA – Employer pays 100% of wages for 2 weeks which is less than cap of \$511/day and \$2555 per week (i.e., ee receives \$600/wk)
- EFMLEA – not available
- Regular unpaid FMLA available for remaining 8 weeks
- Pay potentially available under STD, employer sick leave
- Unemployment?
 - Yes in Maine and NH
 - 8 weeks for sure is covered in MA, not clear on remaining 2 weeks

EPSLA: Emergency Paid Sick Leave

EFMLEA: Emergency Family and Medical Leave Expansion Act

How Does This Work?

Employee makes \$1,600/week and needs 15 weeks of leave to care for child due to school cancellation

- EPSLA – Employer pays 2/3 of pay for 2 weeks, capped at \$1,000/wk
- EFMLEA – Employer pays 2/3 of pay for 10 weeks, capped at \$1,000/wk
- Unemployment available for remaining 3 weeks

How Does This Work?

Employee makes \$1,400/week and needs 2 weeks of leave to self-quarantine and 4 weeks of leave to care for infected relative

- EPSLA – Employer pays 100% of wages (\$1,400/wk) for 2 weeks – employee receives full pay because higher cap applies (\$511/day and \$2555 per week)
- EFMLEA – Employee not entitled to paid leave for this reason
- 4 weeks of unemployment benefits and job-protected leave under regular FMLA if available

Firm Resource Available: Summary Chart

	(Federal) Emergency Family and Medical Leave Expansion Act For employers with <500 ees	(Federal) Emergency Paid Sick Leave Act For employers with <500 ees	(State) ME Emergency Unemployment	(State) MA Emergency Unemployment	(State) NH Emergency Unemployment	(State) Sick Time Laws	(Employer) Vacation/PTO/ Sick Time policies	(Employer) Short Term Disability
4. Employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19	Not covered	Covered Up to 80 hours for f/t (or 2 weeks of regular schedule for p/t) paid at regular rate of pay up to cap of \$511/day (\$5110 total)	Covered "Under a temporary medical quarantine or isolation restriction to ensure that the individual has not been affected by" COVID-19"	Awaiting regulations	Covered "The individual is quarantined . . . at the instruction of a health care provider . . . to prevent the spread of COVID-19"	Covered under MA Earned Sick Time	Likely covered	Unclear, depends on terms of plan

	(Federal) Emergency Family and Medical Leave Expansion Act For employers with <500 ees	(Federal) Emergency Paid Sick Leave Act For employers with <500 ees	(State) ME Emergency Unemployment	(State) MA Emergency Unemployment	(State) NH Emergency Unemployment	(State) Sick Time Laws	(Employer) Vacation/PTO/ Sick Time policies	(Employer) Short Term Disability
6. Employee is caring for a son or daughter if the school or place of care has been closed, or the child care provider is unavailable, due to COVID-19 precautions	Covered if son or daughter is under 18 years (school means elementary or secondary school) Up to 12 weeks of job-protected leave if ee cannot work or telework. First 10 days is unpaid, thereafter paid at rate of 2/3 regular rate of pay up to cap of \$200 per day, \$10,000 in aggregate	Covered Up to 80 hours for f/t (or 2 weeks of regular schedule for p/t) paid at 2/3 of regular pay up to cap of \$200/day (\$2000 total)	Covered "an individual who is on a temporary leave of absence due to ... a need to care for a dependent family member as a result of COVID-19" Confirmed through DOL that Maine UI covers ees when school is closed and ee maintains contact with er and er intends to recall ee.	Awaiting regulations	Covered if family member is "unable to care for themselves" "The individual is caring for a family member or dependent who is unable to care for themselves due to the COVID-19 related closing of their school, child care facility, or other care program."	Not covered	Likely covered	Not covered

Questions?

Please contact your Pierce Atwood employment lawyer with any questions about these complex issues:

Jim Erwin: jerwin@pierceatwood.com

Suzanne King: sking@pierceatwood.com

Meg LePage: mlepage@pierceatwood.com

Katy Rand: krand@pierceatwood.com

Presenter

Suzanne W. King

sking@pierceatwood.com
100 Summer Street
22nd Floor
Boston, MA 02110

One New Hampshire Avenue
Suite 350
Portsmouth, NH 03801

PH / 617.488.8159