For all questions, the best place to start is Fisher Phillips’s website, which is now a COVID-19 resource center. Especially pertinent is the FAQ section.

With schools shut down, possibly through the end of the year, does that mean every employee with kids that cannot telework is automatically paid 12 weeks under the new FMLA?

They will be eligible for leave, but they must apply. You do not have to pay them automatically.

I have heard mixed information on the under 50 employees. Do you have to request an exception or are you automatically exempted because you are not required to give FMLA in general.

You are not automatically excepted. The DOL guidance will determine whether you must apply or meet certain requirements to qualify for the exception. The USDOL FAQs issue today state that, to elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the Department, which will be addressed in more detail in forthcoming regulations. You should not send any materials to the Department of Labor when seeking a small business exemption for paid sick leave and expanded family and medical leave.

If we have an STD policy that pays more than the sick pay policy or paid FMLA, and the employee meets the terms of STD, does the benefit default to the highest payout or does the new leave override?

If they are eligible for STD and apply for it, they are entitled to it. It defaults to the higher amount.

If I furlough an employee, do I need to continue to pay for their benefits. What happens with their portion of the payment of the benefits?

You are not required to cover their benefits. In the normal course of events, group health plan coverage will cease when an employee’s share of premiums is not timely paid. However, several actions might be taken that could allow coverage to continue.

First, the insurance carrier providing the health coverage may voluntarily continue the coverage while the disaster is sorted out and until an employer reopens its doors. More likely, the employer may arrange with the insurance carrier providing health coverage to pay (preferably as an advance) the employees’ share of premiums to keep coverage in place (at least temporarily) and possibly until the employer can reopen its doors. Each situation will be different, depending upon the insurance carrier and the relationship between the employer and the insurance carrier. Therefore, each factual situation will need to be individually assessed.
Quarantine 14 days or 7 days (incubation period)?

If someone is exposed to COVID-19, they should quarantine for 14 days. They may not show symptoms for 7 days but be infected. Once they show symptoms and recover, return to work protocol is different as described in our FAQs.

What if employees are laborers and have not PTO or sick leave?

They get federal sick leave starting April 2. Otherwise, they may be required to take unpaid leave.

do those potential people have to be paid during the 14 days? those one potentially close to anyone with symptoms or diagnosed

Not unless they qualify for paid FMLA or Sick Leave, or use PTO, vacation, or sick leave that your policy gives them.

Should we assume in the absence of a test, since few people have access to testing, that a presumed positive (dr.) or assumed positive (employee) should all be treated the same?

Yes. And a doctor would order a self-quarantine that would qualify an employee for paid leave, or they would qualify as experiencing symptoms and seeking a diagnosis.

If you layoff them off at the same time they claim they got sick, do you have to pay them the paid sick leave 80 hours or not? Does it depend on whether you layoff them off first, or they notify you they are sick just before you lay them off?

This is something that the regulations may address: whether the paid sick leave applies to employees already removed. Now it’s unclear, but you need to treat employees consistently.

When paying sick leave do we have to pay all union benefits? Vacation, pension annuity

It depends on the language in the applicable CBA. It will define whether you must make fringe benefit contributions on such amounts.

What if an employee has someone at home who is sick with most symptoms, but they have not been tested for COVID-19 and the doctor’s office is not wanting to test that person.

That person should not come to work. They are eligible for paid sick leave if a doctor advises them to stay home, or if they are actively seeking a diagnosis for their symptoms similar to COVID.

Do they only get the 80 hours of sick leave if they test positive for COVID-19?
No, there are six ways listed in the slides that make employees eligible for sick leave. Please refer to the slides from Monday’s presentation.

do we need proof an employee has COVID 19 to be properly reimbursed on Qtrly 941 Payroll Tax from FEDS. Probably don't pay just based on an employee saying they have it, but extensive proof also prevents paying the employee in need.

No, there are six ways listed in the slides that make employees eligible for sick leave. Multiple forms of proof are acceptable. Detailed guidance is still outstanding, but the IRS announced that employers paying leave can withhold payroll taxes to cover their expenses.

With the FMLA expansion, there is a 10 day period of unpaid for those over 30 days employed. Can those same employees use Paid Sick days for those 10 days?

Yes.

If they have already taken sick time for possible Covid19, without testing, and now claiming they need to be quarantined for possible exposure- are we obligated to pay More sick time?

Yes, if they qualify under the Act or your policy affords them sick leave.

Are union (collective bargaining) employees paid sick leave by the employer, or by the union?

They can be paid out of a fund or by the employer, depending on the language of the CBA. With the new federal paid sick leave and emergency FMLA leave, however, the answer could be both.

If an employee misses many days, but you have not been given proof they have the virus, when do you have to pay sick leave?

Employees are entitled to leave for the six reasons in the slides. They do not have to have the virus, let alone prove it. To pay sick leave, you can require reasonable proof that they qualify for one of the six triggers for leave.

So, if we are under 50 and therefore do not have to provide FMLA are we exempt from this

No, not until we hear differently from the DOL and its new regulations.

If a construction employee gets covid-19 on the job do they qualify for work comp?

Yes, but they must prove where they got it. This will be hard to do, especially if you are following guidelines for quarantining employees.
if an employee is furloughed do we need to allow them to use sick or vacation time?

Only if your policy requires it. If you lay them off, you will have to pay out vacation time.

What happens if we send the employee home because they are sick? do we pay out the sick pay and then after 10 days pay according to the FMLA?

Yes, if they qualify for FMLA.

Do they have to give you a DRs note in some of these reasons?

Yes, you can require some form of proof.

so this is only for employees who test positive for COVID 19?

No.

What exactly do we need for Tax break for this paid time?

Forthcoming agency guidance will determine this. Detailed guidance is still outstanding, but the IRS announced that employers paying leave can withhold payroll taxes to cover their expenses.

If a household member has symptom of COVID - 19, should they self-quarantine and qualify for sick-leave

They should quarantine and they may qualify for leave with a doctor’s order.

What are we required to have as documentation

Forthcoming agency guidance will determine this. But the bar will likely be low. Strive for some written proof.

What if the company has 500 or more employees

The Act does not apply to them.
The biggest issue is trying to stay in business in light of the economic impacts to business. Businesses need help now versus a tax credit this time next year. Any relief in sight? We are concerned about having enough revenue in order to pay these benefits.

Detailed guidance is still outstanding, but the IRS announced that employers paying leave can withhold payroll taxes to cover their expenses. The Senate is working on a stimulus bill. Right now, the Small Business administration offers emergency loans.

What if we as the employer does not offer FMLA?

This Emergency FMLA is different than traditional FMLA. This Act has lower requirements for emergency FMLA, whether you previously offered FMLA is immaterial.

Did you state that this goes into effect April 2nd?

Yes, but the USDOL just issued its own FAQs today indicating they are implementing this on April 1st.

If an employee needs traditional FMLA for a non-COVID issue, is that in addition to the 12 weeks for COVID?

WE don’t know yet as we are waiting for the regulations to clarify this.

Does this mean that we do not have to pay out the sick leave until 04/02?

It’s now 4/1. You can’t be reimbursed for leave before then.

Can you lay someone off who is on leave or must you make your reduction of force with working employees?

You can lay someone off on leave, if it’s done consistently and objectively.

Most of our employees are saying they cannot get in to see a dr and are being told over the phone to self-quarantine. How do they provide documentation?

They should ask for some form of confirmation. They should at least record the date and time of the conversation, the name of the Doctor, and that doctor’s contact information. They could be eligible for leave based upon their symptoms and attempts to get diagnosed.

How do you apply for the small business exception?

Above.
Can you lay someone off who is on leave or must you make your reduction of force with working employees?

Above.

I am concerned that if DOL were to exempt all employers with <50 employees, those of us with <50 employees that wish to comply with the mandates we would not be refunded via the tax credits.

Unlikely, since they deliberately called for regulations specifying when small employers are excepted instead of issuing a blanket exception. Regulations will answer. Detailed guidance is still outstanding, but the IRS announced that employers paying leave can withhold payroll taxes to cover their expenses.

You do not have to reinstate an employee if they use the EFMLA?

Incorrect. Generally, job restoration is an important component of the FMLA and EFMLA. You may not have to restore an employee if any of the conditions on Slide 18 of the Fisher Phillips presentation are met.

So for anyone that is on leave currently, are they eligible for this, or is it only those that start a leave beginning 4/2/20?

It’s for qualifying leave that carries over beyond 4/1, and for employees who need qualifying leave after 4/1.

If someone notified you they are sick, can you just lay them off? Or if you lay them off, can they get this payment out of the business on their way out?

You shouldn’t lay people off because they are sick. You need an objective standard to lay off. Paying people out for their leave will likely satisfy the Act. Regulations will determine this.

Does the 80 hours of sick leave for companies 1-499 go into effect on April 2nd?

April 1st now.

If you are a small business w/ 50 or fewer employees and it would pose a hardship to pay emergency FMLA or sick leave, do you refer your employee to file for unemployment?
You only refer employees to unemployment if they are on furlough or have been laid off. The regulations will determine what counts as a hardship or, using the language of the EFMLA, whether its requirements jeopardize the viability of the business as a going concern.

Can you furlough someone out on self isolation if they've already taken Paid sick time for possible Covid19?
Yes, but your decision to furlough must be objective and consistent. You should make sure you’re treating the employee in self-isolation the same as other employees in her/his job classification.

i saw the Tax Credit is capped at $200 per day per worker? That is gross wages at 8 hour day for a $25 per hour employee? Does the employer eat the amount over this, along with the Quarterly Cash Flow issue of delayed reimbursement?
It also allows $511 for categories 1-3. The employer is not required to pay more than they will be reimbursed for; if they do, then they must eat the additional amount.

Please give your opinion re taking temperature of all workers coming onto construction sites

The EEOC confirmed that measuring employees’ body temperatures is permissible given the current circumstances. While the Americans with Disabilities Act (ADA) places restrictions on the inquiries that an employer can make into an employee’s medical status, and the EEOC considers taking an employee’s temperature to be a “medical examination” under the ADA, the federal agency recognizes the need for this action now because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions.

However, as a practical matter, an employee may be infected with the COVID-19 coronavirus without exhibiting recognized symptoms such as a fever, so temperature checks may not be the most effective method for protecting your workforce.

Note: If your company does business in the State of California (e.g., if you have one or more locations, employees, customers, suppliers, etc. in the state), and your business is subject to the California Consumer Privacy Act (CCPA), then you must provide employees a CCPA-compliant notice prior to or at the same time as your collection of this information. For advice on CCPA compliance, please reach out to any member of our Data Security and Workplace Privacy Practice Group at any of California offices.

To protect the individual who is taking the temperature, you must first conduct an evaluation of reasonably anticipated hazards and assess the risk to which the individual may be exposed. The safest thing to do would be to assume the testers are going to potentially be exposed to someone who is infected who may cough or sneeze during their interaction. Based on that anticipated exposure, you must then determine what mitigation efforts can be taken to protect the employee by eliminating or
minimizing the hazard, including personal protective equipment (PPE). Different types of devices can take temperature without exposure to bodily fluids. Further, the tester could have a face shield in case someone sneezes or coughs. Further information can be found at OSHA’s website, examining the guidance it provides for healthcare employees (which includes recommendations on gowns, gloves, approved N95 respirators, and eye/face protection).

If an individual is not sick but has potentially been in contact with someone else and is self-quarantining, are we responsible to pay?

Not unless they have a doctor or government order.

Do you have to pay employee’s sick pay if they are sick and they are remotely working?

No, if employees work remotely, they are not on leave and should be paid normal wages.

If I am going to layoff an employee, how much notice do they need for Cobra?

The Act does not change COBRA requirements. Once COBRA election paperwork is sent to the employee, they will have 60 days to elect coverage.

Can we make a form that the employee signs for self quarantine?

You can (though we’re not sure what purpose that would serve). Note, however, that this will not qualify an employee for leave.

What if you lay someone off and on the same day they tell you they have COVID. Do you need to pay them these benefits, or did the layoff happen first?

The answer to this is unknown at present, but hopefully will be answered by the USDOL’s new regulations.

What happens if we send the employee home because they are not feeling well and taking medications to treat their symptoms?

They still must fall under 1-6 to receive paid leave. If they have COVID symptoms and seek a diagnosis, they qualify under (3).

Medical benefits unfortunately do not cover Telemedicine approaches. It’s good for documentation. However, the cost will need to be covered by the employee.
The Act also instructed, but did not require, benefits to cover telemedicine for COVID.

Can you explain FMLA please? From the US Dept of Labor website is explains FMLA as: The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. So, employers would be required to pay out employees the 80 hours of PAID leave under the Emergency Paid Sick Leave. Why do the next 10 weeks have to be paid if the FMLA is UNPAID leave?

The Act provides for paid FMLA. It is different than standard FMLA.