



COVID-19 Legislative Update That Employers Need to Know.

Presented by:

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Wegner CPAs



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Agenda

- Families First Coronavirus Response Act (FFCRA)
- Paid Medical Leave – Emergency Family and Medical Leave Expansion Act (EFMLEA)
- Paid Sick Leave – Emergency Paid Sick Leave Act (EPSLA)
- Interplay of ADA, Rehabilitation Act and COVID-19
- Teleworking and the Fair Labor Standards Act
- Layoffs and Unemployment

Calm the Crazy!



Confirmed COVID Cases

Confirmed cases of Covid-19 in the US

Confirmed cases

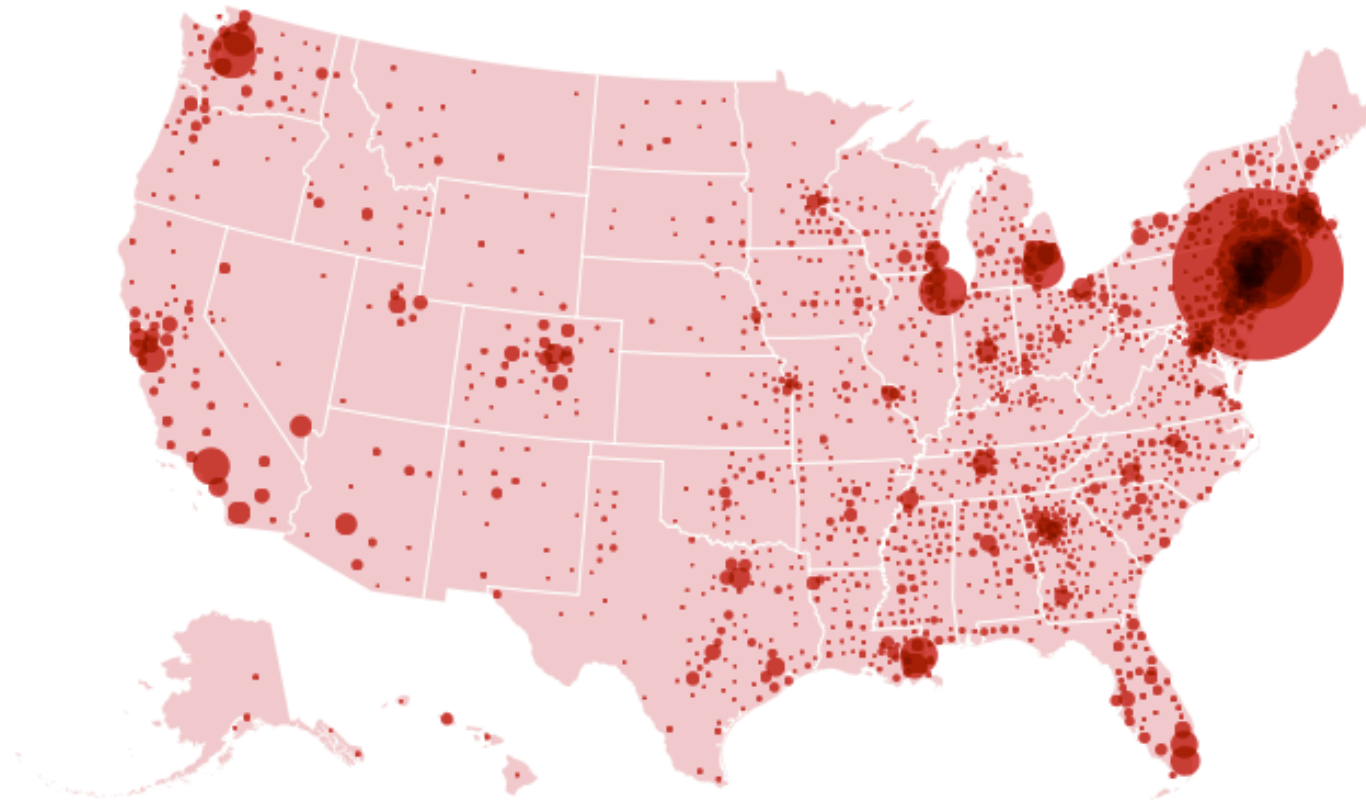
69,120

(Today: +3,342)

Deaths

1,045

(Today: +103)



<https://www.theguardian.com/world/ng>

Last updated 26 Mar 8:25am EST Source: Johns Hopkins CSSE *Note: The CSSE states that its numbers rely upon publicly available data from multiple sources

Overview Families First Coronavirus Response Act (FFCRA)

Emergency Paid Sick Leave

- Up to 80 hours
- 6 different reasons
- 80 hours total

Emergency Paid FMLA

- Up to 12 weeks*
- 1 reason only (childcare due to closings)
- Weeks 1-2 unpaid (but can use paid sick leave)
- Weeks 3-12 2/3 pay
- Subject to caps

Only if under 500 employees, with possible DOL waiver under 50

Notice Requirements

- By April 1st, the employee rights notice must be posted in a conspicuous place at work.
- The employer must comply with both federal and state law.
- Employers may e-mail, direct mail or post the notice on an employee information internal or external website.
- Employees already laid off do not need to be given a copy of the notice.

EMPLOYEE RIGHTS

PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| <ol style="list-style-type: none">1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;2. has been advised by a health care provider to self-quarantine related to COVID-19;3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | <ol style="list-style-type: none">5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services. |
|---|---|

▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-889-5627
dol.gov/agencies/whd

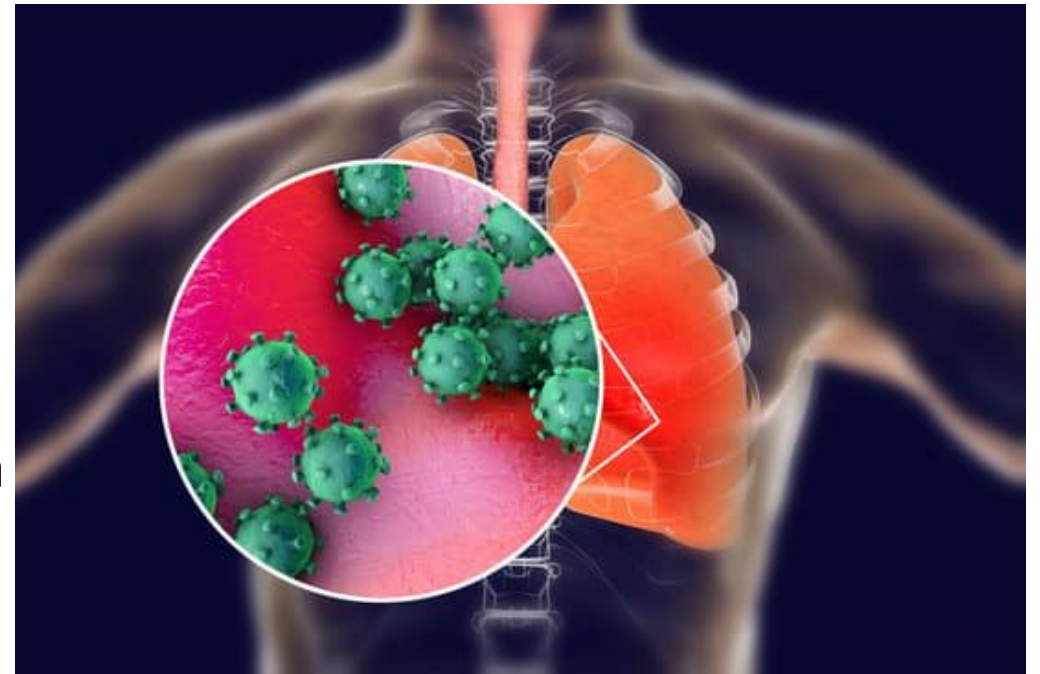


WH1422 REV 03/20

Families First Coronavirus Response Act

How to count to 500

- What date do we use to determine if an employee qualifies based on the 500 employee rule?
 - The date on which the employee takes the paid sick leave or EFMLEA
- Who does this include:
 - Part time employees
 - Full time employees
 - Anyone out on leave
 - Any “joint employees” including those from an agency
- If multiple subsidiaries:
 - Common Management
 - Common ownership
 - Common control/ interchange of ee’s



Emergency Paid Sick Leave Act (EPSLA) Specifics

Who: Small businesses with fewer than 500 employees

Specifics:

- Any employee is eligible* (No 30-day requirement)
- Any employee is eligible
- Maximum of 80 hours. If they work 50 hours a week. They will get the 50 hours the first week and the 30 hours the second week as a total of 80 hours.
- In addition to any PTO/sick you already offer, including unlimited paid time off.
- No credit for any time off prior to April 1
- There is no minimum hours of employment
- Tax Credits! See your tax professional

Emergency Paid Sick Leave Act (EPSLA) Qualifying Reasons/ Payment

- (1) the employee is subject to a federal, state or local quarantine or isolation order;
- (2) a health care provider has advised the employee to self-quarantine;
- (3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis,

\$511/
day

- (4) the employee is caring for someone who has been advised or ordered to quarantine;
- (5) the employee is caring for a son or daughter whose school or place of care has closed, or whose childcare provider is unavailable, because of COVID-19 precautions; or
- (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

\$200/
day

Regular Rate of Pay! Ensure you calculate this correctly.

Talk with your tax professional – ie. Wegner CPA's!

Paid Medical Leave – Emergency Family and Medical Leave Expansion Act (EFMLEA)

- Two weeks (up to 80 hours) of **paid sick time** at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; **(Items 1-3)**
- Two weeks (up to 80 hours) of **paid sick time** at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor; and **(Items 4-6)**
- Up to an additional 10 weeks of **paid sick leave** at two-thirds the employee's regular rate of pay where an employee, who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. **EFMLEA Portion**

Emergency Paid Sick Leave Act (EPSLA) Exemptions

- Employers under with fewer than 50 employees in a 75-mile radius – you can't get sued under this expanded FMLA
- Healthcare providers & emergency responder employers: DOL can exempt you from both the sick leave & the expanded FMLA – hasn't done this yet
- If you're a small business under 50 employees & continued viability of the business is an issue, DOL could exempt you too
 - Expect regulations on this shortly
 - Document the reasons why this affects your viability

Furlough vs. Layoff

Furlough

- Temporary lay-off with intent to bring back
- May keep employee on health insurance and/or other benefits
- No need to pay out accrued but unearned PTO

Lay-off

- Permanent lay-off/termination
- Pay out accrued but unused PTO
- COBRA health benefits

Unemployment

F.A.Q. on Stimulus Checks, Unemployment and the Coronavirus Bill

The Senate relief bill would send money to Americans and greatly expand unemployment coverage.



COVID-19 > Public > UI

Unemployment COVID-19 Public Information

Frequently asked questions about the COVID-19 Coronavirus and Wisconsin Unemployment Benefits for [claimants](#) and [employers](#).

Last updated on 3/25/2020 at 2:30 pm

Information for Claimants

[Expand All](#) | [Collapse All](#)

I was asked to update my name. Where do I go to make the update? +

I needed to start my unemployment claim (initial application) two weeks ago but I did not. Will it create an eligibility issue if I choose to start my claim to include those two weeks? +

Am I required to search for work during the COVID-19 pandemic? +

Do I still need to register for work (register with JCW) if I'm not required to do a work search? +

My employer is currently closed, and I don't have an exact return to work date, but I am going back to work for my employer. Why am I required to register on Job Center of Wisconsin (JCW)? +

I'm self-employed, can I receive unemployment benefits? +

Will I qualify for unemployment benefits if the coronavirus (COVID-19) causes my employer to shut down operations? +

My employer has not told me that I am laid off, but my workplace is closed and I don't have hours. Am I still eligible? +

My hours have been reduced, am I still eligible to apply for UI benefits even though I still have a job? +

If I work less than full-time, may I apply for unemployment if I'm out of work due to COVID-19? +

Unemployment Resources

- [Apply for Unemployment Benefits](#)
- [Other Unemployment FAQs for Claimants](#)
- [Other Unemployment FAQs for Employers](#)

COVID-19 Resources

- [Wisconsin DHS Website](#)
- [CDC Website](#)

<https://www.nytimes.com/article/coronavirus-stimulus-package-questions-answers.html>

Kari would like to work from home half time due to childcare, can she?

Kari qualifies for EFMLEA & #5 under the EPSLA.

Reminder – EFMLEA is when
The employee is unable to work (or telework) due to the need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the childcare provider of such son or daughter is unavailable, due to a public health emergency.

What about intermittent?



Jerry is showing symptoms, can we send him home?



https://www.eeoc.gov/eeoc/newsroom/wysk/wysk_ada_rehabilitaion_act_coronavirus.cfm

An employee calls in sick, what do I need to document?

- DO NOT ASK FOR DOCUMENTATION FROM A HEALTH CARE PROVIDER!
- Talk with the employee
- Send an email to the employee recapping the conversation. (date & time stamped)
 - Reason for the leave
 - How you've calculated
- Can use our old friend, Xcel to track
 - Share this information with the IRS/DOL
 - We can sort the documentation later if needed



Emergency Paid Sick Leave Act (EPSLA)

Qualifying Reasons/ Payment

- (1) the employee is subject to a federal, state or local quarantine or isolation order;
- (2) a health care provider has advised the employee to self-quarantine;
- (3) the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

\$511/
day

- (4) the employee is caring for someone who has been advised or ordered to quarantine;
- (5) the employee is caring for a son or daughter whose school or place of care has closed, or whose childcare provider is unavailable, because of COVID-19 precautions; or
- (6) the employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

\$200/
day

Regular Rate of Pay! Ensure you calculate this correctly.

Talk with your tax professional – ie. Wegner CPA's!

James is Sick...

- James is in Accounting
- His live-in girlfriend is sick & told to self-isolate/quarantine
- He is going to too
- Now until April 1: Does he have any PTO he can use? Can he work from home?
- April 1: Has he called his healthcare provider to discuss whether he should self-quarantine? If yes & healthcare provider says he should =
Emergency paid emergency sick leave at \$511 per day

James is Sick... Continued

Now until April 1: What if we just lay him off instead letting him self-quarantine?

If just him, there's an argument that the layoff/furlough would be in violation of public policy & you could get sued

If he is part of a larger furlough, then probably okay

Post-April 1: What if we just lay him off instead of letting him self-quarantine?

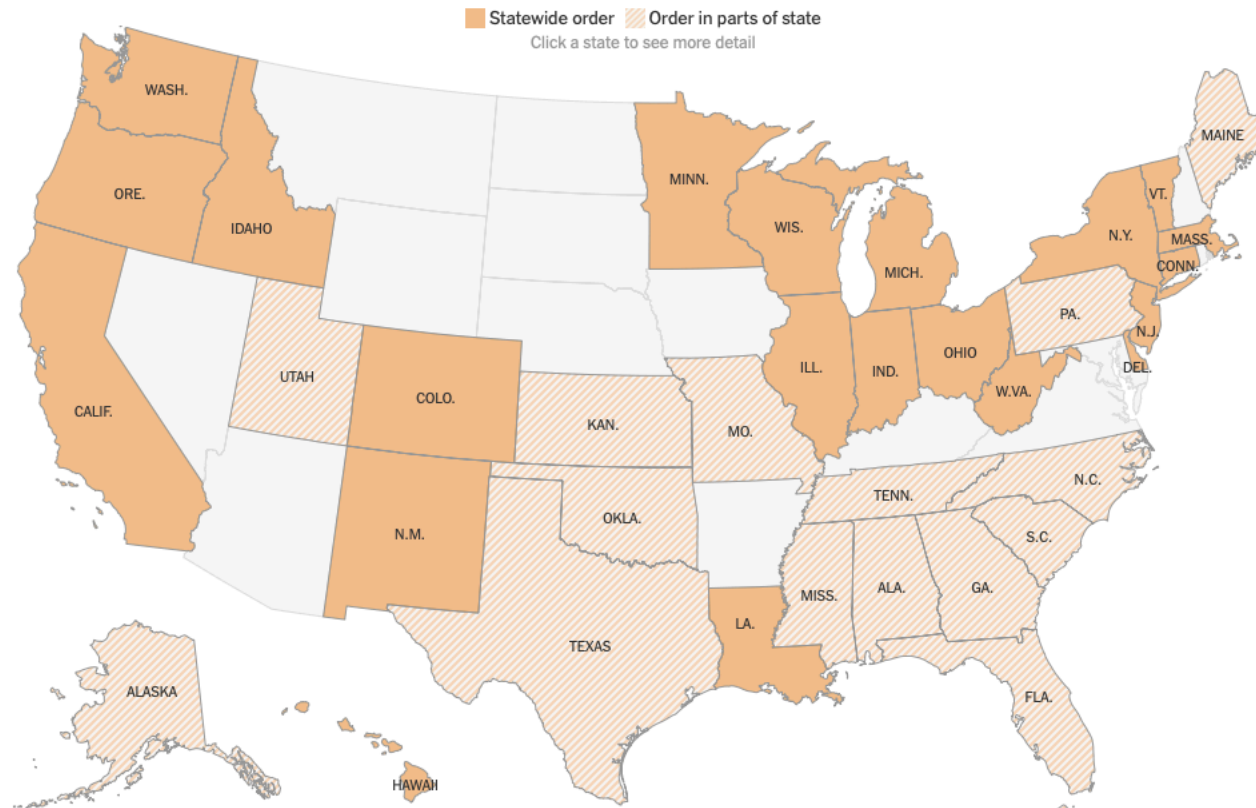
If just him, there's an argument that you're trying to avoid paying him emergency paid sick time, expanded FMLA, or public policy & you could get sued

If he is part of a larger furlough, then probably okay

Stay Home!

See Which States and Cities Have Told Residents to Stay at Home

By Sarah Mervosh, Denise Lu and Vanessa Swales Updated March 26, 2020



<https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home.html>

Stay Home Math

- April 1, 2020
- Governor orders (or has ordered) a Safer at home order
- *Employee has kids under the age of 18*
- Business is STILL operating
- Emergency paid sick leave goes into effect: Regular rate up to \$511 a day for reasons 1-3, \$200 a day for reasons 4-6
- Expanded FMLA goes into effect: $\frac{2}{3}$ ^{rds} regular rate rate up to \$200 a day to \$10,000
- Total per employee: \$15,110 if quarantine lasts 50 working days+

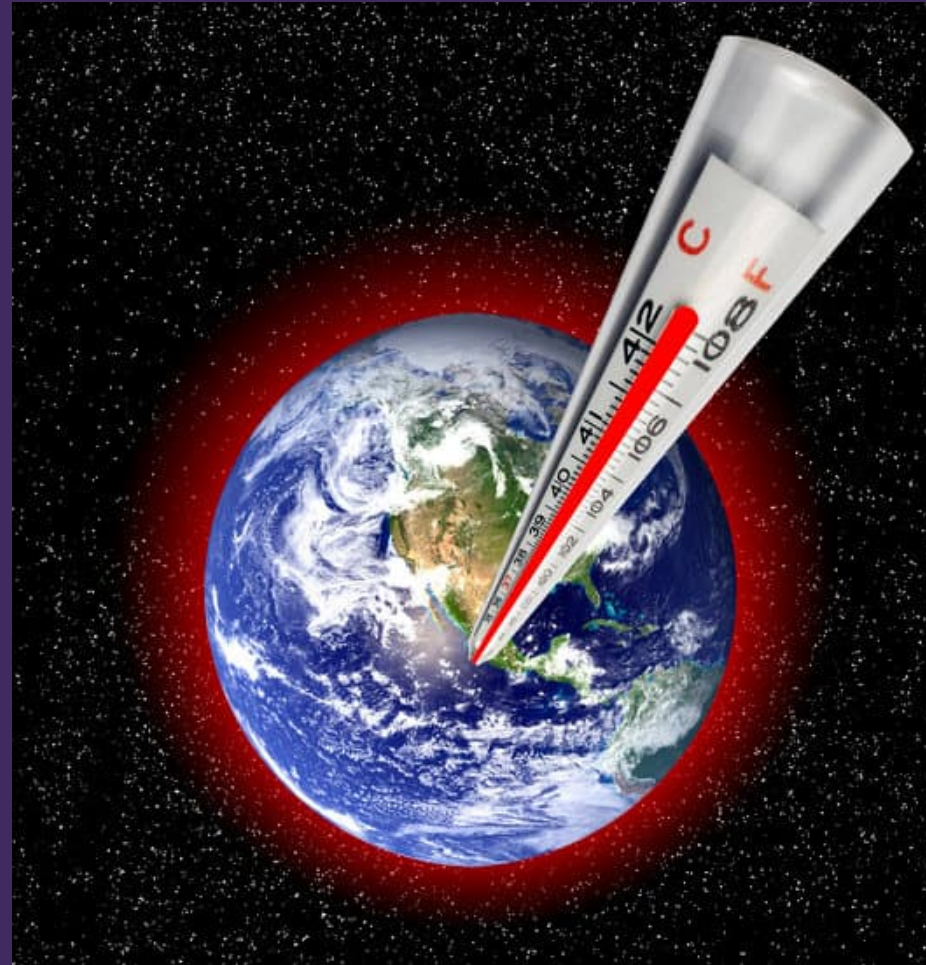
Stay Home Math

- April 1, 2020
- Governor orders (or has ordered) a Safer at Home
- **Employee has no kids**
- Business is STILL operating
- Emergency paid sick leave goes into effect: Regular rate up to \$511 a day to \$5,110 for reasons 1-3, \$200 for reasons 4-6
- Expanded FMLA does NOT apply

Stay Home Math

- April 1, 2020
- Governor orders (or has ordered) a shelter-in-place
- ***Employee has kids under the age of 18***
- **Business decides to close for time being**
- **Employees are furloughed**
- No employee receives emergency sick leave or expanded FMLA because there's employment to take a leave from

World is Sick – We will Get Better.



Upcoming Events

- [EEOC COVID-19 Webinar – March 27th](#)
- [Virtual Workforce? 5 Keys to Make The Transition Successful March 31 @ 10 AM CST](#)
- [Creating a Culture of Engagement – April 1 @ 1 PM CST](#)

Resources

- [State information on Unemployment](#)
- [Family First Coronavirus Response Act Notice FAQ](#)
- [Sick Pay Provision of the Family First Coronavirus Response Act](#)
- [DOL Families first Coronavirus Response Act FAQs](#)
- [DOL Expanded FMLA Rights](#)
- [ADA, Rehabilitation Act and COVID-19 FAQ](#)
- [COVID-19 and the Fair Labor Standards Act Q&A](#)
- [OSHA/ CDC Guidance for Workplace](#)

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Questions?

Thank You



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