

Seattle Metropolitan Chamber of Commerce – Washington Sick Time and Leave Overview

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Sick Time and Leave Overview



- **Washington Sick and Safe Time**

- Covers medical issues for employee or family member
- Includes quarantine and isolation, seeking COVID-19 related medical treatment/diagnosis and care for family member
- School/place of care for children closed by public official
- Workplace closures by public official
- Paid for by employer
- Employer cannot mandate the use of sick time
- If PTO includes sick time, PTO balance available

- **Seattle Sick and Safe Time**

- Same as Washington – but amended in March
- School/place of care closures for *family members* - no public order required
- Employers with 250 FTEs – Workplace slow downs or closures *for any health or safety reason* - no public order required

Sick Time and Leave Overview



- **Paid Family Medical Leave**


- Partial wage replacement, available for *serious health condition* of employee or family member
- Leave could be necessary to underlying condition (vs. COVID-19)
- *Not available for school closures*
- Portable benefit from employer to employer
- ESD provides benefits, there are long wait times for approval

- **Family Medical Leave Act**

- Unpaid, available for *serious health condition* of employee or family member

Benefits Overview

COVID-19 SCENARIOS		Paid Sick Leave (employer paid)		Unemployment Insurance		Paid Family & Medical Leave	Industrial Insurance (L&I)
		Current Law	Current Law	Emergency Rule	Current Law	Current Law	
1	Worker is mildly ill with COVID-19.	✓	✗	✓	?	?	
2	Worker is severely ill with COVID-19.	✓	✗	✗	✓	?	
3	Worker was exposed and quarantined. Business remains open.	✓	✗	✓	✗	?	
4	Worker is caring for sick family member.	✓	✗	?	✓	✗	
5	Schools are closed by a public official because of COVID-19 and worker has no childcare.	✓	✗	?	✗	✗	
6	Worker is immune-compromised and advised to self-quarantine.	?	✗	✓	?	✗	
7	Worker is following the advice of public health and government officials to self-quarantine and chooses not to go to work.	✗	✗	✓	✗	✗	
8	Employer must shut down due to a quarantine by a public official.	✓	✓	✓	✗	?	
9	Employer shuts down due to a business slowdown or lack of demand.	✗	✓	✓	✗	?	
10	Employer reduces available hours due to business slowdown or lack of demand.	✗	✓	✓	✗	?	
11	Employer stays open in defiance of public health urging to close.	✗	?	?	✗	?	
12	Health care workers and first responder are under quarantine.	✓	✗	✗	✗	✓	



Employment Security Department
WASHINGTON STATE

The Employment Security Department is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Language assistance services for limited English proficient individuals are available free of charge. Washington Relay Service: 711

✓ YES
✗ NO
? MAYBE (case by case)

ESD.WA.GOV

<https://esdorchardstorage.blob.core.windows.net/esdwa/Default/ESDWAGOV/newsroom/COVID-19/covid-19-scenarios-and-benefits.pdf>

Unemployment Emergency Rules

- Under the emergency rules, an individual will be considered to have been “laid off due to lack of work when”:
 - The individual was prohibited by a government official from working outside their home and the individual does not have the ability to telework with pay; **OR**
 - The individual was not prohibited by a government official from working outside their home (i.e., they work for an “essential service”), the individual does not have the ability to telework with pay, and the individual is:
 - A person identified by the CDC as high risk for severe illness from COVID-19;
 - In the same household as a person identified by CDC as high risk;
 - Providing direct care to a person identified by the CDC as high risk; **OR**
 - Working at a worksite that does not follow the rules or guidelines published by the Department of Labor, Washington Department of Labor & Industries, or the Washington Department of Health for protecting workers from COVID-19 exposure.
- **CDC High Risk:** 65 or older or has an underlying medical condition:
<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

Unemployment Overview – CARES Act



■ CARES Stimulus

- Provides \$600/week for:
 - Section 2102 extends benefits to those who would not otherwise qualify, such as the self-employed, underemployed, and those who have exhausted unemployment benefits under state law – through July 31, 2020
 - Section 2014 adds \$600 to all weekly benefit payments so long as the claimant would otherwise receive at least \$1.00 per week in benefits payments under state law – through July 31, 2020
- Section 2017 extends regular unemployment claims by an extra 13 weeks –through December 31, 2020

Families First Coronavirus Response Act (FFCRA): Emergency Family and Medical Leave Expansion Act (EFMLEA)

- Temporary expansion of FMLA from **April 1, 2020 to December 31, 2020**
- **12 weeks** of leave to be used when:
 - An employee is unable to work or telework due to the need to care for a child because of school or childcare facility closure; or
 - The child's usual childcare provider is unavailable.
- Applies to employers with **fewer than 500 employees (including non-profits and joint employers) and employees who has been employed for at least 30 calendar days (including those that are part of a union)**, with the following exclusions:
 - Healthcare provider employees
 - First responders
 - Businesses with fewer than 50 employees for whom extension of this benefit would “jeopardize the viability of the business as a going concern”
- First 10 days unpaid (employee can elect to use paid time off). After 10 days employee gets the lesser of 2/3 of the employee’s regular rate of pay or \$200 per day (capped at \$10,000 in total, 10 weeks of \$200/day).

FFCRA: Emergency Paid Sick Leave Act (EPSLA)

- Applies to all employees, regardless of duration of employment
 - Extends two weeks of paid sick leave (80 hours for full-time employees and a proportional amount for part-time employees depending upon their schedule):
 - 1) If the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 - 2) If the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - 3) If the employee is experiencing symptoms of COVID-19 and seeking medical diagnosis;
 - 4) If the employee is caring for an individual who is subject to (1) or (2), above;
 - 5) If the employee is caring for a son or daughter due to a COVID-19-related school or care center closure;
 - 6) If the employee is experiencing a “substantially similar condition.”
 - For reasons 1-3, compensation is the lesser of the employee’s regular rate of pay or \$511 per day (capped at \$5,110 in the aggregate). For reasons 4-6, compensation is at the lesser of 2/3 of the employee’s regular rate of pay or \$200 per day (capped at \$2,000 in the aggregate).

Employer Tax Credits under COVID-19 Legislation

FFCRA and CARES Act offer employers tax credits for certain COVID-19-related wages paid to employees

- FFCRA offers credits for qualified sick leave and qualified family leave paid to employees unable to work due to COVID-19
- CARES Act offers tax credits for 50 percent of “qualified wages” paid while operations are significantly impacted by COVID-19
- **Both** laws also provide tax credits for “qualified health plan expenses” attributable to wages eligible for tax credit under FFCRA or CARES Act

FFCRA Tax Credits

- Tax credits against employer portion of Social Security taxes for:
 1. 100% of qualified **sick** and **family** leave paid between April 1, 2020 and December 31, 2020 (up to specified caps);
 2. Qualified health care expenses attributable to the paid leave (discussed later); **and**
 3. Employer-portion of Medicare taxes on paid leave
 - No Social Security taxes assessed on employer for paid leave
- Employers should retain documentation to substantiate employees' eligibility for paid sick and family leave
 - Keep records for at least 4 years



CARES Act Employee Retention Credit

- Provides tax credit against employer portion of Social Security taxes to “eligible employers”:
 - To be “eligible employer,” must satisfy one of the following criteria:
 1. Operation is fully or partially suspended due to government orders limiting commerce, travel, or group meetings due to COVID-19; or
 2. Gross receipts for a calendar quarter were less than 50% when compared to same quarter for 2019 (continues until the calendar quarter in which gross receipts increase to 80% when compared to same quarter for 2019)

CARES Act Employee Retention Credit

- “Qualified wages” are sum of:
 1. Wages paid to employees while “eligible employer”;
 - Avg. of more than 100 FT employees in 2019: wages paid to employees who are not working
 - Avg. of 100 or fewer FT employees in 2019: all wages paid while “eligible employer”; **and**
 2. Qualified health plan expenses
- Tax credit for 50% of “qualified wages” paid after March 12, 2020 and before January 1, 2021 (while “eligible employer”)
- Credit capped at \$10,000 per employee

Qualified Health Plan Expenses

- Same definition under both FFCRA and CARES Act
- Amounts paid by employer to maintain a group health plan and allocable to wages paid that are eligible for tax credit
 - Includes portion of cost paid by employer **and** portion paid by employees on pre-tax basis
 - Excludes portion paid by employees on after-tax basis
- IRS guidance states “any reasonable method” can be used for determining and allocating “qualified health plan expenses” (e.g., use COBRA premium divided by number of work days)



- Employer contributions to HRA or health FSA count as “qualified health plan expenses”
 - But employer contributions to HSA, Archer MSA, or QSEHRA do not count

How to Claim Tax Credits Under Either Law

- Credits only apply to employer portion of Social Security tax, but...
 - Employers can reduce all quarterly payroll withholdings (i.e., employer and employee portion of Social Security and Medicare taxes and employees' withheld income tax) by amount of anticipated credit for quarter
- If the reduction is insufficient to fund wages or leave amounts for quarter, employers can request an advance credit from the IRS for remaining amounts
 - IRS has issued Form 7200 for this purpose and expects to start issuing credits starting in April
- Refundability: If credits exceed employer's Social Security tax obligation, excess is treated as overpayment (and can be refunded to employer)

Other Limitations

Credits under both laws available to tax-exempt, but not governmental employers

Employer can receive tax credits under both laws, but not for the same wage payments

Employer who receives tax credits for paid leave under FFCRA is eligible for SBA loan, but cannot have the leave counted towards loan principal or towards loan forgiveness

Employer who receives SBA loan is ineligible to receive employee retention tax credit under CARES Act

Deferred Payment of Social Security Taxes

- Under CARES Act, employers can delay payment of their portion of Social Security taxes incurred between March 27, 2020 and December 31, 2020:
 - 50 percent can be delayed until December 31, 2021
 - Other 50 percent can be delayed until December 31, 2022
- Deferred payment not available to employers who have loan forgiven under Paycheck Protection Program of CARES Act



Thank you



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Angela Vogel counsels employers on complex leave and sick time laws, including the new Washington Paid Family Medical leave law. She regularly advises on workplace issues, including investigations, accommodation issues and also provides training on various topics to managers and employees.



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