



**EMERGENCY SICK LEAVE AND  
EMERGENCY FAMILY AND MEDICAL LEAVE  
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT  
PUBLIC LAW NO: 116-127**

Under the Families First Coronavirus Response Act (the "Act"), effective from April 2, 2020 to December 31, 2020, employees will have the following emergency, temporary benefits:

**FEDERAL EMERGENCY SICK LEAVE**

Emergency sick leave is available to employees affected by the COVID-19 virus. An employer must provide to each employee paid sick time to the extent that the employee is unable to work (or telework) due to a need for leave because:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order as described in paragraph (1) or has been advised as described in paragraph (2).
- (5) The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

**REPLY TO**

387 PARK AVENUE S  
5TH FLOOR  
NY, NY 10016  
212 278 0058

450 MAIN STREET  
METUCHEN, NJ 08840  
732 243 9588  
FAX: 732 243 9590

309 FELLOWSHIP RD  
STE 200  
MT LAUREL, NJ 08054  
863 350 1030

The amount of hours of available paid sick time is (1) 80 hours for full-time employees and (2) a number of hours equal to the hours that such employee works, on average, over a two-week period, for part-time employees.

Most employees are entitled to their normal rate of pay except that in no event may such paid sick time exceed \$511 per day and \$5,110 in the aggregate for a use described in paragraphs (1), (2), or (3) above. However, for employees using paid sick time provided for any use described in paragraphs (4), (5), or (6) above, the rate is 2/3 of their normal pay rate, except that in no event may such paid sick time exceed \$200 per day and \$2,000 in the aggregate.

There is no minimal employment period for such leave, which is available for immediate use, regardless of the length of time that the employee has been employed by the employer.

The emergency paid sick time is in addition to district-provided sick leave benefits. An employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the emergency paid sick time.

Each employer **must** post and keep posted, in conspicuous places on the premises of the employer where notices to employees are customarily posted, a notice, to be prepared or approved by the United States Department of Labor Secretary, of the requirements described in the Act. Those notices may be found at:

[https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)

<https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/1422-spanish.pdf>

Based upon a Q & A released by the Department of Labor (“DOL”), “an employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.” Absent further guidance from the DOL, it appears that this is the extent of an employer’s notice obligation to its employees.

### **PAID FAMILY LEAVE**

Paid Family Leave under the Act is limited to circumstances in which an employee is unable to work due to the need for leave to care for a son or daughter under 18 years of age because the child’s school or place of care has been closed, or the child care provider is

unavailable due to a public health emergency. The employee also must have worked in the district for 30 calendar days in order to be eligible.

Eligible employees are entitled to take up to 12 weeks of paid FMLA leave. The first 10 days may consist of unpaid leave, although the employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave. Under New Jersey school law, school employees only are permitted to use sick leave for their own illness. However, given the explicit language of the law and the emergent, limited time period involved, districts should allow employees to use accrued sick leave for this purpose. Additionally, employees also are entitled to emergency paid sick leave during the first 10 days.

The remaining 10 weeks are paid at 2/3 of the employee's regular rate, for the number of hours the employee would otherwise be scheduled to work, with a maximum payment of \$200 per day and \$10,000 total (or \$12,000 when combined with two weeks of emergency paid sick leave).

We understand that these uncertain times and the enactment of emergency laws related to the COVID-19 pandemic may lead to unusual issues that require guidance from seasoned school law attorneys. We continue to monitor updated guidance from the DOL and other government entities as they are issued. The attorneys at The Busch Law Group are always available to help board members and administrators develop and implement strategies to enable to continued and orderly operation of their respective school districts. Should you have any questions regarding legal issues implicated by COVID-19, the firm's attorneys are available to assist you.

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April 10, 2020