



CLIENT CRITICAL RESPONSE TEAM

Summary of Paid Leaves and Unemployment in Response to COVID-19

Whalen Lead Contact:

Linda Nay
614-396-4200 x129
lnay@whalencpa.com

Families First Coronavirus Response Act – Emergency Medical and Sick Leave Specifics

Division C – Emergency Family and Medical Leave Expansion Act

Covers employee unable to work or telework due to a need for leave to care for minor child if the school or place of care has closed

Employer to provide 12 weeks of leave

Employer to provide paid leave for each day of leave that an employee takes after taking initial 10 days of leave

- First 10 days of leave may consist of unpaid leave. Employee may elect to substitute accrued vacation or personal time
- Emergency Paid Sick Leave may be used for these 10 days

Benefit is two-thirds of employee's regular rate of pay – shall not exceed \$200 / day and \$10,000 in aggregate

Employee must be employed for at least 30 calendar days by the employer to qualify

Division E – Emergency Paid Sick Leave Act

Covers employees who are unable to work or telework due to a need for leave:

- The employee is subject to quarantine or isolation
- The employee has been advised by a health care provider to self-quarantine
- The employee is experiencing symptoms of COVID-19
- The employee is caring for an individual subject to the above
- The employee is caring for a minor child of such employee if the school is closed or care is unavailable
- The employee is experiencing any other substantially similar condition specified by Secretary of Health and Human Services

Employer to provide 80 hours of paid sick leave for full-time employee, number of hours worked on average for part-time employee

Regular rate of pay to a maximum of \$511 / day and \$5,110 in aggregate for items 1, 2 and 3

Two-thirds of compensation or \$200 / day and \$2,000 in aggregate for items 4, 5 and 6

Specifics Apply to Both Acts

April 1, 2020 – December 31, 2020

Fewer than 500 employees

- Full-time and part-time employees
- Employees on leave
- Temporary employees who are jointly employed (regardless of whether the employee is on the other employer's payroll)
- Day laborers supplied by temporary agency
- Independent contractors are not considered employees for this purpose

Where a corporation has an ownership interest in another corporation, the two corporations are separate employers unless they are joint employers under the FLSA with respect to certain employees.

- An employee may have one or more joint employers (individual or entity) who is jointly and severally liable for the employee's wages
- If employers are sufficiently associated with respect to the employment of the employee, they are joint employers and must aggregate the hours worked for each for purposes of determining if they are in compliance
- <https://www.dol.gov> Fact Sheet: Final Rule on Joint Employer Status under the Fair Labor Standards Act

The integrated employer test – separate entities or corporations may be part of a single employer for FMLA purposes

- Common management
- Interrelation between operations
- Centralized control of labor relations
- Degree of common ownership or financial control

If two entities are an integrated employer under the FMLA, the employees of all entities making up the integrated employer will be counted in determining employer coverage for purposes of expanded family and medical leave

Pay does not need to include a premium for overtime hours under either program

Employer must continue group health coverage during the expanded family and medical leave on the same terms as if you were working. If you are enrolled in family coverage, your employer must maintain coverage during your expanded family and medical leave. You generally must continue to make any normal contributions to the cost of your health coverage.

Secretary of Labor shall have authority to exempt small businesses with fewer than 50 employees when the imposition of such requirements would jeopardize the viability of the business as a going concern – Department of Labor will provide guidance

Employer may not require an employee to use other paid leave provided by the employer to the employee before the employee uses the paid sick time

Unlawful for employer to discharge employee who takes a leave in accordance with this Act

Restoration to position for company who employs fewer than 25 employees does not apply

Secretary of Labor to provide a model of a notice that should be posted in conspicuous places on premise

Tax Credit

Employer allowed payroll tax credit (941 deposit adjustment / employer portion) against each quarter an amount equal to 100 percent of the leave wages

- Employer to retain and use funds that would otherwise be paid to IRS in payroll taxes
- If amounts are not sufficient to cover the cost of paid leave, employers can seek an expedited advance from IRS by submitting a streamlined claim form (to be released in the near future)
- Eligible employers are entitled to an additional tax credit determined based on costs to maintain health insurance coverage for the eligible employee during the leave period
- Employers face no applicable payroll tax liability
- For self-employed individuals under similar circumstances, credits will be claimed on their income tax return and will reduce estimated tax payments

Unemployment Benefits During Ohio's Emergency Declaration Period

Governor DeWine expanded flexibility for Ohioans to receive unemployment benefits during Ohio's emergency declaration period. Beginning on or after January 27, 2020 and ending on or before December 31, 2020.

EMPLOYERS

For contributory employers, charges during Ohio's emergency declaration period will be mutualized. COVID-19-affected contributory employers will receive regular monthly charge statements, but these charges will be charged to the mutual account and not the employer's account.

Executive order waives penalties for late reporting and payments during Ohio's emergency declaration period.

Employers can pay former employees a supplemental benefit payment (SUB)

- The request must document the plan or provide a description of the arrangement under which benefits will be paid.
- The plan should be on letterhead and include contact information for the business.
- The request must include a citation of legal authority verifying that the benefits would not be wages subject to unemployment tax.
- Submit completed plan to UCTech@jfs.ohio.gov with "SUB PLAN" in subject line.

Ohio follows federal requirements under the Worker Adjustment Retraining Notification (WARN) Act which provides protection to workers, their families, and communities by requiring employers to provide written notice at least 60 days in advance of covered plan closings and mass layoffs. Due to COVID-19, employers should provide the following mass-layoff number – 2000180 to speed the processing of unemployment benefits. Employers should email all WARNs and inquiries to rapdresp@ifs.ohio.gov until further notice.

EMPLOYEES

File online at unemployment.ohio.gov

Unemployment benefits will be available for eligible individuals who are requested by a medical professional, local health authority, or employer to be isolated or quarantined as a consequence of COVID-19, even if they are not actually diagnosed.

Employees who are quarantined are considered unemployed.

Unemployment benefits are available to individuals who are totally or partially unemployed due to no fault of their own.

- Employer lays off employees due to loss of production caused by the coronavirus
- Individual works two jobs but has loss of one job

If the employer required the individual to stay home but did not or was unable to offer telework, the individual might be eligible for benefits if they meet the monetary and weekly eligibility criteria.

Self-employed individuals who have been solely self-employed for the last year or more may not meet the monetary requirements to establish a claim because the wages they earned from self-employment are not considered "covered" under unemployment law. However, Governor DeWine and some other governors have reached out to the federal government to see whether special "Disaster Unemployment Assistance" benefits can be offered to help self-employed individuals and others who aren't currently eligible to receive unemployment benefits. Federal stimulus now allows benefits for self-employed people. Policies are underway. File now because payments will be retroactive to January 27.

Individuals who are partially unemployed due to lack of work may be eligible for benefits.

- Any earnings from employment during the week claims may reduce the amount of benefits paid.
- Earnings equal to or less than 20% of the claimant's weekly benefits amount will not reduce the amount of benefits paid.
- Earnings over 20% of the weekly benefit amount will reduce the benefit payment dollar for dollar.
- Earnings equal to or over the benefit amount will result in no benefits for that week.

Currently, claimants may receive up to 26 weeks of benefits a year – recent addition of 13 additional weeks of unemployment benefits through December 31, 2020 or 39 weeks.

The waiting period for eligible Ohioans to receive unemployment benefits will be waived.

Weekly benefit amount is typically half the claimant's previous wages up to a set maximum, adjusted by number of allowable dependents.

- \$480 for 0 dependents, \$582 (1-2 dependents), \$647 (3+ dependents)
- Workers can receive an additional \$600 a week for up to three months

If an asymptomatic individual removes themselves from employment – as opposed to an employer or medical professional removing them from employment – they are not eligible for benefits.

If a claim was filed before the mass-layoff number was made public, your claim will still be processed, and your benefits will not be delayed. Do not attempt to adjust your application.

ODJFS has waived the requirement for unemployment claimants to register with OhioMeansJobs.com within two weeks of filing an initial claim.

Claims are assigned to Processing Centers based on the last four digits of the applicant's Social Security Number.

ODJFS Adjudication and UI Delivery Center Locations

Social Security # Range (based on last 4 digits)	Location	Phone Number
0000-0765	Cleveland Adjudication Center	1-866-576-0006
0766-1942	Akron UI Delivery Center	1-866-768-0022
1943-2649	Lorain UI Delivery Center	1-866-849-0029
2650-4121	Toledo UI Delivery Center	1-800-589-2799
4122-4710	Chillicothe Adjudication Center	1-866-244-0399
4711-6005	Marietta Adjudication Center	1-866-867-0044
6006-7182	Youngstown Adjudication Center	1-866-221-0558
7183-7477	Dayton UI Delivery Center	1-866-541-0187
7478-7701	Interstate and Federal	1-866-217-0008
7702-8360	Columbus UI Delivery Center	1-866-217-0008
8361-9999	Lima Adjudication Center	1-866-272-0118
0000-9999	Columbus Adjudication Center (Interstate & Federal Claims)	1-866-458-0007

DISCLAIMER:

More information can be obtained from the Department of Labor.

Companies should be aware that information regarding the new legislation and its interpretation continues to evolve.

