



March 31, 2020

Re: Enacted Federal Leave Legislation in Response to COVID-19

At MetLife, we have been monitoring the evolving situation regarding COVID-19 and how recent federal legislation may impact our customers' leave plans and obligations under the Family and Medical Leave Act ("FMLA"). We are reaching out to you regarding the new federal law, which goes into effect on **April 1, 2020**, and what it may mean for you and your workforce. Although the law only applies to private employers with fewer than 500 employees, and certain public employers regardless of employee count, our intent is to share best practices that are applicable for all employers to consider.

On March 14, 2020, the U.S. House of Representatives passed the Families First Coronavirus Response Act (the "Act"), which allows free COVID-19 testing, establishes paid and unpaid leave programs, provides grants to states to process and pay unemployment insurance benefits, expands food service initiatives, and increases federal Medicaid funding. After some negotiation and changes to the legislation, the Senate passed a revised version of the Act on March 18, 2020. President Trump signed the Act into law the same day.

The leave provisions of the Act, which **only apply to private employers with fewer than 500 employees**, and certain public employers regardless of employee count, require covered employers to provide job-protected paid leave to employees for up to 12 weeks for a COVID-19-related absence. The Act does so by expanding the FMLA and adding a new paid sick leave program. Compared to the original version of the bill, the Act expanded the qualifying events for sick leave, narrowed the FMLA qualifying events, and capped the benefit payments to employees. **Per recent guidance from the Department of Labor, these new leave laws become effective on April 1, 2020.** A summary of the legislation **and the recent DOL guidance** is attached to this letter.¹

What Does This Mean For You and Your Workforce?

The leave and tax credit provisions of the Act do not apply to larger private employers with 500 or more employees. The tax credits do not apply to certain governmental employers. However, some of our customers are considering expanding their existing disability and leave programs to help their workforces cope with the issues resulting from the COVID-19 pandemic. To the extent a larger employer would like to voluntarily adopt some of the features of the Act, here are some options that we suggest you consider as best practices:

¹ We have made some updates to this letter since its initial release. The new information in this letter is highlighted in bold and red font so you can clearly see the relevant updates. Please Note: The information contained in this letter is not legal advice and should not be relied upon or construed as legal advice. This letter is for general informational purposes only and does not purport to be complete or cover every situation. Please consult your own legal advisors to determine how these laws affect you.

- Consider expanding PTO or Sick Leave to include up to 80 hours of COVID-19-related time off following similar criteria as the Act.
- Consider updating your existing leave program to allow employees to take leave for the same or similar qualifying reasons as the Act. This approach is consistent with the Department of Labor’s recent guidance regarding COVID-19, which encourages employers to develop “flexible leave policies for their employees.”
<https://www.dol.gov/agencies/whd/fmla/pandemic>.
- During any COVID-19-related absence, if the intent is to continue payment to employees for the duration of the absence, employers should continue paying employees through their payroll and consider updating benefit calculations to be consistent with the Act. This would create a seamless benefit experience for employees and limit payroll disruptions.
- Continue monitoring federal, state, and local legislation for additional changes that could impact your obligations as an employer to provide leave and benefits to your employees. MetLife is monitoring federal and state legislation as well and will provide you with updates after they become available.
- Consider the risks of voluntarily expanding FMLA protections to employees during COVID-19-related leaves, such as expanding the scope of your potential FMLA liability, along with the potential benefits, such as providing job-protection for your employees consistent with the Act’s requirements for smaller employers.
- Consult with your legal counsel to confirm whether the Act applies to you and to help create a legally compliant plan that works best for you and your employees.
- **IF METLIFE ADMINISTERS YOUR ABSENCE LEAVES:** Since MetLife is your leaves administrator, we are here to assist you in updating your leaves program, should you choose to do so. Understanding that this is an evolving situation, we can share best practices about what other similarly situated employers have done or are considering – and we will work with you to operationalize any changes as quickly as possible. We are here to assist you in any way we can, including the communication of any such changes to your workforce.
- **IF METLIFE ADMINISTERS YOUR STD:** While as noted above, our view is that the best practice is to handle non-disabling COVID-19 related leaves through PTO and/or leave policies. For several reasons, we do not recommend non-disabling COVID-19 related absences to be addressed under your short-term disability plan. Nevertheless, to the extent that changes you are considering may impact the administration of your STD program, we are happy to consult with you to discuss the ways in which MetLife can assist you in administering such changes. If you have any questions about the Act, feel free to reach out to any member of your Account Team.
- **IF METLIFE DOES NOT ADMINISTER YOUR ABSENCE LEAVES:** If you outsource your leave administration, work with your leave administrator to update your leave programs and help communicate any changes to your workforce. Your leave administrator may be able to ease the burden of implementing a new leave program during this challenging time.

How is MetLife handling claims relating to COVID-19?

For disability or absence claims reported for disabling flu-like symptoms reported to be due to, or potentially due to, COVID-19, MetLife will conditionally approve 14 calendar days from the date of disability pending supporting medical evidence, except where prohibited by law. We will apply any contractual eligibility provisions. MetLife implemented this process beginning on Thursday, March 19, 2020 for both our fully insured and self-insured customers and to any pending claim with these circumstances. We anticipate maintaining this process for an initial 30-day period, then reassessing based on how this crisis unfolds.

We understand that you may have questions about COVID-19 and the impact on your workforce. To help support our customers, we created a dedicated page on our website to keep track of the rapidly moving and evolving challenges for our customers. For up-to-date information, visit the MetLife microsite at <https://www.metlife.com/COVID-19 US Customer/> or reach out to any member of your Account Team.

In addition, the Department of Labor released its first and second rounds of guidance this week regarding the Act, which is available at <https://www.dol.gov/agencies/whd/pandemic>.

Summary of the New Federal Sick Leave Requirements of the Act

Initially, the Act requires private employers with fewer than 500 employees, and certain public employers regardless of employee size, to offer sick leave to their employees who are unable to work or telework for the following COVID-19-related absences:

- An employee is subject to a federal, state, or local quarantine or isolation order regarding COVID-19;
- An employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- An employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- An employee is caring for an individual subject to the first two qualifying events listed above;
- An employee is caring for a minor child if the child's school or place of care has closed or if the childcare provider is unavailable due to COVID-19 precautions; or
- An employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services ("HHS").

Full-time employees can use up to 80 hours of sick time, while part-time employees can use proportionally less time, based on the average number of hours the employee works over a two-week period. During sick leave taken for the employee's own condition, employers must pay employees their regular rate of pay or the applicable minimum wage, whichever is higher. However, if the sick leave is taken to care for a family member or because the employee is experiencing a condition specified by HHS, the rate of pay is reduced to two-thirds of the employee's regular rate of pay. Leave benefits are limited to \$511 per day and \$5,110 in total per employee for the first three qualifying events listed above. As for the last three qualifying events, leave benefits are limited to \$200 per day and \$2,000 in total per employee.

An employee cannot carry over sick time into the next year, nor is an employee entitled to payment of unused sick time upon separation from employment. Employees will be able to use this sick leave beginning on **April 1, 2020**, regardless of their length of service with the employer. Healthcare or emergency responder employers may elect to exclude healthcare workers from the Act. On March 24, 2020, the Department of Labor published a model notice that employers must conspicuously post in their workplaces, which is available at <https://www.dol.gov/agencies/whd/pandemic>. Similar to the FMLA amendments, the new sick leave law will become effective on **April 1, 2020** and will sunset on December 31, 2020.

To help employers shoulder the financial burden of paying for these additional benefits, the Act allows private employers with fewer than 500 employees to claim a tax credit equal to 100% of qualified sick leave wages paid to employees. These credits, however, are limited to \$200 to \$511 per day, depending on the qualifying leave event, subject to other conditions and limitations. The aggregate number of days taken into account per employee may not exceed the excess of 10 over the aggregate number of days taken into account for all preceding calendar quarters. The tax credit also includes an allowance for certain health plan expenses allocated to wages paid pursuant to the Act. These credits will effectively help employers recover up to 10 days of wages paid to employees earning up to \$132,860 in income. For employees earning

above \$132,860, and who are absent for more than 10 days, the Act will help employers recover some of these wages. The tax credits do not apply to certain governmental employers.

Last week, the Department of Labor released three rounds of guidance in the form of fact sheets, FAQs, and posters which clarified several key points regarding the sick time provisions of the Act. In sum, the guidance clarifies some of the following points:

- **The effective date of the Act is April 1, 2020.**
- **How to determine if you meet the 500-employee threshold.**
- **How to calculate hours worked by part-time employees.**
- **How to calculate an employee's regular rate of pay for benefit payment purposes.**
- **Employees are only entitled to 80 hours of paid sick leave for any combination of qualifying reasons. In other words, an employee cannot take 80 hours of paid sick leave for their quarantine and another 80 hours for another qualifying reason.**
- **Employers can ask employees for appropriate documentation in support of the reason for sick leave (the guidance includes several examples).**
- **Employees can take sick leave intermittently under certain circumstances.**
- **Employees are not entitled to sick leave when the worksite is closed or during a furlough, but employees may be entitled to unemployment insurance benefits.**
- **If an employer reduces scheduled work hours, an employee cannot use paid sick leave for hours the employee is no longer scheduled to work.**
- **Employees may only "top up" paid benefits under the Act with existing leave entitlements if the employer agrees (although the employer cannot require employees to use existing leave entitlements).**

The DOL's guidance is available at <https://www.dol.gov/agencies/whd/pandemic>.

Summary of the FMLA Expansions

The Act also expands the FMLA to allow employees to use FMLA in situations where an employee is unable to work or telework to care for a minor child if the child's school or place of care has closed or if the childcare provider is unavailable due to a public health emergency regarding COVID-19. The prior version of the Act included several more FMLA qualifying events, which Congress has since scaled back.

Although the first 10 days of COVID-19-related FMLA leave is unpaid, employers must pay employees up to approximately 10 additional weeks of leave at the rate of two-thirds of the employee's regular pay rate, capped at \$200 per day and \$10,000 in total per employee. The 50-employee minimum applicable to current FMLA leave reasons does not apply to COVID-19-related leaves, although the Act gives the Department of Labor authority to limit the applicability of the Act to employers with fewer than 50 employees. Absent any regulations from the DOL, all private employers with fewer than 500 employees, and certain public employers regardless of employer count, must offer COVID-19-related FMLA leave to their workforce. The job protection requirements of the FMLA also apply to COVID-19-related leaves, but only to employers with 25 or more employees, if certain conditions are met. Any employee who has

been employed for at least 30 calendar days will be eligible for this new type of FMLA leave. These amendments will be effective on April 1, 2020, and will sunset on December 31, 2020.

Similar to the sick leave requirement, the Act allows private employers with fewer than 500 employees to claim a tax credit of 100% of qualified FMLA wages paid to employees, which is capped at \$200 per day and \$10,000 per quarter per employee. The FMLA tax credit is designed to help employers recover up to \$10,000 in wages for employees earning up to \$52,000 per year. For employees earning above \$52,000 per year, the tax credit will help employers recover a smaller portion of wages. The tax credits do not apply to certain governmental employers.

As previously mentioned, the DOL recently released some guidance regarding the FMLA provisions of the Act. For example, the guidance addresses the following points:

- **The effective date of the Act is April 1, 2020.**
- **How to determine if you meet the 500-employee threshold.**
- **The Act does not give employees an extra 12 weeks of FMLA. Rather, the new FMLA leave under the Act is subject to the existing FMLA entitlement rules.**
- **How to calculate an employee's regular rate of pay for benefit payment purposes.**
- **Employees are only entitled to 80 hours of paid sick leave for any combination of qualifying reasons. In other words, an employee cannot take 80 hours of paid sick leave for their quarantine and another 80 hours for another qualifying reason.**
- **Employers can ask employees for appropriate documentation in support of the reason for FMLA under the Act (the guidance includes several examples).**
- **Employees can take FMLA under the Act intermittently under certain circumstances.**
- **Employees are not entitled to FMLA under the Act when the worksite is closed or during a furlough, but employees may be entitled to unemployment insurance benefits.**
- **If an employer reduces scheduled work hours, an employee cannot use FMLA under the Act for hours the employee is no longer scheduled to work.**
- **Employees may only "top up" paid benefits under the Act with existing leave entitlements if the employer agrees (although the employer cannot require employees to use existing leave entitlements).**
- **Other types of leave under the FMLA remain unpaid.**

The DOL's guidance is available at <https://www.dol.gov/agencies/whd/pandemic>.

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