

This post is for general informational purposes only and should not be considered to constitute legal advice.

Employment Update: COVID-19 Updates and Reminders
Posted July 24, 2020

Hello fellow COVID-19 warriors!

Based on recent updates and calls from many of you, we have put together some important information related to COVID-19 for your reading pleasure. As always, please call or email with any specific questions. This update is meant for informational purposes only and is not intended to be legal advice.

1. Santa Rosa City Temporary Sick Leave Ordinance for COVID-19 (NEW):

- a. Here is link with FAQ's: <https://srcity.org/3348/Temporary-Sick-Leave-Ordinance>
- b. Effective July 7, 2020 through December 31, 2020
- c. Applies to all private employees working at least 2 hours within boundaries of City of Santa Rosa
- d. Expands FFCRA
 - i. Requires employers with 500 or more employees to now provide Emergency Paid Sick (EPS) Leave to employees working in Santa Rosa
 - ii. Removes exemption for health care workers and first responders
 - iii. Increases the compensation for EPS from a cap of \$200/day to a cap of \$511/day for time spent caring for others (see below)
 - iv. Does not provide new entitlement for employees who have already been paid EPS under FFCRA
 - v. Is not eligible for federal payroll tax credit to the extent this mandate exceeds FFCRA provisions
 - vi. Like FFCRA has an exemption for school/day care related leave for employers with less than 50 employees if they attest that the leave requirements would jeopardize the viability of the business as a going concern

2. Reminder of FFCRA Requirements:

- a. With schools not reopening (at least initially) your employees may start asking about paid leave under FFCRA
- b. Here is a link to the DOL FFCRA poster: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf. And here is a copy in Spanish: <https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/1422-spanish.pdf>
- c. Employers must post this notice and provide to employees. We recommend distributing it again as the new school year gears up.
- d. Here is a recap of the benefits:
 - i. **Emergency Paid Sick (EPS)**
 1. **For COVID Purposes Only:** EPS provides additional paid sick leave for all employees for various coronavirus related issues listed below.
 2. **Available Immediately:** EPS leave is granted (not accrued) so it is available for immediate use by all employees (no employment length requirement).
 3. **New and Separate Entitlement:** EPS is provided *in addition to* any sick leave or PTO already provided by the employer. Employers cannot require

employees to use up other accrued paid sick leave or PTO prior to using the emergency sick leave.

4. **Employers:** EPS applies to all employers with less than 500 employees (see above for those in Santa Rosa). Employers with less than 50 employees are exempt if they attest that requirements would jeopardize the viability of the business.
 5. **Amount of EPS:** EPS provides 80 hours of paid leave for full-time employees and part-time employees are eligible for EPS equivalent to the average number of hours they work over a two-week period.
 6. **Reasons for EPS and Caps on Amount Paid:** EPS must be provided to all employees who are unable to work entirely (including working remotely) due to any of the reasons listed below. The amount of paid leave is capped at certain amounts depending on the reason for the leave.
 - a. EPS related to the employee's own health – Paid at the employee's regular rate of pay capped at \$511 per day or \$5,110 total.
 - i. The employee is subject to a federal, state, or local quarantine or isolation order for COVID-19;
 - ii. The employee is advised by a health care provider to self-quarantine due to COVID-19 concerns; or
 - iii. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
 - b. EPS related to the employee's need to care for others – Paid at 2/3rds of the employee's regular rate of pay and capped at \$200 per day or \$2,000 total (Santa Rosa Employers must pay all at full pay capped at \$511 per day or \$5,110 total).
 - i. The employee is caring for an individual who is under a quarantine or isolation order or has been advised to self-quarantine;
 - ii. The employee is caring for their son or daughter whose school or child care has been closed due to COVID-19; or
 - iii. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.
 - c. EPS does not carry over to the next year and is not payable upon termination.
 - d. Employers may not require an employee to search for or find a replacement employee to cover the hours during which the employee is using paid sick time as a condition of using sick time provided under the Act.
- ii. **Expanded FMLA (EFMLA)**
1. **Qualifying Reason:** EFMLA provides up to 10-weeks protected leave for employees who are unable to work entirely (including working remotely) due to the need to care for the employee's son or daughter (under 18) because their son or daughter's school or child care service is closed due to coronavirus.
 2. **Employers:** EFMLA applies to all employers with less than 500 employees. Employers with less than 50 employees are exempt if they attest that the

imposition of the requirements would jeopardize the viability of the business.

3. **Employee Eligibility:** Workers who have been on payroll for at least 30 calendar days are eligible for EFMLA benefits.
 4. **Paid/Unpaid:** The first 10 days of leave are unpaid (unless using EPS for first two weeks). Employees who have used their EPS entitlement already may elect to use accrued sick or vacation time to cover these days (employers cannot require them to use accrued vacation or sick leave). After the first 10 days, the remaining leave must be paid by the employer in an amount not less than 2/3rds of the employee's regular rate of pay. However, the amount of paid leave is capped at \$200 per day per employee or \$10,000 total per employee. Santa Rosa ordinance does not extend higher compensation to EFMLA entitlement.
 5. **Reinstatement:** Just as with any other FMLA leave, an employee who uses this EFMLA leave is entitled to reinstatement to the same or equivalent position. But, for employers with less than 25 employees, reinstatement is not required if the following conditions are met: the position held by the employee at the time the leave started no longer exists due to economic conditions or other operating conditions caused by coronavirus; the employer has tried to restore the employee to an equivalent position but no position is available; and the employer makes a reasonable effort to contact the employee if an equivalent position becomes available within a year.
3. **CAL/OSHA Guidance on Face Coverings:** Cal/OSHA issued recent guidance stating employers need to provide face coverings or reimburse employees who purchase their own cloth face coverings. They also provided helpful guidance and graphics on when to where certain types of masks. You can find the poster here: <https://www.dir.ca.gov/dosh/coronavirus/Face-coverings-poster.pdf>
 4. **COVID Exposure Guidance:** This is the most challenging topic. Unfortunately, every situation is slightly different so it is difficult to have a protocol that covers all contingencies. Below is helpful guidance we provided back in May that drew from the CDC regarding what to do in certain circumstances. The County of Napa has also put out some really helpful guidance with flow charts for certain types of exposure. It does not address all instances, but it does provide real life practical guidance. It can be found here: <https://www.countyofnapa.org/DocumentCenter/View/18019/Guidance-for-Employers-and-the-Community-Positive-or-Exposed-Employees>.

Here is what was provided in our May 27 update:

What to Do If An Employee Gets Sick or Is Exposed to COVID-19:

- Employees should not come to work if they test positive for COVID-19, have COVID-19 symptoms, or have been exposed to someone with COVID-19 or COVID-19 symptoms (whether a confirmed or suspected case).
- If the sick employee is at work they should be immediately separated from other employees and customers and should be sent home.

- Close off areas used by the sick employee and do not use those areas until after cleaning and disinfecting them. The CDC recommends waiting at least 24 hours before cleaning and disinfecting, or as long as possible.
 - Notify all employees who had close contact for a prolonged period of time (<6 feet for more than 15 minutes) with the sick employee that they may have been exposed to COVID-19, while maintaining confidentiality (i.e. do not reveal the sick employee's name or any other confidential medical information).
 - Employees who had close contact with the sick employee as described above should self-isolate for a full 14 days and self-monitor for symptoms. If they develop symptoms, they would then follow the same protocol for sick employees. Note that the 14-day self-quarantine period is required in Sonoma County (other counties recommend pursuant to CDC guidelines).
 - The same rule applies to employees who had close contact with someone outside the workplace who tests positive for COVID-19 or has COVID-19 symptoms, such as a family member. Those employees should self-isolate for 14 days, monitor symptoms, and follow the protocols for sick employees if they develop symptoms.
 - For employees that had close contact with another employee who had close contact with someone who tests positive for COVID-19 or has COVID-19 symptoms (i.e. two degrees of separation from the sick employee), no self-isolation is necessary unless the employee who had direct contact with a sick person develops symptoms themselves or tests positive for COVID-19. However, those employees should still be advised to self-monitor their symptoms and stay home if any symptoms develop.
 - Notify County health officials and customers (if possible) of any possible case of COVID-19 in the workplace.
 - Sick employees should not return to work until they have met the CDC's criteria to discontinue home isolation (this is also consistent with Sonoma County's requirements):
 - If the employee had symptoms of COVID-19 or tested positive for COVID-19 they can return to work if 3 days (72 hours) have passed with no fever without the use of fever reducing medicine, their symptoms have improved, and either 10 days have passed since the symptoms first appeared or they receive 2 negative test results in a row at least 24 hours apart.
 - If the employee tested positive for COVID-19 but never developed symptoms they can return to work if 10 days have passed since the date of the test or they receive 2 negative test results in a row at least 24 hours apart.
5. **Increased County Enforcement Measures:** Most local counties have either instituted or are in the process of instituting more robust enforcement measures with many contemplating fines up to \$10,000 for non-compliant businesses. Check with your local county for its current enforcement measures.