

## MDM&C Update

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March 31, 2020

### ***DOL ISSUES ADDITIONAL GUIDANCE ON NEW PAID SICK LEAVE AND PAID FMLA***

On Friday, March 27, the Department of Labor amended its Guidance on the “Emergency Paid Sick Leave” and the “Family and Medical Leave Emergency Extension Act.” The Guidance reads: “[if] your employer sent you home and stops paying you [before April 1] because it does not have work for you to do, you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits.”

Therefore, as currently interpreted by the Department of Labor, employees laid-off, furloughed or terminated before April 1 are *ineligible* for the new paid sick time and paid FMLA.

Similarly, the Guidance reads: “[i]f your employer closes after [April 1] (even if you requested leave prior to the closure), you will not get paid sick leave or expanded family and medical leave but you may be eligible for unemployment insurance benefits. This is true whether your employer closes your worksite for lack of business or because it was required to close pursuant to a Federal, State or local directive.”

The Guidance uses different language in describing what happens when an employee is laid-off, furloughed or terminated prior to April 1 and what happens after April 1. The Guidance is clear that employees laid-off, furloughed or terminated before April 1 are ineligible. However, for employees laid-off or furloughed after April 1, they are also ineligible if the “employer closes.”

Similarly, if an employer “closes [the] worksite” while employees are receiving paid sick leave or paid FMLA, those employees “are no longer entitled to paid sick leave or expanded family and medical leave, but [they] may be eligible for unemployment insurance benefits.”

Thus the Guidance states that the paid sick leave and paid FMLA is available only if the employer does not close the work site. Employees are not eligible for the paid sick time or the paid FMLA if the “worksite is closed.”

However, absent additional regulations or guidance, it is not clear what “closing” the worksite means for some employers.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at [bjacques@mdmc-law.com](mailto:bjacques@mdmc-law.com).

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