

EPSLA: Reasons Requiring Paid Sick Time

(Sec. 5102(a))

- Full time employees = 80 hours at regular rate
- Part time employees = the number of hours that such employee works, on average, over a 2-week period
- For categories 1, 2, and 3 - Employee's own COVID-related condition, employers must pay at the regular rate
 - Capped at \$511 per day or \$5,110 in aggregate
- For categories 4, 5, and 6 - caring for another and “substantially similar conditions”, Employers must pay at least 2/3 of the employee's regular rate
 - Capped at \$200 per day or \$2,000 in aggregate
- No carryover to the following year



EPSLA: Eligibility and Coverage

- **Employee Eligibility – no minimum time for work**
 - Employees are entitled to emergency paid sick leave regardless of how long the employee has been employed by the employer



- **Employer Coverage**
 - Includes any public employer that employs one or more employees, and any private employer that employs fewer than 500 employees



EPSLA: Notice Requirement & Prohibited Acts

(Sec. 5102(d) – Sec. 5104)

- **Notice:** Employers required to post a notice of the requirements described in the Act
 - Secretary of Labor to publish such a notice within one week
- **Prohibited Acts**
 - Cannot require employee to use other paid leaves provided by the employer before the employee uses emergency paid sick leave
 - Cannot require an employee to find a replacement employee while the employee is using leave under the Act
 - Cannot discharge or discipline employees taking leave in accordance with Act

EPSLA: Interplay with Laws and Policies

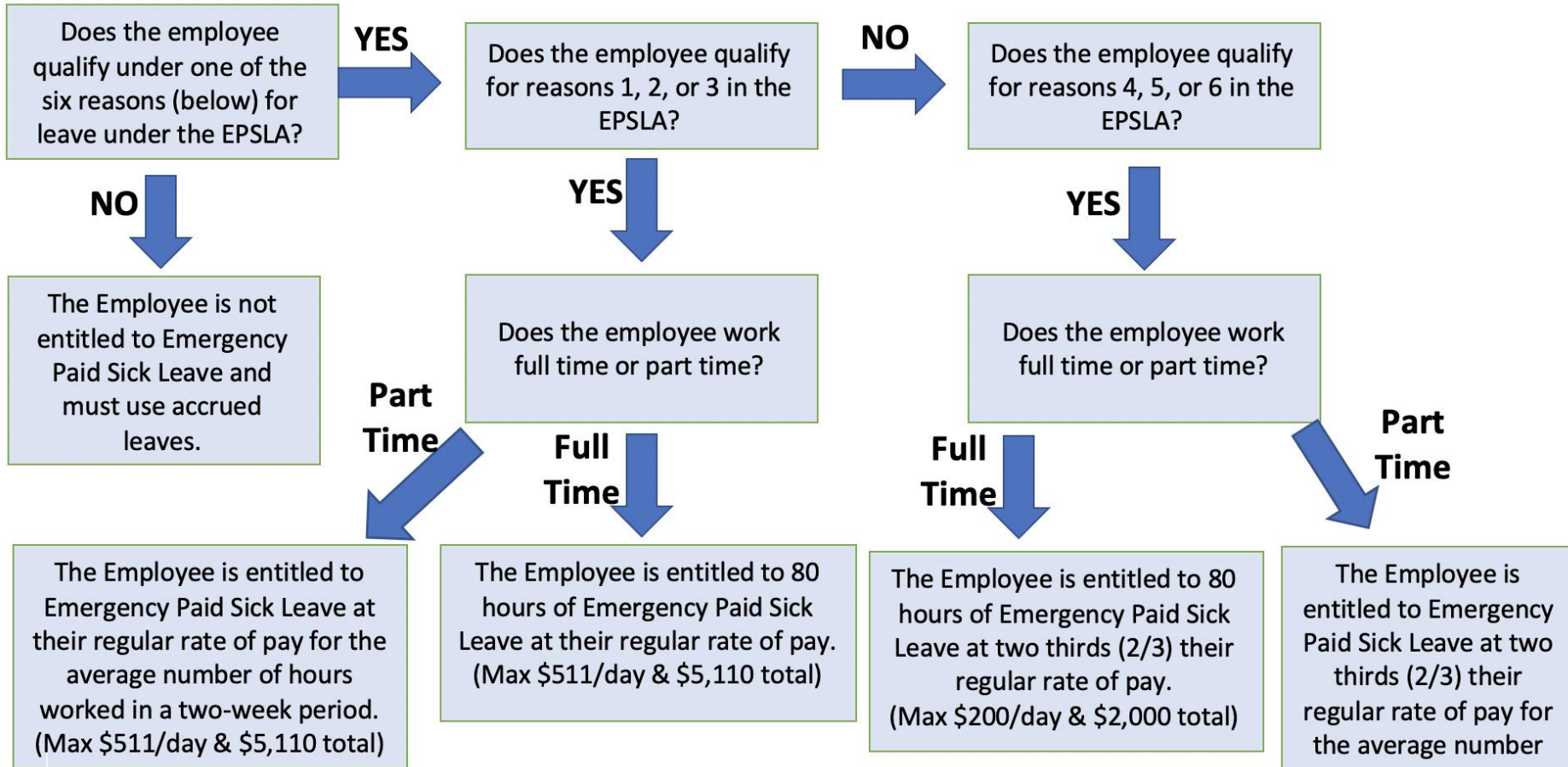
(Sec. 5107)

- Nothing in the Act shall be construed to:
 - In any way diminish the rights or benefits that an employee is entitled to under any:
 - Other Federal, State, or local law;
 - Collective Bargaining Agreement; or
 - Existing employer policy
 - Require financial or other reimbursement to an employee from an employer upon the employee's separation from employment for paid sick time under the Act that has not been used by such employee



Determining an Employee's Pay Under the Emergency Paid Sick Leave Act (EPSLA)

Start Here

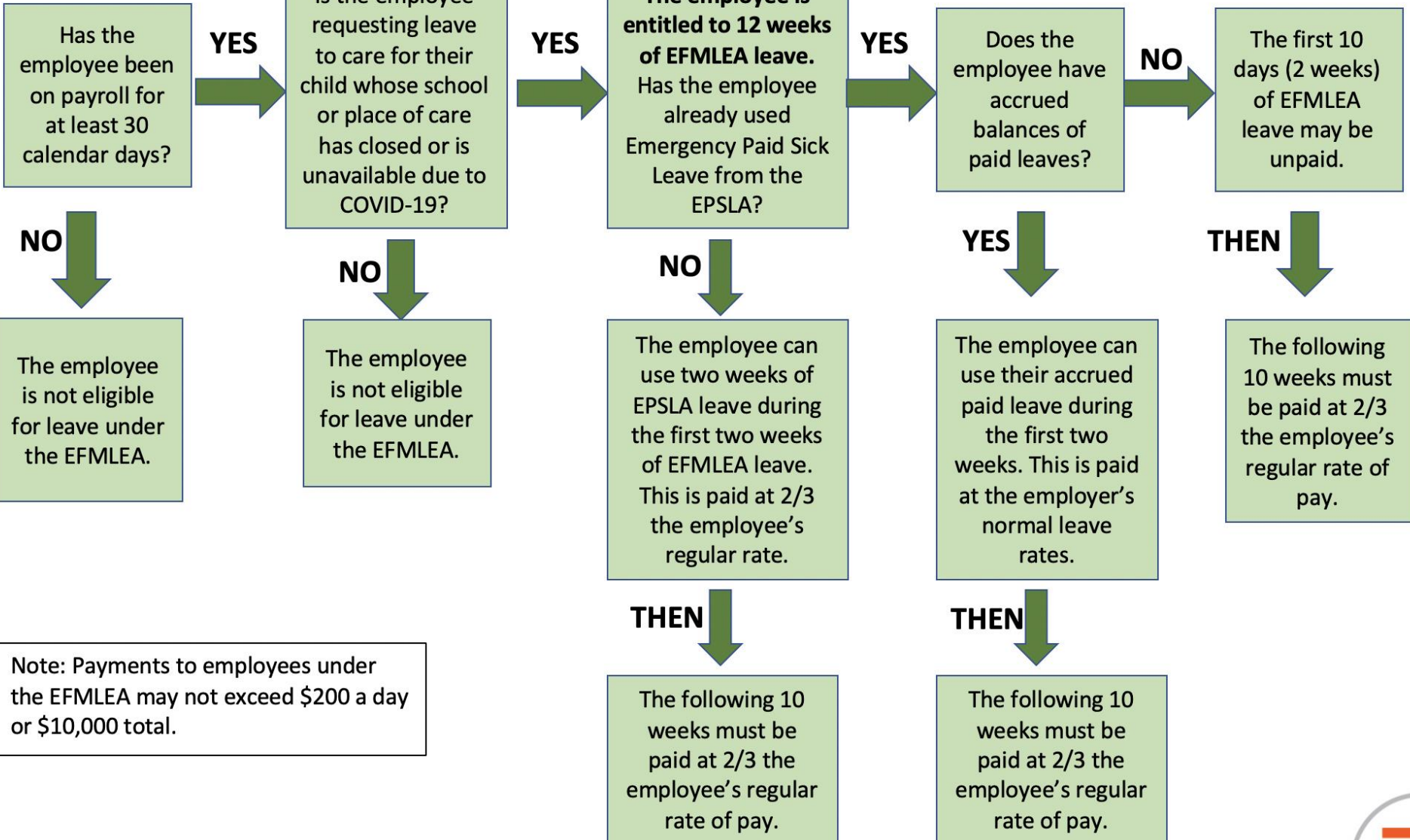


Qualifying reasons to take Emergency Paid Sick Leave (all relating to COVID-19):

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order.
- (2) The employee has been advised by a health care provider to self-quarantine.
- (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 such an order in (1) or such advice in (2).
- (5) The employee is caring for their child whose school or place of care has closed or is unavailable.
- (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Determining an Employee's Pay Under the Emergency Family and Medical Leave Expansion Act (EFMLEA)

Start Here



Note: Payments to employees under the EFMLEA may not exceed \$200 a day or \$10,000 total.

Qualifying Reasons for: Emergency Paid Sick Leave (EPSL)	Weeks 1 and 2 (80 hours)		Weeks 3 through 12 (additional 10 weeks)
1. subject to a Federal, State, or local quarantine or isolation order related to COVID-19	Paid EPSL at regular rate	No EFML	No EFML
2. has been advised by a health care provider to self-quarantine related to COVID-19	Paid EPSL at regular rate	No EFML	No EFML
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis	Paid EPSL at regular rate	No EFML	No EFML
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2)	Paid EPSL at 2/3 regular rate	No EFML	No EFML
5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons This is Also the Only Qualifying Reason for Emergency Family Medical Leave (EFML)	Paid EPSL at 2/3 regular rate	Unpaid EFML	PAID EFML at 2/3 regular rate
6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services	Paid EPSL at 2/3 regular rate	No EFML	No EFML



Part 3: Coverage of Testing for COVID-19

(Sec. 6001)

Employers offering group health insurance benefits are prohibited from imposing any cost sharing requirements (including deductibles, co payments, and coinsurance) for the following items/services furnished during the COVID-19 health emergency:

- 1. In vitro diagnostic products and their administration**
- 2. COVID-19 testing that is “approved, cleared, or authorized” by the FDA**
- 3. Items and services furnished to an individual that result in an order for administration of testing under item (1) at any of the following:**
 - » Health Care Provider Office Visits (in person and telehealth visits)
 - » Urgent Care Center Visits
 - » Emergency Room Visits



COVID-19 and Tax Credits

- Tax Credit for cost of providing paid sick leave as required by the Family First Coronavirus Response Act is **NOT** available to public employers
 - Sec. 7001(e)(4)

Congress has been asked to reconsider this provision



COVID19 and WORKER'S COMP

If Police/EMS/Corrections/firefighter contracts COVID-19 in the course of performing his/her duties (to the extent that can be confirmed) is treatment and wage loss covered by WC.?

- **NO. It would be considered an occupational disease rather than an injury. For an OD to be compensable, the OD must be unique to the employment and the employment must create a risk of contracting it in a greater degree and in a different manner than the general public.**
- **Being a pandemic makes the risk applicable to the entire population.**



COVID19 and WORKER'S COMP

The BWC has an exposure policy pursuant to which it pays for testing of first responders exposed to bodily fluids, etc. which can lead to a claim.

The BWC could implement something similar to the way needle sticks and other exposures are treated with respect to first responders.

BWC issued a Covid19 FAQ dated 3-20-2020

ORC 4123.06 defines emergency medical worker

ORC 2935.01 defines police officer.

The BWC Exposure Policy is Policy No. CP-05-02.



COVID19 and Refusal to Work

4167.06 Right to refuse to work under unsafe conditions.

(A) A public employee acting in good faith has the right to refuse to work under conditions that the public employee reasonably believes present an imminent danger of death or serious harm to the public employee, provided that such conditions are not such as normally exist for or reasonably might be expected to occur in the occupation of the public employee.



COVID19 and UNEMPLOYMENT

As of March 15 Order of Governor DeWine

- Individual waiting period for unemployment suspended
- Requirement to seek work suspended for applications related to the coronavirus outbreak
- Unemployment allow for employees not offered paid leave and are quarantined by Dr. or employer
- Unemployment allowed for employees not offered paid leave and their employer temporarily closes

COVID19 and UNEMPLOYMENT

As of March 15 Order of Governor DeWine

- Employees who chose self-quarantine not eligible
- Payments paid to employees as result of shutdown will be paid from the “mutual” account
- Fees for late reports and late payments will be waived

SEE - <http://jfs.ohio.gov/ouio/CoronavirusAndUI.stm>



COVID19 and UNEMPLOYMENT

- **Layoffs & severance payments & Unemployment:**
 - From current ODJFS manual

4. Severance pay allocated by the employer or the department to week(s) of unemployment is deductible from unemployment benefits. Severance pay allocated by the employer to the last week or day of employment will only be deductible for that week and will not affect benefits beyond that week

<http://www.odjfs.state.oh.us/forms/num/JFS08201/pdf/> - page 37, number 4



COVID19 and UNEMPLOYMENT

Layoffs & Unemployment:

On the Ohio Unemployment Comp website:

Employers, please distribute this form to employees laid off because of the COVID-19 pandemic to expedite their claim process:

<http://www.odjfs.state.oh.us/forms/num/JFS00671/pdf/>

See also: jfs.ohio.gov/ohio/CoronavirusAndUI.stm



Covid19 : When to Consider Paid Leaves or Extension of Leaves

- 1. Employee presents COVID, is exposed, isolated**
- 2. Employee self-concern absence**
- 3. Child care - Parental care**
- 4. “Compromised health condition” self or family**

When may employees access paid leaves and what time limits on the use

Check applicable union contracts & policies



Covid 19: Considerations for Paid Leaves or Extension of Leaves

- **Authority to grant paid leave RC 124.3888**
- **Requirement to use accumulated leave first**
- **Leave without pay**
- **Reduction in pay / layoff / furlough**
 - **(private sector WARN act)**
- **Reduction in pay/position – Public RC 124.34**
- **Unilateral grant of benefit**
 - **possible ULP if unions**
- **Exigent circumstances**



Covid19 and Remote Work

- **Allow or not**
- **Require or limit**
- **Technical support**
- **Security – hackers**



COVID-19 and Union Contracts

Emergency or Exigent circumstances

- **Management Rights**
- **Sick and Other Leaves**
- **Work Assignments / Bargaining unit work**
- **Hours of Work / Alternate provisions**
- **Remote Work provisions**
- **Insurance Payments**
- **Force Majeure provisions**
- **Emergency or Exigent conditions provisions**
 - **Declared by the Governor/President**



ADA - What is a “Disability”

1. **Physical or mental impairment that substantially limits a major life activity; *OR***
 2. **A “record of” such impairment; *OR***
 3. **Being “regarded as” having such an impairment.**
- *** * Only #1 is entitled to a reasonable accommodation**

Is C-19 a disability? – “regarded as” or “actual”?

