

## Coronavirus & Employee Benefits: January 2021 Update

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The COVID-19 pandemic will continue to impact workers and workplaces in the new year. As 2021 begins, workers will continue to navigate possible personal or familial illness, school and childcare closures, and employment uncertainty, but with less support than they received in 2020. In addition, workers will likely encounter updated employer policies involving pandemic-related PPE (masking) requirements and the COVID-19 vaccines.

**Mandatory Paid Sick Days and Emergency Leave Provisions Expire, Become Optional.** The mandated paid and partially paid leave provisions of the March 2020 Families First Coronavirus Relief Act provided employees with up to 10 paid sick days for absence due to COVID-related reasons and/or to care for a family member experiencing COVID symptoms in order to obtain a test or to quarantine or isolate in accordance with a health department or medical professionals orders. It also provided emergency family leave, paid at 2/3rds the employee's regular rate (up to \$210 per day), for 10 weeks for employees to care for their minor children whose school and/or child care facility were closed as the result of the pandemic.

The new legislation *does not* extend the mandatory FFCRA paid sick leave or extended family leave/medical leave benefits. As of January 1, 2021, these paid and partially paid leave provisions are voluntary and the new law encourages paid sick leave and emergency leave by continuing the employer tax credit incentives through March 31, 2021. There is no provision for the tax credits, and therefore no incentive to offer, the extension of voluntary leave provisions after March 31, 2021.

**Unemployment Enhancement.** The most recent COVID aid bill extended eligibility for unemployment by 11 weeks, so that the total eligibility period for state unemployment aid is 24 weeks (up from the standard 11 weeks but down from 26 total weeks under the FFCRA/CARES Act). In addition, the new law provides for a \$300 per week unemployment enhancement of state benefits beginning around January 1<sup>st</sup>.

**Unemployment Documentation.** Because the number of people who applied for unemployment skyrocketed during the pandemic, the new COVID relief bill included provisions designed to reduce unemployment fraud. Newly unemployed workers are now required to provide documentation within 21 days of their first claim. Some already unemployed workers may also be required to provide documentation.

**Duty to Accept Comparable Work to Receive Unemployment.** Congress added a new provision requiring States to create a system, either online or telephonically, that allows employers to report to the State unemployment agency instances where individuals who claim unemployment refuse to return to work or accept an offer of suitable work without good cause. Wisconsin's unemployment agency already has an online tool for employers to report when individuals refuse work. States must also provide individuals who claim unemployment with plain language notices about the State's return to work law, the individual's rights to refuse or accept suitable work, and the right to refuse work that poses a risk to the individual's health or safety. This provision takes effect on January 26, 2021. Therefore, it remains unknown if Wisconsin's

unemployment agency will modify the current return to work and refusal of suitable employment rules to address the requirements under the new law.

### **FAQs (so far)**

#### **A member was exposed to covid-19 over the holidays and has been advised to quarantine for a week, 10 days, etc. Is he still eligible for paid sick days?**

It depends. Whether paid sick days under the December 2020 covid relief act are available is an employer-by-employer decision (and is still limited to employers with under 500 employees). In the event an employee is advised to quarantine or experiences symptoms, the business agent should reach out to the employer and ask whether paid sick days are available.

#### **If the Employer offers voluntary paid sick leave under the new policy, do employees get an additional 10 days?**

No. Any new paid sick day policy by an employer is going to be subject to flexibility – the employer will determine how many paid sick days to offer. In general, though, the tax credit that is available to employers Paid sick days are still limited to 10, total, for all covid-related reasons, between March 31, 2020, and March 31, 2021.

\*Similarly, the total amount of leave available for the partially paid covid family leave does not increase. The employee has a maximum of 12 weeks (2 of which are paid sick days) between March 31, 2020, and March 31, 2021.

#### **If the Employer does not Offer Paid Sick Days, is a Quarantined or Positive Employee Entitled to Unemployment?**

It depends. Wisconsin Unemployment is only eligible to employees who are physically able to work. If someone is quarantined or mildly ill, he or she is still able to work. If the employee is hospitalized, he or she is likely not able to work. Over the last nine months, employers have worked with employees to ensure that unemployment is available, but the unemployment restrictions included in the December 2020 covid relief bill may change that. For now, employees should be advised to apply for unemployment. There are questions designed to determine eligibility.