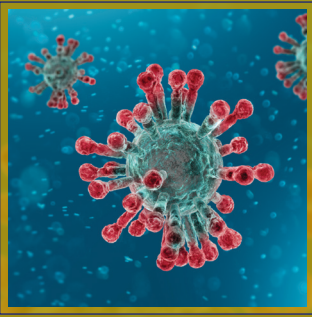




NECA Legal Alert

Expansion of the Credit for Paid Sick Leave and Emergency Family Leave for Certain Pension and Apprenticeship Contributions

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.



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Expansion of the Credit for Paid Sick Leave and Emergency Family Leave for Certain Pension and Apprenticeship Contributions paid pursuant to a Collective Bargaining Agreement, as provided by the American Rescue Plan Act (ARPA)

Jef Fagan, NECA General Counsel

We issued an earlier legal alert on the basic provisions of the ARPA; however, since that time there have been some important interpretations related to pension and apprenticeship contributions that merit consideration by NECA chapters and members.

What Does the Law Allow?

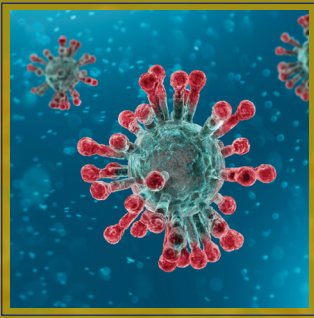
The first pandemic-related employment legislation was the Families First Coronavirus Response Act (“FFCRA”) which established emergency paid leave for workers impacted by COVID-19. Under the FFCRA, employers with fewer than 500 employees were required to provide emergency paid sick leave (“EPSL”) and emergency paid leave under the Family and Medical Leave Act (“EFMLA”) in exchange for a refundable tax credit. This requirement expired at the end of 2020, but employers could voluntarily continue to offer EPSL and EFMLA in exchange for tax credits through March 31, 2021, as long as they offer this leave in a non-discriminatory manner.

ARPA extends and expands voluntary leave programs under FFCRA in the following ways:

- Extends employers’ ability to voluntarily offer EPSL and EFMLA in exchange for refundable tax credits through September 30, 2021.
- Expands the list of reasons for taking any leave under the FFCRA to include: (1) employees receiving a COVID-19 vaccination; (2) recovering from an injury, disability or illness related to receiving a COVID-19 vaccination; and (3) employees waiting on results of a COVID-19 test (because of exposure or employer requirement).
- Increases the length of paid EFMLA leave to 12 weeks by eliminating the requirement that the first two weeks are unpaid. The cap on payroll tax credit was correspondingly increased from \$10,000 to \$12,000.
- Resets the starting date of qualifying EPSL leave to March 31, 2021. As such, if an employee exhausted ESPL leave before March 31, the employee would be eligible for EPSL again after March 31. (There is no carry-over of unused leave.)
- Provides that contributions for certain fringe benefits – pension and apprenticeship – may increase the amount of the credit BUT only to the daily and aggregate maximums.

What Pension and Apprenticeship Contributions Will Count Towards this Credit?

- Paid by the employer for either a defined benefit plan or apprenticeship plan.
- Pension must be a defined benefit plan, not a 401(k) or profit-sharing plan.
- Required by the terms of the CBA.
 - ◆ Note, if a portion of the contribution rate is required by a funding improvement or rehabilitation plan that is not incorporated into the CBA,



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then consult with your legal advisor to determine the amount of contribution available for the credit.

- Apprenticeship contributions must be to a Registered Apprenticeship Program with the DOL.
- Contributions must be broken down into an hourly rate.
- Amount available for the credit is the hours paid for the qualified sick leave or qualified family leave multiplied by the hourly contribution rate.
 - ◆ Subject to the applicable limits for each benefit:
 - » Paid Sick Leave of either \$200 or \$511 depending on the type of sick leave; maximum 10 days of Credit.
 - » Paid Family Leave up to \$200 per day and maximum twelve-week total of \$12,000
 - ◆ The daily and total maximum credit is inclusive of wages, pension contributions and apprenticeship contributions.
 - » The pension and apprenticeship contribution credits are not subject to separate caps

As with most of the COVID-19 legislation and regulation, additional guidance is likely forthcoming. NECA will update these resources, as necessary. Please seek competent legal or financial advice for assistance with any specific factual scenarios.

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