



Decisions, Decisions: Implementing the New Emergency Paid Sick Leave and Paid FMLA Provisions

The Families First legislation passed March 18 created new federally funded paid leave policies that apply to LeadingAge members—unless you fit into two categories: health care business or small business. We can help you determine if you can claim these exemptions with three simple questions. To get started, answer question one to determine if you are a covered employee.

1. Do you have 500 employees or more?

NO: If you have fewer than 500 employees, you are a covered employer! Continue to #2.

YES: Stop here. Your leave policies and normal FMLA apply.

2. Are you a health care employer? (nursing home, home health agency, retirement community, or similar)

NO: Continue on to question 2a.

2a. Do you have over 50 employees?

NO: Continue on to #3.

YES: Stop Here. You must 1) Provide both paid sick leave and paid FMLA to each of your employees, 2) Post the employee notice in a conspicuous location in your community.

YES: Continue to question 2b.

2b. Do you want to **exclude** all/some employees from receiving the new paid leave?

NO: Stop here. You must 1) Provide both paid sick leave and paid FMLA to each of your employees, 2) Post the employee notice in a conspicuous location in your community.

YES: You have some decisions to make:

- 1) Decide if you are going to participate in any portion of the new law (e.g., 2-week quarantine/isolation; FMLA) or none.
- 2) Decide how you are going to determine if any employees are able to take the federally reimbursed paid leave if you participate in some but not all of the provisions.

Note: DOL suggests you be “judicious” in making these decisions.

Once you’ve made your decisions, you must 1) Communicate decisions to your employees, and 2) Post the employee notice in a conspicuous location in your community. *Note: there’s no need to contact DOL; just keep good records.*

3. Are you a small employer? (fewer than 50 employees)

NO: You are expected to provide paid leave unless you are a healthcare employer who chooses not to (see answer to 2(b), above)

YES: Continue to question 3a.

3a. Do you want to choose to be exempt from FMLA leave?

NO: Stop here. If you choose not to be exempt, you should 1) Comply with the law and 2) Post the employee notice in a conspicuous location in your community.

YES: Continue to question 3i.

3i. Do any of these three apply to you?

- Your expenses and financial obligations exceed available business revenues & you would cease operating at a minimal capacity.
- The absence of the employee(s) requesting leave creates a substantial risk to the financial health or operational capabilities because of their specialized skills, knowledge of the business, or responsibilities.
- You do not have enough workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting leave, and these labor or services are needed to operate at a minimal capacity.

NO: Stop here if none of the above apply. You are NOT exempt, you must 1) Comply with the law and 2) Post the employee notice in a conspicuous location in your community.

YES: You are exempt! You must 1) keep records confirming eligibility for exemption (do not send to DOL) and 2) communicate your decision to employees. *Note: Exemption only applies to FMLA, not personal sick leave*