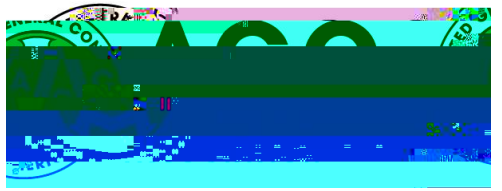
Navigating the Outbreak, Part I:

Patricia Anderson Pryor
pryorp@jacksonlewis.com
513.322.5035
Jackson Lewis P.C.

Leslie Stout-Tabackman
Leslie.stout@jacksonlewis.com
703.483.8345
Jackson Lewis P.C.

© 2020 The Associated General Contractors of America, Inc.

© 2020 The Associated General Contractors of America, Inc.



“Eligible” employees may take 12 weeks of unpaid leave in a 12-month period.

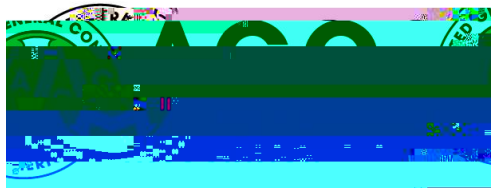
26 weeks to care for an injured service member

Continuation of health insurance benefits for the employee during the leave period.

Restoration of the employee to the same or equivalent position upon timely return from the leave.

Prohibits interference with leave and retaliation

© 2020 The Associated General Contractors of America, Inc.



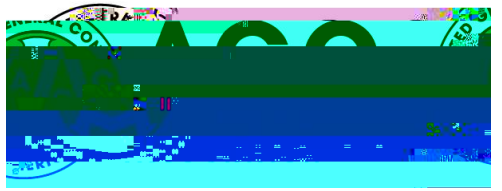
An employee must be employed by a covered employer:

For at least 12 months (can include prior service);

For at least 1,250 hours in the 12 months immediately preceding the leave;

At a worksite having 50 or more employees within 75 miles of that worksite.

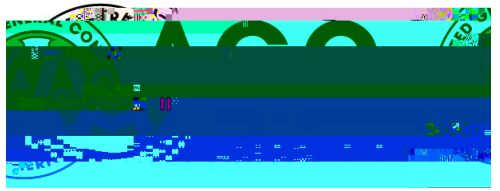
© 2020 The Associated General Contractors of America, Inc.



The birth of a child and in order to care for such child.

The placement of a child with the employee for adoption or foster care and to care for the newly placed child.

© 2020 The Associated General Contractors of America, Inc.



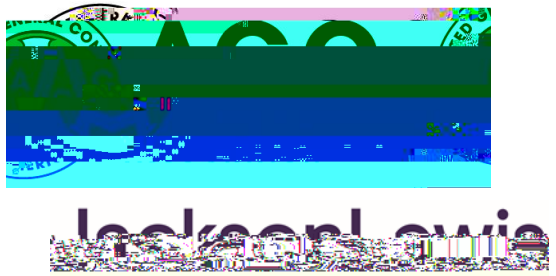
Many states have their own FMLA laws

Variations in terms of:

- coverage based on size of employer
- amount of leave
- reasons for leave

© 2020 The Associated General Contractors of America, Inc.

© 2020 The Associated General Contractors of America, Inc.



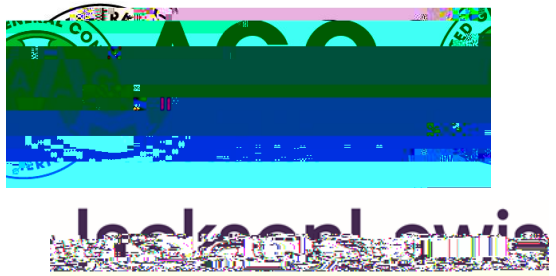
Private employers with fewer than 500 employees (by company not location) and certain public employers.

But . . .

An employer of an employee who is a healthcare provider or an emergency responder may elect to exclude the employee from the application of these two provisions.

U.S. Department of Labor regulations exempt small businesses with fewer than 50 employees when the provision would jeopardize the viability of the business as a going concern.

© 2020 The Associated General Contractors of America, Inc.



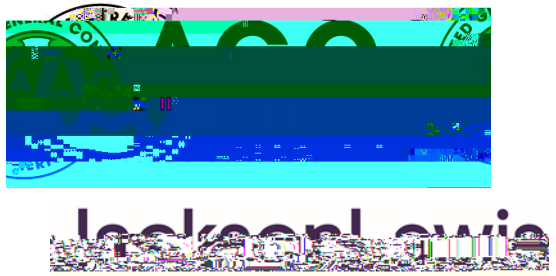
Both the paid FMLA and the Paid Sick Leave provisions go into effect no later than April 2, 2020 and remain in place until the end of 2020.

The Department of Labor is expected to issue regulations in early April 2020.

Employers will be required to post a FFCRA notice – to be published by the Department of Labor – in a conspicuous place in the workplace.

© 2020 The Associated General Contractors of America, Inc.

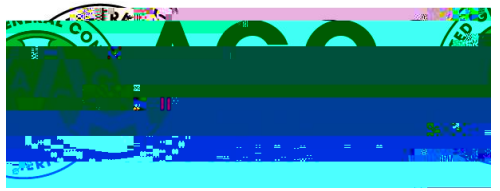
© 2020 The Associated General Contractors of America, Inc.



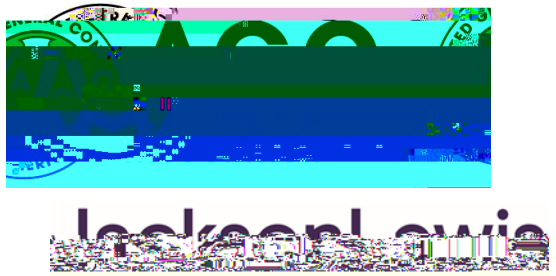
Employees who have been employed for at least 30 calendar days.

The usual FMLA requirements that the employee has been employed for a year, worked for at least 1,250 hours, and

© 2020 The Associated General Contractors of America, Inc.

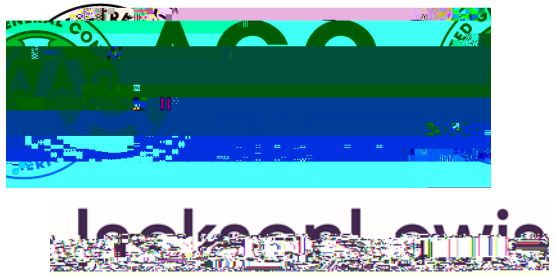


© 2020 The Associated General Contractors of America, Inc.



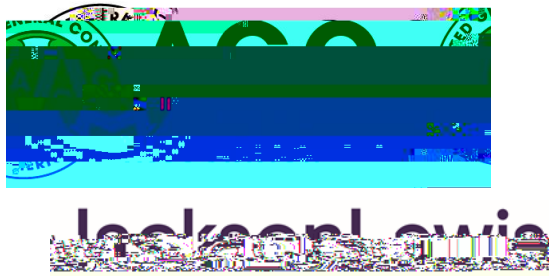
“Qualifying need related to a public health emergency” means an employee is unable to work due to a need for leave to care for the employee’s son or daughter (under 18 years of age) if the child’s elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a “public health emergency.”

© 2020 The Associated General Contractors of America, Inc.



- Up to 12 weeks of FMLA leave
- First two weeks are unpaid
  - Employee may elect to substitute any accrued vacation leave, personal leave, or medical/sick leave (for reasons allowed) under federal/state/local required paid sick leave) for the unpaid leave.
- Subsequent absences for this reason must be paid at 2/3 the employee's "regular rate" of pay, as defined under the FLSA.
  - Capped at $200 a day ($25 per hour under an 8 hour work day) and $10,000 in aggregate per employee.

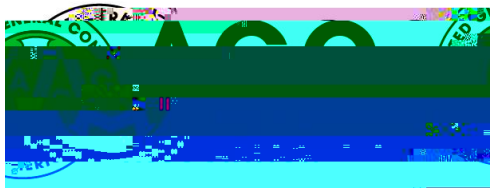
© 2020 The Associated General Contractors of America, Inc.

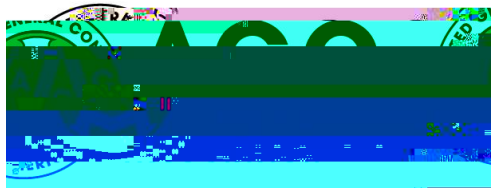


FMLA leave is generally job protected

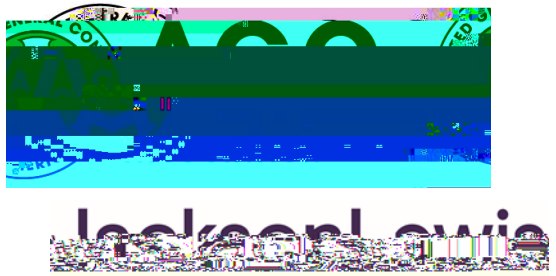
Exception under FFCRA:

© 2020 The Associated General Contractors of America, Inc.



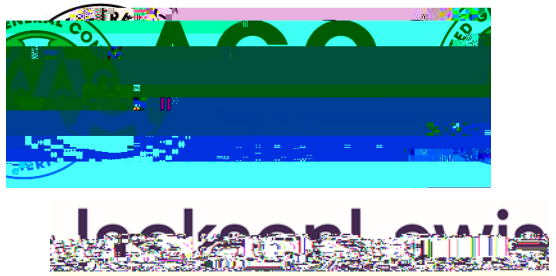


© 2020 The Associated General Contractors of America, Inc.



The paid sick leave requirements would apply to all employees under a covered employer.

© 2020 The Associated General Contractors of America, Inc.

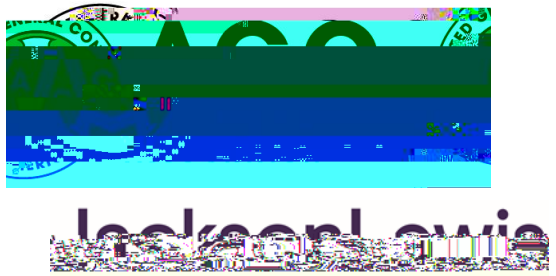


1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.

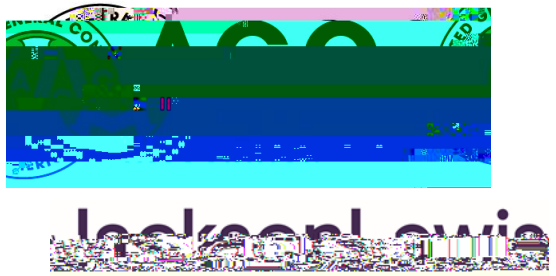
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

© 2020 The Associated General Contractors of America, Inc.



4. The employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or who has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
5. The employee is caring for a son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

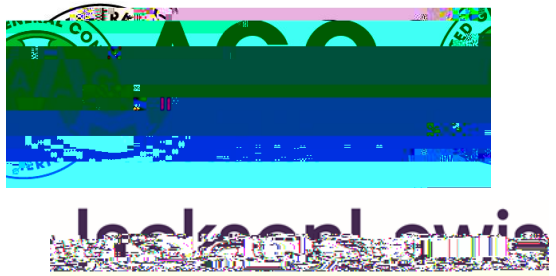
© 2020 The Associated General Contractors of America, Inc.



80 hours of paid sick leave for full-time employees.

The equivalent of the average number of hours a part-time employee works over two weeks.

© 2020 The Associated General Contractors of America, Inc.



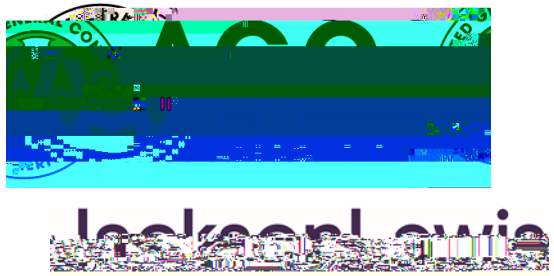
If for an employee's own condition or quarantine (reasons 1-3):

- Paid sick leave is paid at the employee's "regular rate"
  - capped at $511 per day and $5,110 in the aggregate

If to care for others or "a substantially similar condition" (reasons 4-6):

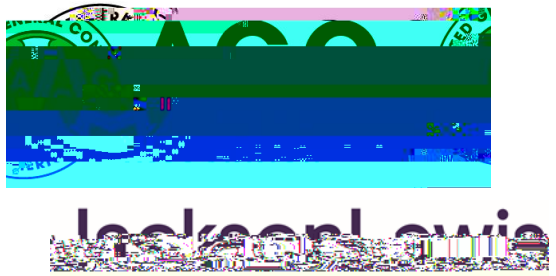
- Paid at 2/3 regular rate
  - capped at $200 per day and $2,000 in the aggregate

© 2020 The Associated General Contractors of America, Inc.



After the first sick day, Employer may require an employee to follow reasonable notice procedures in order to continue receiving the paid sick leave

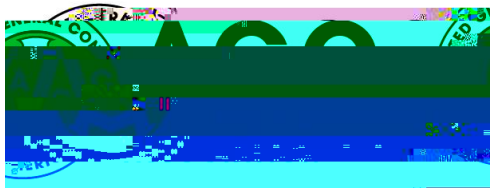
© 2020 The Associated General Contractors of America, Inc.



Both the FMLA provisions and the paid sick leave provisions provide that an employer signatory to a multi-employer collective bargaining agreement may fulfill its obligations (consistent with bargaining obligations and the collective bargaining agreement) by making contributions to a multi-employer fund, plan, or program based on what paid leave each of its employees is entitled to while working under the agreement.

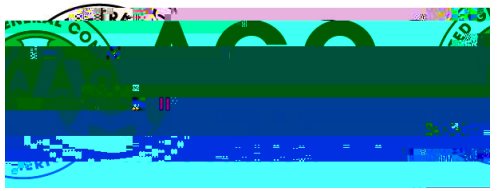
The fund, plan, or program must enable employees to receive pay for both paid sick leave and the FMLA leave.

© 2020 The Associated General Contractors of America, Inc.

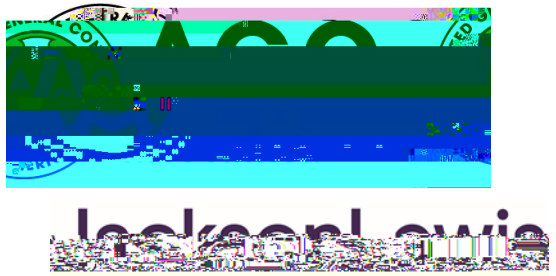


© 2020 The Associated General Contractors of America, Inc.

© 2020 The Associated General Contractors of America, Inc.



© 2020 The Associated General Contractors of America, Inc.

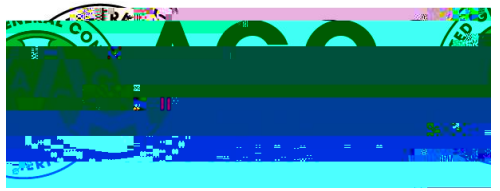


Only applies to:

- Procurement contracts for construction covered by the Davis-Bacon Act (DBA) – but not the Davis-Bacon Related Acts;
- Service contracts covered by the Service Contract Act (SCA);
- Concession contracts, including any concessions contract excluded from the SCA by DOL's regulations at 29 CFR 4.133(b);
- Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public (this includes leases).

© 2020 The Associated General Contractors of America, Inc.

© 2020 The Associated General Contractors of America, Inc.



California (Berkley)
California (Emeryville)
California (Long Beach)
California (LA)
California (Oakland)
California (Santa Monica)

D.C.

Maine*
Maryland
Maryland (Montgomery County)
Massachusetts
Michigan
Minnesota (Duluth)

Minnesota (Minneapolis)
Minnesota (St. Paul)

New Mexico (Bernalillo Co.)*

New York (Westchester)

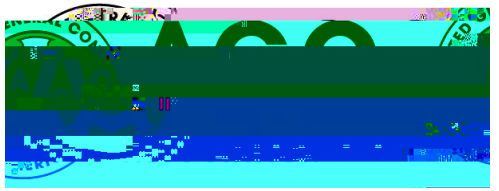
Pennsylvania (Pittsburgh)
Pennsylvania (Philadelphia)

Puerto Rico

Texas (Austin)*
Texas (San Antonio)*
Texas (Dallas)

Washington (Seattle)
Washington (SeaTac)
Washington (Tacoma)

© 2020 The Associated General Contractors of America, Inc.



© 2020 The Associated General Contractors of America, Inc.