



The Families First Coronavirus Response Act

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Families First Coronavirus Response Act

- Referred to as the FFCRA
- Became effective April 1, 2020 and expires December 31, 2020
- Two important provisions for employers to know about:
 1. Emergency Family and Medical Leave Expansion Act (E-FMLA)
 2. Emergency Paid Sick Leave Act (EPSL)

Emergency Family and Medical Leave Expansion Act (E-FMLA)

- **Covered Employers**

- All private employees with less than 500 employees; and
- All government employers, regardless of size

- **Eligible Employees**

- Have been employed by the employer for at least 30 days

- **Qualifying Reasons for Leave**

- Unable to work or telework due to need for leave to care for a child under age 18 whose school or childcare provider is closed or unavailable for reasons related to COVID-19

E-FMLA; Continued

- **Duration of Leave**

- Full-time employees are eligible for up to 12 weeks of leave at 40 hours a week
- Part-time employees are eligible for leave for the number of hours that the employee is normally scheduled to work over that period (12 weeks)

- **Calculation of Paid Benefits**

- First two weeks of leave are unpaid
- Employees taking leave shall be paid at 2/3 their regular rate, or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$10,000 max for weeks three (3) through twelve (12)

Emergency Paid Sick Leave (EPSL)

- **Covered employers**

- All private employees with less than 500 employees; and
- All government employers, regardless of size

- **Eligible Employees**

- All employees are eligible on their 1st day of employment

EPSL; Qualifying Reasons for Leave

- Employee is unable to work (**or telework**) due to a need for leave because the employee:
 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 2. has been advised by a health care provider to self-quarantine related to COVID-19;
 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
 5. is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or
 6. is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

EPSL - Continued

- **Duration of Leave**

- A full-time employee is eligible for up to 80 hours of leave, and a part-time employee is eligible for the number of hours of leave that the employee works on average over a two-week period
- Time off cannot be intermittent

EPSL - Continued

- **Calculation of Paid Benefits**

- **For leave reasons (1), (2), or (3):** employees taking leave shall be paid at either their regular rate, or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 max (over a 2-week period)
- **For leave reasons (4), (5) or (6):** employees taking leave shall be paid at 2/3 their regular rate or 2/3 the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 max (over a 2-week period)

E-FMLA and EPSL Interplay

- **Duration of leave**

- Those taking leave to care for a child under age 18 whose school or childcare provider is closed or unavailable for reasons related to COVID-19 may take two weeks of leave under the EPSL and then ten weeks of leave under the E-FMLA (for a total of 12 weeks of leave)

- **Calculation of Paid Benefits**

- Those taking leave to care for a child under age 18 whose school or childcare provider is closed or unavailable for reasons related to COVID-19 can get paid for weeks 1-2 under the EPSL (because first two weeks under E-FMLA are unpaid) and weeks 3-12 under the E-FMLA
- This means these employees can get paid for 12 weeks of leave at 2/3 of their pay up to \$200 a day with a max of \$12,000 over a 12-week period

Use of Employer Paid Time Off

- During the first two weeks of unpaid E-FMLA, employees may not simultaneously take paid sick leave under the EPSL and preexisting paid leave *unless the employer agrees*
 - If there is an agreement, it would be to supplement up to normal employee earnings
 - Employer also cannot require this
- After the first two weeks of unpaid E-FMLA, the employer can require the employee to use pre-existing paid leave at the same time as E-FMLA under certain conditions (as a supplement and no use of sick)

Taking Intermittent Leave

- Can only take intermittent leave for childcare reasons
- Employer must agree to intermittent leave or the employee cannot take it
 - **For example:** If an employee's child is at home because his or her school or place of care is closed, or child care provider is unavailable, because of COVID-19 related reasons, an employee may take paid sick leave on Mondays, Wednesdays, and Fridays to care for the child, but work his or her normal hours on Tuesdays and Thursdays.

Exemptions from E-FMLA and EPSL

Healthcare Providers

- Some examples are anyone employed at any doctor's office, hospital, health care center, clinic, nursing facility, nursing home, home health care provider, any facility that performs laboratory or medical testing or pharmacy
- Review DOL website for full definition

Exemptions from E-FMLA and EPSL

Emergency Responders

- Some examples are anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19
- This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers
- Review DOL website for full definition

Exemptions from E-FMLA and EPSL

Employers with less than 50 employees can be exempt from the childcare provisions if one of the three statements is true:

1. Providing leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause it to cease operating at a minimal capacity;
2. The absence of the employee requesting leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, and these labor or services are needed for the small business to operate at a minimal capacity

Tax Credits

- Covered employers can qualify for dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under the FFCRA
- Qualifying wages are those paid to an employee who takes leave under the FFCRA for a qualifying reason, up to the appropriate per diem and aggregate payment caps
- Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage
- For more information, please see the Department of the Treasury's website and/or talk with your CPA

What Documents Are Needed to Approve Leave?

- Documentation of need for leave is important to obtain the tax credits
- Employer will substantiate eligibility for the paid leave credits if the employer receives a written request for such leave from the employee in which the employee provides:
 1. The employee's name;
 2. The date or dates for which leave is requested;
 3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
 4. A statement that the employee is unable to work, including by means of telework, for such reason

The Statement from the Employee

- If request for leave is based on a quarantine order or self-quarantine advice, the statement should include the name of the governmental entity ordering quarantine or the name of the health care professional advising self-quarantine, and, if the person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee
- If the leave request is based on a school closing or child care provider unavailability, the statement should include the name and age of the child to be cared for, the name of the school that has closed or place of care that is unavailable, and a representation that no other person will be providing care for the child

Employee Documents Continued

- Requiring more documentation than the FFCRA allows us to ask for, including a medical note, most likely violates the law
- All other required notices and forms to administer leave under the Family Medical Leave Act (FMLA), such as the Notice of Rights and Designation Notice, are required
- E-FMLA leave must still be tracked just like normal FMLA

Poster

- Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements (use the DOL Poster)
- Send the DOL poster via email and/or post on your intranet if employees are working remote
- If not done already, do ASAP since requirement began April 1st

Any Questions?

Contact:

HR Helpline

Phone: 855-873-0374

Email: hrhelpline@eastcoastrm.com



Thank You.