



To: Firm Clients and Friends
From: Jonathan Downes & Jantzen Mace
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Family First Coronavirus Response Act – FAQs

Emergency Family and Medical Leave Expansion Act (EFMLEA)

Q. Does an employee who stays home as a precaution qualify for Emergency Leave?

A. No. The only qualifying reason under the EFMLEA is for employees who need to stay home to care for their minor children whose schools or places of care have closed due to COVID-19. This is true even for employees that have a higher risk of contracting COVID-19.

Q. How does an employer differentiate between the leaves in the EFMLEA and EPSLA when an employee requests time off to take care of their minor child whose school or day care is closed?

A. The employer should proceed based on which type of leave the employee is requesting. The first ten days of EFMLEA leave may be unpaid; however the employee may elect to use their accumulated paid leaves during this time or may request Emergency Paid Sick Leave during this time.

Q. Are Dispatchers and Corrections Officers “emergency responders” such that can be excluded from the provisions of the Act?

A. The Act does not define “emergency responders.” May want t refer to the Homeland Security Act 6 U.S.C. § 101(6): The term *emergency response providers* includes Federal, State, and local governmental and nongovernmental emergency public safety, fire, law enforcement, emergency response, emergency medical services providers (including hospital emergency facilities), and related personnel, agencies, and authorities.

Due to the safety sensitive nature of the work of dispatchers and corrections officers a strong argument can be made for their inclusion as “emergency responders”.

Q. Do these provisions impact employees terminated before the April 2 effective date?

A. No, the Act not effective until April 2nd

Q. Does this apply to court employees?

A. Yes, the Act applies to all Employers with fewer than 500 employees.

Q. Is this bill retroactive?

A. No, the bill does not go into effect until April 2nd.

Q. If an employee is on FMLA leave right now and still has time left in the 12 weeks, do we have to pay them 2/3 of their regular rate for the remainder of the 12 weeks?

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B. No, unless the FMLA leave is for public health emergency leave. Other FMLA leaves remain unpaid

Q. When is the 500 employee threshold measured?

C. As of April 2nd, the effective date of the Act.

Q. Does the EFMLEA apply if the parent pulled the child out of daycare on their own?

A. No, the place of care must have closed on its own.

Q. Can the leave be used intermittently?

A. Yes, this is the same as other FMLA leave.

Q. If an employee is out of work due to coronavirus do they use their own accumulated leaves?

A. Yes, under the EFMLEA, but the employee may request 80 hours of emergency paid sick leave under the EPSLA.

Q. Does the child care provider have to be paid? If an employee’s family normally watched the child but the employee’s family is quarantined does this count?

A. Yes, the definition of child care provider includes family members who normally would watch the child.

Q. Does caring for a grandchild qualify?

A. No, the law only applies to an employee’s own children.

Q. If an employee has a minor child whose school is closed but also has college aged kids that can watch the minor child do employers still have to provide paid time off?

A. Yes, if the employee requests Emergency Family and Medical Leave. Employers cannot choose who cares for an employee’s minor child.

Q. If an employee declines to telecommute can we deny the leave?

A. No, if an employee qualifies for leave under the EFMLEA you may not deny the employee this leave.

Q. If someone has used their FMLA leave already this year do they get a new 12 weeks for emergency leave?

A. No. The EFMLEA adds a qualifying reason for the use of the 12 weeks, it does not add an additional 12 weeks of leave that may be used.

Emergency Paid Sick Leave Act (EPSLA)

Q. If we ask employees to self-quarantine for the 14 days due to travel, but show no symptoms, do they still qualify for emergency paid sick leave?

A. The employee would not qualify under the EPSLA, but they may qualify under your individual leave policies. This is a policy determination that each employer must make.

Q. If a first responder contracts the virus while on duty does it fall under workers compensation?

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- A. Typically no, it would be considered an occupational disease rather than an injury. For an OD to be compensable the OD must be unique to the employment, and a pandemic is not unique to first responders. However, the BWC recently issued guidance noting that it can be compensable, and is proceeding on a case by case basis.

Q. Can I require my employee to use their accumulated paid leaves before paying the Emergency Paid Sick Leave (EPSL) required under the EPSLA?

- A. No. Employers must provide the 80 hours of EPSL and may not require employees to use their accumulated paid leaves first.

Q. If a healthy employee is caring for a healthy child because the child’s school is closed, can you require the employee to work from home?

- A. If the employee is working remotely pursuant to a work from home policy, yes. However, if the employee has requested paid leave pursuant to the EFMLEA or the EPSLA the employer must pay the employee for this time regardless of whether the employee works or not.

Q. Do part time employees include intermittent and seasonal employees for purposes of the EPSLA?

- A. Yes, there no limit on how long the employee has worked for the employer to be eligible.

Q. If an employee is off for self-quarantine as a precautionary measure is the employer required to pay EPSL?

- A. No, only if the employee qualifies under one of the six reasons stated in the EPSLA.

Q. If we already had an agreement with a union giving time off for COVID-19, do we have to comply with the EPSLA as well?

- A. Yes, the EPSLA does not diminish any rights an employee is already entitled to under law, collective bargaining agreement, or policy.

2. If we have an employee off now that falls under the criteria can we reimburse the sick leave they take now?

- A. Yes, employers have the discretion to treat the time as “administrative leave” and/or “on-call” depending on how the employees’ position falls in the organization.

3. If employees are sent home because a rec center has closed by city ordinance but are not otherwise quarantined, does the paid sick leave apply?

- A. No, the employee must fall under one of the six categories outlined in the EPSLA

Payment for COVID-19 Testing/Insurance and Other

Q. Who can take employee temperatures?

- A. There is no one person who is designated to take employee temperatures. To be on the safe side, make sure that the person taking temperatures is the only person who can see the temperature. If you

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need to record temperatures, do so in a private matter and treat this documentation like you would a medical record on a need to know basis.

Q. If an employee pays a deductible or co-pay to a health care provider for COVID-19 testing is the employer liable for reimbursement of the employee?

A. No, it goes back to the health insurance carrier, but no copays/employee payments are allowed under medical insurance.

Q. Can we keep log of employee temps for our records?

A. You can, but treat it as a medical record subject to privacy laws and keep the information on a need to know basis. Write it down where nobody else can see it when nobody else can see it