

Families First Coronavirus Response Act

On March 18th, the federal government passed the Families First Coronavirus Response Act to provide Emergency Paid Sick Leave (EPSL) and Emergency Paid Family and Medical Leave (EFML). Both laws become effective April 2, 2020 and end on December 31, 2020.

Emergency Paid Sick Leave Act (EPSL)

Covered Employers: Employers (public and private) with fewer than 500 employees. Employers with fewer than 50 employees can request an exemption if they can prove this jeopardizes the viability of the business. The DOL has not defined what this means and has not communicated a method for filing an exemption.

Duration: Employer must immediately provide two weeks (80 hours) of paid sick leave for *full-time employees* regardless of the employee's length of employment. *Part-time employees* receive the equivalent of the average number of hours they work in two weeks (part-time employees that do not have a regular schedule must receive their "average hours worked" (based on the average over a 6-month period). The EPSL is **in addition to** the employer's existing sick leave policy. Employees may use the EPSL before any other paid time off (PTO), but an employer **may not force** employees to use other PTO first.

Leave is available for immediate use, regardless of how long they've been employed. You can't force an employee to use other available leave first.

Uses:

1. Employee is subjected to a federal, state or local quarantine due to COVID-19.
2. Employee has been advised by a health care provider to self-quarantine.
3. Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.
4. Employee is caring for individual because of #1 or #2 above. (Note this does **not** have to be a family member).
5. Employee must care for a child whose school or care provider is closed due to COVID-19 (day care, pre-school, K-12; college not included).
6. Employee is experiencing a similar condition as specified by Health and Human Services, DOL or Treasury.

Compensation: For reasons #1-3 above, EPSL must be paid at the employee's regular rate of pay, capped at \$511/day and \$5,110 total. For reasons #4-5, EPSL can be paid at 2/3 the employee's regular rate of pay (but must be at least minimum wage), capped at \$200/day and \$2,000 total. Reason #6 will depend upon what the trigger is. If the employee is the one affected it will be at the regular rate of pay; if the child triggers it, it will be at 2/3 compensation.

Applicability of Tax Credits for Paid Sick Leave: *Private sector* employers with fewer than 500 employees may obtain a credit for wage replacement. Covered employers 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 Act 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.

More information in the administration of the tax credit portion are expected soon.

Emergency Family and Medical Leave Expansion Act (EFML)

The EFML expands the traditional Family Medical Leave Act to apply to employees who must care for a child whose school closed due to COVID-19.

Covered Employers: Employers with fewer than 500 employees. Employers with fewer than 50 employees can request an exemption if they can prove this jeopardizes the viability of the business. The DOL has not defined what this means and has not communicated a method for filing an exemption.

Note: Even though this is an “extension” of the current FML law, it does not have the same eligibility criteria. An employer of any size must offer this (versus an employer with at least 50 employees in a 75-mile radius).

Duration of Leave: Employer must provide 10 weeks of paid family and medical leave for employees (those employed for at least 30 days).

Use: Employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age whose school or place of care closed, or whose child-care provider is unavailable, due to a public health emergency. Could also be a grandchild or foster child, etc. as long as the employee is the legal guardian.

Note: Employees have job protection under this extension like the current FML, however has been expanded to say that for up to one year the employer must bring them back if the job still exists. There will be a few types of positions, such as health care professionals and emergency responders that can be denied the use of EFML.

Compensation: The first 10 days off is unpaid (although the employee may substitute with EPSL, any accrued PTO, etc. to get paid); thereafter, the employee shall be paid *not less than 2/3 of their regular rate of pay (but at least minimum wage) based on the number of hours the employee is scheduled to work, capped at \$200/day and \$10,000 total.*

Applicability of Tax Credits for Paid Family and Medical Leave: Employers with fewer than 500 employees may obtain a credit for wage replacement. Covered employers 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 Act 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.

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Other:

Both laws will end (we think) in 2020, so there is no need to change current policies regarding sick time and FML. But, the Act requires posting in the work place (attached separately).

Because employers can submit these payments for tax credits, new payroll codes will need to be set up so that the employer can document what payments were made and for which employees.

An employer can't require proof that an employee is taking care of someone with COVID (EPSL) or that a school has closed (EFML).