

Federal Families First Coronavirus Response Act: Employer Leave Requirements

Alert

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In a broad, bipartisan effort to curb some of the most pressing consequences of the COVID-19 pandemic, Congress passed the [Families First Coronavirus Response Act](#) (FFCRA) yesterday.

From a birds-eye view, the FFCRA does the following:

- Requires certain employer-provided emergency paid sick leave
- Temporarily amends the Family and Medical Leave Act to include paid "public health emergency leave" related to COVID-19
- Temporarily expands eligibility for unemployment benefits and provides grants to states for processing and paying claims
- Facilitates free COVID-19 testing
- Expands the provision of and eligibility for various forms of food and nutrition assistance
- Increases the Medicaid federal medical assistance percentage

It is crucial that employers are aware of how the FFCRA will affect them and their employees. Specifically, employers will need to understand the impact of two key components of the FFCRA: The Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA). Both provisions are effective April 2, 2020.

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THE EMERGENCY PAID SICK LEAVE ACT

Covered Employers: Private employers with fewer than 500 employees and public employers with one or more employees.

Covered Employees: Any employee of a covered employer, regardless of how long they have worked for the employer, who seeks leave because:

1. The employee is ordered into COVID-19 quarantine or isolation by a public official.
2. The employee has been advised by a health care provider to self-quarantine or isolate due to COVID-19.
3. The employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
4. The employee is caring for an individual due to reasons (1) and (2).
5. The employee is caring for their son or daughter because their school or place of care has been closed or their child care provider is unavailable due to COVID-19.
6. The employee is experiencing any other substantially similar condition identified by the Department of Health and Human Services.

Employer Obligations: Covered employers must provide up to 80 hours of paid sick leave for full-time employees. For part-time employees, employers must provide paid sick leave based on the average number of hours worked over a two-week period. This leave will be available for immediate use beginning April 2, 2020.

- Pay for leave taken for reasons 1-3 above must be at the employee's regular rate of pay, not to exceed \$511 per day and \$5,110 in the aggregate.
- Pay for leave taken for reasons 4-6 above must be at two-thirds the employee's regular rate of pay, not to exceed \$200 per day and \$2,000 in the aggregate.
- Each employer shall post and keep posted a notice on the premises that is easily visible to employees, informing employees of their rights under the EPSLA. A model notice will be issued by the Secretary of Labor for employer use within seven days of enactment.

Employer Limitations:

- Under the EPSLA employers may not diminish other rights or benefits an employee is entitled to under any existing employer policy.
- An employer may not require that the employee use existing accrued paid leave before using leave under the EPSLA.

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- An employer may not require that the employee find a replacement employee to cover hours during their absence.

Employee Obligations: After the first workday (or portion of) that an employee receives paid sick leave, an employer may require the employee to follow reasonable notice procedures to continue receiving paid sick leave.

THE EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT

Covered Employers: Private employers with fewer than 500 employees and government employers.

Notably, as it stands, the EFMLEA diverges from the FMLA 50-employee threshold and applies to private employers with anywhere from 1 to 499 employees.

Additional Exemptions: The Secretary of Labor is authorized to allow exemptions for:

- Businesses with fewer than 50 employees where the imposition of the EFMLEA requirements would jeopardize the viability of the business
- Certain health care providers and emergency responders

Covered Employees: Employees who have been on the job for at least 30 calendar days, or who would otherwise qualify for FMLA under normal circumstances, and who are seeking leave for a “qualifying need related to a public emergency.”

- “Qualifying Need Related to a Public Health Emergency”: Where an employee seeks leave because the employee is unable to work (or telework) because they must care for their minor son or daughter because their school or place of care has been closed or their child care provider is unavailable due to a government-declared public health emergency related to COVID-19.

Employer Obligations:

- The first 10 days of leave may be unpaid, though the employee can elect to use accrued paid leave during that time where available.
- All leave after the first 10 days, up to 10 weeks, must be paid at two-thirds the employee’s regular rate of pay, not to exceed \$200 per day and \$10,000 in the aggregate.
- An employee who takes leave must be restored to their original position. However, employers with fewer than 25 employees may be exempt from this obligation if certain conditions are met.

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Employee Obligations: Where the necessity for leave is foreseeable, an employee must provide the employer with such notice of leave as is practicable.

WHAT THE EPSLA AND EFMLEA HAVE IN COMMON

Timeframe: Effective April 2, 2020 until December 31, 2020.

Government Contribution: To assist companies in the cost, the government is providing new tax credits to offset the costs of accommodating the new mandates and the economic impact of the outbreak.

Health Care Exemption: Employers of employees who are health care providers or emergency responders may elect to exclude the employee from application of the EPSLA and/or EFMLEA.

Special Rules for Multi-Employer CBAs: An employer who is a signatory to a multi-employer CBA may fulfill its obligations by contributing to a multi-employer plan. Employees who have worked under a multi-employer CBA can receive benefits from the plan.

CONSIDERATIONS FOR EMPLOYERS TO WHOM THE EPSLA AND/OR EFMLEA DO NOT APPLY

If your company or employees are not covered by the FFCRA, whether the quarantine period is paid will depend on a number of factors, including whether work can be performed at home and the nature of the job classification, such as exempt or non-exempt.

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