

## **FAMILIES FIRST CORONAVIRUS RESPONSE ACT**

The Families First Coronavirus Response Act (FFCRA), signed by President Trump on March 18, 2020, was enacted to respond to a number of issues caused by the COVID-19 outbreak. Two such issues related to the lack of paid sick leave for Americans and the need to extend the Family and Medical Leave Act (FMLA) to address employees' extended absences due to sickness, quarantine, and/or school closure caused by COVID-19. To address these issues, the FFCRA created the Emergency Family Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA).

These two Acts require qualifying employers to provide employees with paid sick or family leave for specified COVID-19 related reasons, while allowing those employers to take advantage of refundable payroll tax credits to fund the required leave. The purpose of these provisions is to help covered employers keep their employees on their payrolls, while simultaneously ensuring that the employees are not required to choose between their paychecks and helping to protect the public health through self-quarantining, social distancing and other measures. Eligible employees will be provided with paid leave, which can be used for the employee's own health needs or to care for a family member.

What follows is a discussion of the EFMLEA and EPSLA and the tax credits applicable to employers under these provisions.

### **Emergency Family Medical Leave Expansion Act (EFMLEA)**

The EFMLEA amended to Family and Medical Leave Act of 1993 (FMLA) to extend its coverage to

What employers are covered? Private employers and tax-exempt organizations with less than 500 employees and most public employers. However, employers with fewer than 50 employees can be exempt from the EFMLEA, where being required to provide such leave would jeopardize the employer's ability to remain in business. Guidance and rulemaking will be issued to clearly articulate when this standard is satisfied.

Who is eligible for leave under EFMLEA? Any employee who has worked for the employer for at least 30 calendar days.

What type of leave is provided under the EFMLEA? Eligible employees who are unable to work, or telework, because they need to care for a child under 18 because the child's school or child care provider is unavailable for reasons related to COVID-19 may take up to twelve weeks of leave.<sup>1</sup>

#### What is the employee entitled to receive?

- The first 10 days of leave may be unpaid. However, the employee may choose to use accrued vacation, personal, medical or sick leave for this unpaid portion of the leave.
- After the first 10 days, the employer must provide paid leave for each day of leave the employee takes under EFMLEA. The amount paid shall not be less than 2/3 of the employee's regular rate of pay, as determined under the Fair Labor Standards Act, for the number of hours the employee would normally be scheduled to work.<sup>2</sup> The amount paid shall not exceed \$200 per day, or a total of \$10,000 in the aggregate.

#### Is the employee entitled to Restoration to Position at the Conclusion of the 12 weeks?

- Generally, the 12-week leave period does provide for job protection
- Exception: If the employer employs fewer than 25 employees and the following conditions are met, the restoration to position provisions of the FMLA do not apply:
  - o The employee's position no longer exists due to economic conditions or other changes in the employer's operating conditions that (a) affect employment; and (b) were caused by a public health emergency during the leave period.
  - o The employer makes reasonable efforts to restore the employee to an equivalent position, including equivalent benefits, pay and other terms/conditions of employment.

---

<sup>1</sup> Note that employees who need to take leave for reasons not covered by EFMLEA may still be eligible for leave under the FMLA's standard provisions for unpaid leave.

<sup>2</sup> If the employee worked a varying schedule before the need for leave arose, the EFMLEA indicates that the pay will be equal to the average number of hours per day the employee was scheduled to work over the prior six-month period.

- If the reasonable efforts to restore the employee to an equivalent position fail, the employee must make reasonable efforts during the “contact period”<sup>3</sup> if an equivalent position becomes available.

### **Emergency Paid Sick Leave Act (EPSLA)**

Who is eligible for leave under EPSLA? Any employee is eligible for leave under this provision as soon as he/she is hired.

What employers are covered? Private employers and tax-exempt organizations with less than 500 employees and most public employers.

What is a qualifying basis for the need for leave? If the employee is unable to work, or telework, for one of the enumerated reasons below, he/she is entitled to paid sick leave:

- (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 health care provider to self-quarantine due to concerns related to COVID-19
- (3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- (4) The employee is caring for an individual who is subject to an order described in subparagraph (1) or has been advised as described in subparagraph (2).
- (5) The employee is caring for his/her child and the child’s school or place of care has been closed, or the child care provider is not available, 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 Treasury and Secretary of Labor.

#### What duration of leave is provided under the EPSLA?

- An eligible employee with a qualifying need is entitled to:
  - Full-time employees: 80 hours of leave; or
  - Part-time employees: A number of hours of leave equal to the number of hours the employee works on average over a two-week period
- Paid sick leave does not carry over from one year to the next.

#### What is the employee entitled to receive?

- If the leave is necessitated due to (1), (2) or (3) above, the employee shall receive the greater of his/her regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work or the minimum wage rate; provided that the amount paid shall not exceed \$511 per day and \$5,110 in the aggregate.
- If the leave is necessitated due to (4), (5) or (6) above, the employee shall receive 2/3 of his/her regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work (or the minimum wage rate, whichever is greater); provided that the amount paid shall not exceed \$200 per day and \$2,000 in the aggregate.
- Note: The Secretary of Labor will be issuing guidelines to assist in calculating the amount of paid sick time provided under the EPSLA.

**Effective Date:** The EFMLEA and EPSLA provisions become effective on April 2, 2020. The leave entitlement provided pursuant EPSLA expires on December 31, 2020. If an employer implements the required leave under FFCRA prior to the effective date, it may not be eligible for the tax incentives discussed below.

### **Refundable Tax Credits for Paid Sick and Paid Family and Medical Leave**

#### Payroll Credit for Paid Sick Leave and Paid Family and Medical Leave

- The employer shall be allowed a 100% credit for the qualified sick leave wages paid, which shall be credited against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code<sup>4</sup> for each calendar

---

<sup>3</sup> The “contact period” is described as the one-year period beginning on (a) the date on which the qualifying need caused by the public health emergency concludes; or (b) the date that is 12 weeks after the date on which the employee’s leave commences, whichever is earlier.

quarter, subject to the capped amounts discussed above. Additionally, the amount of credit shall be increased by the employer's qualified health plan expenses as can be properly allocated to the qualified sick leave wages for which the credit is allowed.

- This tax credit is accomplished by the employer retaining funds that would otherwise be paid to the IRS pursuant to section 3111(a) or 3221(a) of the Internal Revenue Code. These retained funds can be used to provide the paid leave to the business's employees. If the credit exceeds the employer's tax liability for the quarter, then the excess is treated as an overpayment and will be refunded to the employer.
- Effective Date: This section applies only to wages paid for a period beginning on a date selected by the Secretary of Treasury which is during the 15-day period beginning of the date of the enactment of this Act, and ending on December 31, 2020.

#### **Employer's Notice Obligation**

- Employers must post, and keep posted, a notice concerning the EFMLEA and EPSLA provisions in conspicuous places on its premises where notices to employees are customarily placed. A model notice issued by the Secretary of Labor is attached hereto.

#### **Prohibited Acts**

- An employer may not, as a condition to providing paid leave, require the employee to search for or find a replacement employee to cover his/her hours during the paid sick time.
- It is unlawful for an employer to discharge, discipline or discriminate against any employee who (a) takes leave under the Act; and/or (b) files a complaint or institutes a proceeding under the Act, or testifies in any such proceeding.

---

<sup>4</sup> We recommend you consult with your accountant to verify the appropriate tax credits.

# EMPLOYEE RIGHTS

## PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

### ▶ PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- $\frac{2}{3}$  for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at  $\frac{2}{3}$  for qualifying reason #5 below for up to \$200 daily and \$12,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

### ▶ ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). *Employees who have been employed for at least 30 days* prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.

### ▶ QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to **telework**, because the employee:

- |   |   |
|---|---|
| <ol style="list-style-type: none"><li>1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;</li><li>2. has been advised by a health care provider to self-quarantine related to COVID-19;</li><li>3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;</li><li>4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);</li></ol> | <ol style="list-style-type: none"><li>5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or</li><li>6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.</li></ol> |
|---|---|

### ▶ ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

For additional information  
or to file a complaint:  
**1-866-487-9243**  
TTY: 1-877-889-5627  
[dol.gov/agencies/whd](https://dol.gov/agencies/whd)



WH1422 REV 03/20