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EMPLOYEE BENEFITS PROVISIONS

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)



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FFCRA Overview

Passed: March 18, 2020

Effective: April 1, 2020 (through
December 31, 2020)

Two Main Employee Benefits Provisions

(Many other changes to Unemployment
benefits Systems, School Meal, Snap
Benefits, Tax Code, Etc)

FFCRA Paid Leave Benefits for Employees



1. Emergency Paid Sick Leave Act (EPSLA) amends the FLSA
2. Emergency Family Medical Leave Expansion Act (EFMLEA) temporarily amends the FMLA paid leave for caregivers caring for children who are facing school closures or other caregivers unavailable

FFCRA General Limitations

Both benefits apply only to employers of 500 or less, and

Employers less than 50 can exempt employees if they make a designation that compliance would jeopardize the business.

Health Care Providers and Emergency Responders can exclude employees

Emergency Paid Sick Leave Act (EPSLA)

Modifies the FLSA to create a ten-day *paid* sick leave right for employees of businesses employing less than 500 workers.

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EPSLA

Coverage

(FFCRA § 5102)

COVERS EMPLOYEES WHO ARE UNABLE TO WORK (OR
TELEWORK) BECAUSE OF:

1. A federal, state or local quarantine or isolation order related to COVID-19
2. Employee has been advised by a “health care provider” to self-quarantine due to COVID-19 related concerns
3. Employee is exhibiting symptoms of COVID-19 and seeking Medical diagnosis
4. Employee is caring for an individual described in 1 or 2 above
5. Employee is caring for a son or daughter whose school or place of care is closed, or provider unavailable due to COVID-19 precautions
6. Other similar conditions to be defined by the Department of Health and Human Services

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EPSLA

Benefits

(FFCRA § 5110(B))

Provides for up to 80 hours of paid sick time for full time employees (an average of two week hours for part time employee) at the full regular rate of pay for employees unable to work based on their own health condition. Capped at 511 per day or 5110 for the ten-day period (for section 1-3)

OR provides 2/3 the regular rate of pay capped at 200/day or 2000 for the ten-day period if based on care for others. The Sick leave pay is reduced to 2/3 of the regular rate for employees who are unable to work based on care for others. (Sec. 4-6)

(Based on a “regular rate of pay” generally averaged over 6 months where possible)

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EPSLA Exemptions



Employers of healthcare workers and first responders may elect to exclude employees from application. (They would not participate would not get the corresponding tax refund).

DOL Regulations provide such employers could selectively exempt themselves on an individual employee-by-employee analysis

Small businesses employing fewer than 50 employees may exempt employees in circumstances where compliance would jeopardize the viability of the business.

EPSLA

Enforcement

(FFCRA § 5105)



Employer may NOT require the employee to find a replacement worker to fill-in during the sick time period

Employer may not discharge or discipline an employee for taking Emergency Paid Sick Leave under the act (or for filing any complaint, instituting a proceeding, being about to testify, or having testified in any proceeding related to the Act. 29 CFR Sec. 826.150

Remedies Available Under the FLSA
(Minimum wage violation and Unlawful termination)

EPSLA

Special provisions for self-employed individuals



Section 7002 of the FFCRA extends the business tax credit/refund to fund emergency sick leave to self-employed workers who are unable to work in the same circumstances as other employees.

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EFMLEA

Emergency Family Medical Leave Expansion Act

Modifies the FMLA to create a
Coronavirus related paid leave for
employees of business employing *less
than* 500 workers

EFMLEA Coverage

Covers employees employed for more than 30 days (not the usual 12-month FMLA eligibility requirement)

For Employers with *less than* 500 employees

Defines “Qualifying need related to a public health emergency” defined as:

Unable to work (or telework) due to a need to care for a son or daughter under 18 years old if their school or place of care or childcare provider is unavailable due to COVID-19 declared emergency.

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EFMLEA Exclusions and Exemptions

Health Care Providers and Emergency Responders may elect to exclude employees

Small businesses employing less than 50 employees may exempt employees if the requirements would jeopardize the business as a going concern.

EFMLEA Benefits

Benefits run concurrently with 12 weeks of FMLA

First 10 days may be unpaid, or employee may elect to use accrued vacation or PTO days

May run concurrently with EPSLA Benefits in some circumstances.

Employees should receive paid leave for the remaining 10 weeks at $\frac{2}{3}$ of the regular rate of pay (but not more than \$200 per day or \$10,000 total)

EFMLEA

Return-to-Work

As with other FMLA benefits, employees generally have a right to return to their positions, unless employer can show the position would have been eliminated otherwise.

Employers of fewer than 25 employees who are not able to return an employee to the same position may be exempted

Must make reasonable efforts to return the employee to a comparable position for up to 12 months following the end of the leave or the end of the public health emergency (whichever is earlier).

EFMLEA Enforcement



Prohibited Acts under the EFMLEA § 826.151

(a) *Prohibited Acts.* The prohibitions against interference with the exercise of rights, discrimination, and interference with proceedings or inquiries described in the FMLA, 29 U.S.C. 2615, apply to Employers with respect to Eligible Employees taking, or attempting to take, leave under the EFMLEA. (except no private right unless employer is otherwise covered by the FMLA)

Pre-existing FMLA Rights

Existing FMLA rights to *unpaid* leave would still apply

for Instance employees requiring medical leave for their own serious health condition or covered caregiver responsibilities for a family member with a serious health condition (which may include COVID-19)

Previous FMLA leave diminishes EFMLEA time period

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Tax Refund and Credit for Employers

Under both acts,
employers would
generally qualify for a
tax refund for the
benefits paid under
either program.

RESOURCES

Department of Labor

[Families First Coronavirus Response Act: Questions and Answers](#)

[Families First Coronavirus Response Act: Employee Paid Leave Rights](#)

[Families First Coronavirus Response Act: Employer Paid Leave Requirements](#)

[COVID-19 and the Fair Labor Standards Act: Questions and Answers](#)

[COVID-19 and the Family and Medical Leave Act: Questions and Answers](#)

Occupational Safety and Health Administration

[Guidance on Preparing Workplaces for COVID-19](#)
[Worker Rights to Refuse Dangerous Work](#)

Other Resources

[CDC Guidance on Interim Measures for Employers](#)

<https://www.diabetes.org/coronavirus-covid-19/rights-for-workers-with-diabetes-during-coronavirus-pandemic>