

What Employers Need to Know: Families First Coronavirus Response Act

Updated March 27, 2020 based on recent U.S. DOL guidance (in red and underlined)

Emergency Family and Medical Leave Expansion Act

This Act amends the Family and Medical Leave Act (FMLA) specific to COVID-19.

- **What is the effective date of the E-FMLA?** As part of the FFCRA, the E-FMLA was signed into law on March 18, 2020, with an effective date of April 1, 2020. The provisions of the Act are set to end December 31, 2020. The Act's provisions are NOT be retroactive to any period prior to April 1, 2020.
- **Which employers must comply with this Act?** Private employers with fewer than 500 employees are covered by this Act. The law also applies to certain government employers.
 - If at the time an employee's leave is to be taken, an employer employs fewer than 500 employees in the US (including US territories), the employer is subject to the Act.
 - Single-enterprise (common ownership/management) and joint-employer tests may apply.
- **"Usual" FMLA eligibility requirements do NOT apply** Employees are not required to have been employed for 12 months, worked 1,250 hours, or have work in a location where there are 50 employees within a 75-mile radius.
- **Which employees are eligible?** Employees who have been employed for at least 30 days and are unable to work (or telework) due to a need to care for minor children (under 18 years of age), if the school or place of care has been closed, or if the child care provider of the children is unavailable, due to a public health emergency.
- **What is a public health emergency?** An emergency, such as COVID-19, declared by a local, state, or federal government authority.
- **Will the Secretary of Labor provide exemptions for any employers?** The Secretary of Labor will have the authority to issue regulations to:
 - a. exclude certain health care professionals and emergency responders, and
 - b. exempt small businesses with fewer than 50 employees, when the statute's requirements could jeopardize the viability of the business going forward.

- **Is there an unpaid waiting period?** The first 10 days of leave may be unpaid leave. However, employees must be allowed to substitute accrued vacation, personal leave, or medical or sick leave for unpaid leave.
 - The employee may also use Emergency Paid Leave (as provided below) for the first 10 days.
- **What is the paid leave required for subsequent days?** Employers must provide paid leave following the initial 10-day unpaid waiting period. The paid leave must not be less than two-thirds (2/3) of the employee's *regular rate of pay*, and for the number of hours the employee is regularly scheduled to work. Mandatory paid leave benefits will not exceed \$200 a day, or a total of \$10,000.
- **How long can the leave be based on the usual FMLA?** A total of 12 workweeks of leave during a 12-month period.
- **What are the employer notification requirements?** Each employer is required to post this notice, and keep this notice posted, in a conspicuous place where notices are typically posted, and where all employees can see the notice. This may require posting in more than one business location to ensure all employees can see the notice.
 - A covered employer may satisfy this requirement by emailing or mailing a hardcopy of this notice to employees. Employers may also post this employee notice on an internal website used to post employee information, or an external website.
 - Covered employers are not required to share the notice with laid-off employees. The paid leave applies to current employees only.
 - The poster is available at:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- **Are small employers required to return employees to their previous positions?** Employers with *fewer than 25 employees* are not required to return employees to their pre-leave positions under very specific conditions.
- **Do employers of health care providers and emergency responders have any options?** Employers with employees who are health care providers or emergency responders may elect to exclude those employees from the provisions of this act.
- **How does this Act impact multiemployer bargaining agreements?** Under certain circumstances, employers who are party to multiemployer collective bargaining agreements may fulfill obligations to provide paid sick time by making an equivalent contribution to plan funds.

- **Are there penalties if we don't comply?** Employers in violation of these provisions are subject to the enforcement provisions of the FMLA.
- **Is the DOL going to provide a “grace period” for employer good-faith efforts? The DOL will provide a temporary “period of non-enforcement” through April 17, 2020, as long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole by the employer as soon as practicable, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.**

Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act is specific to COVID-19.

- **What is the effective date of the Emergency Paid Sick Leave Act?** As part of the FFCRA, the EPSLA was signed into law on March 18, 2020, with an effective date of April 1, 2020. The provisions of the Act are set to end December 31, 2020. The Act's provisions are NOT retroactive to any time prior to April 1, 2020.
- **Which employers must comply with this Act?** Private employers with less than 500 employees are covered by this Act. The law also applies to certain government employers.
 - If at the time an employee's leave is to be taken, an employer employs fewer than 500 employees in the US (including US territories), the employer is subject to the Act.
 - Single-enterprise (common ownership/management) and joint-employer tests may apply.
- **Who can use this?** Any employee working for a covered employer. There are no accrual or length of employment requirements.
- **Which employees are excluded?** Health care providers and emergency responders may be excluded if their employers elect to do so.
- **What are covered reasons for this sick leave?** Covered employers must provide employees with paid sick time if the employees are unable to work (or telework) due to one or more of the following six (6) reasons:
 1. The employee is subject to a mandated quarantine or isolation order by a local, state, or federal health department due 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 seeking a medical diagnosis.
 4. The employee is caring for an individual subject to an order as provided in (1) or has been advised as per (2) above.
 5. The employee is caring for their child(ren) if the school(s) are closed, or the childcare provider is closed or unavailable due to COVID-19 precautions.
 6. The employee experiences any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of Treasury and the Secretary of Labor.
- **How much paid sick leave is required?**
 - **Full-time employees:** 80 hours (i.e., if employee normally works 45 hours per week, they receive pay for 45 hours in week one and 35 hours in week two).
 - **Part-time employees:** paid sick time equal to the number of hours the employees work, on average, over a two-week period.
 - Full- and part-time employees must use this paid sick time by December 31, 2020.
 - **Is there a maximum amount of paid leave and pay amount?** Paid sick time under this Act will not exceed:
 - a. \$511 per day—\$5,110 in total—for **reasons 1, 2, and 3** above. Sick time pay for these reasons must be paid at the employee's regular rate of pay or the minimum wage, whichever is greater.
 - b. \$200 per day—\$2,000 in total—for **reasons 4, 5, and 6** above. Sick time pay for these reasons must be paid at two-thirds (2/3) of the employee's regular rate of pay or the minimum wage, whichever is greater.
 - c. Also, the Secretary of Labor issue guidelines to assist employers in calculating the amount of paid sick time by the effective date of **April 1, 2020**.
 - **What is the sequence of leave?** Employees may use this mandated paid sick time before any other paid time off provided by their employer. Therefore, employers cannot require employees to use other paid leave benefits (i.e., PTO) before the mandated paid sick time.
 - **Can this paid sick leave be carried-over from year to year?** Paid sick time under this Act does not carryover from one year to the next.
 - **Will the Secretary of Labor provide exemptions for any employers?** The Secretary of Labor will have the authority to issue regulations to:

- a. exclude certain health care professionals and emergency responders, and
 - b. exempt small businesses with fewer than 50 employees, when the statute's requirements could jeopardize the viability of the business going forward.
- **Are there any employer notice posting requirements?** Each employer is required to post this notice, and keep this notice posted, in a conspicuous place where notices are typically posted, and where all employees can see the notice. This may require posting in more than one business location to ensure all employees can see the notice.
 - A covered employer may satisfy this requirement by emailing or mailing a hardcopy of this notice to employees. Employers may also post this employee notice on an internal website used to post employee information, or an external website.
 - Covered employers are not required to share the notice with laid-off employees. The paid leave applies to current employees only.
 - The poster is available at:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- **Are there any employee notice requirements?** After the first workday an employee receives paid sick time under this Act, their employer may require the employee to follow reasonable notice procedures to continue receiving paid sick time.
- **Are there any anti-retaliation provisions?** Employers are prohibited from discharging, disciplining, or discriminating against employees who take paid sick leave, or file a complaint under this Act, or testifies in a proceeding related to this Act.
- **Are there penalties for failing to comply with this Act?** Employers who fail to comply will be deemed to have failed to pay minimum wages, and will be subject to penalties under the FLSA.
- **Is the DOL going to provide a “grace period” for employer good-faith efforts? The DOL will provide a temporary “period of non-enforcement” through April 17, 2020, as long as the employer has acted reasonably and in good faith to comply with the Act. For purposes of this non-enforcement position, “good faith” exists when violations are remedied and the employee is made whole by the employer as soon as practicable, the violations were not willful, and the Department receives a written commitment from the employer to comply with the Act in the future.**
- **Does this Act diminish any other rights or benefits?** This Act does not diminish any other rights or benefits employees are entitled to under local, state, or federal law, collective bargaining agreements, or existing employer policies.

- **Are employers required to payout paid sick leave under this Act?** Employers are not required to reimburse, or payout, paid sick time benefits provided under this Act in the event of a voluntary or involuntary termination of employment.
- **How does this Act impact multiemployer bargaining agreements?** Under certain circumstances, employers who are party to multiemployer collective bargaining agreements may fulfill obligations to provide paid sick time by making an equivalent contribution to plan funds.

Tax credits

Information related to tax credits under the *Families First Coronavirus Response Act* is available on the HR Compliance Experts' **Coronavirus Resources** webpage at:

<https://hrcexperts.com/coronavirus-covid-19-resources/>

If you have any questions, or require further information regarding these or other related issues, please contact Frank Cania at frank@hrcexperts.com, or 585-416-0751.

Check for additional updates on the HR Compliance Experts' **Coronavirus Resources webpage at <https://hrcexperts.com/coronavirus-covid-19-resources/>**

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