

The Families First Coronavirus Response Act

The Emergency Paid Sick Leave Act (EPSL) and The Emergency Family and Medical Expansion Act (EFMLA) were signed into law on March 18, 2020, as part of the Families First Coronavirus Response Act (FFCRA). The FFCRA requires certain employers to provide employees with paid sick leave and/or expanded family and medical leave for certain proscribed reasons along with tax credits for eligible employers. The provisions will generally apply until December 31, 2020. This summary highlights the provisions of each of these new laws.

FFCRA notice requirements

Employers are required to post a notice detailing an employee's right to take leave under this law. The Department of Labor (DOL) poster is available to download free of charge: [Employee Rights: Paid Sick Leave and Expanded Family and Medical Leave under The Families First Coronavirus Response Act \(FFCRA\)](#)

For more information on the notice requirement see: <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>.

Documentation and tax credits for EPSL and EFMLA

Non-governmental employers covered by the FFCRA will be able to claim tax credits equal to 100% of the EPSL and EFMLA paid on their quarterly Form 941 and reduce their quarterly payroll tax payments accordingly. Eligible employers can fund qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS and, if necessary by requesting an advance from the IRS using Form 7200. Employers that intend to claim a tax credit for EPSL and EFMLA should retain documentation for their records and consult applicable IRS forms, instructions, and information for the procedures that must be followed to claim a tax credit, including any needed substantiation to be retained to support the credit.

For more information see: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>



The Emergency Paid Sick Leave Act

This act requires private employers with fewer than 500 employees and all public employers to provide “for immediate use” two weeks of emergency paid sick time to any employee who is absent for a qualifying reason.

Effective date

The act went into effect on April 1, 2020. Any paid time off used prior to the effective date will not count toward this sick leave requirement.

Eligible employees

All employees are eligible; there are no service requirements that must be met in order to be eligible.

Six qualifying reasons for leave

▪ **Self-Care Reasons**

1. COVID-19-related quarantine order from local/state/federal government
2. COVID-19-related self-quarantine recommended by healthcare provider
3. Employee has COVID-19 symptoms and is seeking a medical diagnosis

▪ **Care for Family/HHS Reason**

4. Employee caring for someone in quarantine under 1. or 2. above.
5. Employee caring for their son or daughter due to school/daycare COVID-19-related closure
6. Employee experiencing “any other substantially similar condition specified by the Secretary of Health and Human Services” (Note that as of the publication of this document, Health and Human Services has not yet identified any “substantially similar condition” that would allow an employee to take paid sick leave).

Amount of paid leave

Full-time employees are entitled to 80 hours of paid sick time, and part-time employees are entitled to an amount equal to the average number of hours they work over a two-week period. This time must be in addition to any other paid time off employers have already provided to employees.

Employers are required to pay leave:

- At the employee’s regular rate of pay, capped at \$511 per day, up to a total of \$5,110, for leave for self-care reasons 1, 2, and 3 above; and/or
- At 2/3 the employee’s regular rate of pay, capped at \$200 per day, up to a total of \$2,000, for leave to care for a family member/Health and Human Services reasons 4, 5 and 6 above.
- The paid leave must be immediately available to employees, and employees must be able to use sick leave before using other paid leave benefits provided by the employer.



Job Protection

It's unlawful to terminate or discipline an employee who takes EPSL or who files a complaint/proceeding relating to the Act.

Exemptions

Employers may exempt certain healthcare providers and emergency responders from providing EPSL: (1) A healthcare provider for purposes of this exemption can include anyone employed at any doctor's office, hospital, healthcare center, clinic, nursing facility, retirement facility, and other similar entities. (2) An emergency responder is anyone necessary for the provision of transport, care, and nutrition of patients or others needed for the response to COVID-19 and can include but is not limited to military or national guard, law enforcement, correctional institution personnel, fire fighters, emergency medical services personnel, emergency medical technicians, paramedics, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency.

Small businesses may claim an exemption under certain circumstances. An employer, including a religious or non-profit organization, with fewer than 50 employees is exempt from providing paid sick leave due to school or place of care closures or child-care provider unavailability for COVID-19 related reasons when doing so would jeopardize the viability of the business as a going concern.

Interaction with furloughs/layoffs/business shutdowns

EPSL does not apply to an employee who is furloughed or laid off because of a COVID-19-related business slowdown. An employee who is taking public health emergency leave who is furloughed/laid off will cease being eligible for leave, paid or unpaid, but employers must be able to show that the furlough/layoff was based on legitimate business needs. If an entire department is laid off, the business need is clear. If people are selected for layoff, this becomes less clear and you would need to be prepared to demonstrate that the employee would have been furloughed/laid off even if they weren't taking leave.

Payroll tax credits

The government will provide to eligible employers a refundable FICA credit for 100% of "qualified sick leave wages" paid for a calendar quarter up to a cap of \$200 per day (\$511 per day for "care for self" reasons) up to 10 days per employee for the year. "Qualified sick leave wages" are wages paid by reason of the paid sick leave law (not paid public health emergency FMLA). Public employers are not eligible for this payroll tax credit.



The Emergency Family and Medical Leave Expansion Act

This act requires private employers with fewer than 500 employees and all public employers to provide ten days of unpaid leave, and thereafter ten weeks of paid leave, to an eligible employee who takes leave due to “a qualifying need related to a public health emergency.”

Effective date

The act went into effect on April 1, 2020. Any paid time off used prior to the effective date will not count toward this leave requirement.

Eligible employees

Employees who have been employed by the employer for at least 30 calendar days at the time of the leave.

Qualifying reasons for leave

A “qualifying need related to a public health emergency” exists where a federal, state or local authority has declared an emergency with respect to COVID-19 and the employee is unable to work or telework due to a need for leave to care for a minor son or daughter whose school or place of care has been closed or whose child care provider is unavailable.

Amount of leave

Eligible employees are entitled to a total of 12 weeks of leave under the FMLA. The amount of leave available for the public health emergency leave is part of, not in addition to, the employee’s total 12 weeks of FMLA leave.

Amount of paid leave

The first two weeks of leave are unpaid, and the last 10 weeks are paid. Employees can elect to use any available Emergency Paid Sick Leave (EPSL), vacation, personal or other paid time off during the first two weeks. Once paid leave is required, employees must be paid at least 2/3 their regular rate for the number of hours the employee would otherwise have worked up to \$200 per day (\$10,000 total). In addition, if the employer agrees, employees may choose to supplement their EFMLA with additional paid time off or the employer may **require** the employee to use other paid leave to run concurrently with the paid EFMLA.

Benefits

Benefits must be maintained as they would under a typical FMLA leave. This means that employees can maintain health coverage (medical, dental, vision, health FSA) as if actively working.

Job protection

Employees must be restored to the same or equivalent position at the end of leave, except for employers with less than 25 employees where the employee’s position has been eliminated due to economic conditions as a result of the public health emergency.



Exemptions

Employers may exempt certain healthcare providers and emergency responders from providing EFMLA: (1) A healthcare provider for purposes of this exemption include any person (e.g., M.D., nurse practitioner) permitted to issue a FMLA medical certification; direct care providers providing diagnostic, preventive, and/or treatment services; and certain other providers of services integrated with and necessary to the provision of patient care. (2) An emergency responder is anyone necessary for the provision of transport, care, and nutrition of patients or others needed for the response to COVID-19 and can include but is not limited to military or national guard, law enforcement, correctional institution personnel, fire fighters, emergency medical services personnel, emergency medical technicians, paramedics, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency.

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Payroll tax credits

The government will provide to eligible employers a refundable FICA credit for 100% of "qualified family leave wages" paid for a calendar quarter up to a cap of \$200 per day, a maximum aggregate amount for all calendar quarters of \$10,000 per individual. "Qualified family leave wages" are wages paid by reason of an employee taking public health emergency FMLA leave (not paid sick leave). Public employers are not eligible for this payroll tax credit.

For more information about the FFCRA

For more information about EPSL and EFMLA, see the Department of Labor's detailed Questions and Answers which are separated into the following categories: 1) Definitions; 2) Eligibility; 3) Coverage; 4) Application; 5) Enforcement: [Families First Coronavirus Response Act: Q&A \(DOL\)](#)

