





Families First Coronavirus Response Act April 9, 2020

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Families First Coronavirus Response Act

Signed by Congress and signed by President Trump on 3/18/20

Effective April 1, 2020

- 3 MAJOR ASPECTS:
- Emergency Family and Medical Leave Expansion Act
- Emergency Paid Sick Leave Act
- Tax Credit for Paid Sick and Paid Family and Medical Leave



Families First Coronavirus Response Act

Covered Employers

- All Public Employers regardless of size;
- All private employers with less than 500 employees:
 - Count employees as you typically would using FMLA coverage test
- Exemption for small businesses with fewer than 50 employees if compliance would jeopardize the viability of the business
- Employers can exclude “certain **health care providers** and **emergency responders** from the definition of eligible employee”



Families First Coronavirus Response Act

Covered Employees

29 C.F.R. §826.30(c)(1)(i)-(iii).

- **Health Care Providers**: includes: *anyone employed at any doctor's office, hospital, health care center, clinic, medical school, local health depts., nursing/retirement facilities, pharmacies, laboratories/medical testing, anyone making medical products, drugs, vaccines, equipment, treatments, and anyone employed by an entity that contracts with any of the foregoing to provide services or maintain or support the operation of the facility.*



Families First Coronavirus Response Act

Covered Employees

29 C.F.R. §826.30(c)(2)

- **Emergency Responders**: All law enforcement officers, correctional institution personnel, 911 operators, emergency management personnel, persons with skills or equipment in operating specialized equipment or other skills needed to provide aid in a declared emergency “as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.”



Emergency FMLA Expansion Act

Covered Employees Under Expanded FMLA

- “Eligible Employee” Any employee employed at least 30 *calendar days* and needs Expanded FMLA for Coronavirus related issues (Only Exception is Sec. 3605 CARES ACT);
- Applies to all employees employed by covered employers (eliminates 12 months and 1250-hour requirement);
- Only for Child Care/School Closings related to Coronavirus. All other FMLA eligibility requirements still exist.



Emergency FMLA Expansion Act

Expansion of FMLA Benefit

- Leave under the new FMLA provisions can be used when the employee needs leave because they are unable to work (or telework) due to a need to care for the employee's child if the child's elementary or secondary school or place of care has been closed, or the childcare provider is unavailable, due to a "public health emergency."
- Unlike original FMLA, closure of a child's school or childcare is the **only** reason allowed under the expanded FMLA provisions.
- First 10 days of leave are permitted to be unpaid.



Emergency FMLA Expansion Act

First 10 days of Expanded FMLA Leave

- Employees can elect to use accrued sick, vacation, PTO during this time (Employer cannot force this).
 - NOTE: 80 hours of paid sick leave is required in other portion of Family First Act (Emergency Paid Sick Leave Act).
 - NOTE: If the reason an employee is electing to take Emergency Paid Sick Leave would have been paid for under the Employer's existing sick/PTO policies, then Employer **MUST** allow employee to use the accrued leave and keep this benefit for use at a later date. This leave is to be a last resort for employees with accrued leaves and a 2 week safe harbor for employees who have no leave accrued.



Emergency FMLA Expansion Act

First 10 days of Expanded FMLA Leave

- The remaining 10 weeks must be paid at 2/3 the employee's regular rate. In no event is the amount to be over \$200 per day or \$10,000 in the aggregate.
- Paid Sick Leave is to be taken in full day increments unless Employer agrees to intermittent (partial) day absences.
- Employee does not have to use all of the 10 Paid Sick Leave days at once; remaining days can be saved and used later.



Emergency Paid Sick Leave Act

What employers are covered?

- Private entity or individual employing fewer than 500 employees;
- All Public entities; and
- Any other entity that is not a private entity or individual that employs 1 or more employees
- Elected officials' offices; federal legislature and related entities; federal executive branch; federal agencies
- Federal contractors with more than 500 employees are NOT covered



Emergency Paid Sick Leave Act

Covered Employees (6 Categories)

1. Employee is subject to 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 concerns related to COVID-19;
3. Employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Employee is caring for individual who is subject to quarantine or isolation order or who has been advised by a health care provider to self-quarantine (p. 17);
5. Employee is caring for a son or daughter if school or place of care is closed, or child care provider is unavailable due to COVID-19 (p.19); or
6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.



Emergency Paid Sick Leave Act

Benefits Available

- Specific Benefits
 - Full-time employees – 80 hours paid sick leave
 - For full-time employees who regularly work more than 80, you only have to pay 80
 - For full-time employees who regularly work less than 80 – average the hours
 - Part-time employees – average number of work hours over 2-week period
- Rate of Compensation
 - Categories 1-3 – Regular rate of pay, capped at \$511/day and \$5,110/total
 - Categories 4-6 – 2/3 rate of pay, capped at \$200/day and \$2,000/total
 - Tipped Employees should be paid full minimum wage
 - All employees must be paid at least minimum wage (\$8.46 in Florida)



Emergency Paid Sick Leave Act

Other Important Provisions

- Notice Requirement
 - Secretary of Labor issued the Notice – All Employers must post.
 - https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
 - <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>
 - Must post in workplace in the same places as the other required postings
- Anti-discrimination and anti-retaliation provision
 - Covers employees who take leave under the EPSLA or complain about a violation of the EPSLA



Emergency Paid Sick Leave Act

Important Clarifications

- All employees are covered regardless of length of employment
- Language of the law does not allow individuals to refuse work, absent one of the qualifying conditions
- Employees do not have to provide prior notice; employer may require reasonable notice procedures for the employee to continue to receive paid sick time after the first day or portion of the day the employee uses paid sick time
- Employer may not require employee to use other paid leave first
- Emergency Paid Sick leave is in addition to existing leave



Intermittent Leave

- Codified in 29 CFR 826.50
- Employee may take intermittent leave for either Emergency Paid Sick Leave or Expanded FMLA leave.
- Employer must agree to this – does not need to be in writing but a “clear and mutual understanding” must exist
 - The agreement can allow for any amount of intermittent leave time.
- Intermittent Leave may only be taken for school closings. No other reason triggering Emergency Paid Sick Leave applies (Sections 1-4 and 6) – exception is telecommuting.
- If employee takes EPSL for reasons 1-4 or 6, then must use all the sick leave days consecutively until exhausted.



General Questions

- *What are the pay requirements during the 10 days of unpaid FMLA*
 - Employers are not required to provide paid FMLA leave during the employee's initial 10 days of Emergency Leave (Employee may receive Emergency Sick Leave)
 - Employees may elect to use paid emergency sick leave, however depending upon the nature of the leave, the paid leave may be in full or at 2/3 of employee's regular rate.
 - Employees may supplement 2/3 sick leave pay with accrued paid time off during the initial 10-day period, but employers may not require them to use accrued leave.



General Questions

- *Can an employer require employee to use existing accrued leave to cover the 10 weeks of FMLA*
 - Yes, DOL Rule 4/1/20 - Employer may require the employee use accrued leave for the care of a child;
<https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA.pdf>
 - Similar to FMLA for the care of a child and DOL believes it will encourage employees to minimize their absences (Find alternative childcare).



General Questions

- *Is Emergency FMLA in addition to standard FMLA?*
 - No, the Emergency FMLA Act amends the FMLA to provide an additional qualifying reason; it does not require employers to provide more than 12 weeks of FMLA for any reason during a 12-month period.



General Questions

- *Do Governor DeSantis' Executive Orders constitute local quarantine or isolation order related to COVID-19 entitling employees to paid sick leave?*
 - **YES.**
 - EO 20-83: Directed by FL Surgeon General on 3-24-20 (Governor's position is Order triggers No. 2 of EPSLA):
 - Over 65 and underlying medical conditions;
 - Expires 60 days from EO 20-52 issued on 3/9/20. (5/9/20)



General Questions Continued

- *Do Governor DeSantis' Executive Orders constitute local quarantine or isolation order related to COVID-19 entitling employees to paid sick leave?*
 - **YES.**
 - EOs 20-91 and 20-92: Stay at Home Orders and clarification of Essential Employees
 - https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91.pdf
 - Issued on 4/1 and 4/2/20 – EOs expire on 4/30/20.
 - <https://www.flgov.com/2020-executive-orders/> (link for all EOs).
 - DOL Rule issued on 4/1/20 clarifies 29 CFR 826 – Statewide stay at home orders trigger No. 2 under EPSLA.



General Questions

- *We are hiring employees during the outbreak; what steps can we take to protect our workforce?*
 - May screen applicants *after making a conditional job offer* according to the EEOC, as long it's for all entering employees in the same type of job; and
 - May take an applicant's temperature as part of a *post-offer, pre-employment medical exam* after you have made a conditional offer of employment



General Questions

- *May an employer delay the start date or withdraw a job offer of an applicant who has COVID-19 or symptoms associated with it?*
 - Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.



General Questions

- *Can you ask an employee to stay home or leave work if they exhibit symptoms of the COVID-19 coronavirus or the flu?*
 - Yes, you are permitted to ask them to seek medical attention and get tested for COVID-19.
 - CDC states that employees who exhibit symptoms of influenza-like illness at work during a pandemic should leave the workplace.
 - EEOC confirmed that advising workers to go home is permissible and not considered disability-related if they have symptoms of COVID-19 or the flu



General Questions

- *Can an employee take their Emergency Paid Sick Leave and Expanded FMLA leave intermittently while telecommuting?*
 - Yes, if the employer agrees. Remember, if the employee can telecommute, then they are not eligible for Paid Sick Leave or Expanded FMLA.
 - Example: child care/school closed during the day, but employee can telecommute in the morning and evening hours for 4-6 hours/day.
 - Paid Sick Leave – only in full day increments (unless you agree to something less)
 - Paid FMLA – employer must agree to the telecommuting work schedule.
 - NOTE: The DOL has indicated that it “encourages employers and employees to work collaboratively to achieve flexibility and meet mutual needs.”



General Questions

- *If the employee is required by the Employer to self quarantine and they do not meet the eligibility for Paid Sick Leave or expanded FMLA is the Employer required to pay administrative leave?*
 - This is up to the Employer's discretion, but he/she is not required to pay for the leave.
 - Most employers are either allowing the employee to use accrued leave, placing the employee on administrative leave with/without pay or encouraging employees to get tested – triggering the EPSLA (10 day paid benefits).



General Questions

- *Do you have employees who are represented by a union and subject to a collective bargaining agreement?*
 - If yes, some of the foregoing answers may change depending upon the language of your collective bargaining agreement. Consult your labor lawyer.

Questions?

Additional questions may be emailed to



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