

Remaining Questions

Acronyms:

EPSL – Emergency Paid Sick Leave

EFML – Emergency Family Medical Leave

Questions:

- Must an employee be paid the minimum wage when taking EPSL or EFML? **The regulations have clarified that an employee's regular rate must be at least the minimum wage. Thus, if an employee's regular rate falls below the minimum wage, the regular rate must be increased to the AZ minimum wage. Please note that, in such a situation, where an employee receives 2/3 pay, they will receive 2/3 of the minimum wage. An employee who is receiving full pay will receive the minimum wage.**
- Can the employee use their own paid time off that was accrued along with the 66% to make up the full pay? **Yes, but the employee and employer must both agree to it.**
- Can the EPSL be applied back to wages paid BEFORE April 1? **No, only leave taken after the effective date can be counted as EPSL or EFML.**
- Childcare is currently open however sending a child is risky. Is it covered under EFML if an employee chooses not to send children to daycare? **If the employee's usual childcare provider is open, then no. The childcare provider must be closed or unavailable due to COVID 19. An employee who chooses to stay home may receive PTO or other paid leave as decided by the employer, but such time will not result in a tax credit to the employer.**
- Does salary work differently if hours are reduced due to for example a childcare issue? Say they can only work six hours a week not eight. **If an exempt employee performs any work during a week, he or she must be paid for their full salary, except in certain circumstances. However, an employer may be able to take the tax credit for the two hours for which the employee is not working.**
- Does the sick leave, FMLA expansion and tax credits apply to Community Colleges? **The leave requirements apply, but as a public entity, the tax credit is inapplicable.**
- Follow up for employee who can partly telework. They have administrative duties they can perform at home but also ship product from the office which they go into the office to do. Are they qualified for payment under these leaves? **I apologize, but I would need additional information to respond to this question.**
- I have an employee that cares for a child not her own, and has asked if she can use the EFML leave now that the child will not be returning to school? **It depends. If she stands in the place of a parent for that child ("in loco parentis"), she may qualify for leave. This is a fact-intensive question, which would require a review of the circumstances.**

- If childcare is closed to all but "essential workers", how does that work in Arizona with the expansive definition of "essential" to include golf courses etc.? **The definition of essential businesses is quite broad. However, if non-essential workers can telework but are unable to work because they need to care for a child, they would qualify for EPSL/EFML. If a non-essential worker cannot work because telework is not possible or there is no work available, the employee would not qualify for EPSL or EFML.**
- If someone is currently on self-isolation can these benefits still apply come April1? **Yes, if the employee has been advised by a healthcare provider that s/he should self-isolate, and as a result, the employee is unable to telework.**
- If an employee applies for unemployment then we wouldn't pay them the paid leave? **Assuming the employee is furloughed (and thereby eligible for unemployment), the employee would not be eligible for paid leave because there is no work for the employee to do. In such a situation, the employee should apply for unemployment as soon as possible.**
- If we continue to pay employees as normal, can we require them to use vacation and sick time balances? **I apologize, but I would need additional information to respond to this question.**
- If you are contracted with the state as an emergency responder, are you exempt? **Yes, all emergency responders can be exempted regardless of for whom they work.**
- If you have employees hired through a staffing agency, who is responsible for FFCRA? **Both parties are responsible for compliance. You should review your contract with the staffing agency to determine how compliance is to be accomplished.**
- Is the small employer exemption for just extended Family Emergency Leave or is it for any reason (i.e., also paid sick leave) if the reason is for school closure/childcare not available? **Yes, it is available for both EPSL and EFMLA.**
- Should EPSL only be awarded to employee IF they qualify for the FFCRA act or do companies need to award ALL employees additional 80 EPST hours? **An employee only receives the 80 hours only if they require leave for a qualifying reason.**
- So for anyone who had to take sick leave in March, this doesn't apply? **Correct. It does not count against their entitlement and the employer may not take a tax credit for such time. However, such time may have exhausted some of the leave the employee would be otherwise entitled to under the Arizona Paid Sick time law.**
- We keep track of employees' time off under or ADP software, do we need to add the additional 80. EPST hours now to everyone? or, is this only IF they qualify assessed individually? **Individually. An employee only receives the 80 hours only if they require leave for a qualifying reason.**
- We offer 3 weeks of PTO but not separate sick leave and vacation. This raises the question of whether these three weeks or just one week would be added to the two weeks? **I apologize but I'm not sure that I understand the question, nor do I think I could provide an answer without**

further information. But keep in mind that EPSL and EFML are in addition to any other leave already provided.

- What if a part-time employee is 1099? If an individual is an “employee” they are entitled to leave under the law. However, if the person receiving a 1099 is, in fact, an independent contractor, that person would not be eligible. The determination of whether an individual is an employee or independent contractor is a fact intensive analysis and varies from case to case.