

## **Paid Leave under the Families First Coronavirus Act**

March 22, 2020

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The Families First Coronavirus Act (Act), signed into law on March 18, 2020, and effective April 2, 2020, temporarily requires certain employers, including state agencies, to provide paid leave for enumerated reasons related to the COVID-19 pandemic.

The larger Act contains several acts related to COVID-19, including two acts mandating paid leave: the Emergency Family and Medical Leave Expansion Act (EFMLA) and the Emergency Paid Sick Leave Act (EPSLA). This summary includes an outline and table of the combined effect of these two laws and identifies priority implementation issues. Also, for reference, this summary separately details each act's key provisions.

### **Paid Leave Entitlements and Requirements**

#### **General Provisions**

- **Covered employers:** All government employers (e.g., public universities); private employers with fewer than 500 employees (except for small business with fewer than 50 employees under certain conditions).
- **Eligible employees:** EFMLA: employees who have been employed for at least 30 calendar days; EPSLA: government employees and employees defined under specified provisions of the Fair Labor Standards Act, eligible from the first day of employment. Health care providers or emergency responders may be excluded.
- **Entitlement:** Paid leave when an employee is unable to work (or telework) for enumerated reasons related to COVID-19.
- **Effective dates:** April 2, 2020-December 31, 2020
  - ***Delayed enforcement:*** On March 20, 2020, the Department of Labor (DOL) announced that it will be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, the DOL will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. The DOL will instead focus on compliance assistance during the 30-day period.
- **Employer notice to employees:** Employers must post notice of EFMLA and EPSLA requirements.
- **Employee notice to employer:** Under the EFMLA, the employee must provide as much notice of leave as is practicable when the need for leave is foreseeable. Under the EPSLA, the employee may be required to follow reasonable notice procedures after the employee's first workday receiving emergency paid sick leave (EPSL).
- **No retaliation:** Employers may not take action against an employee for taking leave under, or engaging in protected activity related to, either act.

- **Job restoration:** Employers must restore employees to the same or equivalent position after their return from leave.
- **Tax credits:** According to the Act and DOL guidance, every dollar of required paid leave (plus the cost of the employer's health insurance premiums during leave) will be 100% covered by a dollar-for-dollar refundable tax credit available to the employer for each calendar quarter.

### **Priority Implementation Issues/Actions**

- Establish policies and procedures to implement the Act.
- Notify employees of the availability of leave under the Act.
- Work with payroll and other departments to determine how to record reasons for leave and calculate rate of pay and impact on retirement contributions.
- Determine which health care providers, if any, to exempt from emergency family and medical leave (EFML).
- Tailor current FMLA forms to new reason for leave (school closure/unavailable childcare).

### **Unanswered Questions**

The Act provides no guidance on many issues (see bullets below), but DOL regulations and guidance are expected.

- Documentation – What documentation can employers require to document the employee's need for leave?
- Intermittent Leave – Can employees take EFML or EPSL intermittently like they can with traditional FML?
- Substituting paid leave for unpaid leave – Employees may elect to use accrued paid leave during the first 10 days of EFML, but can employers *require* them to do so?

## Qualifying Reasons for Leave and Related Pay Entitlements

Reason	Details/Conditions	Duration	Pay Entitlement
<b>Ordered Quarantine or Self-Quarantine</b>	Pursuant to government order or advice of a health care provider.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> <li>Employees eligible from first date of employment to paid sick time at <u>regular rate</u> of pay for normally-scheduled hours</li> <li>Prorated for part-time employees</li> <li>Capped at \$511/day and \$5,110 total</li> </ul>
<b>COVID-19 Symptoms</b>	Experiencing COVID-19 symptoms and seeking medical diagnosis.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> <li>Employees eligible from first date of employment to paid sick time at <u>regular rate</u> of pay for normally-scheduled hours</li> <li>Prorated for part-time employees</li> <li>Capped at \$511/day and \$5,110 total</li> </ul>
<b>Care for Quarantined Individual</b>	Pursuant to federal, state, or local government order or advice of a health care provider.  "Individual" not defined.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> <li>Employees eligible from first date of employment to paid sick time at <u>2/3 regular rate</u> of pay for normally-scheduled hours</li> <li>Prorated for part-time employees</li> <li>Capped at \$200/day and \$2,000 total</li> </ul>
<b>School Closure/ Unavailable Child Care</b>	Care for a child (of any age) whose school or child care provider is closed or unavailable for reasons related to COVID-19.	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> <li>Employees eligible from first date of employment to paid sick time at <u>2/3 regular rate</u> of pay for normally-scheduled hours</li> <li>Prorated for part-time employees</li> <li>Capped at \$200/day and \$2,000 total</li> </ul>
	Care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19.	<p><u>Employees eligible only if they have worked at least 30 days for:</u></p> <p>Up to 10 weeks after 10 days unpaid (employee may elect to be paid by substituting accrued paid leave, including EPSL)</p> <p>But, employers may elect to exclude health care providers and emergency responders.</p>	<p><u>Employees with regular (non-variable) work hours:</u></p> <ul style="list-style-type: none"> <li>At least <u>2/3 regular rate</u> of pay for normally-scheduled hours</li> <li>Capped at \$200/day and \$10,000 total</li> </ul> <p><u>For variable-hour employees who worked for six months prior to taking leave:</u></p> <ul style="list-style-type: none"> <li>At least <u>2/3 regular rate of pay</u> for the average number of hours the employee was scheduled per day.</li> <li>Capped at \$200/day and \$10,000 total</li> </ul> <p><u>For variable-hour employees who did not work for six months prior to taking leave:</u></p> <ul style="list-style-type: none"> <li>At least <u>2/3 regular rate of pay</u> for the employee's reasonable expectation when hired of the average number of hours per day that the employee would normally be scheduled to work</li> <li>Capped at \$200/day and \$10,000 total.</li> </ul>
<b>Substantially-similar Condition</b>	Any other substantially similar condition specified by HHS Secretary	Two weeks (up to 80 hours)	<ul style="list-style-type: none"> <li>Employees eligible from first date of employment to paid sick time at <u>2/3 regular rate</u> of pay for normally-scheduled hours</li> <li>Prorated for part-time employees</li> <li>Capped at \$200/day and \$2,000 total</li> </ul>

## **Emergency Paid Sick Leave Act**

- **Qualifying Reasons for EPSL**

Employers are required to provide paid sick time when an employee is unable to work (or telework) due to a need for leave because the employee is:

1. Subject to a federal, state, or local quarantine or isolation order related to COVID-19;
  2. Under self-quarantine due to concerns related to COVID-19 based on the advice of a health care provider;
  3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
  4. Caring for an individual who is subject to an order as described in (1) or who has been advised as described in (2);
  5. Caring for a son or daughter of any age whose school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19 precautions; or
  6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor.
- **Employee Eligibility**

Employees are eligible from their first day of employment.
  - **Employee Exclusions**

Employers may elect to exclude health care providers and emergency responders from leave.
  - **Duration of Paid Sick Time**
    - Full-time employees: 80 hours
    - Part-time employees: average number of hours worked over a two-week period
  - **Pay Entitlement**
    - For ordered quarantine, self-quarantine, or COVID-19 symptoms: regular rate of pay but no more than \$511/day and \$5,110 total
    - For caring for individual under quarantine or with symptoms, caring for child due to school closure or unavailability of child care, or other substantially similar reason: 2/3 regular rate of pay but no more than \$200/day and \$2,000 total
  - **Employee Notice Requirement**
    - After the first day an employee receives EPSL, an employer may require the employee to follow reasonable notice procedures in order to continue receiving paid sick time.

- **Other Provisions**

- Leave entitlement does not carry over from one year to the next.
- An employer cannot require employees to use accrued leave before they use EPSL.
- Employer must post notice of EPSLA requirements. The DOL shall prepare a model notice not later than March 25, 2020.
- The EPSLA shall not diminish employees' rights or benefits under any other federal, state, or local law or existing employer policy.
- Employees are not entitled to be paid for any unused EPSL upon separation from employment.

### **Emergency Family and Medical Leave Expansion Act**

- **New Reason to Take FML – School Closure or Unavailability of Child Care**

- When an emergency has been declared by a federal, state, or local authority related to COVID-19, the EFMLA expands an employee's FML entitlement to include the employee's inability to work (or telework) because the employee must care for a son or daughter under age 18 whose elementary or secondary school or place of care has been closed, or whose child care provider is unavailable, due to COVID-19.

- **Employee Eligibility**

- Full-time and part-time employees are eligible for the leave if they have worked at least 30 calendar days.

- **Employee Exclusions**

- The Secretary of Labor is authorized to issue regulations excluding health care providers and emergency responders from coverage.

- **Duration of EFML**

- 12 weeks combined in 12-month period for any FMLA- or EFMLA-qualifying reason.

- **Pay Entitlement**

- First 10 days may be unpaid: The institution does not have to pay employees for their first 10 days of EFML, but employees may elect to be paid by substituting accrued paid leave, including EPSL.
- After the first 10 days: institutions must provide paid leave as follows:
  - For employees with regular (non-variable) hours of work: at least 2/3 of regular pay for hours normally scheduled to work, not to exceed \$200/day and \$10,000 in aggregate.
  - For variable-hour employees who worked for six months prior to taking leave: at least 2/3 of regular pay for the average number of hours the employee was scheduled per day.

- For variable-hour employees who did not work for six months prior to taking leave: the employee's reasonable expectation when hired of the average number of hours per day that the employee would normally be scheduled to work.
- **Employee Notice Requirement**
  - Employees must provide their employers as much notice of leave as is practicable when the need for leave is foreseeable.