# Families First Coronavirus Response Act

Mary Elizabeth “Betsy” Davis

## FFCRA - Agenda

<table>
<thead>
<tr>
<th>Division</th>
<th>Subject</th>
<th>Administered</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>Expansion → Family Medical Leave Act</td>
<td>DOL</td>
</tr>
<tr>
<td>E</td>
<td>Emergency Paid Sick Leave Act</td>
<td>DOL</td>
</tr>
<tr>
<td>G</td>
<td>Tax Credits</td>
<td>IRS</td>
</tr>
</tbody>
</table>

April 1 - December 31, 2020
Emergency Family and Medical Leave Expansion Act

Is the organization a covered employer?
- Apply to certain public employers
- Private employers with fewer than 500 employees
Emergency Family and Medical Leave Expansion Act

What employees are eligible?

- Employed for at least 30 calendar days as of date leave requested
- Example: request leave on April 1, 2020, must have been on employer’s payroll as of March 2, 2020
- Different from FMLA

New category of FMLA leave

- Employee is unable to work or telework
- Due to a need for leave to care for a son or daughter under 18 years of age of such employee
  - If the school/daycare is closed, or
  - If the childcare provider is unavailable
  - Due to a public health emergency
Emergency Family and Medical Leave Expansion Act

EFMLA does not:

• Extend paid leave to other categories of leave under the FMLA
• Provide for an additional 12 weeks of leave
• If the employee has used some or all FMLA leave, the employee is not entitled to additional leave

How much leave must an employer provide, and how much of that leave is paid leave?
Emergency Family and Medical Leave Expansion Act

Leave is Paid and Unpaid

• The first 10 days of “public health emergency” leave are unpaid
  ◦ Employee may choose to use available PTO
  ◦ But the employer cannot require that employee use PTO
• After 10 days, leave is paid
  ◦ Payment amount is at least 2/3 of employee’s “regular rate of pay” based on number of hours the employee would normally otherwise be scheduled to work
  ◦ Cap: “In no event shall such leave exceed $200 per day and $10,000 in the aggregate”

Emergency Family and Medical Leave Expansion Act

Regular rate of pay is calculated as defined in FLSA

Must include:

• Wages or salary
• Commissions
• Bonuses based on productivity, efficiency, performance, or attendance
• Payments received in the form of goods that are intended to be part of wages, and
• Premium payments other than for overtime.
Emergency Family and Medical Leave Expansion Act

Regular rate of pay does not include:

• Premium payments for overtime work or extra pay for work on Saturdays, Sundays, and holidays
• Money paid as a gift
• Payments for time off, like sick days, vacation, and holidays
• Reimbursements from the employer for expenses paid by employees
• Bonuses that are completely discretionary, and
• Amounts the employer spends on employee benefits.

May employees take leave under the EFMLA intermittently?

• Yes
• If the employer agrees
EMERGENCY PAID SICK LEAVE ACT

Emergency Paid Sick Leave Act

An employer shall provide each employee with paid sick leave to the extent that the employee is unable to work (or telework) due to a need for leave because:

1. Employee is subject to federal, state, or local quarantine or isolation order;
2. Employee has been advised by health care provider to self-quarantine;
3. Employee is experiencing COVID-19 symptoms and is seeking medical diagnosis;
4. Employee is caring for an individual who meets 1. or 2. above;
5. Employee is caring for a son or daughter whose school or childcare provider is closed due to COVID-19 precautions;
6. Employee is experiencing “any other substantially similar condition” specified by HHS in consultation with Secretary of Treasury and Secretary of Labor.
Emergency Paid Sick Leave Act

How Much Leave?

• Paid sick leave amount is 80 hours for full-time employees;
• Pro rata for part-time employees
  ▫ Number of hours the employee works on average over a two-week period
  ▫ Look-back period of 6 months

Emergency Paid Sick Leave Act

Can employees take 2 weeks of leave for all 6 reasons, racking up 12 weeks of paid leave?

• No
• Employees are entitled to up to 2 weeks/10 days of leave
• 80 hours for full-time employees, or
• Pro-rated equivalent for part-time employees
• FOR ANY OF THE QUALIFYING REASONS
• Capped at 80 hours under the Emergency Paid Sick Leave Act
Emergency Paid Sick Leave Act

How much do employers have to pay?

• If the reason for leave is 1., 2. or 3. above, compensation is paid at not less than the employee’s regular rate of pay

• If the reason for leave is 4., 5. or 6. above, compensation is paid at 2/3 of employee’s regular rate of pay

Emergency Paid Sick Leave Act

• Caps
  ▫ If reason for leave is 1., 2., or 3. above, cap is $511 per day, and $5,110 total
  
  ▫ If the reason for leave is 4., 5. or 6. above, cap is $200 per day, and $2,000 total
Emergency Paid Sick Leave Act

If the employer provided sick leave before April 1, 2020 for covered reasons, must the employer provide 2 additional weeks under the EPSLA?

YES

Emergency Paid Sick Leave Act

Can EPSL be taken intermittently?

• If working at typical work site:
• It depends on the reason for leave; and
• Requires employer agreement.
Emergency Paid Sick Leave Act

Unless teleworking, EPSL must be taken in full-day increments.

EPSL cannot be taken intermittently if leave is being taken where employees takes leave for qualifying reasons 1-4 or 6.

1. Employee is subject to federal, state, or local quarantine or isolation order;
2. Employee has been advised by health care provider to self-quarantine;
3. Employee is experiencing COVID-19 symptoms and is seeking medical diagnosis;
4. Employee is caring for an individual who meets 1. or 2. above;
5. (May be taken intermittently by agreement)
6. Employee is experiencing “any other substantially similar condition” specified by HHS in consultation with Secretary of Treasury and Secretary of Labor.
Emergency Paid Sick Leave Act

Unless EPSL begins for reasons 1-4 or 6, the employee must continue to take paid sick leave each day until either

(1) Employee uses the full amount of paid sick leave or

(2) Employee no longer has a qualifying reason for taking paid sick leave

Reason: Intent of FFCRA is to provide such paid sick leave as necessary to keep you from spreading the virus to others. Employees sick, possibly sick, or caring for someone who is or may be sick must stay out of the office.
If our company wants to pay more than the cap, can we?
Yes, but you may only receive a tax credit for the amount of the cap
How do EFMLA and EPSLA work together?

EFMLA leave

EPSL - Category 5

“A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week ...”

FFCRA - Documentation

What information may/should the employer request to support leave and tax credit?

• The name of your employee requesting leave;
• The date(s) for which leave is requested;
• The reason for leave; and
• A statement from the employee that he or she is unable to work because of the reason
FFCRA - Documentation

CATEGORY 1 – employee subject to a quarantine or isolation order: employee must provide the name of the government entity that issued the order.

CATEGORY 2, 3 or 6 – employee uses paid sick leave for self-quarantine: employee must provide the name of the health care provider who gave that directive.

CATEGORY 4 – employee uses paid sick leave to care for an individual who is subject to Category 1 or 2: employee must provide the name of the government entity that issued the order, or the health care provider who directed the self-quarantine, as applicable.

CATEGORY 5 – employee uses paid sick leave or paid family leave to care for a child whose school or daycare has closed: employee must provide the name of the child, name of the school or daycare that has closed, and a representation that no other suitable person will be caring for the child during the period for which leave has been requested.

NOTE: An employer may request that an employee provide such additional material as is needed for the employer to support a request for tax credit based upon its provision of paid leave under the FFCRA.
FFCRA – Tax Credit

Complete Coverage
Employers get 100% reimbursement for required paid leave

- Health insurance costs are also included in the credit
- Employers face no payroll tax liability

FFCRA – Tax Credit

Fast Funds
- Reimbursement will be quick and easy to obtain
- An immediate dollar-for-dollar tax offset against payroll taxes will be provided
- Where a refund is owed, IRS will send the refund as quickly as possible
## Summary of EFMLA and EPSLA Benefits and Tax Credit

<table>
<thead>
<tr>
<th>Reason for Leave</th>
<th>Pay</th>
<th>Cap</th>
<th>Max Days</th>
<th>Max Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1 - Quarantine order</td>
<td>Regular rate of pay</td>
<td>$511/day</td>
<td>10</td>
<td>$5,110</td>
</tr>
<tr>
<td>Category 2 - HC provider advises employee to self-quarantine</td>
<td>Regular rate of pay</td>
<td>$511/day</td>
<td>10</td>
<td>$5,110</td>
</tr>
<tr>
<td>Category 3 - COVID-19 symptoms, seeking diagnosis</td>
<td>Regular rate of pay</td>
<td>$511/day</td>
<td>10</td>
<td>$5,110</td>
</tr>
<tr>
<td>Category 4 - Caring for category 1 or 2 individual</td>
<td>2/3's of regular rate of pay</td>
<td>$200/day</td>
<td>10</td>
<td>$2,000</td>
</tr>
<tr>
<td>Category 5 - Caring for son or daughter - closed school/daycare</td>
<td>2/3's of regular rate of pay</td>
<td>$200/day</td>
<td>60*</td>
<td>$12,000 ($2,000 sick leave + $10,000 EFMLA leave)</td>
</tr>
<tr>
<td>Category 6 - Substantially similar condition specified by HHS</td>
<td>2/3's of regular rate of pay</td>
<td>$200/day</td>
<td>10</td>
<td>$2,000</td>
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Summary of EFMLA and EPSLA Benefits and Tax Credit

Example – EPSLA
Barbara is employed by a CCRC as a nurse practitioner. Her health care provider advises her to self-quarantine for 14 days (Category 2). She self-quarantines from April 12-25 and is unable to work or telework. Barbara’s regular pay is $136,500 per year, which equates to $525/day.

- $511/day limit (Category 2)
- Affected 14 days
- 10 days limit
- Employer pays sick leave of $5,110
- Employer credit = $5,110 (511/day x 10 days) + prorated health insurance

Example – EPSLA
Mark is a CNA. His son’s daycare is closed for 10 days (Category 5). Mark is unable to work or telework during these days. Mark’s regular pay is $26,000, or $100 per day.

- 2/3’s = $66.67/day
- 10 days = $666.67 credit
- 60-day limit
- Employer pays sick leave of $666.70
- Employer credit = $666.70 (666.70/day x 10 days) + prorated health insurance
Example – EPSLA and EFMLA
Dawn is an activities director for a CCRC. Her 3 year old daughter’s school is closed 70 days (Category 5). Dawn stays home with daughter and she is unable to work or telework because she is caring for daughter. Dawn’s regular pay is $62,400 per year or $240 per day.
• 2/3’s = $160.00/day (Category 5)
• Affected 70 days
• Limited to 60 days (10 days paid sick leave + 50 days family medical leave)
• Employer pays sick leave of $9,600 ($160 x 60 days)
• Employer credit = $9,600 + prorated health insurance
Furloughs and Layoffs and FFCRA

What is the difference:

**Furlough:** temporary suspension of employment for a specified period of time during which employees do not receive wages

**Layoff:** reduction in force, termination as a result of loss of business

If the worksite closes before April 1, 2020, are employees entitled to leave under FFRCA?

- No
- Includes closing for lack of business
- Includes closing for federal, state or local directive
- Employees may be eligible for unemployment insurance benefits
If the worksite closes after April 1, 2020, but before an employee goes on leave, are employees entitled to leave under FFCRA?
• No
• Includes closing for lack of business
• Includes closing for federal, state or local directive
• Employees may be eligible for unemployment insurance benefits

If the employer furloughs employees on or after April 1, 2020, are employees eligible for paid sick leave or expanded family and medical leave?
• No
• Not enough work
• Employees may be eligible for unemployment insurance benefits
Furloughs and Layoffs and FFCRA

If the employer reduces employee scheduled work hours, are employees eligible for paid sick leave or expanded family and medical leave for the hours reduced?

- No
- Not enough work
- Not prevented from working those hours due to COVID-19 qualifying reason
- Employees may be eligible for unemployment insurance benefits

Unemployment Benefits

Virginia:
1 week waiting period eliminated
Expanded reasons for eligibility
Not assessed against the employer’s experience ratio

Federal Supplement:
$600 flat rate
Eligible for the full amount if eligible for $1 of state unemployment benefit
Not assessed against employer’s experience ratio
QUESTIONS?

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