




FAMILIES FIRST CORONAVIRUS RESPONSE Act

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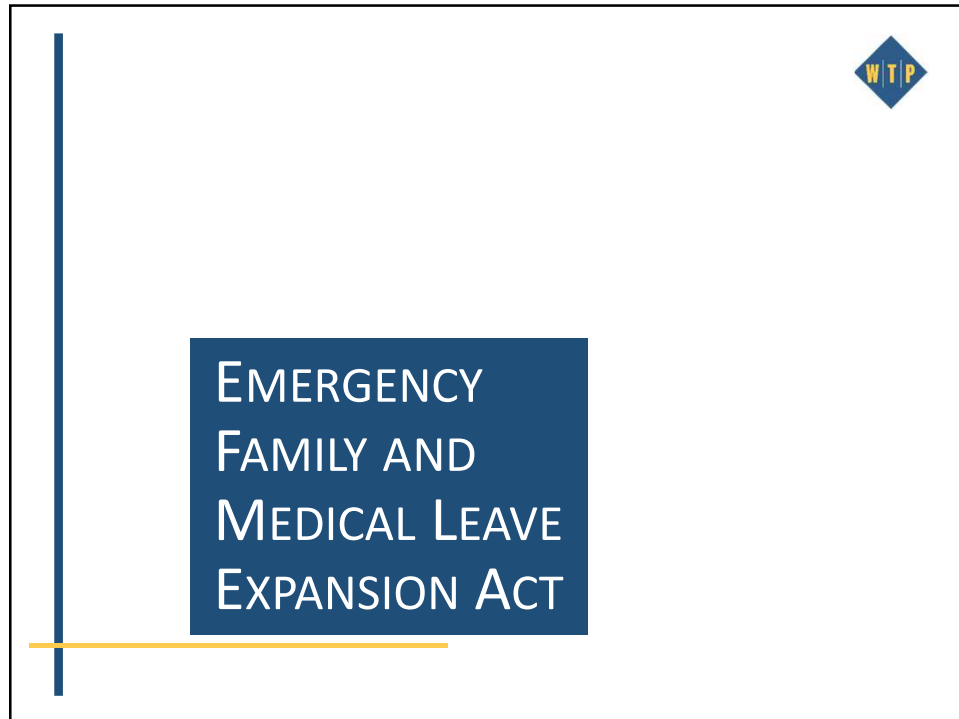
FFCRA - Agenda



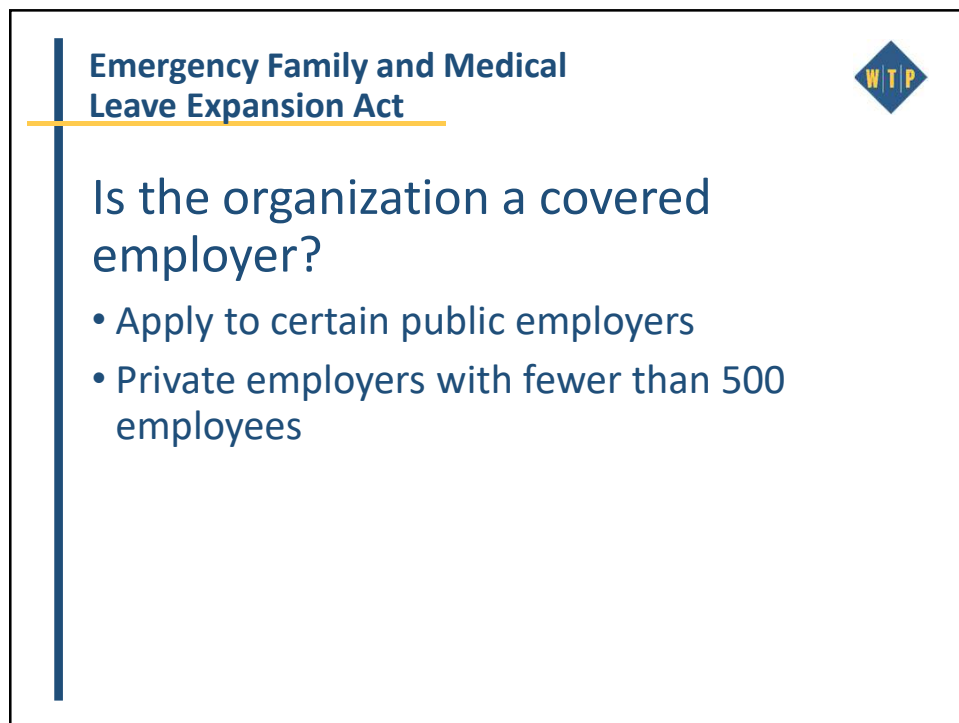
	Subject	Administered
Division C	Expansion → Family Medical Leave Act	DOL
Division E	Emergency Paid Sick Leave Act	DOL
Division G	Tax Credits	IRS

April 1-Decmeber 31, 2020

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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

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Emergency Family and Medical Leave Expansion Act



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

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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

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Emergency Family and Medical Leave Expansion Act



**How much leave must an employer
provide, and how much of that leave
is paid leave?**

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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”

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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.

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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.

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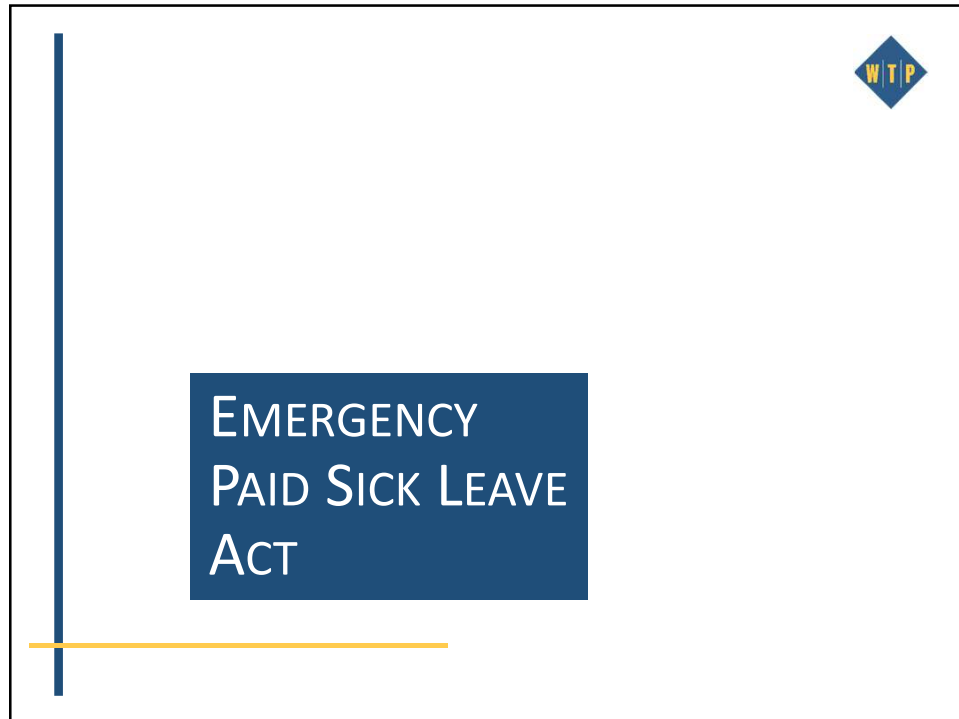
Emergency Family and Medical Leave Expansion Act



May employees take leave under the EFMLA intermittently?

- Yes
- If the employer agrees

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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

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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

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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

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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

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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

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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

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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.

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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.

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Emergency Paid Sick Leave Act



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

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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.

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FFCRA

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FFCRA



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

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FFCRA



Required Notice



The Families First Coronavirus Response Act (FFCRA) is Act requiring certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS

Generally, employers covered under the Act must provide employees:

Up to two weeks (10 hours, or a paid time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage (see A1).

• 100% for qualifying reasons A1-B below, up to \$511 daily and \$2,100 total.

• 75% for qualifying reasons A4 and B below, up to \$200 daily and \$2,000 total; and

• Up to 12 weeks of paid sick leave and expanded family and medical leave paid at 1/3 for qualifying reason B5 below for up to \$511 daily and \$2,000 total.

A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES

In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 20 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason B5 below.

QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19

An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

- | | |
|---|---|
| 1. is subject to a Federal, State or local quarantine or isolation order related to COVID-19; | 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or |
| 2. has been advised by a medical care provider to self-quarantine related to COVID-19; | 6. is experiencing any other substantially similar condition specified by the U.S. Department of Health and Human Services; |
| 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis; | |
| 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2); | |

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who asserts a leave and sick leave or expanded family and medical leave under the FFCRA, files a complaint, or notifies or threatens to file a complaint with the WHD. Employees in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

For additional information
go to the complaint
1-866-487-9243
TTY: 1-877-455-0202
dol.gov/employeeswhd



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FFCRA



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 ...”

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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

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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.

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FFCRA - Documentation



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) LEAVE REQUEST	
Employee Information	
Name: _____	Current Position: _____
Address: _____	Location: _____
City, State, Zip: _____	Supervisor: _____
Phone: _____	
Personal Email: _____	Date Request Submitted: _____
Reason for Requested Leave	
A. I would like to use provisions of the Emergency Paid Sick Leave Act (up to 2 weeks) for the following reasons:	
1. I am the subject to a federal, state, or local quarantine or isolation order related to COVID-19. (Must provide name of the government entity that issued the quarantine)	
2. I have been advised by a health care provider to self-quarantine related to COVID-19. (Must provide name of health care provider and/or health care provider documentation of instructions)	
3. I am experiencing COVID-19 symptoms and is seeking a medical diagnosis. (Must provide name of health care provider and/or health care provider documentation)	
4. I am caring for an individual subject to an order described in (1) or self-quarantine as described in (2). (Must provide name of individual being cared for/relationship and health care provider's documented instructions)	
5. I am caring for a child whose school/daycare of care/care provider is unavailable for reasons related to COVID-19. (Must provide name of school or place of care and documentation of closure)	
6. I am experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury. (Not common-DOH to provide updates)	
B. I would like to use provisions of Emergency Family Medical Leave Expansion Act (up to 10 weeks) because I am caring for a child whose school/daycare of care/care provider is unavailable for reasons related to COVID-19. (Must provide name of school or place of care and documentation of closure)	
Complete for Reasons A#1, A#2, A#3, A#4, or A#6	
First Day OOTD: _____	Return Date: _____
By signing below, I certify that I am unable to work (or telework) due to the reason selected above.	
Employee Signature	
Complete for Reason A#5 or Reason B Only - School/Day Care Information	
School/Daycare: _____	School Address: _____
Date of Closing: _____	Expected Reopen Date: _____
Child 1 Age/Name: _____	Child 2 Age/Name: _____
By signing below, I certify that no other suitable person is available to care for the child(ren) during the period of requested leave.	
Employee Signature	
Employee Certification and Date	
By signing below, I certify that the information provided is true and accurate. I agree to provide additional information required to support a tax credit for the leave requested.	
Employee Signature: _____	
Date: _____	

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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

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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

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[illegible]

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

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

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Summary of EFMLA and EPSLA Benefits and Tax Credit



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 (\$66.70/day x 10 days) + prorated health insurance

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Summary of EFMLA and EPSLA Benefits and Tax Credit



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

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FURLOUGHS AND LAYOFFS AND FFCRA



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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

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Furloughs and Layoffs and FFCRA



If the worksite closes before April 1, 2020, 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

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Furloughs and Layoffs and FFCRA



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

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Furloughs and Layoffs and FFCRA



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

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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

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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

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QUESTIONS?

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