

EMPLOYER GUIDANCE

Families First Coronavirus Protection Act
Updated March 20, 2020

On March 18, 2020, the Families First Coronavirus Response Act (FFCRA) became law. Among the provisions are two important features related to emergency paid sick leave and expanded access to FMLA leave for certain childcare-related leave arising out of the coronavirus pandemic.

Paid Sick Leave

Effective **April 2, 2020** and continuing through December 31, 2020, private employers with fewer than 500 employees and all government employers must provide *two weeks of paid sick leave to their employees (including part-time employees)*, aka Emergency Paid Sick Leave (“EPSL”).

The EPSL must be provided in instances where an employee:

- 1) Is either subject to a government-issued quarantine or isolation order related to COVID-19, has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- 2) Is caring for an individual who is subject to a quarantine order or has been advised to self-quarantine, caring for a child whose school or place of care has been closed, or is experiencing any other substantially similar condition.

EPSL is to be calculated based on the *greater* amount of the employee’s regular rate of pay or the applicable minimum wage rate. There is a two-tiered pay rate:

- If the employee’s sick leave is for reasons listed in number 1 above, the pay is calculated based on the full amount the employee would have been paid (capped at \$511 per day).
- If the leave is for reasons listed in number 2 above, the pay rate is two-thirds of the full pay amount (capped at \$200 per day).

Employees may not carry over EPSL from one year to the next and similar to many state paid sick leave laws, EPSL is not paid out at termination of employment. Further, the entitlement to any EPSL ends on the next scheduled shift following an employee’s return to work after taking EPSL. To note, an employee may need to use additional leave for either the care of a family member or for his or her own eligible condition. It is unclear whether an employee would be

eligible to use any remaining EPSL following a return to work if an additional need arose. Employers may *not* require employees to use other forms of paid leave prior to use of EPSL. For employers with existing paid sick or other leave policies, EPSL is in addition to such paid leave. Covered employers are prohibited from modifying any paid leave policies to avoid being subject to this requirement. Like other leave laws, the EPSL provision of the FFCRA contains anti-retaliation provisions and imposes penalties for denial of EPSL in accordance with the FLSA.

Self-employed individuals are also eligible for paid sick leave, but the payment will be made through a tax credit.

Family and Medical Leave Act Expansion

Yes, the FFCRA also temporarily expands certain protections under the Family and Medical Leave Act (FMLA) from April 2, 2020 through December 31, 2020. The new law amends the FMLA to provide for Public Health Emergency Leave (PHEL) that extends eligibility for up to 12 weeks of job-protected leave in limited childcare-related circumstances. Specifically, PHEL may be taken only if the 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 if the child's school or place of care has been closed, or the childcare provider is unavailable due to a public health emergency. Importantly, all employers with less than 500 employees must provide PHEL to employees who have been on the job for at least 30 days.

The *first two weeks* of PHEL is unpaid. Employers may allow, but not require, employees to substitute vacation leave, personal leave, or sick leave for the first two weeks of PHEL. The remaining 10 weeks of PHEL must be paid at a rate of at least two-thirds of the employee's regular rate of pay (not to exceed \$200 per day).

The FFCRA provides employers payroll tax credits to help defray the costs associated with providing paid sick leave and paid family and medical leave.