

# Employer Fact Sheet - Families First Coronavirus Response Act (FFCRA)

## Emergency Paid Sick Leave Act (EPSLA)

- **Requirements Generally**
  - Employers are prohibited from discharging, disciplining, or in any other manner discriminating against an employee who takes leave under the EPSLA
  - Covered employers are required to provide eligible employees up to two weeks of paid sick leave at full pay, up to certain caps.
    - Due to COVID-19 quarantine imposed by Federal, state, local, or healthcare provider (for self or to care for individual subject to quarantine)
    - Experiencing symptoms of COVID-19 and is seeking medical diagnosis
    - Need to care for employee's child whose school or place of care is closed/unavailable due to COVID-19
- **Eligible Employees**
  - Applies to all employees regardless of how long the employee has worked for the employer (including part-time)
  - May exclude employees who are health care providers or emergency responders
- **Amount of Leave:** Up to 80 hours of paid sick leave
  - For part-time employees: up to the number of hours that they work on average over a 2-week period
  - At a rate at the greater of (i) the employee's regular rate of pay under the FLSA or the applicable minimum wage
  - Employers cannot require employees to use other paid leave before using the paid sick leave
- **Penalty for non-compliance**
  - Failure to provide paid sick leave under the EPSLA is treated the same as failure to pay minimum wages in violation of the FLSA

## Emergency Family and Medical Leave Expansion Act (EFMLEA)

- **Eligible employees:** Any employees who have been employed at least 30 days and are unable to work because:
  - the employee is caring for his or her child whose school or place of care is closed or whose child care provider is unavailable due to a public health emergency, with respect to COVID-19, declared by a Federal, State, or local authority
- **Amount of Leave:** May take up to 12 weeks leave, up to 10 weeks must be paid at a rate of at least two-thirds (2/3) the employee's regular rate of pay
  - Payment is triggered once the employee has used two weeks of pay (which could be paid under the EPSLA)
  - May be used concurrently with any other leave the employer offers (such as vacation or other paid time off)
- **Notice:** Employee must provide the employer with notice as soon as practicable.
- **Protections and Penalties:** Same as non-compliance with the FMLA

## Both EPSLA & EFMLEA

- **Employers subject to FFCRA:** Employers with less than 500 employees
  - Covered employers are required to post a notice of employees' rights under the EPSLA & EFMLEA
- **Telework.** If employee subject to a quarantine is able to telework, the employee does not have to be paid leave, only if
  - (a) his or her employer has work for the employee to perform;
  - (b) the employer permits the employee to perform that work from the location where the employee is being quarantined or isolated; and
  - (c) there are no extenuating circumstances that prevent the employee from performing that work
- **Refundable Tax Credit**
  - Under the FFCRA, covered private employers may qualify for reimbursement through refundable tax credits as administered by the Department of the Treasury
    - To reimburse for qualifying paid sick leave wages and qualifying family and medical leave wages paid to an employee who takes leave under the FFCRA
      - up to per diem and aggregate leave caps and
      - allocable costs related to the maintenance of health care coverage under any group health plan while the employee is provided leave under the FFCRA.

- **Small Employer (less than 50 employees) Exemption**
  - Exempt from providing paid sick leave and expanded family and medical leave due to:
    - Need to care for employee's child whose school or place of care is closed/unavailable due to COVID-19
  - Exemption applies only if providing paid leave would ***"jeopardize the viability of the business as a going concern"***
    1. Such leave would cause the small employer's expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity;
    2. the absence of the employee requesting such leave would pose a substantial risk to the financial health or operational capacity of the small employer;
    3. the small employer cannot find enough other workers to perform the labor or services the employee or employees requesting leave provide, and these labor or services needed for the small employer to operate at a minimal capacity
  - Employer must document the facts and circumstances that meet the criteria set forth above to justify such denial of paid leave.
    - DO NOT send material or documentation to the DOL, but rather retain such records for the employer's own files for a minimum of 4 years.

