



# What You Need to Know

Emergency Paid Sick & Family and Medical Leave Under the **Families First Coronavirus Response Act**



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# Families First Coronavirus Response Act (FFCRA)

**Effective Date: April 1, 2020**

## **Covered Employers:**

- Private employers with fewer than 500 employees
- Public employers

## **Employee Eligibility:**

- E-PSLA (paid sick leave): Eligible immediately upon hire
- E-FMLA (paid family and medical leave): Eligible after 30 days of employment

# Families First Coronavirus Response Act (FFCRA)

## Exceptions for Small Employers:

- Employers with fewer than 50 employees may seek exemption if the paid leave requirements “jeopardize the viability of the business”
- Employers with fewer than 25 employees are exempt from FMLA restoration obligations if the position no longer exists and they make reasonable efforts to rehire the employee for up to one year

## Exceptions for Healthcare Providers/Emergency Responders:

- The Secretary of Labor MAY issue regulations to exclude certain healthcare providers or emergency responders

# Emergency Paid Sick Leave Act (E-PSLA):

## *Reasons for Leave*

- 1.** The employee is subject to a federal, state, or local quarantine or isolation order related to coronavirus
- 2.** The employee has been advised by a healthcare provider to self-quarantine due to concerns related to coronavirus
- 3.** The employee is experiencing coronavirus symptoms and seeking a medical diagnosis
- 4.** The employee is caring for an individual who is subject to an order as described in reason (1) or has been advised as described in reason (2)
- 5.** The employee is caring for a son or daughter due to the child's school/childcare closure due to coronavirus
- 6.** The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services

# Emergency Paid Sick Leave Act (E-PSLA): *Paid Leave Amounts/Limits*

## Amount of Paid Leave:

- Full-time employees: Up to 80 hours
- Part-time employees: The number of hours they work on average in a two-week period

## Amount Depends on Reason for Leave:

- For reasons 1–3, employees receive their regular rate
- For reasons 4–6, employees receive 2/3 their regular rate

## Paid Leave Caps:

- For reasons 1–3, paid leave shall not exceed \$511/day and \$5,110 aggregate
- For reasons 4–6, paid leave shall not exceed \$200/day and \$2,000 aggregate

# Emergency Family and Medical Leave Act (E-FMLA): *Reason for Leave*

## Employee is unable to work (or telework) due to:

- A need for leave to care for a son/daughter under 18 years of age if the child's school/childcare is closed due to coronavirus

# Emergency Family and Medical Leave Act (E-FMLA): *Paid Leave Amounts/Limits*

## Amount of Paid Leave:

- First 10 days are unpaid (but employee may substitute E-PSLA or other paid leave)
- After that, up to 10 weeks paid at 2/3 of the employee's regular rate of pay

## Paid Leave Cap:

- Paid leave shall not exceed \$200/day and \$10,000 aggregate

# Emergency Family and Medical Leave Act (E-FMLA): *Return to Work*

- Employees must be returned to their position or an equivalent position
- Employers with fewer than 25 employees are not required to guarantee job reinstatement if the employee's position is eliminated as a result of economic conditions
  - In this case, employers must make a reasonable effort to restore the employee to an "equivalent" position at the end of the leave. If no equivalent position is available, reasonable efforts must be made to contact the former employee if an equivalent position becomes available in the following 12 months.

# Families First Coronavirus Response Act (FFCRA): Tax Credits

## Tax Credits:

- Employers receive 100% reimbursement for paid leave under FFCRA
- An immediate dollar-for-dollar offset against payroll taxes may be provided
- Where a refund is owed, the employer may file a request for an accelerated refund, which the IRS promises to send “as quickly as possible”

## IRS Example:

- If an employer paid \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes (including employee taxes), the employer can use \$5,000 of the payroll taxes it was going to deposit
- If an employer paid \$10,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes, the employer could use the entire \$8,000 in payroll taxes, then file a request for an accelerated refund for the remaining \$2,000

# E-PSLA and E-FMLA Documentation Requirements

- Due to the need to retain documented support for the tax credit, you MUST obtain and retain documentation from employees for both leaves
- Due to our overburdened health system, we recommend you don't require documentation from a healthcare provider
- The following is acceptable from the employee: employee name, qualifying reason for leave, statement from employee that they are unable to work/telework, dates of leave requested, source of any quarantine or isolation order, and/or name of healthcare provider who has advised employee to self-quarantine
- Public notices and/or emails are acceptable documentation

# What Else Should I Know?

- Both E-PSLA and E-FMLA sunset (expire) on Dec. 31, 2020
- These leaves must be provided in addition to the leave(s) the employer already provides to employees
- E-PSLA and/or E-FMLA leave is not paid out at termination



# Common Questions



**I don't get an automatic exemption from having to provide E-PSLA and E-FMLA? I have fewer than 50 employees.**



There are no automatic exceptions or exemptions of these leaves for employers with fewer than 50 employees. Proactive action will be required of employers seeking an exemption — they will have to demonstrate that providing the leave will “jeopardize the viability of the business” and is an ongoing business concern. Regulations will be issued by the Secretary of Labor that provide guidance to employers on how to apply for the exemption.



**How long do I have to comply with this law?**



The Department of Labor (DOL) will observe a “temporary period of non-enforcement” after the Families First Coronavirus Response Act (FFCRA) takes effect April 1, 2020.



## **Can I require employees to use other paid leave before using the new E-PSLA and E-FMLA?**



No. The new E-PSLA and E-FMLA must be allowed to be used for the stated reasons, starting on April 1, 2020. Employers may not require employees to use other vacation, sick, or PTO leave first.



## **Are temporary, interim, and/or seasonal employees eligible for these leaves?**



Yes. All employees on your payroll are eligible for E-PSLA immediately and E-FMLA after 30 calendar days of employment.



**If we are continuing to pay our staff now, even though our facility is closed, can we count this money toward the new paid leave requirements?**



No. Leave must be provided when needed for these explicit reasons.



**If employees are on furlough, are they eligible for E-PSLA or E-FMLA?**



No. They would be eligible for unemployment.



## Can E-PSLA be used on an intermittent basis?



If an employee works on site, E-PSLA is not permitted to be used on an intermittent basis for the following reasons:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to coronavirus
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to coronavirus
3. The employee is experiencing coronavirus symptoms and seeking a medical diagnosis
4. The employee is caring for an individual who is subject to an order as described in reason (1) or has been advised as described in reason (2)
5. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services

Intermittent use of E-PSLA is permitted for caring for a child due to school/childcare closure.

If the employee is working remotely, and the employer and employee agree, E-PSLA may be used intermittently. When allowed, the DOL encourages collaboration between employers and employees to achieve flexibility and meet mutual needs.



## Can E-FMLA be used on an intermittent basis?



If the employer and the employee agree, E-FMLA may be used on an intermittent basis. The DOL encourages collaboration between employers and employees to achieve flexibility and meet mutual needs.



## Is an employee entitled to E-FMLA if their child's school is offering remote/online learning?



Yes. While the employee's child may still be receiving education, there may still be a need for childcare.



**Is an employee entitled to E-FMLA or E-PSLA if we are offering remote work?**



Yes. While an employee may be permitted and able to work from home, the need for childcare or to care for another individual may still exist.



**If a company cuts pay before April 1, 2020 and employees subsequently become eligible for paid leave under E-PSLA or E-FMLA, is the employee paid at their prior wage/salary or their new wage/salary?**



Employees should be paid at the wage/salary that is in effect when the need for leave arises.



## Do I need to inform employees of their right to take paid leave?



Employers must post/keep posted a **notice**, approved by the Secretary of Labor, describing the requirements of this Act in conspicuous places on the premises of the employer where notices to employees are customarily posted.



## Is all FMLA leave now paid?



No. The usual rules apply for traditional FMLA leave.



**If an employee's employment is terminated, do I have to pay them for any unused E-PSLA or E-FMLA leave?**



No. The Act does not require financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment for unused leave.

**If you have any questions or would like more information, contact:**

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