

# COVID-19 Alert

PRESIDENT SIGNS EMERGENCY LEAVE LAW

MARCH 2020

## FAMILIES FIRST CORONAVIRUS RESPONSE ACT

On March 18, 2020, President Trump signed the Families First Coronavirus Response Act ("FFCRA") into law. The law will take effect on April 1, 2020, and will remain in effect until December 31, 2020. The FFCRA was adopted to amend portions of the FMLA while also providing for paid sick leave in limited circumstances.

The law has two sets of provisions, each with their own uses and limitations. Below is a comparison of The Emergency Family and Medical Leave Expansion Act ("EFMLEA") terms, which applies only to leave taken for the care of a minor child whose school or place of care is closed due to COVID-19, to the FMLA.

### 1. Covered Employer

- FMLA:
  - Private employers with 50 or more employees
  - Public agencies
- EFMLEA:
  - Private employers with less than 500 employees
  - Public agencies

### 2. Eligible Employee

- FMLA:
  - Employee has been employed for at least 12 months and for at least 1,250 hours during the previous 12-month period
- EFMLEA:
  - Employee has been employed for at least 30 days

### 3. Total Leave Time Allowed

- FMLA: 12 weeks
- EFMLEA: 12 weeks (No extension of original 12 week maximum)

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#### 4. Covered Reasons

- FMLA:
  - Birth and care of newborn child of an employee
  - Placement with the employee of a child for adoption or foster care
  - Care for an immediate family member
  - Take medical leave when the employee is unable to work because of a serious health condition
- EFMLEA:
  - All FMLA covered reasons
  - Care for a minor child if the child's school or place of care has been closed or the child care provider is unavailable due to a public health emergency related to COVID-19, but only if the employee is not able to work or telework

#### 5. Paid vs. Unpaid

- FMLA: Unpaid
- EFMLEA:
  - First two weeks (10 days) unpaid
  - All subsequent time (10 weeks) paid at 2/3 employee's regular rate of pay for the above covered reasons

#### 6. Payment Caps

- FMLA: N/A
- EFMLEA: \$200/day and \$10,000 total

### EMERGENCY PAID SICK LEAVE ACT

On March 16, 2020, the House of Representative amended the Families First Coronavirus Response Act ("FFCRA"). The bill is intended to aid employers as it removes or restricts many of the paid leave provisions established in the original bill.

#### **Changes to the Emergency Paid Sick Leave Act**

Full-time employees are still provided with 80 hours of paid sick leave (or pro-rata for part-time employees) for coronavirus-related illness and self-quarantine, but the bill limits the conditions in which employees can take leave, and it caps the daily and total amount of compensation. Under Division E of the revised bill, the Emergency Paid Sick Leave Act ("EPSLA"), employers must provide paid sick leave if the employee is unable to work, *or telework*, if the employee:

1. Is subject to federal, state or local quarantine or isolation order;
2. Has been advised by a healthcare provider to self-quarantine;

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3. Is experiencing symptoms of COVID-19;
4. Is caring for a quarantined individual;
5. Is caring for a minor child whose school or place of care has been closed due to COVID-19; or
6. Is experiencing any other substantially similar condition related to COVID-19.

**Other key provisions of the EPSLA include the following:**

- The EPSLA applies to private employers with less than 500 employees and public agencies with one or more employees.
- Paid sick leave is available for immediate use, regardless of how long an employee has been employed.
- EPSLA leave must be paid at the employee's regular rate of pay or minimum wage, whichever is greater, for uses 1-3 above (self-care or quarantine), and at two thirds the employee's regular rate of pay for uses 4-6 (care of another).
- Paid leave is capped at \$511 per day and \$5,110 in the aggregate for uses 1-3 (self-care or quarantine) and is capped at \$200 per day and \$2,000 in the aggregate for uses 4-6 (care of another).
- An employee may use paid sick leave under the EPSLA before using other leave.
- An employer may not require an employee to use other paid leave before the employee uses his or her EPSLA leave.
- Employers may not discriminate or retaliate against employees who take paid sick leave. Violations of these provisions may result in penalties for failure to pay minimum wages consistent with the Fair Labor Standards Act.

The House has given the Secretary of Labor authority to exempt certain healthcare providers and first responders from the obligation to provide emergency leave, and to exempt small business (less than 50 employees) from the obligation to provide emergency leave when such leave would "jeopardize the viability of the business as a going concern." Employers who are health care providers may also choose to exempt their employees from the provisions of the EFMLEA and EPSLA.

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