

**The Families First Coronavirus Response Act results in the Emergency Paid Sick Leave Act
and Expansion of the Family Medical Leave Act**
(Updated 3.27.2020)

President Trump has signed the second coronavirus relief package, the Families First Coronavirus Response Act (FFCRA). The FFCRA is effective April 1, 2020 and in effect for all workers employed on the date the president signed the bill. Among other provisions, the Act contains the Emergency Paid Sick Leave Act (EPSLA) and an expansion of the Family Medical Leave Act (FMLA). Both are scheduled to go into effect on April 1, 2020 and will expire on December 31, 2020.

EPSLA

The EPSLA provides up to 80 hours of paid sick leave to employees at both public- and private- sector employers with fewer than 500 employees. Employers may claim a refundable credit against their payroll taxes for payments to employees under the EPSLA. There are six instances in which an employee is unable to work or “telework” where the EPSLA applies when:

1. The employee is subject to a State or local quarantine or isolation order related to COVID-19
2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19
3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis
4. The employee is caring for an individual who is subject to an isolation order or has been advised by a healthcare provider to self-quarantine
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed or is unavailable, due to COVID-19
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services. This needs to be further defined.

Here’s more information about the EPSLA:

- The EPSLA is scheduled to go into effect on April 1, 2020.
- There is no minimum employment eligibility time period for employees to be eligible for EPSLA. If they were employed at the time of the EPSLA’s passing, they are eligible.
- The maximum number of hours of sick leave under the EPSLA is 80 hours for full time employees. Hours are pro-rated for part time employees.
- Employees are eligible for payment at their regular rate of pay, up to a maximum of \$511 per day and \$5,110 in total, under items 1 and 2 above; i.e., the employee is subject to a local quarantine/isolation order or the employee has been advised by a healthcare provider to self-quarantine.
- Employees can receive two-thirds of their regular rate of pay, subject to a daily maximum of \$200 and a total cap of \$2,000 under situations described in items 3, 4, 5 and 6 above; i.e. they are taking care of someone else or experiencing any other substantially similar condition.
- To help employers pay for this newly required paid sick leave, the Act provides employers with a refundable tax credit. Employers may claim a credit against their federal payroll taxes up to the amount paid for full and part time workers. If the payments to employees exceed the payroll taxes, the employer will receive a refund.
- The 80 hours (or prorated amount for part-time workers) under the EPSLA is in addition to any other paid sick leave that the employee has under the employer’s wage and benefit plan.
- The employee may use EPSLA sick leave first, then revert to the sick leave under the employer’s “regular” plan.
- Unused EPSLA sick leave will not carry over to subsequent years.
- The Secretary of Labor may exempt small businesses with fewer than 50 employees from the EPSLA with respect to caring for children whose school or daycare provider is unavailable if such requirements would jeopardize the viability of the business as a going concern. We don’t yet know how this will be determined.
- The EPSLA does not apply to healthcare workers or first responders.

The FMLA will be temporarily expanded through December 1, 2020 to allow employees who cannot work or telework because their child's or children's school or other care facility closed because of the coronavirus. The employee will be granted a leave of up to 12 weeks.

FMLA

Typically, FMLA leave is unpaid. However, under these temporary rules:

- Employees who have been employed for at least 30 calendar days are eligible for this expanded FMLA paid leave.
- The first 2 weeks may be unpaid, although the employee may use accrued vacation, sick leave or other PTO during that initial 2-week period.
- The next 10 weeks the employee will be paid at least 2/3 of their regular rate up to a maximum of \$200 per day and a total of \$10,000 over the 10 weeks.
- The employee is entitled to reinstatement to the same or an equal position after the 12 weeks of FMLA has lapsed. There are exceptions for employers with less than 25 employees.
- Like the EPSLA, the Secretary of Labor may exempt small businesses with fewer than 50 employees from the expanded FMLA with respect to caring for children whose school or day care provider is unavailable if such requirements would jeopardize the viability of the business as a going concern. We don't yet know how this will be determined.
- Also like the EPSLA, the expanded FMLA does not apply to healthcare workers or first responders.
- This expanded FMLA is only to address the coronavirus pandemic and does not impact the existing provisions of the FMLA.
- Like the EPSLA, employers can claim a credit against their payroll taxes to be "reimbursed" for this newly required expanded FMLA in a similar manner as they claim a credit for the EPSLA.

The Department of Labor summarized the Bill [HERE](#). And [HERE'S](#) a link to the bill in its entirety. Also, the DOL has created a FAQs page for the EPSLA and FMLA temporary rules [HERE](#). Struggling to decipher the rules? Our team can help. Contact us at (408) 287-7911 for assistance or to schedule a Skype/Phone/Zoom appointment.