

**FAMILY FIRST  
CORONAVIRUS  
RESPONSE ACT  
(FFCRA)**

**EMERGENCY PAID FAMILY MEDICAL LEAVE  
AND PAID SICK LEAVE  
IN RESPONSE TO THE COVID-19 PANDEMIC**

# FFCRA QUICK FACTS

- Effective for leave taken between April 1, 2020 and December 31, 2020.
  - Temporary non-enforcement period for violations until April 17, 2020
- Regulations are enforced by the US Department of Labor.
- Covers all private sector and non-profit employers with less than 500 employees.
- Covers all public sector employers with any amount of employees.
- Anti-retaliation protection for employees who seek to enforce rights under FFCRA or help others pursue rights under FFCRA.
- Exemption for employers who in “good faith” and “reasonably” violate FFCRA if they immediately remedy the violation, did not act willfully, and confirms to DOL they will comply in the future.

# EXEMPTION FOR HEALTH CARE PROVIDERS AND EMERGENCY RESPONDERS

- Health care providers and emergency responders may **choose** not to provide FFCRA paid leave on an individual employee case-by-case basis.
  - Not an employer-wide opt-out, DOL decides whether employer can opt-out for individual.
  - Maybe does not apply to non-treaters or non-essential workers (i.e. administrative staff, payroll, HR)
- Health care providers
  - Broad definition = anyone employed at a health care center, hospital, doctor's office, nursing facility or nursing homes, medical and laboratory testing, local health departments, pharmacy, etc.
- Emergency responders
  - Broad definition = anyone necessary for transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. Military, police, fire fighters, emergency medical services, etc.

- **EPSLA: Emergency Paid Sick Leave Act**

- Six qualifying reasons for leave
- Paid between 100% or up to 2/3 salary
- Up to 80 hours or 10 workdays job-protected leave

- **EFMLEA: Emergency Family Medical Leave Expansion Act**

- One qualifying reason for leave
- Paid up to 2/3 salary after first 10 workdays/two weeks
- Up to 12 weeks job-protected leave

**TWO TYPES  
OF PAID  
LEAVE UNDER  
FFCRA:  
EPSLA AND  
EFMLEA**



# **EMERGENCY PAID SICK LEAVE ACT**

**(EPSLA)**

# WHO QUALIFIES FOR EMERGENCY PAID SICK LEAVE?

- Full time and part time employees
- Must be employed and working on or after April 1, 2020
- Must have work available, but unable to work either in person or by telework
- Employees who have worked for employer for any length of time

# FOR WHAT REASONS CAN YOU ASK FOR EMERGENCY PAID SICK LEAVE?

- Must meet one of the following six situations:
  1. Employee is unable to work because he or she has been subject to an individual order by the federal, state, or local government to quarantine or isolate due to COVID-19.
    - Must be a direct order; government general "stay at home" or "shelter in place" orders insufficient.
  2. Employee has been advised by a health care provider to self-quarantine related to COVID-19.
  3. Employee is experiencing COVID-19 related symptoms **and** is seeking a medical diagnosis.
  4. Employee is **caring for an individual** that has been subject to an individual order by the federal, state, or local government to quarantine or isolate due to COVID-19 or has been advised by a health care provider to self-quarantine related to COVID-19.
  5. Employee is caring for his or her child whose school or place of care is closed, or childcare provider unavailable, due to COVID-19 related reasons;
  6. Experiencing any other substantially-similar condition specified by the US Dept. of Health and Human Services. **Has not been established at this time.**

# HOW MUCH LEAVE AM I ENTITLED TO UNDER THE EPSLA?

- **Full time employees**
  - Will receive up to 80 hours of paid leave
- **Part time employees (less than 30 hours per week)**
  - Will receive the average number of hours he or she works in a two-week period
  - Based off of employee's regular work schedule.
    - If hours not regular, will use two-week average over six month period.
    - If employed less than six months, average based on expectation of hours when hired.
- Overtime hours can be included in calculating average weekly pay, but still subject to 80-hour cap over two-week period.



# HOW MUCH DO I RECEIVE FOR EMERGENCY PAID SICK LEAVE?

Employees will receive either the **highest of the employee's regular rate of pay** OR highest of federal/state/municipal minimum wage.

## **100% OF REGULAR PAY IF THE EMPLOYEE TAKES LEAVE FOR:**

- (1) Being subject to a government quarantine/isolation order;
- (2) Advised by a health care provider to self-quarantine; or
- (3) Is experiencing COVID-19 related symptoms and is seeking diagnosis.

Total pay capped at **\$511/day or \$5,110 total.**

## **2/3 OF REGULAR PAY IF THE EMPLOYEE TAKES LEAVE FOR:**

- (1) Caring for an individual subject to a quarantine/isolation order or advised by a health care provider to self-quarantine;
- (2) Child's school or care provider closed or unavailable due to COVID-19; or
- (3) Substantially similar situation specified by US Dept. of HHS.

Total pay capped at **\$200/day or \$2,000 total.**

# WHAT IF I HAVE ACCRUED PTO BENEFITS THROUGH MY EMPLOYER?

- Under Massachusetts law, most employees have right to earn and use up to 40 hours of job-protected sick leave per year to take care of themselves and family members. Employees must earn at least one hour of sick leave for every 30 hours worked.
- You may elect to use your emergency paid sick leave under EPSLA before using other accrued PTO benefits, such as sick time or vacation, but you do not have to.
  - Your employer **cannot force you** to use other accrued PTO to substitute emergency paid sick leave.
- If you are receiving 2/3 of your pay for leave under EPSLA, you may “top off” your payments with your regular accrued PTO benefits to get to 100%, **if your employer agrees**.
  - Your employer cannot force you to “top off” your payments with other accrued leave.
- Unlike vacation time, you are **not** entitled to payouts for unused emergency paid sick leave time if terminated before you use it.

# WHAT DOCUMENTATION CAN AN EMPLOYER ASK FOR TO PROVE NEED FOR EMERGENCY PAID SICK LEAVE?

- An employer may ask for any of the following documents:
  - Copy of a government quarantine or isolation order
  - Notice of closure of school or care center, unavailability of child care in form of public announcement, email, text, or website posting.
  - If medical records unavailable, can show a treater note, letter, bill, or receipt in connection with seeking care or diagnosis.

# CAN I TAKE LEAVE UNDER EPSLA INTERMITTENTLY?

- **If both employee *and* employer agree**, employee can take paid sick leave intermittently for **purposes of caring for his or her child** whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons **only**.
- Paid sick leave **for all other qualifying reasons must be taken in full-day increments** and you must continue to take the leave until you use the full amount of paid sick leave or no longer have a qualifying reason to take the leave.
- If an employee **does not use the full two-week or 80 hours of paid sick leave** and no longer has a qualifying reason for taking paid sick leave, the employee **may take the remaining paid sick leave at another time** if another qualifying reason occurs.

# WHAT IF I OR MY FAMILY MEMBER MAY HAVE BEEN EXPOSED TO COVID-19 BUT DOES NOT HAVE A DIAGNOSIS OR A RECOMMENDED/REQUIRED QUARANTINE?

- Your employer may tell you not to come to work, but you will **NOT** be eligible for paid leave under EPSLA.
  - May use regular accrued PTO benefits, such as employer sick time or vacation.
- For salaried, overtime-exempt employees, you must be paid your **full salary** for the week if you worked any portion of that week.
- For hourly, non-exempt employees, your employer must only pay you for the hours you **actually worked that week**.

# WHAT IF MY EMPLOYER FAILS TO PAY ME UNDER EPSLA FOR MY QUALIFYING LEAVE?

- The failure to pay emergency sick leave is a minimum wage violation under FLSA.
- Speak to an employment law attorney to advise you on whether you might have an FLSA violation and how to file a claim.
- FLSA provides you with a private right to sue in court for lost wages.



# **EMERGENCY FAMILY MEDICAL LEAVE EXPANSION ACT**

**(EFMLEA)**

# WHO QUALIFIES FOR EMERGENCY FAMILY MEDICAL LEAVE?

- ✓ An employee that has work available, but is unable to go to work or telework **due to a need to care for his or her child** whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons.
- ✓ Full time and part time employees.
- ✓ Has been employed with the employer for at least 30 days immediately prior to when leave begins.
- ✓ Is an employee on or after April 1, 2020.



# HOW MUCH TIME OFF CAN I TAKE FOR EMERGENCY FAMILY MEDICAL LEAVE?

- Up to 12 weeks of job-protected leave, with continuation of health insurance benefits.
- If employee takes emergency family medical leave *and* paid sick leave under EPSLA, can only take up to 12 weeks combined total leave.
- If the employee has already used regular FMLA leave for another reason in the past 12 months, he or she is **NOT** entitled to more leave under the EFMLEA.
  - Can only use 12 weeks total for the year.

# WHAT PAY AM I ENTITLED TO UNDER EFMLEA?

## UNPAID FOR THE FIRST TWO WEEKS (10 WORKDAYS):

- Can use either paid sick leave under EPSLA, or use vacation time or other PTO benefits
- If uses EPSLA, will be paid at 2/3 regular rate of pay, and capped at \$200/day, or \$2,000 total for two-week period.

## 2/3 REGULAR RATE OF PAY FOR THE REMAINING 10 WEEKS:

- Total pay capped at \$200/day, or \$10,000 total.

# WHAT IF AN EMPLOYER FAILS TO PAY ME FOR QUALIFYING EMERGENCY FAMILY MEDICAL LEAVE?

- The failure to pay or allow family medical leave will provide you with a private right of action for enforcement under FMLA laws.
- Speak to an employment law attorney to advise you on whether you might have an violation and how to file a claim.
- **However, there is no private right of action** for employees not usually covered by FMLA (i.e. employer with less than 50 employees).
  - DOL will enforce the law

# DO I STILL HAVE RIGHTS TO TAKE LEAVE FOR OTHER REASONS UNDER FMLA?

- FMLA is still in force for employees who need to take leave for their own serious illness, caring for a family member with a serious illness, or caring for a new child.
  - This leave will still be **unpaid**.
  - You are only entitled to this leave if your employer has 50 or more employees, and you have worked for the employer for at least 12 months.
- Remember, there are no health care provider or emergency responder exemptions to regular FMLA leave
  - You are entitled to leave for other covered FMLA reasons even in this emergency.

# I AM HIGH RISK, CAN I TAKE LEAVE UNDER EPSLA OR EFMLEA TO AVOID CATCHING COVID-19?

- **No**, fear of exposure to COVID-19 does not entitle an employee to paid emergency sick leave or emergency family medical leave.
- You can use your regular PTO benefits or vacation time.
- If you have a disability that may be exacerbated or puts you at high risk of COVID-19, you may also ask your employer for a reasonable accommodation for telework, provided you can perform your essential job functions at home and doing so is not overly difficult or expensive for your employer.

# IMPORTANT TO NOTE:

- Small businesses with **fewer than 50 employees** may seek an exemption for providing paid emergency sick leave or family medical leave **for employees needing leave to care for his or her child whose school or place of care is closed, or childcare provider is unavailable**, due to COVID-19 related reasons.
- On an individual case-by-case basis, the employer must have **one of the three hardships** apply if they allow the employee paid leave:
  - Employee's leave would result in expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
  - Employee's absence would entail a substantial risk to the financial health or operational capabilities of the business because of the employee's specialized skills, knowledge of the business, or responsibilities;
  - Insufficient employees able, willing, and qualified at time and place needed to perform labor or services provide by the employee and those labor/services are needed for business to operate at a minimal capacity.

- DOL guidance on the FFCRA:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

- FAQ's on FLSA and COVID-19:

<https://www.dol.gov/agencies/whd/flsa/pandemic>

- FAQ's on FMLA and COVID-19:

<https://www.dol.gov/agencies/whd/fmla/pandemic>

## ADDITIONAL RESOURCES