

Families First Coronavirus Response Act (FFCRA) Becomes Law



On Wednesday, March 19, 2020, President Trump signed into law the Families First Coronavirus Response Act (FFCRA). This Act includes a number of relief measures responsive to the COVID-19/Coronavirus pandemic. The FFCRA will go into effect on April 2, 2020. The employment related provisions of this Act create significant new leave entitlements which will have a major impact upon employers, as well as a tax mechanism to recover the costs related to those leaves. Here's what employers need to know:

Emergency Paid Sick Leave Act (EPSLA)

EPSLA provisions apply to all private employers with fewer than 500 employees, as well as government employers. Covered employers must provide 80 hours of paid leave to "full time employees" (or the number of hours a part-time employee works on average over a two week period) for qualifying purposes. Under these provisions, some qualifying conditions require leave be paid at the employee's regular rate of pay, while others require that the employee be paid at least two-thirds their regular rate. The applicable pay is listed below for each type of qualifying condition. These provisions apply to all employees of a covered employer regardless of how long they have worked for the employer.

Qualifying conditions:

1. The employee has been placed under a federal, state, or local quarantine or isolation order related to Coronavirus. (Full rate of pay)
2. The employee has been advised by a health care provider to self-quarantine for reasons related to Coronavirus. (Full rate of pay)
3. The employee is experiencing symptoms of Coronavirus and seeking medical diagnosis. (Full rate of pay).
4. The employee is caring for an individual who is subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantine for reasons related to Coronavirus. (At least 2/3 rate of pay).
5. The employee is caring for a child under the age of 18 because the child's school or place of care has closed or because their child care provider is unavailable for reasons related to Coronavirus. (At least 2/3 rate of pay).

The employee is experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor. This allows some room for the government to expand upon these qualifying reasons should the need to do so arise.

Details:

- Note that this leave is required in addition to an employer's current leave policies, and the EPSLA does not relieve an employer of its duties to provide leave under existing laws or policies.
- Leave entitlement is immediate, with no unpaid waiting period. This feature is unlike the FMLA expansion discussed below.
- Qualifying reasons which require the full rate of pay are capped at \$511 per day, and \$5,110 total.
- Qualifying reasons which require 2/3 the employee's regular rate of pay are capped at \$200 per day, or \$2,000 total.
- An employer may not require an employee to utilize his or her accrued leave under another policy before taking EPSLA leave.
- Employers cannot require an employee provide or attempt to provide cover for the hours he or she takes under this leave.
- The Secretary of Labor will prepare a notice regarding these provisions which employers will be required to post.
- Employers of emergency responders and health care providers may exclude their employees from the EPSLA.

Tax Credits for Affected Employers:

Employers providing EPSLA leave are eligible for a refundable tax credit for 100% of EPSLA wages paid in each quarter. The tax credit may be taken against the employer's portion of the Social Security payroll tax for all its employees. Any portion of such credit in excess of the employer's total obligation for a given quarter is refunded to the employer. Self-employed individuals will be eligible for a similar credit.

Emergency Family and Medical Leave Expansion Act (EFMLEA):

Covered Employers:

All employers with fewer than 500 employees, as well as government employers, are covered employers under the EFMLEA. Even employers not normally subject to the FMLA are covered employers under these provisions.

Qualifying Leave:

Up to 12 weeks of EFMLEA leave may be taken by any employee who has worked for a covered employer for at least 30 days for the purpose caring for a child under the age of 18, if the child's school or place of care is closed due to Coronavirus, or if their child care provider is unavailable due to Coronavirus.

Details:

- Up to 12 weeks of EFMLEA leave within one calendar year.
- The first 10 days of leave under the EFMLEA may be unpaid, however, employees may use available leave time to be paid during those first ten days of leave. This would include qualifying leave under the EPSLA.
- After the first 10 days, the remainder of the EFMLEA leave must be paid, but can be paid at a rate that is at least 2/3 the employee's regular rate of pay.
- Employees who work part-time or have an irregular schedule are entitled to be paid based on the average number of hours the employee worked for the six months prior to taking Emergency FMLA. Employees who have worked for less than six months prior to leave are entitled to the employee's reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work.
- Pay is capped at \$200 per day and \$10,000 total for each employee who takes this leave.
- EFMLEA leave is considered to be job-protected as are other types of FMLA leave; an employee who takes leave under these provisions is entitled to job restoration upon the conclusion of his or her leave. However, the job restoration requirement does not apply to employers with fewer than 25 employees if the employee's position does not exist when the leave ends due to coronavirus-related economic issues.
- Health care providers and emergency responders may exclude employees from this leave.
- The Secretary of Labor is empowered to enact regulations that would:
 - Allow employers with fewer than 50 employees to apply for an exemption if compliance would jeopardize their business.
 - Exclude certain health care providers and emergency responders from eligibility for this leave.

Tax Credits for Affected Employers:

Employers providing EFMLEA leave are eligible for a refundable tax credit for 100% of EFMLEA wages paid in each quarter. The tax credit may be taken against the employer's portion of the Social Security payroll tax for all its employees. Any portion of such credit in excess of the employer's total obligation for a given quarter is refunded to the employer.

Looking Forward

As with most other employment-related issues at the moment, further developments addressing paid sick leave and FMLA will be forthcoming. McMahon Berger will continue to monitor this situation and update you as new issues arise. Please contact one of us to help you navigate this new law.

DISCLAIMER: The St. Louis employment attorneys at McMahon Berger have been representing employers across the country in labor and employment matters, including all aspects of FMLA and other leave-related issues, for over sixty years. As always, the foregoing is for informational purposes only and do not constitute legal advice regarding any particular situation as every situation must be evaluated on its own facts. The choice of a lawyer is an important decision and should not be based solely on advertisements.

McMahon Berger, PC
(314) 567-7350 | 2730 North Ballas Road, Suite 200 | St. Louis, MO 63131-3039
mcmahonberger@mcmahonberger.com