

FFCRA (Families First Coronavirus Response Act) Paid Leave Q & A

The Department of Labor has a much more detailed and comprehensive FAQ [here](#). The condensed Q & A below addresses the most common questions our clients and potential clients have asked about the paid leave provision of the Act.

1. What employers does this Act apply to?

The FFCRA applies to all private employers with under 500 employees.

2. What are the leave requirements?

Covered employers are required to allow up to 2 weeks of emergency paid sick leave (EPSL) for reasons 1-6 and up to 10 weeks of expanded FMLA (eFMLA) for reason 5 for employees who are not able to work or telework due because the employee:

1. Is subject to a federal, state or local quarantine or isolation order related to COVID-19;
2. Has been advised by a health care provider to self-quarantine related to COVID-19;
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. Is caring for an individual subject to an order as described in (1) or self-quarantine as described in (2);
5. Is caring for his/her child whose school or place of care is closed or provider unavailable due to COVID-19 related reasons; or
6. Is experiencing any other substantially similar condition specified by the US DHHS.

All employees (full time, part time, temporary) are eligible to take EPSL and all employees who have been employed for at least 30 calendar days are eligible to take eFMLA.

3. How much does pay does each employee receive?

Full time employees receive up to 80 hours of EPSL at their regular rate of pay (capped at \$500/day and \$5,000 total) for reasons 1-3 and at 2/3 their regular rate of pay (capped at \$200/day and \$2,000 total) for reasons 4-6. Full time employees taking eFMLA for reason 5 receive no pay for the first two weeks (they may take EPSL for these weeks) and 10 weeks at 2/3 their regular rate of pay (capped at \$200/day and \$10,000 total) for reason 5. Part time employees, rather than receiving 40 hour per week, receive pay for the normal number of hours they would have otherwise worked.

4. Are small employers exempt from any of this?

Possibly. Employers with under 50 employees may claim and exemption from reason 5 only if an authorized officer of the business determines and documents any of the following are true:

- a) The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- b) The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- c) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the

employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

5. Is there government assistance to help me pay for this?

Yes, the federal government is providing a tax credit for the gross wages, employer's portion of health insurance and social security and Medicare taxes on of the paid leave (up to the maximum caps). For clients of PBSI, this tax credit is applied on the same invoice as the wages are paid.

6. What if I have no more work and need to lay off my employees?

If there is no work available (even if for a COVID-related reason), the employee is not eligible for this paid leave but may be eligible for unemployment benefits.

7. Am I required to keep their job open for them?

Yes, this is paid and also job-protected leave. If you make a business decision to close the worksite, the paid leave will cease at that point. You may not discharge, discipline or otherwise discriminate against an employee for inquiring about or taking the leave.

8. What about health insurance for an employee out on EPSL or eFMLA?

Employers are required to maintain an employee's group health coverage under the same conditions as if they were actively working. If the employee pays a portion of those premiums, those deductions should continue during the paid leave period.

9. How long does this new law last?

These leave requirements are in effect beginning April 1, 2020 and until December 31, 2020.

10. If I send my employee home because s/he is not feeling well, can I pay them under this act?

No, not unless they were seeking a medical diagnosis or advised to quarantine by a health care provider. If you send an employee home because they are exhibiting COVID-like symptoms, you should advise them to seek medical advice or care.

11. Can I substitute my employees' regular paid leave (vacation, sick or PTO) with this new paid leave?

No. The provisions of the EPSL and eFMLA are new types of leave and should be provided in addition to your employees' regular accrual and allotment of paid leave. You also cannot require that they use their regular paid leave before utilizing these new leave entitlements.

12. What does it mean "substantially similar condition" (reason #6)?

The Department of Health & Human Services has not yet identified a "substantially similar condition". Until they do, reason 6 is not actually relevant.

13. How are employees supposed to find out about this leave entitlement?

Employers must post the FFCRA Employee Rights poster with their other employment posters.