



COVID-19 EMPLOYER UPDATE: NEW PAID LEAVE LAWS

Congress recently passed the Families First Coronavirus Response Act (FFCRA). Starting April 1, 2020, employers with under 500 employees are subject to two new paid leave requirements. Covered employers may be required to provide up to 12 weeks of paid leave to full- and part-time employees affected by COVID-19.

1. EMERGENCY PAID SICK LEAVE (EPSL)

For a maximum of 10 days (80 hours for full-time employees and the 10 workday average number of hours for part-time employees), two (2) types of paid sick leave are available:

A. For Self - where the employee is unable to work or remotely work because:

- a. the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider); or
- b. the employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.

This type of EPSL is paid at the employee's regular rate of pay to a maximum of \$511/day (equivalent to \$63.88 per hour) and \$5,110 over a two-week period.

B. To Care For Another/Child - where the employee is unable to work or remotely work because:

- a. the employee needs to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider);
- b. the employee needs to care for a child (under 18 years of age) whose school or childcare provider is closed or unavailable for reasons related to COVID-19; or
- c. there is a substantially similar condition (details to be provided as COVID-19 response evolves).

This type of EPSL is paid at two-thirds the employee's regular rate of pay to maximum of \$200/day (\$25 per hour), or \$2,000 over a two-week period.

2. EXPANDED FAMILY MEDICAL LEAVE (EFML)

Employees who have been on the job for 30+ days and who are unable to work due to leave to care for a child whose school or childcare provider is closed or unavailable for reasons related to COVID-19 (same as 1.B.b. above) are entitled to:

- a. a maximum of 12 weeks of leave with 10 weeks of paid leave (leave available/used counts against EFML entitlement);
- b. paid leave is paid at two-thirds the employee's regular rate of pay to a maximum of \$200/day (\$25 per hour) and \$10,000 over the ten-week period;
- c. Paid portion of EFML starts after 2 work weeks, but employee may use employer provided paid leave or EPSL for the unpaid first two work weeks.



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NOTES:

- Businesses with fewer than 50 employees may not have to provide childcare-related EPSL or EFML if it would “jeopardize the viability of the business as a going concern.” Regulations are anticipated in April to establish the criteria to support this exemption;
- An employer may not require an employee to use employer-provided leave before the employee uses the EPSL. An employer may not require the use of employer-provided leave concurrently with EFML;
- Job restoration rights under the FMLA apply after leave period;
- Health care coverage remains in place under either EPSL or EFML;
- Both types of FFCRA leave may be taken on intermittent basis under certain circumstances. One basic condition applies to all employees who seek to take FFCRA leave intermittently –they and their employer must agree. Absent agreement, no leave under the FFCRA may be taken intermittently;
- No retaliation against employees using or requesting this leave;
- Covered employers qualify for dollar-for-dollar reimbursement for such paid leave and the cost to maintain health insurance coverage for the employee during the leave period through a credit against payroll taxes reported on IRS Form 941–Employer’s Quarterly Federal Tax Return (federal income taxes, employee’s share of Social Security and Medicare taxes, and employer’s share of Social Security and Medicare taxes for all employees). If the payroll tax credits are insufficient to cover the paid leave, the employer can request accelerated payment from the IRS using Form 7200–Advance Payment of Employer Credits Due to COVID-19. The IRS’ target for processing requests is two weeks or less;
- Internal Revenue Service forms and instructions will provide procedures and substantiation requirements for claiming the tax credit. Employers may require and should retain documentation to support such leave requests;
- If the Employer is closed or does not have work, EPSL and EFML is not available;
- Employers must post new employment law poster covering EPSL and EFML. (https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf); and
- Employers have a 30-day non-enforcement period for good faith compliance efforts before penalties under Fair Labor Standards Act apply.

CALL JOHNNY GILMAN (410-648-9105) OR STEVEN BROWN (410-934-3902) WITH ANY QUESTIONS.
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