



Employee Benefits News Alert

COVID-19 Update

NEWS ALERT: What The New COVID-19 Bill Means For Employers

On Wednesday, the Senate passed the Families First Coronavirus Response Act (“FFCRA” or “Bill”) by a vote of 90-8 without amendment to the House version. President Trump then signed the Bill into law. A copy of the entire Bill can be found [here](#).

As it applies to employers, there are several provisions worth noting – specifically the Bill’s requirement for paid FMLA and sick leave to employers with fewer than 500 employees. The FFCRA will go into effect no later than April 2, 2020.

The following information provides a summary for those employers who employ fewer than 500 employees. Please note that companies who employ more than 500 employees are not subject to the FFCRA’s provisions related to paid sick leave and the expanded FMLA provisions.

Emergency Family and Medical Leave Expansion Act (“EFMLEA”)

As part of the FFCRA, the EFMLEA provided new rules and expanded certain provisions for employers. From application, it expands the FMLA’s following definitions:

1. An “eligible employee” means an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested.
2. The “employer threshold” includes those employers with “fewer than 500 employees”.
3. A “qualifying need related to a public health emergency” means that an employee has need for leave for the following reason ONLY:
 - a. To care for a child under 18 if the school or place of care has been closed or a childcare provider is unavailable due to the public health emergency.

This is now the only qualifying need for Emergency FMLA and a significant change from the prior version of the bill passed by the House over the weekend, which contained several other COVID-19-related reasons to provide paid EFMLEA.

With these new definitions in place, the following requirements for employers (fewer than 500 employees) are applicable:

1. The first 10 days (NOT 14 days) for which an employee takes leave under this section may consist of unpaid leave, *but the employee may substitute vacation, personal or sick leave.*

2. Employer must provide paid leave for each day of leave that an employee takes after taking leave for 10 days.
3. The paid benefit amount equals two-thirds (up to \$200 per day, and \$10,000 in total paid benefit) of the employee's regular rate of pay for the number of hours the employee would otherwise be normally scheduled to work.
 - a. For employees with variable hours, the number is equal to the average number of hours worked over a 6-month period.
 - b. If an employee did not work over such a 6-month period, then use the reasonable expectation of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
4. The 12-week period does not extend any time under the FMLA act but rather adds another reason for leave and specifies payment under such leave.
5. The following job restoration will be imposed for those employees who take paid EFMLEA.
 - a. Employers with 25 or more employees will have the same obligation as under traditional FMLA to return any employee who has taken paid EFMLEA to the same or equivalent position upon the return to work.
 - b. Employers with fewer than 25 employees are generally excluded from this requirement if the employee's position no longer exists following the leave due to an economic downturn or other circumstances caused by a public health emergency during the period of paid EFMLEA.
 - i. This exclusion is subject to the employer making reasonable attempts to return the employee to an equivalent position and requires an employer to make efforts to return the employee to work for up to 1 year following the employee's leave.

Health Care Provider Exemption

The EFMLEA and the FFCRA provide that an employer of an employee who is a health care provider or an emergency responder to elect out of providing paid family leave to these employees.

Small Business Exemption

For those employers with fewer than 50 employees, the Department of Labor ("DOL") has the authority to exempt from this paid family leave requirement such employers if the requirement to provide leave would jeopardize the viability of the business.

The provisions of this EFMLEA expire on December 31, 2020.

Emergency Paid Sick Leave Act ("EPSLA")

As part of the FFCRA, the EPSLA requires employers to provide two weeks (10 days) of paid sick leave to its employees who are unable to work or telework due to the various leave reasons below. The EPSLA does provide a cap on certain leave reasons, as indicated below.

The following reasons are provided at 100% of pay, capped at \$511 per day:

1. are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. are experiencing symptoms of COVID-19 and seeking a medical diagnosis

The following reasons are provided at 66% of pay, capped at \$200 per day:

1. are caring for an individual who is subject to a quarantine or isolation order related to COVID-19, or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
2. are caring for a son or daughter if the school or place of care for the child has been closed, or childcare provider is unavailable due to COVID-19 precautions; or
3. are experiencing any other substantially similar condition as specified by the Secretary of Health and Human Services.

Full-Time and Part-Time

For purposes of the paid sick leave, full-time employees are entitled to 80-hours of pay, while part-time employees are entitled to the number of hours that such employee works on average over a 2-week period.

Additional Aspects of Paid Sick Leave

The EPLSA provides the following additional requirements and guidance related to paid sick leave.

1. There is no carryover of this sick time from one year to the next
2. This paid sick leave is in addition to any paid sick leave already offered by an employer
3. An employer may not require that the employee search for or find a replacement employee to cover the hours in which the employee is using paid sick time
4. Paid sick time is available regardless of how long the employee has been employed by an employer (this differs from the EFMLEA provisions)
5. An employer may not require an employee to use other paid leave before using the paid sick time
6. Each employer is required to post a notice, to be provided by the Secretary of Labor
7. Employers are prohibited from discharging or disciplining an employee who takes a leave in accordance with the Act

The provisions of the EPLSA expire on December 31, 2020.

Healthcare Provisions of FFCRA

In addition to the paid sick leave and FMLA expansion aspects, the FFCRA also provided guidance for healthcare provisions applicable to employers. In short, private healthcare plans (i.e., employers) are required to provide no-cost coverage (no deductibles, copayments or co-insurance) for COVID-19 diagnostic testing. This includes the cost of a provider, urgent care center or emergency room visit in order to receive testing. This also includes telehealth visits at no-cost coverage. *This applies to all group health plans, regardless of employer size, including self funded and fully-insured.*

Tax Credits

Under the new requirements provided by the FFCRA, employers will receive tax credits for such paid sick leave and paid FMLA leave up to 100% of such amount paid to employees.

QUESTIONS?

Should you have any questions or comments or want to discuss the application of this to your employee population, please do not hesitate to contact your Employee Benefits team. Deer Park, Ill. (847-307-6100), Chicago (312-606-4800), Dallas (972-770-5010) or Oklahoma City (405-840-3033).