

HUNT & GALE

COVID-19 EMERGENCY SICK LEAVE AND EMERGENCY FMLA

Overview:

This letter is intended as preliminary guidance for employers on the Families First Coronavirus Response Act (FFCRA). Components of this legislation are separately known as the Emergency Sick Leave Pay Act and the Emergency Family and Medical Leave Act. The FFCRA was amended by the CARES Act for certain technical corrections and exceptions. Governmental agencies have issued regulations implementing these laws which will be subject to later amendment and guidance.

Effective Dates:

The law applies from April 1, 2020 through December 31, 2020 unless later amended. FFRA passed on March 18, 2020 and the CARES Act passed on March 27th.

Employers Required to Follow it:

The law applies to private (and most public) employers with less than 500 employees. This is a sea change for small employers, who are normally exempted from FMLA (which only applies to employers with 50 or more employees). There are two broad exemptions to the Act:

- 1.) Healthcare Providers:** The Department of Labor defines healthcare providers as follows: *"...anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care provider, any facility that performs laboratory or medical testing, pharmacy, or any similar institution, Employer, or entity. This includes any permanent or temporary institution, facility, location, or site where medical services are provided that are similar to such institutions. This definition includes any individual employed by an entity that contracts with any of these institutions described above to provide services or to maintain the operation of the facility where that individual's services support the operation of the facility. This also includes anyone employed by any entity that provides medical services, produces medical products, or is otherwise involved in the making of COVID-19 related medical equipment, tests, drugs, vaccines, diagnostic vehicles, or treatments. This also includes any individual that the highest official of a State or territory, including the District of Columbia, determines is a health care provider*

necessary for that State's or territory's or the District of Columbia's response to COVID-19.

2.) Certain private employers with fewer than 50 employees.

Small businesses with fewer than 50 employees may qualify for exemption from the EFMLA requirement to provide leave due to school closings or childcare unavailability if the leave requirements would **jeopardize the viability of the business as a going concern.**

Who pays these costs?

Employers must absorb the related cost and then apply for a tax credit against certain of their payroll costs. The rules related to the tax credit program are available through the IRS.

What is covered under the Sick Pay Act?

The Emergency Paid Sick Leave Act (EPSLA) entitles certain employees to take up two weeks (up to 80 hours for full-time employees and a pro-rata amount for part-time employees) of paid sick leave in addition to their normal sick leave for any of if the employee is unable to work or unable to telework for due to a need for leave 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 described in (1) or self-quarantine as described in (2);
5. Is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
6. Is experiencing any other substantially-similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

What is covered under the Emergency Family and Medical Leave Expansion Act” (EFMLEA)?

An employee qualifies for expanded family leave if the employee is caring for a child whose school or place of care is closed (or a child care provider is not available) for reasons related to COVID-19.

What is the pay rate?

The rate depends upon the program. For EPSLA, you will need to pay the entire salary of the employee, or the equivalent of their normal compensation, including overtime. For EMFLA, it will be the greater of 2/3 of the normal salary or \$200.00 per day.

Are overtime hours included?

Yes, the EFMLA requires employers to pay the employee for hours the employee would have been normally scheduled to work even if that is more than 40 hours in a week.

Are independent contractors included?

You are not required to cover individuals who act as independent contractors, but temporary employees and jointly-employed employees are covered for EPSLA.

Where can I find further guidance?

Guidance was issued by the U.S. Department of Labor's Wage and Hours Division at <https://www.dol.gov/agencies/whd/pandemic/ffera-questions>. The IRS has issued information with respect to tax credits available to employers who have paid these benefits. For information on the tax credits, see <https://www.irs.gov/forms-pubs/about-form-7200> see also <https://www.irs.gov/pub/irs-drop/n-20-21.pdf>.

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