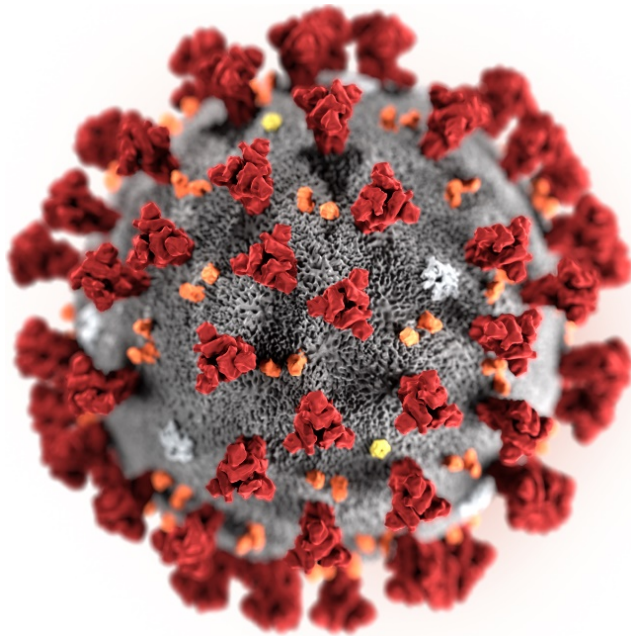




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7117 Florida Blvd. Baton Rouge, LA 70806 | (225) 218-1100 | www.nexusla.org

EMPLOYERS' QUESTIONS ANSWERED: OVERVIEW OF COVID-19 LAWS IMPACTING THE WORKPLACE



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April 2, 2020



FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

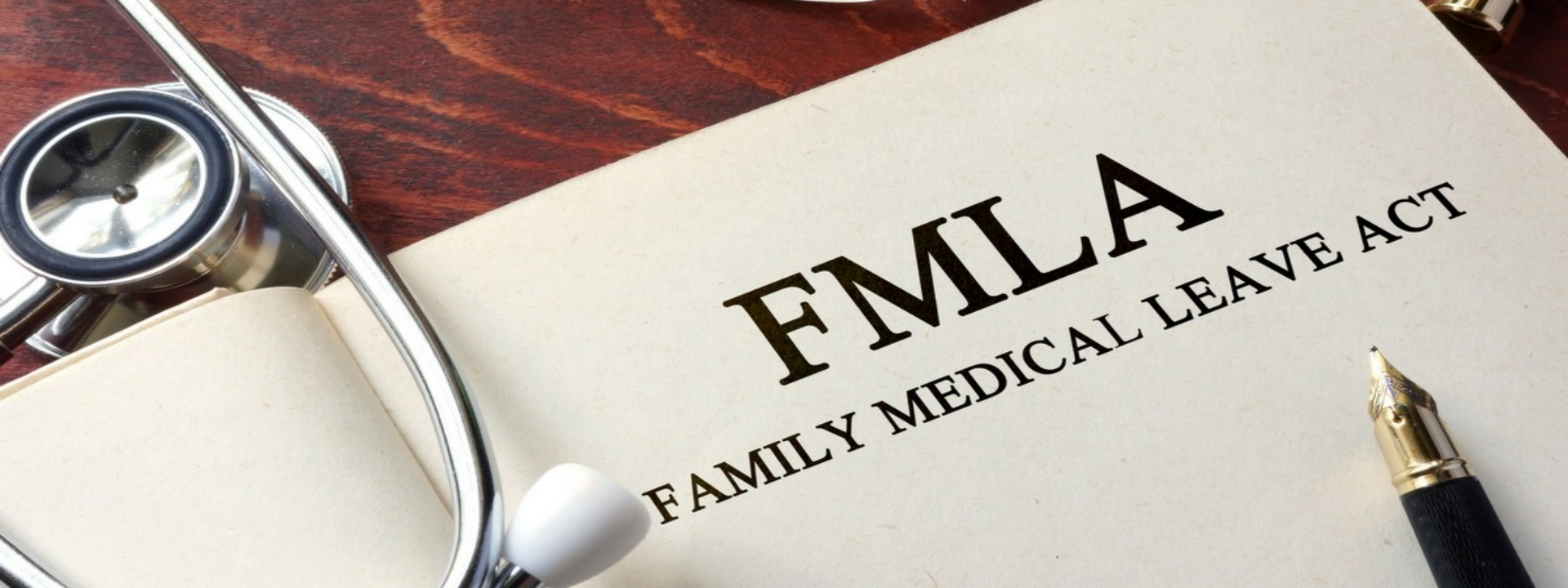
Families First Coronavirus Response Act FFCRA

- Enacted on March 18, 2020
- Eight parts – “divisions”
 - A: Appropriations
 - B: Nutrition Waivers for Schools “MEALS Act”
 - **C: Emergency Family and Medical Leave Expansion Act (EFMLEA)**
 - D: Unemployment Stabilization
 - **E: Emergency Paid Sick Leave Act (EPSLA)**
 - F: Health Provisions
 - **G: Tax Credits for Paid Sick and Paid Family and Medical Leave**
 - H: Budgetary Effects
- One set of regulations issued April 1, 2020, for emergency leave acts

Families First Coronavirus Response Act FFCRA

- Enacted March 18, 2020, effective April 1, 2020. NOT retroactive.
- Sunsets on December 31, 2020.
- DOL issued Q&As on March 24, 2020 (updated twice since).
- DOL issued regulations April 1, 2020.





DIVISION C

EMERGENCY FAMILY AND

MEDICAL LEAVE EXPANSION

ACT (EFMLEA)

Family and Medical Leave Act (FMLA)

BASICS

The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons within a one-year period.

- **COVERED EMPLOYER:** Private employers with **50 or more employees** *and* state and local government employers without regard to number of employees employed.
- **ELIGIBLE EMPLOYEE:** Employee who has worked at least **12 months and 1250 hours** prior to the start of the leave.
 - AND employed at a worksite with **50 employees within a 75 mile radius**

Emergency Family and Medical Leave Expansion Act (EFMLEA)

EFMLEA adds a new FMLA “qualifying reason” - F:

- A. The birth of a child and to care for the newborn;
- B. The placement of a child with the employee for adoption or foster care;
- C. To care for the employee’s spouse, child, or parent with a serious health condition;
- D. Employee’s own serious health condition;
- E. Any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.”
- F. Qualifying need related to a public health emergency.**

What is the Leave “Related to a Public Health Emergency”?

An employee is entitled to leave if he or she is **unable to work (or telework)** due to a need for **leave to care for a son or daughter under 18 years of age if the child’s school or place of care has been closed, or the childcare provider is unavailable**, for reasons related to COVID-19 (i.e. the public health emergency).

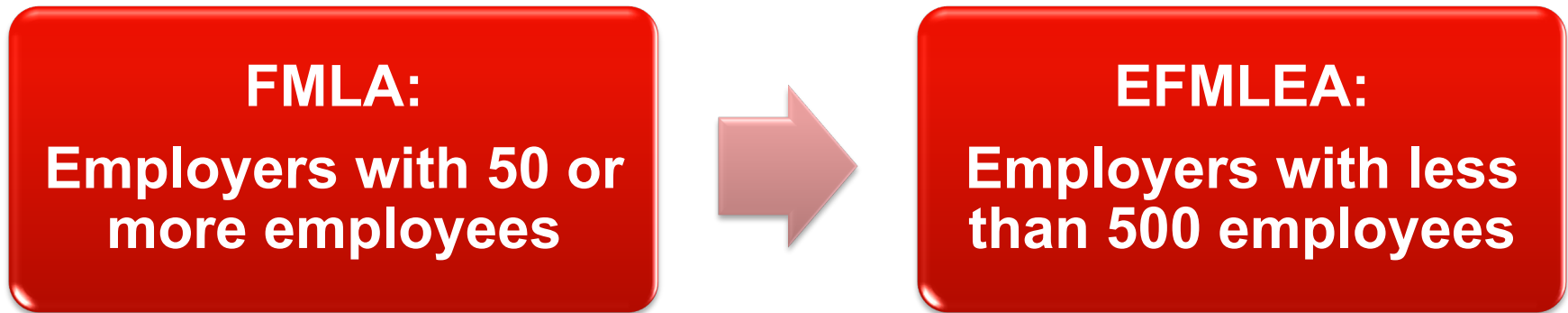
KEY QUESTION . . . AMOUNT OF LEAVE

- The COVID-related school/childcare closure is a new qualifying event for FMLA leave . . . the employee gets 12 weeks of leave under the FMLA – TOTAL.
 - The EFMLEA does not provide an eligible employee with an additional 12 weeks of leave.
 - The leave for this qualifying event is counted against the employee's entire 12 week allotment and an employee is eligible to take this leave to the extend the FMLA is available to that employee.



Leave “Related to a Public Health Emergency” – **COVERED EMPLOYERS**

For this new “qualifying reason” for FMLA leave only, the definition of **covered employer** has changed:



- Both private employers and nonprofits with less than 500 employees
- Covered Employer also includes public sector employers with one or more employees
- The minimum threshold of 50 still applies to all other qualifying reasons covered by the FMLA

Leave “Related to a Public Health Emergency” – **COVERED EMPLOYERS**

“Small Employers” Exemption:

For employers with less than 50 employees that can show compliance with the EFMLEA will “jeopardize the viability of the business as a going concern.”

Small Employers Guidance and Regulations

- Jeopardize business as a going concern means an authorized officer of business has determined:
 - Leave would result in business's expenses and financial obligations exceeding available revenues and cause business to cease operating at a minimal capacity
 - Absence(s) present substantial risk to financial health or operational capabilities of business due to specialized skills, knowledge of business, or responsibilities, **OR**
 - Insufficient workers able, willing, and qualified, and available at time and place needed, to perform labor or services relied upon by the employee(s) requesting leave, and the labor or services are needed to operate at minimal capacity
- Employer must document and retain records of determination

Leave “Related to a Public Health Emergency” – **ELIGIBLE EMPLOYEE**

For this new “qualifying reason” for FMLA leave only, the definition of **eligible employee** has changed:

FMLA: Employee has worked at least 1,250 hours during the prior 12 month period AND at a worksite with 50 employees in a 75-mile radius.



**EFMLEA:
Employee has to be employed for at least 30 calendar days.**

- The 30 days “immediately prior to the day the leave would begin” (i.e. does not count prior employment days)

Leave “Related to a Public Health Emergency” – **ELIGIBLE EMPLOYEE**

Health Care Provider and Emergency Responder Exclusion:

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the EFMLEA.

- The DOL issued regulations April 1, 2020
- Expansively define these terms

Leave “Related to a Public Health Emergency” – **ELIGIBLE EMPLOYEE**

Health Care Provider Exclusion:

- Regulations define “health care provider” as “anyone employed at a 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,” including any “permanent or temporary” entity or facility
- Includes individuals employed by contractors to such entities or facilities

Leave “Related to a Public Health Emergency” – **ELIGIBLE EMPLOYEE**

Health Care Provider Exclusion:

- 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
- Includes any individual that the highest official of a state or territory, including the District of Columbia, determines is a health care provider in connection with the response to COVID-19

Leave “Related to a Public Health Emergency” – **ELIGIBLE EMPLOYEE**

Emergency Responder Exclusion:

- Regulations define “emergency responder” as anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19
- Includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency

Leave “Related to a Public Health Emergency” – **ELIGIBLE EMPLOYEE**

Emergency Responder Exclusion:

- Includes individuals whose work is necessary to maintain the operation of facilities employing emergency responders
- Includes any individual that the highest official of a state or territory, including the District of Columbia, determines is an emergency responder in connection with the response to COVID-19

Leave “Related to a Public Health Emergency” – **PAID LEAVE**

- The first 10 days of EFMLEA leave are unpaid. But an employee may substitute:
 - accrued paid leave OR
 - paid sick time under the EPSLA (this will only be at 2/3 of their pay and runs concurrently) . . . *more on that later*
 - important to note, that the emergency paid sick leave does not extend the 12-week leave entitlement under the FMLA
 - The employer may not require the employee to substitute paid leave.

Leave “Related to a Public Health Emergency” – **PAID LEAVE**

- After the first ten-day period, the remainder of the 12-week leave taken for this qualifying event (absences caused by school closures and the resulting childcare responsibility) **is paid**.
 - Pay is at two-thirds of their regular pay at the number of hours the employee would otherwise be normally scheduled to work (including overtime hours for purposes of counting hours – pay does not need to include premium for overtime hours).
 - up to a maximum of \$200 a day or \$10,000 in the aggregate

Leave “Related to a Public Health Emergency” – **PAID LEAVE**

- After the first ten-day period, the remainder of the 12-week leave taken for this qualifying event (absences caused by school closures and the resulting childcare responsibility) **is paid**.
 - Part-time employees or employees with an irregular schedule paid based on the average number of hours the employee was scheduled per day for the six months prior to taking leave under the EFMLEA.
 - If the employee worked for less than six months prior to leave, paid based on employee’s reasonable expectation at hiring of the average number of hours the employee would normally be scheduled to work (including overtime hours for purposes of counting).

KEY QUESTION . . . INTERMITTENT LEAVE

- Generally under the FMLA, employees may take leave intermittently (i.e. take leave in separate blocks of time or on a reduced schedule) when it is medically necessary.
 - When it is not medically necessary, leave may be only taken intermittently with the employer's approval.
- Regulations state intermittent leave is allowed only if the employer approves, but is not available when employee must report to worksite and reason for leave is personal illness



Leave “Related to a Public Health Emergency” – **JOB RESTORATION**

- FMLA and EFMLEA provide job protection and the customary reinstatement requirements of the FMLA apply.
 - Employee must generally be restored to their prior or an “equivalent” position with equivalent benefits, pay and other terms and conditions of employment after their FMLA/EFMLEA leave.

Leave “Related to a Public Health Emergency” – **JOB RESTORATION**

Exception for employers with less than 25 employees who will be generally excluded from this requirement if the employee’s position no longer exists following the EFMLEA leave due to an economic downturn or other circumstances caused by a public health emergency during the period of EFMLEA leave.

- Subject to the employer making reasonable attempts to return to employee to an equivalent position AND
- Requires an employer to make efforts to return the employee to work for up to a year following the employee’s leave.

KEY QUESTIONS . . . NOTICE & CERTIFICATION

- Employees are required to provide notice as soon as practicable when the need for leave is foreseeable.
- EFMLEA also silent about what certification, if any, an employer can request from employee to support need for EFMLEA leave or whether an employee is required to fill out FMLA paperwork for this leave.



KEY QUESTIONS . . . NOTICE & CERTIFICATION

- Guidance and regulations allow employer to request documentation of:
 - Name
 - Dates leave is requested
 - Qualifying reason for leave
 - Oral or written statement employee is unable to work because of qualified reason
- Must provide name of government entity for quarantine or isolation order if applicable
- Must provide name of health care provider who advised to self-quarantine if applicable



KEY QUESTIONS . . . NOTICE & CERTIFICATION

- For expanded family and medical leave, guidance and regulations allow employer to request documentation of:
 - Name of son or daughter to be cared for
 - Name of school, place of care, or child care provider that is closed or unavailable
 - Representation that no other suitable person will be caring for the son or daughter during the leave period requested



EFMLEA ENFORCEMENT

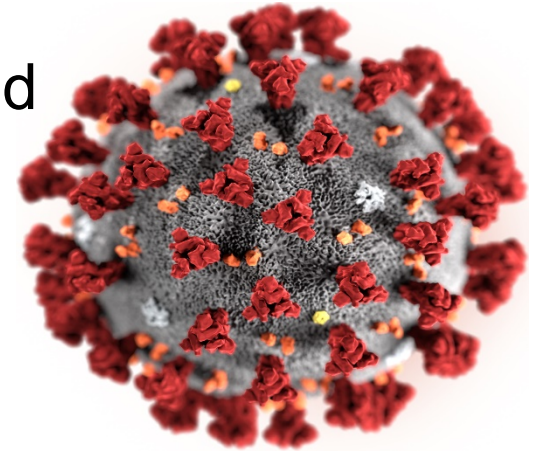
- FMLA standard private cause of action by employee and action by DOL still applicable.
- **Small Employers Can't Be Sued**: The law exempts employers with fewer than 50 employees from civil FMLA damages in an FMLA lawsuit, shielding them from being liable for back pay or liquidated damages.
 - Still subject to enforcement by DOL.



DIVISION E EMERGENCY PAID SICK LEAVE ACT (EPSLA)

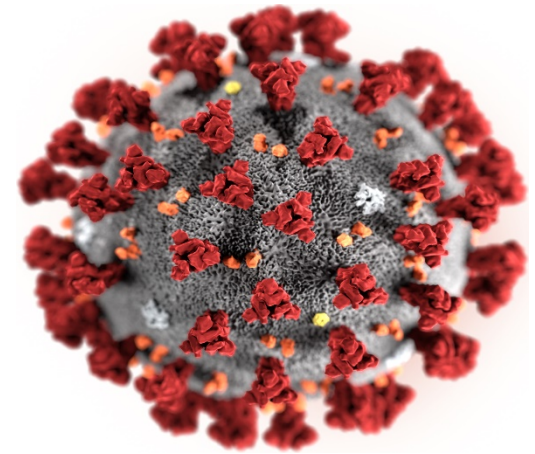
Emergency Paid Sick Leave Act – **PAID SICK TIME**

- For full-time employees, **80 hours** of paid sick time to the extent an employee is unable to work or telework due to coronavirus-related reasons.



Emergency Paid Sick Leave Act – **PAID SICK TIME**

- For part-time employees, the number of hours the employees works, on average, over a two-week period.
- Employees with 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 leave.
- If the employee has not worked six months, the reasonable expectation of the employee concerning the number of hours at the time of hire.



Emergency Paid Sick Leave Act – **PAID SICK TIME**

- No carryover of unused time and no payout of paid sick leave under the EPSLA for employees who are terminated prior to using their 80 hours.
- The leave is in addition to any paid leave the employer may provide.
- Employers cannot require employee to first use PTO before EPSLA paid sick time.
- Employer cannot require the employee find a replacement worker when using this paid sick time.



Emergency Paid Sick Leave Act – **APPLICATION**

- **COVERED EMPLOYERS:** Private employers and nonprofits with fewer than 500 employees, and public employers.
- **ELIGIBLE EMPLOYEE:** all employees - part-time and full time.
 - Sick leave under this Act shall be available for immediate use by the employee regardless of how long they worked for the employer.

Remember: for the EFMLEA the employee has to be employed for 30 days to be eligible for the expanded FMLA leave.

Emergency Paid Sick Leave Act – **COVERED EMPLOYERS**

“Small Employers” (Limited) Exemption:

For employers with less than 50 employees that can show paying for leave ***due to school or childcare closures*** will “jeopardize the viability of the business as a going concern.”

DOL is applying same definitions as under EFMLEA



Emergency Paid Sick Leave Act – **ELIGIBLE EMPLOYEE**

Health Care Provider and Emergency Responder Exclusion:

An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the EPSLA.



Emergency Paid Sick Leave – **WHEN EMPLOYEE IS SICK**

1. The employee is under a government quarantine or isolation order related to COVID-19.
 2. The employee was advised by a health care provider to self-quarantine due to COVID-19 concerns.
 3. The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- **For reasons 1-3 above, employees get paid sick time at 100% of their regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a two-week period).**

KEY QUESTION . . . SHELTER IN PLACE, STAY HOME, BUSINESS SHUTDOWN

- DOL's new regulations provide additional guidance as to whether the above orders are quarantine or isolation orders under #1
- Answer is yes, but regarding need for leave focus is whether employee is unable to work or telework because of the order
- Preamble to regulations and regulations themselves provide additional explanation



Emergency Paid Sick Leave – **OTHERS SICK/SIMILAR CONDITION**

4. The employee is caring for an individual who is subject to paragraphs (1) or (2).
5. The employee is caring for a son or daughter if the child's school/childcare place is closed or unavailable, due to COVID-19 precautions. (similar to EFMLEA – but no child age limitation – DOL treats the same)
6. The employee is experiencing any other substantially similar condition specified by Department of HHS.
 - **For reasons 4-6 above, employees get paid sick time at 2/3 of their regular rate or the applicable minimum wage, whichever is higher, up to \$200 per day and \$2,000 in the aggregate (over a two-week period).**

KEY QUESTIONS . . . CERTIFICATION & CALL OUT RULES/PROCEDURES

- Nothing in the EPSLA prohibits an employer from requesting reasonable documentation to support a paid sick leave request.
- After the first day the employee is receiving paid sick leave, the employee should be following the call-out rules and procedures outlined in your handbook/policy.
 - If don't have call-out rules or procedures, you should think about developing a COVID-19 policy that will govern paid sick time and emergency FMLA.



Emergency Paid Sick Leave Act- EMPLOYER NOTICE

EMPLOYEE RIGHTS
PAID SICK LEAVE AND EXPANDED FAMILY AND MEDICAL LEAVE
UNDER THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Families First Coronavirus Response Act (FFCRA or Act) requires certain employers to provide their employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions will apply from April 1, 2020 through December 31, 2020.

PAID LEAVE ENTITLEMENTS
Generally, employers covered under the Act must provide employees:

Up to two weeks (80 hours, or a part-time employee's two-week equivalent) of paid sick leave based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:

- 100% for qualifying reasons #1-3 below, up to \$511 daily and \$5,110 total;
- ⅔ for qualifying reasons #4 and 6 below, up to \$200 daily and \$2,000 total; and
- Up to 12 weeks of paid sick leave and expanded family and medical leave paid at ⅓ for qualifying reason #5 below for up to \$200 daily and \$12,000 total.


A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

ELIGIBLE EMPLOYEES
In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially paid sick leave for COVID-19 related reasons (see below). Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid expanded family and medical leave for reason #5 below.


QUALIFYING REASONS FOR LEAVE RELATED TO COVID-19
An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;	5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
2. has been advised by a health care provider to self-quarantine related to COVID-19;	6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.
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);	

ENFORCEMENT
The U.S. Department of Labor's Wage and Hour Division (WHD) has the authority to investigate and enforce compliance with the FFCRA. Employers may not discharge, discipline, or otherwise discriminate against any employee who lawfully takes paid sick leave or expanded family and medical leave under the FFCRA, files a complaint, or institutes a proceeding under or related to this Act. Employers in violation of the provisions of the FFCRA will be subject to penalties and enforcement by WHD.

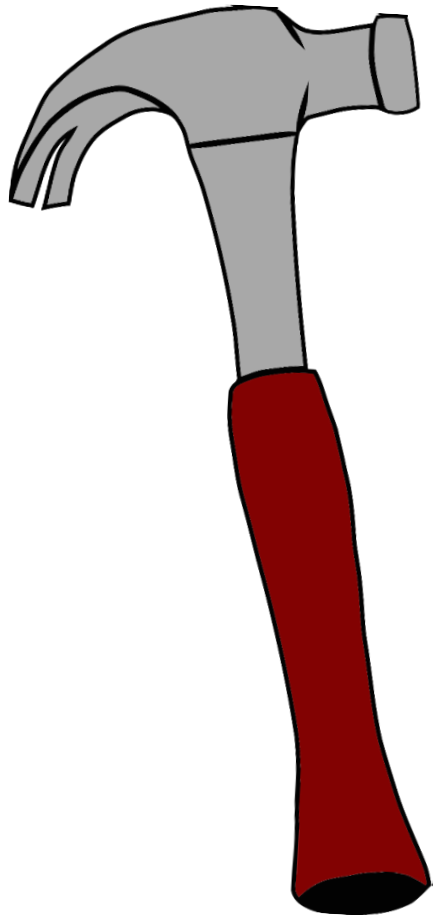
 **WAGE AND HOUR DIVISION**
UNITED STATES DEPARTMENT OF LABOR

For additional information
or to file a complaint:
1-866-487-9243
TTY: 1-877-689-5627
dol.gov/agencies/whd

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- Employers should post (and keep posted) in a conspicuous place on the premises where notices are customarily posted a notice of the requirements described in the EPSLA.
- Employers can satisfy this obligation by emailing or mailing the poster directly to employees or posting the poster/notice on the Company's internal or external website.
- Employers must provide this poster to any new hires.
- Not required to be posted in multiple languages.

Emergency Paid Sick Leave - **ENFORCEMENT**



- No Discrimination or Retaliation
 - It is unlawful for an employer to discharge, discipline, or in any manner discriminate against an employee who takes leave under the EPSLA **AND** has filed a complaint or participated in a proceeding under or related to this act or has testified or is about to testify in any such proceeding.
- A violation of the EPSLA is considered a failure to pay minimum wages in violation of the requirements of the FLSA.

EFMLEA

ELIGIBLE EMPLOYEE: An employee who has worked for the employer for at least 30 days prior to taking leave.

COVERED EMPLOYER: Private employers with less than 500 employees, nonprofits, and public sector employers.

EPSLA

ELIGIBLE EMPLOYEE: Eligible immediately.

COVERED EMPLOYER: Private employers with less than 500 employees, nonprofits, and public sector employers.

EFMLEA

LEAVE REASON:

Employee cannot work or telework due to caring for a son or daughter under age of 18 closure of school or childcare because of COVID-19.

EPSLA

LEAVE REASON:

1. Quarantine or isolation order
2. Employee self quarantine due to concerns related to COVID-19
3. Employee has symptoms of COVID-19 and is seeking a medical diagnosis
4. Employee is caring for an individual under quarantine or who was advised to self quarantine
5. Employee is caring for a child due to school/childcare closure
6. “Substantially similar condition”

EFMLEA

LENGTH OF LEAVE: up to 12 weeks, assuming the employee has not already exhausted any FMLA leave time.

PAY ENTITLEMENT: First ten days unpaid, remainder of leave (up to 10 weeks) paid at reduced rate.

EPSLA

LENGTH OF LEAVE: Doesn't address length of leave but allows for a maximum of 80 hours of paid leave.

PAY ENTITLEMENT:

- For full-time employees 80 hours (no accrual)
- For part-time employees average hours over two-week period.

EFMLEA

PAY CALCULATION:

2/3 of regular rate or the applicable minimum wage, whichever is higher, up to a maximum of \$200 a day or \$10,000 in the aggregate.

EPSLA

PAY CALCULATION:

For leave 1-3: 100% of regular rate or the applicable minimum wage, whichever is higher, up to \$511 per day and \$5,110 in the aggregate (over a two-week period).

For leave 4-6 (including #5 which is similar leave to EFMLEA): 2/3 of regular rate or the applicable minimum wage, whichever is higher, up to a maximum of \$200 a day or \$2,000 in the aggregate.

EFMLEA

SMALL BUSINESS EXEMPTION: possible exemption from EFMLEA for employers with fewer than 50 employees if business can show compliance would “jeopardize the viability of the business as a going concern” (waiting for DOL guidance)

EPSLA

SMALL BUSINESS EXEMPTION: possible exemption from child-care related paid sick leave (reason #5) for employers with fewer than 50 employees if business can show compliance would “jeopardize the viability of the business as a going concern” (waiting for DOL guidance)

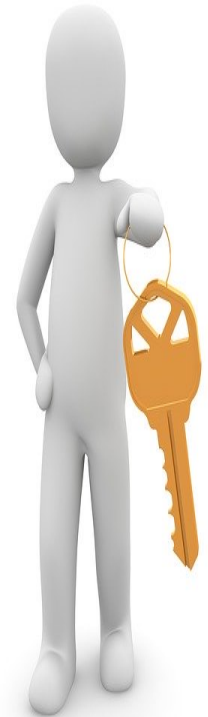
KEY QUESTION . . . 500 EMPLOYEE THRESHOLD

- The 500 count is determined as of the time leave is sought.
- Includes employees:
 - in United States, D.C. or any “territory or possession of United States”
 - Part-time and full-time employees.
 - Employees on leave
 - Temporary employees who are jointly employed with another company.
- Foreign employees not counted.
- Independent contractors not counted.
- Employees who have been laid off are not counted.



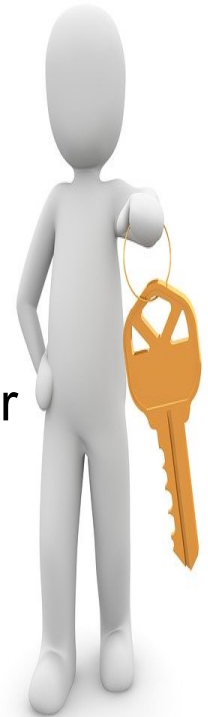
KEY QUESTION . . . 500 EMPLOYEES - SUBSIDIARIES & RELATED ENTITIES

- DOL is applying joint employer and integrated employer tests
 - “Any person acting directly or indirectly in the interest of an employer in relation to an employee” is a joint employer if the balance of the DOL’s new four-factor test weigh in favor of joint employment: whether and the extent to which the putative joint employer:
 - hires or fires the employee;
 - supervises and controls the employee’s work schedule or conditions of employment to a substantial degree;
 - determines the employee’s rate and method of payment; and
 - maintains the employee’s employment records.



KEY QUESTION . . . 500 EMPLOYEES - SUBSIDIARIES & RELATED ENTITIES

- Factors considered in determining whether two or more entities are an integrated employer include:
 - (i) Common management;
 - (ii) Interrelation between operations;
 - (iii) Centralized control of labor relations; and
 - (iv) Degree of common ownership/financial control.
- Under the franchisor-franchisee model, a franchisee is customarily considered a separate employer – not a joint or integrated employer with the franchisor



Recent Guidance From THE DOL

- **Non-Enforcement Period:** DOL will be issuing a temporary non-enforcement policy that provides a 30-day period of time for employers to come into compliance with the Act. Under this policy, DOL will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. DOL will instead focus on compliance assistance during the 30-day period.





Tax Credits

DIVISION G

TAX CREDITS FOR PAID SICK AND PAID FAMILY AND MEDICAL LEAVE

THERE IS SOME RELIEF!

Basics Of The Tax Credit

- Friday, the Treasury Department, IRS and DOL announced that covered employers under EFMLEA and EPSLA can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar for cost of providing leave under EFMLEA and EPSLA:
 - Includes cost of paid leave and costs to maintain health insurance coverage for the eligible employee during the leave period.

THERE IS SOME RELIEF!

Basics Of The Tax Credit

- Employers are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns.
- Under guidance that will be released this week, eligible employers who pay qualifying leave under EFMLEA or EPSLA will be able to retain an amount of the payroll taxes equal to the amount they paid, rather than deposit them with the IRS.

THERE IS SOME RELIEF!

Basics Of The Tax Credit

- The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.
- If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced next week.



Pexels

CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT “CARES”

“CARES”

- \$2 trillion stimulus package
- Enacted March 27, 2020
- Key employer provisions
 - Retention credit
 - Expanded UI benefits



Key Employer Provisions of “CARES”

EMPLOYEE RETENTION CREDIT

- Credit against employment taxes
- Equal to 50% of wages (including health care expenses) paid to an employee after March 12, 2020, in each calendar quarter, up to a total of \$10,000 per employee for all quarters
- For employers with 100 or fewer employees (measured by average employment in 2019), the credit applies if the employer had to fully or partially suspend operations due to an order from a governmental authority or had a decline in revenue for any calendar quarter in 2020 of 50% compared to the same quarter in 2019

Key Employer Provisions of “CARES”

EMPLOYEE RETENTION CREDIT

- For employers with over 100 employees, the same conditions apply but the credit applies only to wages paid to employees who are on payroll but not working (furloughed)
- The credit covers qualified wages paid March 13, 2020 through December 31, 2020, and expires when (1) the full \$10,000 per employee maximum is reached, or (2) when revenue for a quarter in 2020 is above 80% of gross receipts for the same quarter in 2019
- The credit applies to tax-exempt organizations, including non-profit organizations
- Employers receiving emergency SBA 7(a) loans would not be eligible for these credits

Key Employer Provisions of “CARES”

ADDITIONAL UI BENEFITS:

- UI provisions include an additional \$600 weekly payment to each recipient for up to four months, and extend UI benefits to self-employed workers, independent contractors, and those with limited work history
- States that waive or have no waiting period will receive full funding of the first week of regular unemployment
- UI benefits will extend for an additional 13 weeks through December 31, 2020, after state UI benefits end

Key Employer Provisions of “CARES”

- **PAYROLL TAX DELAY:** Employers' Social Security payroll tax payments may be delayed until January 1, 2021, with 50% owed on December 31, 2021, and the other half owed on December 31, 2022. The Social Security Trust Fund will be backfilled by general revenue in the interim period.

Questions?



NEXUSLA

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