



Continuing our efforts to support our entrepreneurial clients, EntrePartner Law firm is providing a resource for those who have questions about how to handle payroll and employee leave and how new legislation, the Families First Coronavirus Response Act, will affect their business.

The Families First Coronavirus Response Act (FFCRA) becomes effective on April 2, 2020 and ends December 31, 2020. The FFCRA has modified federal employment laws requiring businesses with fewer than 500 employees to provide emergency paid family and sick leave.

#### Quick Summary of Employer's Obligations

Until April 2, employers will pay hourly employees for hours worked (if any) and salaried employees' full weekly salary if employee worked ANY hours. Employees should take any accrued paid leave before April 2nd if they did not work and want to be paid.

After April 2, full-time employees that are infected, experiencing symptoms, caring for someone with COVID-19, or caring for a child that has had school or childcare closed due to concerns surrounding COVID-19 will receive 80 hours paid leave. Employees experiencing symptoms of COVID-19 will receive full wages unless wages exceed daily and total emergency leave wages maximums. Employees caring for a person infected with COVID-19 or caring for a child that has had school or childcare closed due to concerns surrounding COVID-19 will receive 2/3 of regular wages unless wages exceed daily and total emergency leave wage maximums.

After April 2, employees will receive 12 weeks leave with limited job protection for a public health emergency. The first 10 days of the 12 weeks leave will be unpaid leave. After 10 days, employees will receive 2/3 of regular wages unless wages exceed daily and total emergency leave wage maximums.

Employers will be reimbursed for the paid emergency leave through tax credits applied against employer's Social Security tax obligation.

### **PRE APRIL 2, 2020 CONSIDERATIONS**

#### **WAGES AND FAIR LABOR STANDARDS ACT (FLSA)**

Employers must adhere to the following for hourly and salaried employees.

##### Hourly Employees (non-exempt)

- A. Non-exempt employees are generally:
  - I. Paid by the hour
  - II. Entitled to overtime
- B. Employees must be paid for the **ACTUAL** hours worked

##### Salaried Employees (exempt)

- A. Exempt employees generally:
  - I. Receive a salary (at least \$23,600)

- II. Perform exempt job duties (for example, management responsibilities)
- B. Not required to be provided paid time off (PTO) (unless otherwise required under applicable policies or written agreement)
- C. May be required by employers to paid time off (PTO) on specified days (i.e. forced office closures)

State laws may affect the requirements listed above for the FLSA.

For more information, the U.S. Department of Labor put together a FAQs regarding COVID-19 and the FLSA [here](#).

### **FAMILY MEDICAL LEAVE ACT (FMLA)**

Under FMLA, covered employers are required to grant eligible employees 12-weeks of unpaid leave each year.

#### Covered Employers

Private employers 50+ employees

#### Eligible Employees Generally:

- A. Worked for Employer for at least 12 months
- B. Worked for Employer for at least 1,250 hours over the last 12 months
- C. Worked at location where at least 50+ employees are employed by the employer within a 75-mile radius

There is no federal requirement for paid leave; however, state laws may affect paid/unpaid leave requirements.

For more information, the U.S. Department of Labor put together a FAQs regarding COVID-19 and the FMLA [here](#).

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### **POST APRIL 2, 2020 CONSIDERATIONS**

### **FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)**

The FFCRA includes Emergency Family Medical Leave Expansion Act (EFMLEA) and Emergency Paid Sick Leave Act (EPSLA) and Tax Credits to reimburse employers for this paid leave. The following modifies current federal regulations starting April 2, 2020.

#### Emergency Family Medical Leave Expansion Act (EFMLEA)

Under EFMLEA, employees are entitled to 12 weeks of leave for a qualified leave related to a public health emergency. This Act applies to the following employees and employers:

- A. Employee
  - I. Employees must have worked for employer for at least 30 calendar days

II. Employee cannot work (or telework) because of a qualified leave for public health emergency:

- a) **Qualified Leave:** Employee must care for a child under the age of 18 due to a school or care provider closure caused by COVID-19 as declared by federal, state or local government

B. Employers

- I. Applies to Employers with fewer than 500 employees  
a) **EXCEPTION:** Employers who have fewer than 50 employees **AND** adhering to this Act would jeopardize the business will be exempt from the Act

C. Payment

- I. Employee's first 10 days of leave under the Act is unpaid.  
b) Employees may use PTO or sick days during this period  
c) Employers may require employees to use PTO or sick leave
- II. After first 10 days, employer pays 2/3 of the employee's regular pay rate for the number of hours the employee would normally be scheduled to work.  
a) Daily cap: \$200  
b) Aggregate cap: \$10,000

D. Reinstatement

- I. Employee's job is protected meaning the employee will get his/her same job or equivalent position upon return from leave.  
a) **EXCEPTION:** if employer has less than 25 employees and:
- i. The employee's position no longer exists due to economic conditions or employer has reduced employer's operations caused by the public health emergency during the employee's leave and
  - ii. The employer makes a "reasonable effort" to transfer the employee to an equivalent position and
  - iii. If the employer's "reasonable efforts" fail and an equivalent position becomes available later in the year, the employer must again make "reasonable efforts" to reinstate the employee

Emergency Paid Sick Leave Act (EPSLA)

A. Who Does the Act Affect?

- I. Employers with fewer than 500 full-time employees  
II. Any employee of the employer (length of employment irrelevant)

B. When Does the Act Apply?

- I. **Full-time** employees are entitled to 80 hours of emergency sick leave.  
II. **Part-time** employees are entitled to emergency paid sick leave equal to the average number of hours they worked over a six-month period.

- a) If employees were employed less than 6 months, employees are entitled to the average number of hours they worked over a two-week period.
- C. Requires employers to provide paid emergency sick leave to employees for the following reasons:
- I. Personal
    - a) Employee is subject to federal, state, or local quarantined due to COVID-19.
    - b) Employee is advised by health care provider to self-quarantine due to COVID-19 concerns.
    - c) Employee is experiencing COVID-19 symptoms and seeking medical diagnosis.
  - II. Other
    - d) Employee is caring for individuals subject to a federal, state or local quarantine or isolation order or advised by a health care provider to self-quarantined due to COVID-19 concerns.
    - e) Employee is caring for employee's child if the child's school or place of care is closed or the child's care provider is unavailable due to public health emergency due to COVID-19 precautions.
    - f) Employee is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and Secretary of Labor.
- D. Payment
- I. Personal (*see Section C(I) Personal*)
    - a) Employee is entitled to 80 hours of paid sick leave at employee's regular rate of pay.
  - II. Other (*see Section C(II) Other*)
    - a) Employee is entitled to 2/3 of paid sick leave at employee's regular rate of pay.
- E. Payment Caps
- I. Personal (*see Section C(I) Personal*)
    - a) Daily cap: \$511
    - b) Aggregate cap: \$5,110
  - II. Other (*see Section C(II) Other*)
    - c) Daily cap: \$200
    - d) Aggregate cap: \$2,000
- F. EPSLA & Employer Provided Leave Time
- I. Employers cannot require employees to use all of employer provided leave time (i.e. PTO or sick leave) prior to taking emergency sick leave under EPSLA.
  - II. Employees may use EPSLA in conjunction with paid time off or sick leave.
  - III. EPSLA does not carry over into use for the next year.

## **TAX CREDITS FOR EMERGENCY FAMILY LEAVE AND PAID SICK LEAVE**

If an employer provides ANY paid sick and/or family leave under the EFMLEA and EPSLA they are entitled to a tax credit. The tax credit is equal to 100% of the qualified paid sick leave and family leave wages paid by an employer for each calendar quarter.

The tax credit will be applied against the employer's portion of Social Security taxes.

- A. Cap of Quarterly Tax Credits for Qualified Family Leave Wages (EMFLEA)
  - I. Daily cap=\$200
  - II. Aggregate cap= \$10,000
  
- B. Cap of Quarterly Tax Credits for Qualified Sick Leave Wages (under EPSLA)
  - I. Personal (see *EPLSA* Section C(I) Personal)
    - a) Daily cap: \$511
    - b) Aggregate cap: \$5,110
  
  - II. Other (see *EPSLA* Section C(II) Other)
    - a) Daily cap: \$200
    - b) Aggregate cap: \$2,000

If any tax credit exceeds employer's total portion of Social Security taxes owed for all employees for any calendar quarter, the excess credit will be paid as a refund to the employer.

- C. Wages not Subjected to Social Security Tax
  - I. Wages to be paid by employers under the EMFLEA and EPSLA will not be subject to Social Security taxes.

## **EMPLOYEE TERMINATION**

The FFCRA allows an employer to terminate employees if the business closes or reduces their operations. The Act prohibits employers from discriminating against employees who are taking any paid leave or laying off employees immediately prior to April 2, 2020.

*This alert is provided as a service to our clients and firm associates. While the information provided in this publication is believed to be accurate as of March 20, 2020, it is general in nature, subject to change, and should not be construed as legal advice.*