A Q&A for Employers on New COVID-19 Federal Leave Requirements

Mar 26, 2020

Categories:

Coronavirus Response Team
Publications

Authors:

Theodore E. Bacon

On March 18, President Trump signed into law the Families First Coronavirus Response Act (FFCRA), a $104 billion emergency aid package to help combat coronavirus (COVID-19). The FFCRA establishes free testing, protects public health workers, and provides important benefits to children and families. It also creates a new class of Family and Medical Leave Act and Paid Sick Leave, known as the Emergency Family and Medical Leave Extension Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA). These regulations include significant new paid leave benefits to shield millions of workers from the virus's economic impact.

There are three sections that employers need to be aware of:

- The Emergency Family and Medical Leave Expansion Act (EFMLEA)
- The Emergency Paid Sick Leave Act (EPSLA)
- Tax Credits for EFMLEA and EPSLA.

We have prepared the following Q&A to guide employers through critical points, criteria, and employer requirements for each of these sections.

Q: When does the new law go into effect, and for how long will it be in effect?

A: The FFCRA will take effect on April 1, 2020 and expires on December 31, 2020.

Q: Are all employers subject to the FFCRA?

A: No. The FFCRA applies to private employers that have less than 500 employees and certain public employers as defined in the bill.

Q: Can certain Employers be exempt?

A: Yes. The U.S. Department of Labor (DOL) is granted identical powers with both leave requirements and can establish exemptions for small businesses with less than 50 employees if offering leave would jeopardize the viability of the company.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

To elect this small business exemption, you should document why your business with fewer than 50 employees meets the criteria set forth by the DOL, which will be addressed in more detail in forthcoming regulations. **There is no need to send any materials to the DOL to seek this exemption.**

Q: What does the EFMLEA say about paid family medical leave?

A: The EFMLEA amends the FMLA to create a new type of covered public health emergency leave—which is in addition to existing FMLA leave. **Eligible employees** will be able to take up to 12 weeks of job-protected leave for a "**qualifying need**" related to a declared emergency concerning COVID-19.

- **Eligible Employees:** Unlike the existing FMLA leave, which requires employees to work for at least 1,250 hours before qualifying for leave, EFMLEA claims can be made by any full-time or part-time employee if employed for at least 30 calendar days before the first day of leave AND are unable to work or telecommute for a **qualifying need**.
- **Qualifying Need:** To care for the employee's son or daughter under 18 years old, if the child's school or care provider (The term 'child care provider' means a provider who receives compensation for providing child care services on a regular basis), is closed or unavailable due to a public health emergency. **IMPORTANT NOTE: An employee who is not ill but merely quarantined because of coming into contact with COVID-19 would not be eligible for EFMLEA or regular FMLA.**

Q: What portion of the EFMLEA is paid leave, and are there caps?

A:

- **The first 10-day period of the EFMLEA leave may be unpaid**, but employees can opt to use any accrued paid time off, including vacation and sick time, to cover the first 10-day period, though employers cannot require them to do so. And of course, they may be paid leave if they qualify under the Paid Sick Leave branch of the FFCRA, (see EPSLA, below).

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

- **After the first 10-day period, employers must provide EFMLEA paid leave** no less than two-thirds of the employee's usual rate of pay for the number of hours the employee would otherwise normally be scheduled to work even if that is more than 40 hours in a week.
- **Compensation for an employee is capped at $200 per day and a total of $10,000**. When the $10,000 cap is reached, the remaining 12-week leave is unpaid. Compensation for an employee whose schedule varies from week to week is determined based on the number of hours the employee was scheduled per day during the 6 months immediately before the leave.

Q: Is this EFMLEA a job-protected leave?

A: Yes, with some exemptions. After an employee's EFMLEA leave is over and returns to work, the employer must restore the employee to the same or equivalent position. However, employers with less than 25 employees may not be required to reinstate if the employee's position does not exist due to economic conditions or other changes caused by the public health emergency. An employer must make reasonable efforts to restore the employee to a position equal to the role they held before the leave started (i.e., equivalent benefits, pay, terms, and conditions of employment). If a position is not available, an employer must contact the employee over the next year if an equivalent position does become available.

- **Exemption to Civil Penalties:** Employers who do not meet the standard definition of employer under the FMLA (employers with less than 50 employees) are excluded from civil liability for violations of this amendment.

Q: What is the Emergency Paid Sick Leave Act (EPSLA)?

A: EPSLA creates a new federal emergency paid leave benefit that requires certain employers to provide only up to 80 hours over a two-week period of paid sick leave related to the COVID-19 outbreak. The EPSLA leave doesn't carry over from one year to the next.

Q: What employees are eligible for EPSLA?

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

A: All full-time, part-time, and temporary employees are eligible to request emergency sick leave regardless of the length of employment. Employees qualify for emergency paid sick leave if they are unable to work or telework for specific covered purposes related to the COVID-19 outbreak.

Q: What are the covered reasons and compensation under EPSLA paid leave?

A: Full-time employees are entitled to 80 hours at their regular rate of pay. Part-time employees are entitled to the number of hours the employee worked, on average, over a two-week period.

Q: May an employee use EPSLA leave to cover the first 10 days of EFMLEA leave?

A: Yes, if the employee qualifies for leave under both the EFMLEA and EPSLA, but only for a total of twelve weeks of paid leave. For example, a single parent who must care for a child whose school has closed and for whatever reason cannot come into work could qualify for 10 days of pay under EPSLA (capped at $2,000) and 10 weeks under EFMLEA (capped at $10,000).

Q: Are employers paying for the FFCRA's emergency paid FMLA and paid sick leave?

A: Yes and No. For employers covered by the FFCRA and who are required to provide EFMLEA and EPSLA described above will initially be responsible for paying out both leaves. However, employers are eligible for a series of refundable tax credits against the covered employers' portion of Social Security taxes that are intended to pay equal to 100% of wages paid for these leaves**. PLEASE NOTE that no tax credit is available for paid leave extended before April 1, 2020.**

As this is a fast moving topic, please note that this post is current as of March 26, 2020.

DISCLAIMER: *The information contained herein is intended for informational purposes only and should not be construed as professional counsel or legal advice. Seek legal counsel for advice with respect to any legal matter. The information in this document*

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

may not reflect the most current developments as the subject matter is extremely fluid and may change daily. The content and interpretation of the issues addressed herein are subject to change.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons