



ROSE LAW FIRM

TO: Clients
FROM: Rose Law Firm, a Professional Association
DATE: March 24, 2020
RE: Summary of the Families First Coronavirus Response Act

The Families First Coronavirus Response Act (FFCRA), recently passed by Congress and signed by the President, includes the Emergency Family and Medical Leave Expansion Act (EFMLEA) and the Emergency Paid Sick Leave Act (EPSLA).

The Senate and House both are working on additional legislation in response to the effects of the Coronavirus pandemic.

When does the FFCRA take effect?

FFCRA is to take effect no later than 15 days after its enactment (March 18, 2020). It contains a sunset provision of December 31, 2020.

Who is covered by the FFCRA?

FFCRA generally covers employers with fewer than 500 employees. The Labor Department is tasked with promulgating regulations that will clarify how employers are to count the number of employees. Some exemptions are available for small employers.

What's required?

FFCRA has two main requirements directly impacting employment law. The first requirement has to do with providing paid leave to employees in order for them to care for minor children, defined as children under the age of 18, who are out of school or daycare due to the COVID-19 pandemic (EFMLEA). The second has to do with paid sick leave for employees (EPSLA).

EFMLEA

The EFMLEA amends the Family and Medical Leave Act in certain respects concerning employees who must miss work in order to care for their minor children who are out of school or day care on account of actions taken due to the COVID-19 pandemic.

- Covers employers with fewer than 500 employees.
- Covers employees who have been employed for no fewer than 30 days (versus current FMLA's 12 month, 1250 hour, 50 or more employees in 75 mile radius criteria for coverage).
- Leave is unpaid for the first ten (10) days, although employee may opt to use accrued paid time off. The employer is not permitted to *require* the use of paid time off.
- Following the initial ten (10) days off, the employer must pay the employee at two-thirds (2/3) of the employee's regular rate (as defined by the Fair Labor Standards Act) for the hours the employee would normally work. This payment for time off from work is capped at \$200 per day or \$10,000 in the aggregate.
- As with the FMLA, employees must give as much notice as they can if the need for leave is foreseeable.
- At the conclusion of leave, employers with 25 or more employees must restore the employee to the position the employee held when the leave commenced. There are exemptions from this requirement for employers with fewer than 25 employees if the employer is experiencing significant economic hardship.
- As with the FMLA, the leave entitlement is 12 weeks within a 12 month period. FMLA leave time that the employee has already used with the applicable 12 month period will count against this entitlement.
- The Labor Department has authority to issue regulations exempting health care providers and emergency responders from the definition of "eligible employees" and to exempt small employers with fewer than 50 employees "when the imposition of such requirements would jeopardize the viability of the business as a going concern."

EPSLA

In most cases, the EPSLA requires employers to grant employees 80 hours of paid sick leave when the leave is for qualifying Coronavirus-related reasons.

- The Act requires provision to all full-time employees of 80 hours of paid sick leave at employee's regular rate for qualifying Coronavirus-related reasons.
- The Act requires provision to part-time employees of paid sick leave for qualifying Coronavirus-related reasons of pay at the employee's regular rate based on the employee's average number of hours normally worked in a two (2) week period.
- Qualifying conditions:
 - Subject to federal, state, or local quarantine or isolation order related to COVID-19
 - Has been advised by health care provider to self-quarantine because of COVID-19 concerns
 - Is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
 - Is caring for an individual who is subject to a quarantine order
 - Is caring for son or daughter whose school or daycare has been closed due to COVID-19 concerns
 - Is experiencing any other similar condition specified by the Secretary of HHS in consultation with the Secretary of the Treasury and the Secretary of Labor
- There is no minimum length of time the employee must have been employed for coverage.
- Paid sick leave does not carry over from year to year.
- Employers are not required to pay terminated employees for their unused paid sick leave (including involuntary termination, retirement, resignation, or other separation).
- Employees may use this paid sick leave before using other paid time off.
- Paid leave under the act is in addition to entitlement to other paid time off under employer's policies.

- Employers are required to post notice of employees' right to emergency paid sick leave. Labor Department will make a model of such notice.
- Employer of a health care provider or first responder may elect to exclude such employee.
- Payment is limited to \$511 per day and \$5,110 in the aggregate, or \$200 per day and \$2,000 in the aggregate, depending upon the reason for the leave.

Tax credits for payments under these acts are available. The credits will be taken against payroll taxes owed. Regulations and guidance are forthcoming from the Treasury Department. Employers should speak with their tax advisor concerning the particulars of the tax credit provisions.

THIS DOCUMENT PROVIDES A GENERAL SUMMARY OF OUR INTERPRETATION OF THE MAJOR PROVISIONS OF THESE LAWS. PLEASE CONTACT AN ATTORNEY IN ROSE LAW FIRM'S LABOR AND EMPLOYMENT DEPARTMENT WITH SPECIFIC QUESTIONS.

Below is a link to the latest guidance from the Treasury Department concerning implementation of the FFCRA:

<https://home.treasury.gov/news/press-releases/sm952>