

Families First Coronavirus Response Act (FFCRA) Q&A for Employers

On March 18, 2020, President Donald Trump signed into law a coronavirus relief package that includes provisions for paid emergency leave (the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act (EFMLA)). MRA has compiled a list of questions and answers to help members with navigating and managing through these new requirements.

The Emergency Paid Sick Leave Act

Q: How do I know if my company is impacted?

A: The Emergency Paid Sick Leave Act (the paid leave provision) requires employers with *fewer than 500* employees and public employers with at least one employee to provide employees with **up to two weeks of paid sick leave**. Employers of health care providers or emergency responders may elect not to provide this leave to those specific employees. In addition, the Secretary of Labor may exempt small businesses (defined as fewer than 50 employees) if the required leave would jeopardize the viability of their business.

Q: We are a small business (fewer than 50 employees). How can we apply for an exemption?

A: At this time, guidance has not been issued on this aspect, however it is expected by the April 2nd effective date.

Q: How long do employees need to be working at my company before they get emergency paid leave?

A: All employees, regardless of their tenure with the organization or full- or part-time status are eligible to receive this benefit.

Q: When do covered employers need to provide emergency paid leave?

A: Covered employers are required to provide emergency paid leave to an employee who is unable to work or work remotely because:

1. the employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine because of COVID-19;
3. the employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. the employee is caring for an individual subject (or advised) to quarantine or isolation;
5. the employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unavailable, due to COVID-19 precautions; or
6. the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

NOTE: Caring for another who is subject to an isolation order or advised to self-quarantine as described above is not limited to family members.

Q: How much pay are employees entitled to?

A: Covered employers are required to provide employees with two weeks of paid sick leave.

- Full-time employees: 80 hours at their regular rate of pay.
- Part-time employees: the number of hours that the employee works, on average, over a two week period.

NOTE: Once the employee returns to work the employer is not required to provide any further emergency paid sick leave.

Q: Do employees need a note from a doctor?

A: Although not specifically addressed in the FFCRA, we recommend that you do not require a health care provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as health care provider offices and medical facilities are *very busy* and will likely not be able to provide the

documentation. The CDC recommends that people who are experiencing respiratory illness stay home until they are free of fever and other symptoms, for at least 24 hours without the use of medicines (e.g., aspirin and cough suppressants).

Q: Are the payments subject to caps?

A: Yes, payments are capped at \$511 a day (\$5,110 in total) for dealing with an employee's own illness or quarantine (reasons 1, 2 and 3 above). Employees who are caring for an individual affected by COVID-19 and those whose children's schools have closed (reasons 4, 5 and 6 above) receive up to two-thirds of their pay, and that benefit is limited to \$200 a day (\$2,000 in total).

Q: Do we still need to provide emergency paid sick leave if we have existing paid leave via sick days and PTO?

A: Yes. The emergency leave is *in addition to* any paid leave provided by employers.

Q: Do we need to post a notice?

A: Yes. Employers will be required to post an approved notice once the Secretary of Labor makes it available.

Q: When can employees start using emergency paid leave?

A: The effective date is April 2, 2020. Any paid leave provided *before the* law is enacted *cannot be* credited against the employee's paid leave entitlement.

Q: Do employees need to exhaust their PTO or sick leave before using emergency paid leave?

A: No. Employers may not require employees to exhaust their current sick leave, PTO or similar benefit before using this emergency paid sick leave.

Q: Will employees be entitled to this benefit in 2021?

A: No. Hours cannot be carried over after December 31, 2020 (when the legislation sunsets).

Q: Are employers eligible for reimbursement for providing these additional paid benefits to employees?

A: To ease some of the financial burden this will place on employers, a limited refundable tax credit will be allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes), equal to payments made to the employee. For example, under the Emergency Paid Sick provision, employers can claim up to \$511 or \$200 for any day of absence for the reasons outlined above, to a maximum of ten days per employee for the year. Please consult your tax attorney or accountant for specific guidance on caps and credits.

Q: How does the refundable tax credit apply to tax-exempt employers?

A: In the past, other employer tax credit programs have been claimed as a credit against social security tax on all wages paid to employees, for tax-exempt employers. It is uncertain whether the IRS/SSA will follow suit and handle the Families First credits similarly; we anticipate employers will receive additional guidance on this.

Emergency Family and Medical Leave Expansion Act (EFMLA)

Q: How do I know if my company is impacted by EFMLA?

A: The EFMLA expands the protections of the Family and Medical Leave Act (FMLA). The EFMLA requires employers with *fewer than 500 employees* and public employers with at least one employee to provide paid benefits in certain situations. Employers of health care providers or emergency responders may elect not to provide this leave to those specific employees. In addition, the Secretary of Labor may exempt small businesses (defined as fewer than 50 employees) if the required leave would jeopardize the viability of their business.

Q: We are a small business (fewer than 50 employees). How can we apply for an exemption?

A: At this time, guidance has not been issued on this aspect, however it is expected by the April 2nd effective date.

Q: How long do employees need to be working at my company before they are eligible to receive EFMLA?

A: Any full-time or part-time employee that has been on the employer's payroll for 30 days prior to taking the leave is eligible. NOTE: This is a significant departure from the FMLA's usual requirement that the employee work for the employer for 12 months and 1,250 hours in the 12 months prior to taking leave.

Q: When do covered employers need to provide EFMLA?

A: Employees will be entitled to take up to 12 weeks of job-protected leave if an employee is unable to work (or remote work) due to caring for the employee's son or daughter (who is under 18) because the child's school or place of care has been closed or his or her childcare provider is unavailable due to the public health emergency.

Q: How much pay are employees entitled to under EFMLA?

A: The EFMLA provides for a combination of unpaid and paid leave. The first 10 days of EFMLA may be unpaid. An employee may *choose* to take any existing pay benefit (PTO, vacation or sick leave) during the 10-day unpaid period, but an employer may not *require* an employee to do so. After ten days of unpaid leave, employees are entitled to 12 weeks of job-protected leave of at least two-thirds their usual pay. The cap of this entitlement is \$200 per day (\$10,000 in the aggregate). Part-time employees are entitled to be paid based on the average number of hours worked for the six months prior to taking the leave.

Q. Do employees need a note from a doctor?

A: Although not specifically addressed in the FFCRA, we recommend that you do not require a health care provider's note for employees who are sick with acute respiratory illness to validate their illness or to return to work, as health care provider offices and medical facilities are *very busy* and will likely not be able to provide the documentation. The CDC recommends that people who are experiencing respiratory illness stay home until they are free of fever and other symptoms, for at least 24 hours without the use of medicines (e.g., aspirin and cough suppressants).

Q: Have the employee protections changed?

A: As with the traditional FMLA, the EFMLA is job-protected leave. However, EFMLA's job restoration requirements will apply to employers *with 25 or more employees*. For employers with *less than 25 employees*, job restoration is not required if:

- The employee takes EFMLA;
- The position held by the employee does not exist due to economic conditions or other changes in operating conditions that affect employment and are caused by a public health emergency during the period of leave;
- The employer makes reasonable efforts to restore the employee to an equivalent position

NOTE: If no equivalent positions are available at the time the employee tries to return from leave, the employer must attempt to contact the employee if an equivalent position becomes available in the next year.

Q: What is the effective date and will employees be entitled to this benefit in 2021?

A: The EMFLA is effective on April 2, 2020, and will remain in place until the end of 2020, when the legislation sunsets.

Q: Are employers eligible for reimbursement for providing these additional paid benefits to employees?

A: To ease some of the financial burden this will place on employers, a limited refundable tax credit will be allowed against the tax imposed by section 3111(a) (the employer portion of Social Security taxes), equal to payments made to the employee. For example, under the EFMLA, employers can claim up to \$200 for each day of qualifying leave up to \$10,000 per employee for the year. Please consult your tax attorney or accountant for specific guidance on caps and credits.

Q: How does the refundable tax credit apply to tax-exempt employers?

A: In the past, other employer tax credit programs have been claimed as a credit against social security tax on all wages paid to employees, for tax-exempt employers. It is uncertain whether the IRS/SSA will follow suit and handle the Families First credits similarly; we anticipate employers will receive additional guidance on this.