

Families First Coronavirus Response Act: Frequently Asked Questions

1. When does FFCRA go into effect?

April 1, 2020 (and it sunsets on December 31, 2020).

2. What businesses are impacted by the new law?

Private employers with fewer than 500 employees and certain public employers.

3. What changes were made by the law?

The law implemented a new emergency paid sick leave benefit (EPSLA) and amended the Family and Medical Leave Act (FMLA) to provide new emergency paid leave benefits in specific circumstances.

4. Who is eligible for emergency paid sick leave (EPSLA)?

All employees (regardless of tenure) who meet the criteria.

5. What are the criteria for eligibility for emergency paid sick leave (EPSLA)?

To qualify, the employee must be unable to work (or telework) due to a need for leave for the specific reasons outlined below:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for an individual who is either subject to a federal, state, or local quarantine or isolation due to COVID-19 or has been advised to self-quarantine due to concerns related to COVID-19.
- The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor.

6. How much paid sick leave do employees get?

Employees working 40 hours or more per week are eligible for up to 80 hours of paid leave.

7. How is the sick leave pay calculated?

It depends.

- For qualifying reasons 1, 2, and 3 (above), eligible employees will receive paid sick leave at their regular rate, except that in no event shall the amount paid exceed \$511 per day and \$5,110 in total.
- For qualifying reasons 4, 5, and 6 (above), eligible employees will receive paid sick leave at two-thirds of their regular rate, except that in no event shall the amount paid exceed \$200 per day and \$2,000 total.

8. Who is eligible for the new paid leave benefit under EFMLEA?

Employees who have been employed for at least 30 days.

9. What is the qualifying reason for the new paid leave benefit under EFLMEA?

The employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.

10. If another caretaker is available to care for my child, am I eligible for leave?

No. Leave is available to an employee to care for his or her child only when the employee needs to, and actually is, caring for his or her child. Generally, an employee does not need to take such leave if another suitable individual—such as a co-parent, co-guardian, or the usual child care provider—is available to provide the care the employee's child needs.

11. How much leave can employees take under EFMLEA?

Up to a maximum of 12 weeks, when combined with EPSLA.

12. How is the pay under EFMLEA calculated?

- The initial 10 days of leave are unpaid, but the employee may elect to use emergency paid sick leave, accrued paid sick leave and/or accrued vacation during this otherwise unpaid period.
- After the initial 10-day period, an employee is entitled to receive from the employer two-thirds of the employee's normal wages for the number of hours the employee would be regularly scheduled to work, up to a maximum of \$200 per day and \$10,000 in total.

13. Are there any workers who may be excluded from the leave benefits provided under either EPSLA or EFMLEA?

Potentially, yes. Under both laws, health care providers or emergency responders may be excluded from these benefits by the employer and the Secretary of Labor has authority to issue rules excluding these two categories of workers.

14. If I have fewer than 50 employees, do these new laws apply?

Yes, but an employer with fewer than 50 employees is exempt from providing either emergency paid sick leave (to those seeking it due to school or place of care closures) or EFMLEA leave when doing so would jeopardize the viability of the small business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- The provision of either EPSLA or EFMLEA leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting either EPSLA or EFMLEA leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

But, the employer may deny paid sick leave or expanded family and medical leave only to those otherwise eligible employees whose absence would cause the small employer's expenses and financial obligations to exceed available business revenue, pose a substantial risk, or prevent the small employer from operating at minimum capacity, respectively.

For additional guidance, refer to the Department of Labor's website:

- <https://www.dol.gov/sites/dolgov/files/WHd/Pandemic/FFCRA.pdf>
- <https://www.dol.gov/general/topics/posters>
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>
- <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>

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