

COVID-19 Summary and Resource Guide for Employers

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Families First Coronavirus Response Act

Our prior [Compliance Alert](#) summarized the benefits employers are required to provide their employees under the Emergency Paid Sick Leave Act (“EPSLA”) and the Emergency Family and Medical Leave Act Expansion Act (“EFMLAEA”) which were included as part of the Families First Coronavirus Response Act (“FFCRA”) signed in to law by President Trump on March 18, 2020.

This ComplianceAlert expands on the tax credit portions of those two laws. Rather than a long discussion, we have summarized and outlined what we believe is most relevant to small business owners. We also include a short outline of the mandated leave requirements from our prior Alert for ease of reference.

The [FAMILIES FIRST CORONAVIRUS RESPONSE ACT](#), was signed into law on March 18, 2020, and is effective no later than April 2, 2020 through December 31, 2020, unless extended by further action of Congress. To help employers prepare for and “ease” into compliance, the FFCRA allows a 30-day non-enforcement period if employers are working to comply with the EPSLA and EFMLAEA in good faith.

Tax Credits for Payments under EPSLA or EFMLAEA (Division G of the FFCRA):

In general, the law gives a 100%, dollar-for-dollar, quarterly payroll tax credit to employers who are required to pay employees under either EPSLA or EFMLAEA . In addition to the tax credit, employers may also receive a payroll tax refund if the value of their applicable credit is greater than their payroll tax liability.

As with most IRS rules, the actual calculation of the payroll tax credit/refund is a bit more complicated than the summary and is subject to various limitations and special rules. We have summarized these below in a simplified outline format.

I. EPSLA Rules—Credit/Refund for “Qualified Sick Leave Wages”

- a. Payroll Tax Credit for “Qualified Sick Leave Wages”
 - i. Amounts paid by the employer for “**paid sick time**” under the EPSLA
 - ii. **Limited** to \$511/day or \$200/day, as applicable
 - iii. **Limited** of 10 total days [formula: 10 / total EPSLA days from all prior quarters]
- b. EPSLA credit is applied against reduced payroll tax: Total credit for any quarter **may not exceed** the total payroll tax for that quarter minus any credits taken by the employer for (1) employing qualified veterans and (2) qualified small business research expenses.
- c. Credit May Be Increased by Qualified Health Plan Expenses:

An employer may **increase** the EPSLA credit for any amounts paid as “qualified health plan expenses” that are properly allocable to EPSLA payments. Qualified health plan expenses include an employer’s costs to provide or maintain a group health plan for employees which are not included as income to the employee. This credit increase is subject to pro rata allocation rules.

- d. **Payroll Tax Refund:** If the total payroll tax credit for a calendar quarter is greater than the reduced payroll taxes due that calendar quarter, then the IRS treats the excess as an overpayment and issues a refund in the amount of the overpayment.
- e. **Self-Employed Individuals** can qualify to receive a **similar Tax Credit** if the individual would have been entitled to EPSLA benefits if employed by an employer.

2. EFMLA Rules—Credit/Refund for “Qualified Family Leave Wages”

- a. Payroll Tax Credit for “Qualified Family Leave Wages”
 - i. Amounts paid by the employer by reason of the EFMLEA
 - ii. **Limited** to \$200/day
 - iii. **Further Limited** to \$10,000 maximum aggregate for all calendar quarters.
- b. EFMLAEA credit is applied against reduced payroll tax: Same rules as EPSLA Credit.
- c. Credit May Be Increased by Qualified Health Plan Expenses: Same rules as EPSLA Credit
- d. **Payroll Tax Refund:** Same rules as EPSLA Credit
- e. **Self-Employed Individuals:** Same rules as EPSLA Credit.

Outline from prior Compliance Alert:

- I. **Emergency Family Medical Leave Act Expansion Act:** The expansion protects employees with minor children who are not be able to work to care for their children. **Eligible employees** can receive up to **12 weeks of emergency leave** under the FMLA if they **cannot work** because they need to **care for children** whose **school** or **child care** is **closed** due to a **public health emergency**. The first two weeks are unpaid and the remaining 10 weeks are paid at 2/3 their normal pay rate but capped at \$200/day and \$10,000 total.
 - a. Who is Covered
 - i. **Eligible employees** (NOTE: Some “healthcare providers” and “emergency responders” may be excluded—waiting for further DOL guidance)
 - 1. Must have been employed for at least 30 calendar days, **AND**
 - 2. Have minor children, **AND**
 - 3. School or childcare is closed due to a “public health emergency”, **AND**
 - 4. Employee cannot work or telework as a result.
 - ii. **Public employers** of any size
 - iii. **Private employers** with less than 500 employees.
 - b. Benefits to the Employee:
 - i. Up to 12 weeks of emergency leave to care for minor children
 - ii. First ten (10) days unpaid
 - 1. Employee may elect to use accrued paid time off (“PTO”) or the “Emergency Paid Sick Leave Act” benefit discussed below
 - iii. First ten (10) days unpaid
 - 1. Two-thirds (2/3) of employee’s regular pay—up to \$200/day maximum
 - 2. Total pay during 10 weeks is capped at \$10,000 maximum
 - iv. Employer must protect the employee’s job at the same or equivalent position at the end of the period of protected leave.
 - c. Assistance to Employer:
 - i. **Tax Credits** (see tax credit summary above)
 - ii. Exemption for **Small Employer** (less than 50 employees) if compliance with EFMLAEA would jeopardize the viability of the business. *Waiting for further DOL guidance.*
 - iii. **Multi-Employer Bargaining Agreements:** a participating employer in a MBA may make contributions to the multi-employer fund, plan or program in lieu of payments to the employee under certain circumstances

Web-based Resources:

**FAMILIES FIRST
CORONAVIRUS RESPONSE
ACT -- Full Senate Bill as signed
into law on March 18, 2020:**
<https://www.congress.gov/116/bills/hr6201/BILLS-116hr6201enr.pdf>

**Joint News Release by the
Department of Labor and
Department of the Treasury—
March 20, 2020:**
<https://www.dol.gov/newsroom/releases/osec/osec20200320>

IRS Coronavirus Help Page:
<https://www.irs.gov/coronavirus>

**DOL Coronavirus Resource
Page:**
<https://www.dol.gov/coronavirus>

DOL Employer Fact Sheet:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

2. NEW Emergency Paid Sick Leave Act : The EPSLA protects employees who are not able to work due to being ill or potentially ill with COVID-19.

Eligible full-time employees can receive up to **80 hours** of **paid sick leave** and **eligible part-time employees** can receive up to **paid sick leave** in an amount **proportionate to what they normally work** each pay period if they **cannot work** due to a **quarantine or isolation order** or **recommendation**, or are **experiencing symptoms and are seeking care**. Employers are required to post a notice about the EPSLA and may not retaliate or discriminate against any employee who chooses to receive benefits under the EPSLA. Employers are prohibited from requiring any employee from using or exhausting any accrued paid time off.

a. Who is Covered

- i. **Eligible employees** (NOTE: Some “healthcare providers” and “emergency responders” may be excluded—waiting for further DOL guidance)
 1. NO MINIMUM period of employment,
 2. COVID-19 Impact due to:
 - a. Federal, state or local quarantine or isolation order, or
 - b. Self-quarantine recommendation by healthcare provider, or
 - c. Seeking medical diagnosis for symptoms.
 3. Employee is caring for a person with a COVID-19 Impact (#2 above), or
 4. Employee is caring for minor child due to school or childcare closure, or
 5. Employee is experiencing COVID-19 type symptoms (waiting further DOL guidance)
- ii. **Public employers** of any size
- iii. **Private employers** with less than 500 employees. (NOTE: Potential exemption for businesses with less than 50 employees if the expanded FMLA would jeopardize the viability of their business—waiting for further DOL guidance.)

b. Benefits to the Employee:

- i. The employee **MUST GIVE NOTICE** as soon as practical
- ii. **IF FULL TIME:** employee entitled to up to 80 hours of paid sick leave
- iii. **IF PART TIME:** employee entitled to prorated portion of paid sick leave based on their normal work hours per pay period
- iv. IF COVID-19 impacts the employee:
 1. Paid sick leave is 100% employee pay but capped at \$511/day and total of \$5,110.
- v. IF employee is caring for someone else with COVID-19 impact or general symptoms:
 1. Paid sick leave is at the highest rate of (i) 2/3 employee pay, (ii) federal minimum wage, or (iii) state minimum wage but capped at \$200/day and total of \$2,000.
- vi. The employee MAY, but is not required, to use their accrued paid time off before using their EPSLA benefits.
- vii. Any unused benefit under EPSLA does not carry over from one year to another.

c. Assistance to Employer:

- i. **Tax Credits** (see *tax credit summary* above)
- ii. Exemption for **Small Employer** (less than 50 employees) if compliance with EFMLAEA would jeopardize the viability of the business. *Waiting for further DOL guidance.*
- iii. **Multi-Employer Bargaining Agreements:** a participating employer in a MBA may make contributions to the multi-employer fund, plan or program in lieu of payments to the employee under certain circumstances

Please do not hesitate to contact Messner Reeves attorney Stephen Lehnardt for any tax-related questions or attorneys John Shunk or LaRona Kitzinger if you have further questions in regards to employment or leave.

Emergency Paid Sick Leave Act

Employer Decision Chart

Am I a Covered Employer?

NO

Covered Employer?

- Less than 500 employees
- Public agency with 1+ employees

No EPSLA obligations

YES

- Less than 50 employees, **AND**
- Business in Jeopardy if Comply
- OR**
- Certain health care providers and emergency responders



NO

Employee Eligible?

- Employed (no minimum period)

YES

Can Employee Work (in office/remote)

YES

No EPSLA obligations

Reason for Sick Leave

No EPSLA obligations



- Government Isolation Order, **OR**
- Healthcare provider recommended Self-Quarantine, **OR**
- Seek Dr. Diagnosis for Symptoms

YES

- Care for person in isolation, **OR**
- Care for minor child **AND** school / child-care closed, **OR**
- Employee is experiencing symptoms



YES

Paid Sick Leave Allowed Under EPSLA

- FULL TIME EMPLOYEES: Up to 80 hours
 - PART TIME EMPLOYEES: Up to ## hours = ## hours normally work in 2 week period
- AND** Employer:
- **MAY NOT** Require employee to find a replacement employee to cover paid sick time
 - **MAY NOT** Require employee to FIRST use other accrued paid leave benefits
 - **MAY NOT** Discharge or discipline employee who takes leave
 - **MUST** post notice to employees of EPSLA Requirements

IF  , THEN

EPSLA = 100% of employee regular pay

- Max \$511/day
- Max \$5,110 total benefit

IF  , THEN

EPSLA = Greater of:

- 2/3 employee pay, **OR**
- Federal or state minimum wage
 - Max \$200/day
 - Max \$2,000 total benefit

Emergency Family and Medical Leave Expansion Act

Employer Decision Chart

