

CLIENT ALERT

FAMILIES FIRST CORONAVIRUS RESPONSE ACT PAID LEAVE

REQUIREMENTS FAQs

The Families First Coronavirus Response Act (“FFCRA”) implements two paid-sick leave requirements, effective April 1, 2020. The two components of paid leave are required by the Emergency Paid Sick Leave Act (“EPSLA”) and the Emergency Family and Medical Leave Expansion Act (“EFMLEA”). Employers are required to provide paid sick leave under both the EPSLA and the EFMLEA, but the employer is entitled to tax credits equal to 100% of the amount the employer is required to pay for the leave. If you have any questions about how the FFCRA applies to your business, or would like a policy for your business to implement, Lisa Petersen (lpetersen@ck.law) and Caitlin McKelvie (cmckelvie@ck.law) would be happy to assist you.¹

	Emergency Paid Sick Leave Act	Emergency Family and Medical Leave Expansion Act
Which Employees Are Entitled to Leave?	All employees, regardless of their length of employment. An employer can choose to exempt health care providers and emergency responders.	All employees who have been employed for at least 30 calendar days on the date they request leave. An employer can choose to exempt health care providers and emergency responders.
How Many Hours of Leave Does the Employee Receive?	Full-time employees receive 80 hours of paid sick leave. Part time employees receive paid sick leave in amount equal to the number of hours the employee would normally work during a two-week period.	All employees receive 12 workweeks of EFMLEA leave. If an employee is entitled to leave under the Family Medical Leave Act, these 12 workweeks are <i>not</i> in addition to the employee’s FMLA leave.

¹ This Client Alert is provided for informational purposes only. It is not intended as, and does not constitute, legal advice. Further, access to or receipt of this Client Alert by anyone does not create an attorney-client relationship. As such, it is not reasonable for anyone to rely upon this Client Alert with respect to any particular legal matter. Rather, readers are encouraged to retain a licensed attorney to provide individualized and current legal advice.

<p>When Can An Employee Use Leave?</p>	<p>From April 1, 2020 through December 31, 2020, an employee can use EPSLA leave if the employee is unable to work (or telework) for the following reasons:</p> <ol style="list-style-type: none"> (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 due to concerns related to 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 who is subject to an order under (1) or has been advised under (2). (5) The employee is caring for the employee’s child because the child’s school or childcare provider is unavailable due to COVID-19 precautions. (6) The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services. <p>An employee cannot be required to use other paid leave before the employee uses paid leave under the EPSLA.</p> <p>Note: An employee is only entitled to take leave under the EPSLA if the employee would be able to work but for the qualifying reasons listed above. If the employer is closed or otherwise would not have work available, the employee is not entitled to take EPSLA leave.</p>	<p>From April 1, 2020 through December 31, 2020, an employee can use EFMLEA leave if the employee is unable to work (or telework) because the employee is caring for the employee’s child because the child’s school is closed or childcare provider is unavailable due to COVID-19 precautions.</p> <p>Note: An employee is only entitled to take leave under the EPSLA if the employee would be able to work but for the qualifying reasons listed above. If the employer is closed or otherwise would not have work available, the employee is not entitled to take EPSLA leave.</p>
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<p>How Much Money Does An Employee Get Paid When Using Leave?</p>	<p>Employees taking leave under the EPSLA for reasons (1), (2), and (3) are paid the employee’s regular rate (or the applicable minimum wage, whichever is greater). Irrespective of the foregoing, paid sick leave for reasons (1), (2), and (3) is capped at \$511 per day or \$5,110 in the aggregate.</p> <p>Employees taking leave under the EPSLA for reasons (4), (5), and (6) are paid 2/3 of the employee’s regular rate (or 2/3 of the applicable minimum wage, whichever is greater). Irrespective of the foregoing, paid sick leave for reasons (4), (5), and (6) is capped at a maximum of \$200 per day and \$2,000 in the aggregate.</p>	<p>The first two workweeks of EFMLEA leave are unpaid, although an employee can choose to substitute any other paid leave (including paid leave under the EPSLA) for those first two weeks.</p> <p>The remaining 10 workweeks are paid at 2/3 of the employee’s regular rate (or 2/3 the applicable minimum wage, whichever is greater) multiplied by the number of hours the employee otherwise would have been working. Irrespective of the foregoing, paid leave is capped at a maximum of \$200 per day or \$10,000 in the aggregate.</p>
<p>Which Employers Are Required to Provide Leave?</p>	<p>All employers with fewer than 500 employees are required to provide paid sick leave under the EPSLA.</p>	<p>All employers with fewer than 500 employees are required to provide EFMLEA leave, even if the employer does not otherwise have to comply with the Family Medical Leave Act.</p>

<p>What if I Am a Small Business and Providing Leave Would Hurt My Business?</p>	<p>An employer with fewer than 50 employees can decline to provide leave under the EPSLA for qualifying reason (5) or under the EFMLEA if the employer makes a determination that:</p> <ul style="list-style-type: none"> (1) providing the leave would result in expenses and financial obligations exceeding available business revenues and would cause the business to cease operating at a minimal capacity; (2) the absence of the employee or employees requesting leave under reason (5) would entail a substantial risk to the business’s financial health or operational capabilities because of the employees’ specialized skills, knowledge of the business, or responsibilities; or (3) there are insufficient workers who are able, willing, qualified, and available to perform the labor provided by the employees’ requesting leave and this labor is necessary for the business to operate at a minimal capacity.
<p>How Do I Get Reimbursed for the Leave I Pay?</p>	<p>An employer that provides paid leave under the EPSLA or the EFMLEA is entitled to a fully refundable tax credit for all required wages paid under the EPSLA and the EFMLEA and the employer’s share of qualified health plan expenses paid by the employer during the employee’s leave. An employer can claim the credit immediately by retaining the federal taxes the employer would otherwise deposit with the IRS for wages paid between April 1, 2020 and December 31, 2020, including federal income tax withheld from employees, the employees’ share of social security and Medicare taxes, and the employer’s share of social security and Medicare taxes.</p> <p>Importantly, in order to qualify for the tax credit, an employer must maintain the required documentation to substantiate the employee’s qualifying need for leave.</p>