

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

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.



When Can An Employee Use Leave?

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:

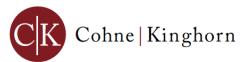
- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
- (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.

An employee cannot be required to use other paid leave before the employee uses paid leave under the EPSLA.

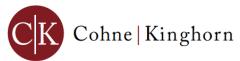
Note: An employee is only entitled to take leave under the EPSLA if the employee would be able to work but for the qualifying reasons listed above. If the employer is closed or otherwise would not have work available, the employee is not entitled to take EPSLA leave.

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.

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.



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How Much Money	Employees taking leave under the	The first two workweeks of EFMLEA leave are unpaid, although an
Does An Employee	EPSLA for reasons (1), (2), and	employee can choose to substitute any other paid leave (including paid
Get Paid When Using	(3) are paid the employee's	leave under the EPSLA) for those first two weeks.
Leave?	regular rate (or the applicable	
	minimum wage, whichever is	The remaining 10 workweeks are paid at 2/3 of the employee's regular
	greater). Irrespective of the	rate (or 2/3 the applicable minimum wage, whichever is greater)
	foregoing, paid sick leave for	multiplied by the number of hours the employee otherwise would have
	reasons (1), (2), and (3) is capped	been working. Irrespective of the foregoing, paid leave is capped at a
	at \$511 per day or \$5,110 in the	maximum of \$200 per day or \$10,000 in the aggregate.
	aggregate.	
	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.	
Which Employers Are	All employers with fewer than	All employers with fewer than 500 employees are required to provide
Required to Provide	500 employees are required to	EFMLEA leave, even if the employer does not otherwise have to
Leave?	provide paid sick leave under the	comply with the Family Medical Leave Act.
	EPSLA.	



What if I Am a Small	An employer with fewer than 50 employees can decline to provide leave under the EPSLA for qualifying		
Business and	reason (5) or under the EFMLEA if the employer makes a determination that:		
Providing Leave			
Would Hurt My	(1) providing the leave would result in expenses and financial obligations exceeding available business		
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.		
How Do I Get	An employer that provides paid leave under the EPSLA or the EFMLEA is entitled to a fully refundable tax		
Reimbursed for the	credit for all required wages paid under the EPSLA and the EFMLEA and the employer's share of qualified		
Leave I Pay?	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.		
	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.		