

## Families First Coronavirus Response Act – FFCRA ([full text of the Act](#))—**FOR PRIVATE SECTOR EMPLOYERS**

Consult [DOL Fact Sheet](#) & [DOL FFCRA Q & A](#) for more details

**Employees have these two categories of additional paid and unpaid leave from April 1 – December 31, 2020:**

<p>EPSLA</p> <p><b>Emergency Paid Sick Leave</b></p> <p>Division E of Act</p>	<p><b>EPSLA exists on top of employers’ regularly provided paid leave (e.g., sick, vacation)</b></p> <p>Begins on first day of employment</p> <p>All private sector employers with fewer than 500 employees (<i>i.e.</i>, 1 – 499)</p> <p><b>100% of regular pay* (up to \$511 daily / \$5,110 total)</b> for the employee’s own issues that meet this criteria:</p> <ol style="list-style-type: none"> <li>1. Employee is subject to federal, state, or local COVID-19-related quarantine/isolation order;</li> <li>2. Employee has been advised by healthcare provider to self-quarantine for COVID-19-related reason;</li> <li>3. Employee has symptoms of COVID-19, and is seeking a diagnosis;</li> </ol> <p><b>67% of regular pay* (up to \$200 daily / \$2,000 total)</b> if:</p> <ol style="list-style-type: none"> <li>4. Employee is caring for an individual subject to an order described in #1 or in self-quarantine as described in #2</li> <li>5. Employee is caring for his or her child (including <a href="#">adult children incapable of self-care</a> &amp; those <i>in loco parentis</i>) whose school or daycare is closed / whose child care provider is unavailable for COVID-19-related reasons.**</li> <li>6. Employee is experiencing any other substantially-similar condition specified by the U.S. Dept. of HHS, DOL, and Treasury as meriting time off.</li> </ol> <p>Employee can choose to use this leave first instead of employer-provided regular sick / vacation leave (and most employees <i>should</i> – this time will disappear after 12/31/2020; doesn’t roll over; doesn’t get paid if unused)</p>	<p>Full-time: Up to 10 days or 80 hours</p> <p>Part-time: Up to the number of hours they are scheduled to work in a 2-week period</p> <p>*Do not include overtime in calculations of regular pay; only calculate regular pay by regular rate.</p> <p>**may overlap with EFMLE if employee is caring for children with school/daycare closure</p>
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<p>EFMLE</p> <p><b>Emergency Family and Medical Leave Expansion Act</b></p> <p>Division C of Act</p>	<p><b>Expanded FMLA is <i>only</i> for school/daycare closures, and <i>it’s the only form of partially paid FMLA leave - on top of employers’ regularly provided paid leave (e.g., sick, vacation)</i></b></p> <p>All employees of FMLA-eligible employers become eligible for this type of leave (<i>only</i>) after 30 days of employment – NO 1,250 hour / 12 months of employment requirement, NO requirement they work at a site with ≥ 50 employees. (All other forms of FMLA still require this.) [<a href="#">Key Employees</a> still under regular restricted rights]</p> <p><b>67% of regular pay* (up to \$200 daily / \$10,000 total)</b> after 10 days of work days missed (although EPSLA available for these days); <b>ONLY</b> available if employee is caring for minor child due to COVID-19-related school/daycare closure.</p> <p>Employer <b>can’t require</b> employee to use</p> <p>If employee has already exhausted FMLA balance, EFMLE is unavailable until additional leave is available (through 12/31/2020). EFMLE time will count against employees’ other FMLA balance—this is merely another form of FMLA leave. FMLA leave remains available for all other FMLA-qualifying events (<i>e.g.</i>, serious health conditions of employee or covered family; birth/placement of a child, military provisions, <i>etc.</i>); but those events remain unpaid (unless employee uses paid time off).</p>	<p><b>*Do</b> include overtime in calculations of regular pay.</p> <p>Up to 12 weeks; paid leave only begins after 10 days of unpaid leave (but may use paid EPSLA for those 10 days of unpaid EFMLE)</p>
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**Supplementing Paid FFCRA Leave:** If Employer & Employee agree, employee can supplement any missing portion of employee’s regular pay with accrued paid leave they receive from their employer (e.g., paid sick, personal, vacation, medical leave), up to the employee’s normal earnings. (But no tax credit applies to this portion.)

**Recordkeeping** ([critical to receive year-end tax credit](#)): names/dates/reasons for leave; documentation of reasons for leave (e.g., notice of school closure, medical certification—but discourage trips to the doctor, just for certification; phone call/email/telehealth certification is fine); proof of paid leave. Keep records 3 years.

## Families First Coronavirus Response Act – FFCRA ([full text of the Act](#))

### **SPECIAL TERMS FOR SMALL BUSINESSES**

Consult [DOL Fact Sheet](#) & [DOL FFCRA Q & A](#) for more details

#### Limited Exceptions for Small Businesses

Small businesses are only exempt from EPSLA and EFMLE if providing this leave would jeopardize the viability of the business as a going concern. Small businesses are only exempt from mandated paid sick leave and/or expanded family and medical leave requirements in two instances, outlined below.

#### Small Business Exemption - Employers with < 50 Employees + Meets Conditions

If doing so would jeopardize the viability of a small business as a going concern, an employer, including a religious or nonprofit organization, with fewer than 50 employees (small business) is exempt from providing:

- Paid sick leave due to child's (including [adult children incapable of self-care](#) & those *in loco parentis*) school or place of care closures or child care provider unavailability for COVID-19 related reasons (**EPSLA**); and
- Expanded family and medical leave due to school or place of care closures or child care provider unavailability for COVID-19-related reasons (**EFMLE**)

A small business may only claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave (EPSLA) or expanded family and medical leave (EFMLE) 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;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical 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
3. 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.

#### Added Small Business Exemption For Employers with < 25 Employees Who Took Leave for Closed School/Daycare/Childcare

Employers with < 25 employees may refuse to reinstate employees who took leave to care for their own child (including [adult children incapable of self-care](#) & those *in loco parentis*) whose school or place of care was closed, or whose child care provider was unavailable if **all four** of the following hardship conditions exist:

1. The employee's position no longer exists due to COVID-19 operational/economic conditions arising during leave;
2. The employer made reasonable efforts to restore the employee to the same or an equivalent position;
3. The employer made reasonable efforts to contact the employee if an equivalent position became available;
4. The employer continues to make reasonable efforts to contact the employee for one year, beginning on the date the leave concluded or 12 weeks after the leave began, whichever is earlier.

#### No Exemptions/Exceptions For Small Businesses To Avoid Paying Two Weeks of Paid Sick Leave (EPSLA) for other FFCRA-qualifying EPSLA

These exemptions only apply to the school / daycare / childcare provisions of the EPSLA (as well as to the EFMLE—which only pertains to closure of schools, daycares, and childcare). Small businesses must still provide paid sick leave to employees who qualify under the remaining five reasons in the EPSLA.