

IMPORTANT UPDATE – MARCH 27, 2020

According to recent clarifications issued by the Department of Labor (DOL), that agency asserts that as of now, employees who are out of work due to either (1) “a Federal, State or local directive” ordering your business to close (as under the Stay Home/Stay Healthy Order) or (2) closures for other business-related reasons (like closures due to slowed business, supply chains, etc.) would not be eligible for FFCRA’s E-PSL and E-FMLA leave benefits.

These employees will likely be entitled to unemployment benefits, which due to the passage of the CARES Act, will include additional compensation.

Employees who have circumstances covered by E-PSL and E-FMLA will only receive those benefits as their qualifying circumstances exist or continue, **SO LONG AS THE BUSINESS FOR WHOM THEY WORK REMAINS OPEN** for business (including businesses currently working from home).

Should additional changes or clarifications be made by the Department of Labor or other governmental agency, we will continue to do our best to provide you with that updated information as quickly as possible.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

The Federal government passed the Families First Coronavirus Response Act on March 18th, which goes into effect on April 1, 2020. The Act will require employers with fewer than 500 employees to provide paid leave to employees who are impacted by COVID-19 and offer tax credits to employers that do so.

The law contains three sections of interest for employers:

- Emergency Paid Sick Leave Act (E-PSL)
- Emergency Family and Medical Leave Act Expansion (E-FMLA)
- Tax Credits for Paid Sick and Paid Family and Medical Leave.

Emergency Paid Sick Leave Act (E-PSL)

The Emergency Paid Sick Leave Act requires private employers that employ fewer than 500 employees and public employers to provide an additional 80 hours of emergency paid sick leave (E-PSL) to full time employees who are unable to work or telework for certain reasons related to the coronavirus (“CV19”) outbreak. Part-time employees must be provided E-PSL for the average number of hours they would work over a two-week period. E-PSL is available to employees who are unable to work or telework for the following reasons and at the applicable pay rates noted.

1. The employee is subject to a federal, state, or local quarantine or isolation order related to CV19. Pay is at the greater of the employee’s regular rate or applicable minimum wage, but capped at \$511 per day and \$5,110 in the aggregate.
2. The employee has been advised by a health care provider to self-quarantine because of CV19 concerns. Pay is at the greater of the employee’s regular rate or applicable minimum wage, but capped at \$511 per day and \$5,110 in the aggregate.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (Continued)

3. The employee chooses to obtain a medical diagnosis because the employee is experiencing symptoms of CV19. Pay is at the greater of the employee's regular rate or applicable minimum wage, but capped at \$511 per day and \$5,110 in the aggregate.
4. The employee is caring for or assisting an individual who is subject to an order or recommendation as described in 1 or 2 above. Pay is at two-thirds of the greater of the employee's regular rate or applicable minimum wage, but capped at \$200 per day and \$2,000 in the aggregate.
5. The employee is caring for the employee's child because of school or daycare closure, or because the child care provider is unavailable, due to CV19. Pay is at two-thirds of the greater of the employee's regular rate or applicable minimum wage, but capped at \$200 per day and \$2,000 in the aggregate.
6. The employee is experiencing any other substantially similar condition specified by Human Health Services. Pay is at two-thirds of the greater of the employee's regular rate or applicable minimum wage, but capped at \$200 per day and \$2,000 in the aggregate.

Emergency Family and Medical Leave Act Expansion (E-FMLA)

Employees who have worked for the employer for at least 30 calendar days prior to the leave may use up to 12 weeks of job-protected leave to care for their child under 18 years of age if their school or place of care has been closed, or their childcare provide is unavailable due to a public health emergency.

The first 10 days of public health emergency leave (PHEL) may be unpaid but the employee may elect to substitute any accrued paid leave, including E-PSL. Employees are entitled to paid PHEL after the first 10 days, at a rate of no less than two-thirds their regular rate of pay, up to a maximum of \$200 per day or \$10,000 in the aggregate.

Tax Credits for Paid Sick and Paid Family and Medical Leave

Under the law employers are allowed a credit against certain employer taxes equal to 100 percent of the qualified sick leave wages paid by the employer, subject to the caps discussed above. The credit is increased by certain specified health expenses (such as employer-paid health plan premiums) that are excluded from employees' income. We expect more guidance on these tax credits shortly.

Payments for paid sick leave and paid family and medical leave are themselves not subject to the employer portion of Social Security tax.

Under guidance that will be released the first week of April, eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. The details of this new, expedited procedure will be announced the first week of April.

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (continued)

Equivalent child care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

Small Business Exemption

Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue. The exemption will be available on the basis of simple and clear criteria that make it available in circumstances involving jeopardy to the viability of an employer's business as a going concern. Labor will provide emergency guidance and rulemaking to clearly articulate this standard.

Non-Enforcement Period Labor will be issuing a temporary non-enforcement policy that provides a period of time for employers to come into compliance with the Act. Under this policy, Labor will not bring an enforcement action against any employer for violations of the Act so long as the employer has acted reasonably and in good faith to comply with the Act. Labor will instead focus on compliance assistance during the 30-day period.

Mandatory Poster

A poster needs to be posted on or before April 1st in a "conspicuous place" of the employer's premises. An employer may satisfy this requirement by emailing or direct mailing this notice to employees, or posting this notice on an employee information internal or external website.

For More Information

Please find a link to the FAQs at this U.S. Department of Labor website.

<https://www.dol.gov/agencies/whd/pandemic>

Unless this document expressly provides that the statements contained herein are intended to constitute written tax advice within the meaning of IRS Circular 230 §10.37, the intention of this document is to provide general information for discussion purposes only, and you should not, therefore, interpret the statements to be written tax advice or rely on the statements for any purpose. The sender will conclude that you have understood and acknowledged this important cautionary notice unless you communicate to the sender any questions you may have in a direct electronic reply to this message.