

Guide on Employee Leave

Families First Coronavirus Response Act (“FFCRA”)

The FFCRA contains two paid leave provisions, the Emergency Family and Medical Leave Expansion Act, and the Emergency Paid Sick Leave Act. Below is a summary of each Act.

Emergency Family and Medical Leave Expansion Act (“EFMLEA”)*

EFMLEA amends the Family and Medical Leave Act (“FMLA”) by adding protected paid leave for a qualifying need, and expands the definition of eligible employees. Eligible employees under EFMLEA are defined as employees who have worked for the company for at least 30 days.

A qualifying need under this Act is one where:

- The employee is unable to work (or telework) due to a need for leave to care for a minor son or daughter if the school or place of care has closed due to COVID-19, or
- The childcare provider is unavailable, due to a public health emergency with respect to COVID-19.

The employee is entitled to 12 weeks of protected leave. The first two weeks (10 days) of leave are unpaid. However, the employee may:

- Elect to receive other designated pay for which the employee is eligible as provided for by EPSLA (two thirds pay, as referenced below), or
- The company’s paid vacation or sick leave policies, or
- Two thirds pay, *plus* the difference from the employee’s company PTO balance.

After the first 10 days, the employee will be paid two-thirds of the employee’s regular rate of pay for the hours he or she would normally work, not to exceed \$200 per day, maximum of \$10,000.

Note: If an employee’s weekly hours vary from week to week to such an extent that it is difficult to determine with certainty the hours the employee would have worked, then a calculation must be made to determine the average number of hours the employee worked over the previous 6-month period. You must factor into that calculation any vacation/sick leave the employee took during that period. If the employee elects to be paid the balance of their 2/3 pay (the remaining 1/3 from their company PTO allowance), the employer does not receive a tax credit for the 1/3 paid from the company’s PTO allowance.

An employee is required to provide the employer as much notice as practicable.

The Act is effective until December 31, 2020 and applies to employees with fewer than 500 employees. There are some exceptions, specifically for those employees who are healthcare providers and emergency responders, or small businesses with fewer than 50 employees where these requirements would jeopardize the viability of the business.

Emergency Paid Sick Leave Act (“EPSLA”)*

EPSLA grants full-time employees paid sick leave of up to 80 hours and part-time employees paid sick leave for the number of hours equivalent to two weeks of their average work hours.

In order to become eligible, the leave must be for COVID-19 related issues as follows:

1. Employee is subject to a Federal, State or local quarantine or isolation order;
2. Employee has been advised by a healthcare provider to self-quarantine;
3. Employee is experiencing symptoms of COVID-19 and seeks medical diagnosis;
4. Employee is caring for an individual who is subject to quarantine or isolation order;
5. Employee is caring for minor child due to school or daycare closure, or childcare provider’s unavailability due to COVID-19.
6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

There is an exception to the above eligibility, at the employer’s election, for an employee who is a healthcare provider or emergency responder.

This Act provides for a cap on the amount of pay, depending on the reason for the leave. The pay will be:

- the employee’s regular rate of pay, not to exceed:
 - \$511 per day and \$5,110 in the aggregate, for leave related to leave for (#1) an order for a local COVID-19 quarantine, (#2) self-quarantine upon advice of a health care provider, or (#3) for seeking a medical diagnosis when experiencing COVID-19 symptoms; or
- two thirds the employee’s regular rate of pay, not to exceed:
 - \$200 per day and \$2,000 in the aggregate, for leave related to (#4) caring for another in quarantine, (#5) caring for employee’s minor child due to school or daycare closure, or (#6) substantially similar COVID-19 condition specified by the Secretary of Health and Human Services.

Unused sick leave under this Act does not carry over into the following year and is not reimbursable upon an employee’s separation from the company.

Employer restrictions and requirements:

The employer may *not*:

- Require the employee to find a replacement employee to cover their hours while using this sick leave;
- Require that employee use other paid leave provided by employer before using paid sick leave under this Act.
- Discharge, discipline, or in any other manner discriminate against an employee who takes leave under this Act, or files a complaint related to this act or testifies or is about to testify in such proceedings.

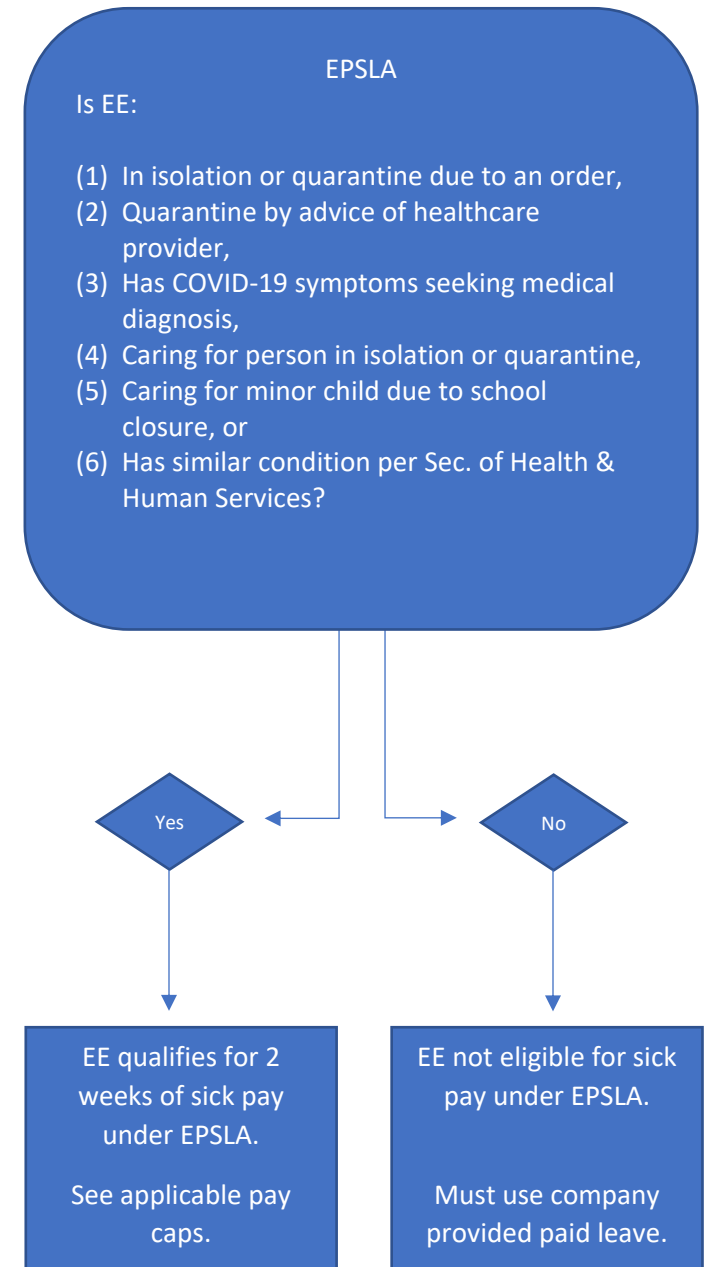
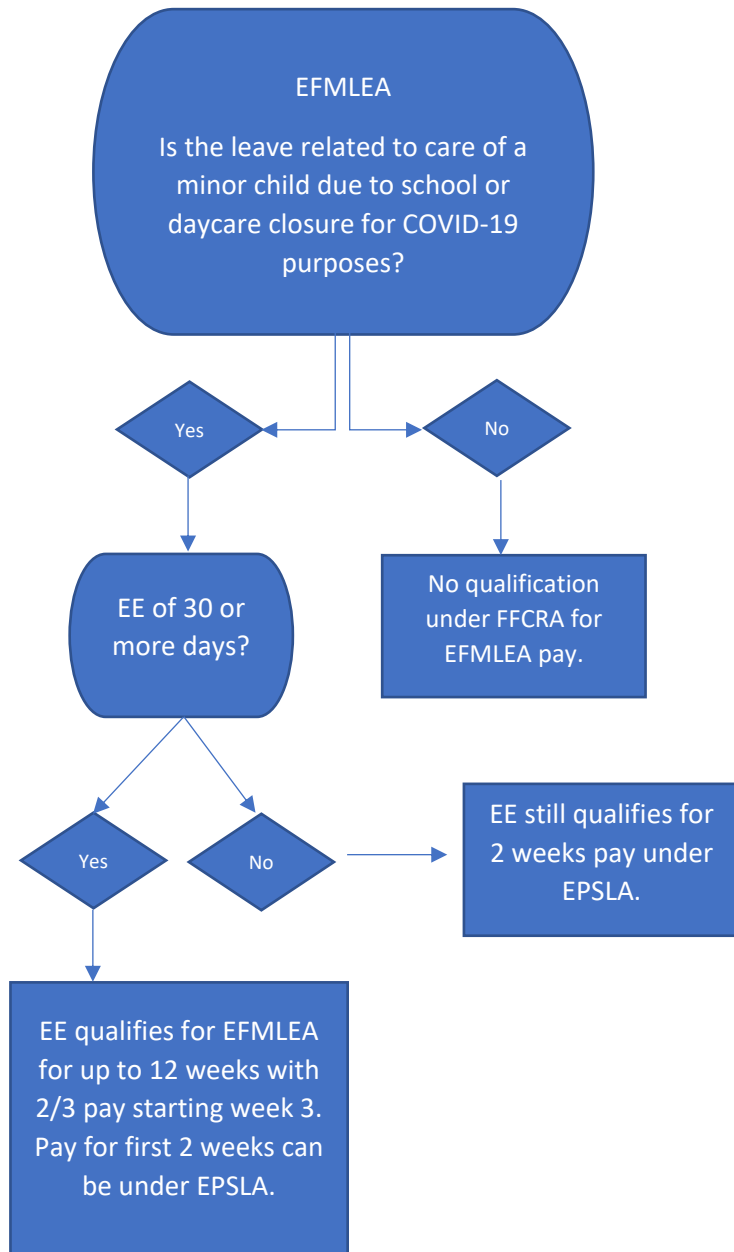
Employer *must*:

- Comply with a notice requirement by posting the notice in a conspicuous place. A model notice will be provided by the Secretary of Labor.

This Act is effective through December 31, 2020.

***NOTE:** For more details about the application of the EFMLEA and EPSLA, please review the following Q&A from the Department of Labor here <https://www.dol.gov/agencies/whd/pandemic/ffcrqa-questions>, and the Internal Revenue Service here <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

FFCRA Leave



Other Leave

