

The FFCRA How-To Guide

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Since its passage earlier this year, the Families First Coronavirus Response Act (“FFCRA”) has required quick implementation and careful administration by employers.

The FFCRA creates eligibility for paid leave under the Emergency Paid Sick Leave Act (“EPSLA”) and the Emergency Family and Medical Leave Expansion Act (“EFMLA”), both of which are designed to financially assist employees whose temporary absences are related to COVID-19.

Leave Reasons and Payment

Under the **EPSLA**, employees may seek up to two weeks (i.e., 10 business days) of paid leave for the following reasons:

1. Subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. Advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. Caring for an individual subject to a quarantine or isolation order or advised to self-quarantine due to concerns related to COVID-19;
5. Caring for a son or daughter whose school or child care provider is closed or unavailable due to COVID-19 precautions; and
6. Experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor. (Please note, the Secretary of Health and Human Services has not defined conditions which trigger this subpart.)

EPSLA leave for reasons 1, 2, and 3 is paid at the employee’s regular rate of pay, capped at \$511/day. EPSLA leave for reasons 4, 5, and 6 is paid at a rate equivalent to two-thirds of an employee’s regular rate of pay or minimum wage, whichever is greater, capped at \$200/day.

Under the **EFMLA**, employees may seek up to twelve weeks of leave to care for a son or daughter whose school or child care provider is closed or unavailable due to COVID-19 precautions.

Though the first two weeks of EFMLA leave are unpaid, they run concurrently with the EPSLA leave’s Qualifying Reason 5, which allows for payment at a rate equivalent to two-thirds; the remaining ten weeks of leave are paid at a rate equivalent to two-thirds of an employee’s regular rate of pay or minimum wage, whichever is greater, capped at \$200/day.

Covered Employers and Eligible Employees

Employers with fewer than 500 employees must provide eligible employees with FFCRA leave. However, employers with fewer than 50 employees may seek application of the small business exemption for leave related to child care (i.e., EPSLA Qualifying Reason 5 and EFMLA), if the

provision of such leave threatens the viability of the business. All covered employers should display the attached FFCRA poster onsite and otherwise make a copy available to employees.

Employees are immediately eligible for paid leave under the EPSLA, with the exception of Qualifying Reason 5. Employees are eligible for paid leave under the EFMLA and Qualifying Reason 5 of the EPSLA once they have been employed for 30 calendar days.

Employee Leave Request Form

The development and dissemination of an Employee Leave Request Form (the “Form”) will simplify the FFCRA process. The Form requires employees to identify the precise reasons for their absences and provide supporting documentation. This allows clearer approvals and denials, especially when an employee may be eligible for leave under multiple Qualifying Reasons.

When an employee fails the daily health screening, reports an absence related to a Qualifying Reason, or explicitly requests FFCRA leave, the employee should be provided copies of the Form and the FFCRA poster.

An employee need not submit a Form before leave begins, but the employee should return a complete Form by a reasonably determined deadline (e.g., within two weeks). Employees should include with their completed Forms documentation to substantiate their need for leave, where appropriate and feasible. For example, an employee who is unable to work because of a self-quarantine order issued by a health care provider must include a copy of the order with the completed Form.

The Form is also designed to facilitate receipt of the IRS tax credit, which reimburses employers for any funds paid to employees under the FFCRA. The IRS requires that the request for leave be in writing and supported by documentation.

Employee Protections

Employee requests for or utilization of FFCRA leave are protected. Employers cannot interfere with or retaliate against employees for engaging in this protected activity. In particular, placement on or continuation of unpaid leave or layoff is not permitted where an employee is unable to work for Qualifying Reasons, even if the employee is collecting unemployment compensation benefits. This is likely to constitute interference with employees’ FFCRA rights.

Employers should also keep in mind that employees who exhaust their FFCRA leave entitlement may be eligible for unpaid leaves of absence, if they disclose COVID-19 symptoms and/or close contact with a confirmed case.

Conclusion

In summary, employers must:

- Inform employees of their rights under the FFCRA;
- Advise employees on how to request FFCRA leave;

- Approve leave and payment when employees timely submit completed Forms and supporting documentation;
- Continue employees' health insurance benefits during FFCRA leave;
- Retain documentation;
- Process the IRS tax credit;
- Reinstate employees to their same or similar positions; and
- Ensure employees are not subject to interference or retaliation.

Employers should review their FFCRA processes and procedures for compliance. **Bodman's Workplace Law Group** can assist with any questions you may have.