

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

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Greater Scranton Chamber of Commerce**

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FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

■ Key Provisions:

- Emergency Paid Sick Leave Act (EPSLA)
- Emergency Family and Medical Leave Expansion Act (EFMLEA)

■ Effective Dates

- Signed into law on March 18, 2020.
- **EPSL and EFMLE effective April 1, 2020.**
 - **More employers will have to actively administer these benefits as more businesses are allowed to resume**
- Sunset provision as of December 31, 2020.



FFCRA NOTICE

- **REQUIRED NOTICE**: Effective April 1, 2020, each covered employer must post a notice of the Families First Coronavirus Response Act (FFCRA) requirements in a conspicuous place on its 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.
- Where to get the DOL published notice/ poster:
https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf
- Also see the DOL's Families First Coronavirus Response Act Notice – Frequently Asked Questions here:
<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>



FFCRA: PAID SICK LEAVE

■ Emergency Paid Sick Leave (EPSL)

- Available to any employee on payroll (no waiting period) and provides paid sick leave benefits to employees unable to work (or telework) for any of the following six (6) reasons:
 1. The employee is subject to a government quarantine or isolation order
 2. The employee has been advised by a health care provider to self-quarantine
 3. The employee has symptoms of COVID-19 and is seeking a medical diagnosis
 4. The employee is caring for a relative who is in quarantine or isolation
 5. The employee is unable to work because their child's school is closed or childcare service is closed or unavailable due to a public health emergency, such as COVID-19
 6. An employee is experiencing any substantially similar condition to be specified by HHS



FFCRA: PAID SICK LEAVE

■ Amount of EPSL

- Full-Time Employees: Up to 80 Hours
 - For purposes of the EPSLA, a full-time employee is an employee who is normally scheduled to work 40 or more hours per week
- Part-Time Employees: Up to the number of hours of leave that the employee works on average over a two-week period
 - Use # of hours normally scheduled to work in 2-week period, or
 - If normal hours scheduled are unknown, or schedule varies, use a six-month average; or, if employed less than six months, use the number of hours agreed upon at time of hire



FFCRA: EMERGENCY PAID SICK LEAVE

■ EPSL – Calculation and Use of the Benefit

- Amount of pay depends on the reason for leave
 - **Leave for employee's own illness or quarantine/isolation**
 - 100% regular daily pay, up to a cap of \$511, \$5,110 total
 - **Leave to care for a family member subject to quarantine/isolation or a child due to school or childcare closure**
 - 2/3 of regular daily pay, up to a cap of \$200, \$2,000 total
- Employee may first use available EPSL before other accrued leave
 - **So employer cannot force employees to use other available paid time first**
- Not available after COVID-19 crisis; no payout or carryover
- May be taken intermittently in limited situations, and only with agreement of employer (e.g. due to the closure of a child's school or place of care).



FFCRA: Regular Rate of Pay

- **What is the regular rate of pay for purposes of the FFCRA?** For purposes of the FFCRA, the regular rate of pay used to calculate your paid leave is the average of the employee's regular rate over a period of up to six months prior to the date on which leave is taken. If the employee has not worked for six months, the regular rate used to calculate the paid leave is the average of the employee's regular rate of pay for each week worked for the current employer.
- If paid by commissions, tips, or piece rates, these amounts will be incorporated into the above calculation to the same extent they are included in the calculation of the regular rate under the FLSA.
- The regular rate can also be computed for each employee by adding all compensation that is part of the regular rate over the above period and divide that sum by all hours actually worked in the same period.



FFCRA: PAID FAMILY LEAVE

■ Paid Family Leave

- Provides total of up to 12 weeks of leave **for employees who cannot work because their minor child's school or childcare service is closed due to COVID-19 precautions.**
 - **Notice that this is one of the qualifying reasons for EPSL**
- Only one qualifying reason (noted above) for Paid Family Leave
- Applies to any employee who has been on the payroll for at least 30 days.
 - **Note that there is no 30-day requirement for EPSL**
- Intermittent use is permitted **if** approved by your employer (e.g., you are unable to telework your normal schedule of hours due to a qualifying reason).



FFCRA: PAID FAMILY LEAVE

- For first 2 weeks, employee may use EPSL or substitute other available paid leave at same time (otherwise unpaid)
- For the remaining 10 weeks, the employee received 2/3 of regular earnings up to a cap of \$200/day (or \$10,000 total)
 - Varying hour calculation for part-time employees



FFCRA: TAXES

■ **When FFCRA benefits are paid:**

- The employer withholds the employee's portion of SS tax from the qualified sick leave and expanded FMLA leave payments; the employer is NOT required to pay its 6.2% share of SS tax with respect to those payments.
- The employer likewise withholds the employee's portion of the Medicare tax from the qualified sick leave and expanded FMLA leave payments. The employer pays its 1.45% share of the Medicare tax on all of your payroll in the normal course, however the amount of this tax paid in connection with FFCRA benefits can be claimed as a tax credit.



FFCRA Employer Coverage



■ Private Sector

- Employers with fewer than 500 employees
- Including non-profit employers
 - Essentially the FFCRA has a large business exemption: private employers with 500 or more employees are not covered

■ Public Agencies

- Most public agencies and government employers are covered regardless of the number of employees



FAQs – Small Business Exemption (under 50 employees)

- **When will the small business be exempt from providing paid sick leave and expanded family and medical leave?**
 - An employer with less than 50 employees may be exempt from providing EPSL and Paid Family Leave **due to school or place of care closures or childcare provider unavailability** when doing so would jeopardize the viability of the small business as a going concern.
 - No application process; a small business may claim this exemption if an authorized officer determines that:
 - **Providing leave would result in expenses and financial obligations exceeding available revenues and cause a cessation of operations,**
 - **The absence of employees due to the leave would cause substantial risk to the financial health and operational capabilities due to their specialized skills, knowledge or responsibilities, or**
 - **There are not sufficient workers who are able, willing and qualified to perform the labor/services and such labor/services are needed for the business to operate.**



FFCRA

- **Which Employees are covered?**
 - EPSL: all FT and PT employees of a covered employer (500 or less employees and most public agencies/government employers regardless of # of employees)
 - **No waiting period**
 - **Eligible first day on payroll**
 - Expanded Family and Medical Leave: FT and PT employees who have worked 30 or more calendar days.
 - **Must be on payroll 30 days**
 - **If a temp employee is converted to a regular employee, time as temp is counted**



FFCRA

- **Which Employees are NOT covered?**
 - Health Care Provider employees and Emergency Responder employees if excluded by employer
 - **Employer gets to decide whether to provide the leave benefits to these employees**
 - Definitions:
 - **Healthcare Provider – Anyone employed at any doctor’s office, hospital, healthcare center, clinic, post-secondary educational institute offering health care instruction, medical school, local health department, nursing facility, retirement facility, nursing home, home health care provider, facility that performs laboratory/medical testing, pharmacy, etc.**
 - **Emergency Responder – An employee who is necessary for the provision of transport, care, health care, comfort, and nutrition of patients or are needed to limit the spread of the virus (e.g., military/national guard, law enforcement, EMS, 911 operators, etc.)**



FFCRA: RECORDKEEPING

- Employers should require/document the following in connection with FFCRA leave requests:
 - All requests;
 - The name of your employee requesting leave;
 - The date(s) for which leave is requested;
 - The reason for leave; and
 - A statement from the employee that he or she is unable to work because of the reason



FFCRA: RECORDKEEPING

- If leave is requested because employee is subject to a quarantine or isolation order or to care for an individual subject to such an order
 - additionally document the name of the government entity that issued the order.
- If leave is requested due to employee's self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantining based on such advice
 - additionally document the name of the health care provider who provided advice.



FFCRA: RECORDKEEPING

- **If request is related to a child’s school closure or childcare closure/unavailability, also require:**
 - The name and age of the child (or children) to be cared for;
 - The name of the school that has closed or place of care that is unavailable
 - A representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave; and
 - With respect to the employee’s inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care.
- **In the case of a 15- to 17-year old child, the employee must identify “special circumstances” requiring the employee to provide care during daylight hours**
 - Does not apply to children 14 and younger



FFCRA: TAX CREDITS

- Private sector employers that provide paid sick leave and expanded family and medical leave required by the FFCRA are eligible for reimbursement of the costs of that leave through refundable tax credits.
 - Must retain appropriate documentation in your records and complete relevant IRS forms.
 - Advance Payment of Employer Credits Due to COVID-19
 - Seek advice from tax consultant as needed.
 - IRS guidance
 - **COVID-19-Related Tax Credits for Paid Sick and Paid Family Leave: Overview** - <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-paid-sick-and-paid-family-leave-overview>
 - **COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs**- <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>



QUESTIONS?

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