

Insights

Employment Law Bulletin - Summary of Families First Coronavirus Response Act

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1. MOST EMPLOYERS WITH FEWER THAN 500 EMPLOYEES MUST COMPLY

- Employers with fewer than 50 employees can seek exemption if compliance would jeopardize viability of the business.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA)

2. FMLA-TYPE LEAVE OF UP TO 12 WEEKS IS REQUIRED AFTER 30 DAYS' EMPLOYMENT.

3. PURPOSE FOR LEAVE INCLUDES INABILITY TO WORK OR TELEWORK DUE TO THE NEED TO CARE FOR A SON OR DAUGHTER UNDER 18 WHEN THE CHILD'S SCHOOL OR DAY CARE IS CLOSED DUE TO COVID-19.

- Notably does NOT allow leave for persons with COVID-19, those who had been quarantined, or those who cared for such individuals. But existing FMLA protections may extend to person diagnosed with COVID-19 or who requires leave to care for an immediate family member with the disease.

4. FIRST 10 DAYS ARE UNPAID, REMAINDER IS PAID AT TWO-THIRDS OF REGULAR RATE, UP TO MAXIMUM OF \$200 PER DAY AND \$10,000 IN TOTAL FOR THE DURATION OF THE LEAVE.

- Employee can elect to run existing paid leave (like vacation days or PTO) concurrently with the 10-day unpaid leave period, but employer cannot require this.
- If employee qualifies for both EFMLEA and Emergency Paid Sick Leave (see below), employee may use Emergency Paid Sick Leave at the same time as the first 10 days of EFMLEA leave that would normally be unpaid.

5. EMPLOYER MUST REINSTATE TO SAME OR EQUIVALENT POSITION AFTER LEAVE, SAME AS FMLA.

- Exception for employers with fewer than 25 employees if:

- Position no longer exists because of economic or operating conditions caused by the public health emergency; AND
- Employer makes reasonable efforts to restore employee to an equivalent position for a one-year period, must contact employee when an equivalent position becomes available during this one-year period.

EMERGENCY PAID SICK LEAVE ACT (EPSLA)

6. EMPLOYERS MUST ALLOW PAID SICK LEAVE TO ALL FULL-TIME AND PART-TIME EMPLOYEES, WITH NO MINIMUM PERIOD OF EMPLOYMENT, IF EMPLOYEE CANNOT WORK OR TELEWORK BECAUSE:

- subject to a federal, state, or local quarantine or isolation order;
- has been advised by a health care provider to self-quarantine;
- experiencing symptoms of coronavirus and is seeking a medical diagnosis;
- caring for person subject to a federal, state, or local quarantine or isolation order or who has been advised by a health care provider to self-quarantine;
- caring for a son or daughter of employee whose school or day care is closed; or
- experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, the Secretary of the Treasury, and/or the Secretary of Labor.

7. EMPLOYER CANNOT DECREASE LEAVE UNDER EXISTING POLICIES AND MUST GIVE EMPLOYEE THE CHOICE TO TAKE THIS EMERGENCY PAID SICK LEAVE BEFORE ANY OTHER LEAVE IT PROVIDES.

8. "PAID SICK LEAVE" - FULL-TIME EMPLOYEES GET 80 HOURS' PAID LEAVE (PART-TIMERS GET AVERAGE HOURS IN TWO-WEEK PERIOD) UP TO A LIMIT OF \$511 PER DAY AND \$5,110 TOTAL, IF:

- subject to a federal, state, or local quarantine or isolation order;
- advised by a health care provider to self-quarantine; or
- experiencing symptoms of coronavirus and is seeking a medical diagnosis.

9. "PAID FAMILY LEAVE" - LESSER PAY (TWO-THIRDS OF REGULAR RATE SUBJECT TO A LIMIT OF \$200 PER DAY AND \$2,000 TOTAL) TO CARE FOR OTHERS OR IF NOT SEEKING MEDICAL DIAGNOSIS, IF:

- caring for person who is subject to a federal, state, or local quarantine or isolation order or who has been advised by health care provider to self-quarantine;
- caring for a son or daughter of employee whose school or day care is closed; or
- employee experiencing other substantially similar condition specified by the Secretary of Health and Human Services, the Secretary of the Treasury, and/or the Secretary of Labor.

DOCUMENTATION AND NOTICES UNDER EFMLEA AND EPSLA

10. EMPLOYERS SHOULD NOTIFY EMPLOYEES OF NEW POLICY AND WILL BE REQUIRED TO POST DEPARTMENT OF LABOR WORKPLACE POSTER WHEN IT IS ISSUED (IN ROUGHLY SEVEN DAYS).

11. EMPLOYEE SHOULD

- provide employer with such notice of leave “as is practicable” and after the first day of leave, can be required to follow reasonable notice procedures to continue receiving paid sick time.
- provide written statement of reason for leave, until additional legislative guidance is provided on required documentation.

PAYROLL CREDITS

12. EMPLOYERS GET REFUNDABLE TAX CREDIT EQUAL TO 100% OF QUALIFIED EPSLA WAGES OR QUALIFIED PAID EFMLEA WAGES (PLUS QUALIFIED INCREASES IN HEALTH CARE PLAN EXPENSES) FOR EACH CALENDAR QUARTER.

- Credits to employer portion of Social Security taxes (6.2%) and employer portion of the hospital insurance portion (1.45%).
- If total amount exceeds employer’s liability for Social Security taxes, the excess credit is refundable to employer.

If you have questions pertaining to information found in this alert you are encouraged to reach out to any member of Krieg DeVault’s **Employment Law team**.