

March 25, 2020

**SUMMARY OF THE CORE POINTS OF THE US DEPARTMENT OF LABOR'S
GUIDANCE ON PAID LEAVE UNDER THE EMERGENCY PAID SICK LEAVE ACT &
THE EMERGENCY FAMILY & MEDICAL LEAVE EXPANSION ACT**

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BACKGROUND

The **Families First Coronavirus Response Act ("FFCRA")**, signed into law on March 18, 2020, directed the US Department of Labor to prescribe instructions or regulations necessary to carry out FFCRA, including its **Emergency Paid Sick Leave Act ("EPSLA")** and **Emergency Family & Medical Leave Expansion Act ("Emergency FMLA")**. The US Department of Labor issued guidance on both EPSLA and the Emergency FMLA on March 25, 2020. *This brief summary summarizes only the core points of the US Department of Labor's guidance issued on EPSLA and the Emergency FMLA. This brief summary is NOT intended to serve as legal advice and all public libraries should consult with their own legal counsel regarding any necessary updates or amendments to their employment policies and practices.*

EFFECTIVE DATE

Per the U.S. Department of Labor's guidance, both FFCRA's EPSLA and the Emergency FMLA **take effect on April 1, 2020**, and **expire on December 31, 2020**.

Note—FFCRA's EPSLA imposes a new paid leave requirement on covered employers that is effective April 1, 2020. As such, covered employers may not deny an employee paid sick leave if the employer provided the employee paid leave for a reason identified in EPSLA prior to EPSLA going into effect. Neither FFCRA's EPSLA nor Emergency FMLA requirements are retroactive.

COVERED EMPLOYERS

Both FFCRA's EPSLA and Emergency FMLA apply to all private sector employers with fewer than 500 employees and to certain public sector employers, specifically including all local government employers (*i.e., Illinois public libraries*).

Both FFCRA's EPSLA and Emergency FMLA allow the Secretary of the Department of Labor to exempt certain small businesses with fewer than 50 employees if imposing the leave requirements would jeopardize the viability of the business as an ongoing concern (expected to be issued April 2020).

PAID LEAVE REQUIREMENTS UNDER FFCRA

Under FFCRA's **EPSLA**, a covered employer must provide to **all employees**, whether full-time or part-time, and regardless of how long the employee has been employed by the employer, 2 weeks (up to 80 hours) of **paid sick leave** where the employee is unable to work (or is unable to telework) for any of the above six (6) specified leave reasons listed below related to COVID-19.

Under FFCRA's **Emergency FMLA**, a covered employer must provide to **all employees that it has employed for at least 30 calendar days up to an additional 10 weeks of paid expanded family and medical leave** at 2/3 of the employee's regular rate of pay **only** where an employee is unable to work (or is unable to telework) due to a bona fide need for leave that exceeds 10 days to care for such employee's child under 18 years of age because the elementary or secondary school or place of care of the child has been closed, or the child care provider of such child who receives compensation for providing child care services on a regular basis is unavailable due to an emergency with respect to COVID-19 related reasons (*or, for leave reason (5) below*).

QUALIFYING REASONS FOR PAID LEAVE

Under FFCRA's EPSLA, an employee qualifies for **paid sick leave** if the employee is unable to work (or is unable to telework) due to a need for leave for any of the following **six (6) qualifying reasons** related to COVID-19:

- (1) The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.
- (2) The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (3) The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.
- (4) The employee is caring for *an individual* (which includes a non-family individual) subject to a federal, state or local quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- (5) The employee is caring for the employee's son or daughter if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable due to COVID-19 precautions.
- (6) The employee is 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.

Note—Under FFCRA's Emergency FMLA, an eligible employee qualifies for up to an additional 10 weeks of paid expanded family and medical leave only where the employee is unable to work (or is unable to telework) due to a need for leave that exceeds 10 days under leave reason (5) above.

DURATION OF PAID LEAVE

For leave reasons (1), (2) (3), (4) and (6) above, **full-time employees** are eligible for up to 80 hours of paid leave. **Part-time employees** are eligible for paid leave for the number of hours that are equal to the number of hours that such part-time employee works on average over a 2-week period.

For **only** leave reason (5) above, **full-time employees** are eligible for up to 12 weeks of paid leave at 40 hours a week (*"up to 12-weeks"—includes 2 weeks of paid sick leave under EPSLA followed by up to 10 weeks of paid expanded family and medical leave under FFCRA's Emergency FMLA*). **Part-time employees** are eligible for paid leave for the number of hours that the employee is normally scheduled to work over that period.

For those part-time employees whose hours vary from week to week to such an extent that the employer is unable to determine with certainty the number of hours the employee would have worked, for leave based on the average number of hours such employee worked during the six (6) months before taking such leave, or, for employees who have worked less than 6 months, the number of hours the employer and employee agree that the employer would work upon hiring, or if there is no such agreement, the average hours per day the employee was scheduled to work over the entire term of his or her employment.

CALCULATION OF PAID LEAVE

For leave reasons **(1)**, **(2)** or **(3)** above, employers must provide employees with paid sick leave at the at the **employee's regular rate of pay**, up to \$511 per day, or \$5,110 total (over a 2-week benefit period).

For leave reasons **(4)** or **(6)** above, employers must provide employees with paid sick leave at **2/3 of the employee's regular rate of pay**, up to \$200 per day, or \$2,000 total (over a 2-week benefit period).

For **only** leave reason **(5)** above, employers must provide employees with paid leave at **2/3 of the employee's regular rate of pay**, up to \$200 per day, or \$12,000 total over a 12-week period (*"over a 12 week period"—includes 2 weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave under FFCRA's Emergency FMLA*).

USE & CARRYOVER OF PAID SICK TIME

An employer must make paid sick time available for an employee's immediate use. Paid sick time under EPSLA cannot be carried over from 1 year to the next and employees are not entitled to reimbursement of unused leave upon separation from employment.

USE OF OTHER PAID LEAVE DURING INITIAL EXPANDED FMLA LEAVE PERIOD

FFCRA's Emergency FMLA reduced the initial leave period to the first 10 workdays, which may consist of unpaid leave. An employee taking paid expanded family & medical leave may take paid sick leave under EPSLA for the first 10 workdays of that leave period, which would otherwise be unpaid under the Emergency FMLA, or the employee may substitute any accrued vacation, personal, or sick leave under the employer's policy for that initial 10-day leave period. After an employee has taken his or her initial 10-day leave period, FFCRA's Emergency FMLA requires an employer to provide the employee paid leave calculated based on an amount that is not less than 2/3 of an employee's regular rate of pay and the number of hours the employee would otherwise be normally scheduled to work, but again, caps such paid leave for each employee at \$200 per day, or \$12,000 for the 12 weeks that includes both paid sick leave and expanded family & medical leave **only if** the employee is on leave that exceeds 10 days to care for his or her child (who is under 18 years of age) whose school or place of care is closed, or child care provider is unavailable due to COVID-10 related reasons.

EMPLOYER NOTICE

Each covered employer must post in a conspicuous place on its premises a notice of FFCRA requirements, which can be found on the US Department of Labor's website at: https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf.

PROHIBITIONS

An employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time mandated under FFCRA. Nor may an employer require the employee to find a replacement employee to cover the hours during which the employee is using paid sick time. An employer may not discharge, discipline, or in any other manner retaliate or discriminate against any employee who takes paid sick leave under FFCRA and who has filed any complaint or institutes or caused to be instituted any proceeding under or related FFCRA.

TERMINATION OF PAID LEAVE

Paid leave ceases beginning with the employee's next scheduled work shift immediately following the termination of the need for paid sick time under FFCRA.

TAX CREDITS

FFCRA excludes government employers from receiving reimbursements through tax credits for qualifying wages paid to employees under FFCRA.

ADDITIONAL INFORMATION & GUIDANCE

Additional information & guidance, including Fact Sheets and FAQs, is available on the **US Department of Labor's website**, COVID-19 and the American Workplace, at: <https://www.dol.gov/agencies/whd/pandemic>.

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