

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

FREQUENTLY ASKED QUESTIONS (FAQS)

Covered Employers

Q. How do I know if my business is under the 500-employee threshold and must provide Emergency Paid Sick Leave and/or Emergency Family Medical Leave?

A. The DOL Guidance provides that an employer has fewer than 500 employees if, at the time the employee's leave is to be taken, it has fewer than 500 full-time and part-time employees within the United States. This includes employees who are on leave and temporary employees. This means that the Act may become applicable to an employer who drops to fewer than 500 employees because of furloughs and/or layoffs.

Q. How do I know if my business qualifies for the small business exemption of fewer than 50 employees?

A. A small business with fewer than 50 employees is exempt from providing Emergency Paid Sick Leave and/or Emergency Family Medical Leave (EFML) because of school closure or childcare provider unavailability if providing an employee such leave would jeopardize the viability of the business as a going concern. A small business may claim this exemption if an authorized officer of the business has determined that:

- (1) The provision of the Emergency Paid Sick Leave or EFML would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- (2) The absence of the employee or employees requesting Emergency Paid Sick Leave or EFML would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- (3) There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting Emergency Paid Sick Leave or EFML, and these labor or services are needed for the small business to operate at a minimal capacity.

To elect this small business exemption, the employer should document why its business with fewer than 50 employees meets at least one of these criteria.

Paid Leave Issues

Q. What does it mean for an employee to be unable to work, including telework, for COVID-19 related reasons?

- A. An employee is unable to work if the employer has work for the employee and one of the COVID-19 qualifying reasons set forth in the FFCRA prevents the employee from being able to perform that work, either under normal circumstances at the normal worksite or by means of telework.

If an employer and an employee agree that the employee will work his or her normal number of hours, but outside of normally scheduled hours, then the employee is able to work and leave is not necessary unless a COVID-19 qualifying reason prevents the employee from working that schedule.

Q. Is an employee entitled to Emergency Paid Sick Leave or EFML intermittently while teleworking?

- A. Yes. An employer and employee may agree that an employee may take Emergency Paid Sick Leave and/or EFML intermittently while teleworking. An employee may take intermittent leave in any increment, provided that the employee and employer agree. The DOL encourages employers and employees to collaborate to achieve flexibility and meet mutual needs, and the DOL is supportive of such voluntary arrangements that combine telework and intermittent leave.

Q. How much should employees be paid on Emergency Paid Sick Leave?

- A. If an employee is taking Emergency Paid Sick Leave because the employee is: (1) subject to a federal, state, or local quarantine or isolation order related to COVID-19, (2) has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; or (3) is experiencing symptoms of COVID-19 and seeking a medical diagnosis, the employee is entitled to receive his or her regular rate of pay up to a maximum of \$511 per day, or \$5,110 total over the entire paid sick leave period.

If an employee is taking Emergency Paid Sick Leave because the employee is: (1) caring for an individual who is subject to a federal, state, or local quarantine or isolation order related to COVID-19 or an individual who has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19; (2) caring for his or her child whose school or place of care is closed, or whose childcare provider is unavailable, or (3) experiencing any other substantially-similar condition that may arise as specified by the Secretary of Health and Human Services, the employee is entitled to receive compensation at two-thirds (2/3) of his or her regular rate of pay up to a maximum of \$200 per day, or \$2,000 over the entire paid sick leave period.

Q. Is an employee who takes leave because his or her school or place of care is closed, or whose childcare provider is unavailable, entitled to both Emergency Paid Sick Leave and EFML?

A. Yes. An employee may be entitled for both types of leave, but only for a total of twelve (12) weeks of paid leave. Emergency Paid Sick Leave provides for an initial two weeks of paid leave. After the first two (2) weeks, the employee is entitled to EFML for the subsequent ten (10) weeks.

Q. Can I require an employee to use other accrued leave prior to taking Emergency Paid Sick Leave or EFML or to supplement his or her pay while on leave?

A. No. Under the FFCRA, only the employee may decide whether to use existing paid vacation, personal, medical, or sick leave from a paid leave policy to supplement the amount received for Emergency Paid Sick Leave or EFML.

Q. Can I pay an employee on Emergency Paid Sick Leave or EFML more than they are entitled to receive under the FFCRA?

A. Yes, but an employer cannot claim a tax credit for amounts paid in excess of the FFCRA's statutory limits.

Q. Does any paid sick leave provided prior to the Act going into effect count toward either the Emergency Paid Sick Leave or EFML that an employee is entitled to receive?

A. No. The Act imposes new leave requirements on employers that is effective beginning on April 1, 2020.

Q. What records do I need to keep when an employee takes Emergency Paid Sick Leave or EFML?

A. If an employer intends to claim a tax credit for the paid leave, the employer should retain appropriate documentation in its records. The employer should consult Internal Revenue Service (IRS) applicable forms, instructions, and information for the procedures that must be followed to claim a tax credit. An employer is not required to provide paid leave if materials sufficient to support the applicable tax credit have not been provided by the employee.

If an employee takes EFML to care for his or her child whose school or place of care is closed, or childcare provider is unavailable, the employer may require that the employee provide additional documentation to support such leave, such as a notice that has been posted on a

government, school, or daycare website, or published in a newspaper, or an email received from an employee or official of the school, place of care, or childcare provider.

Availability for Employees Furloughed or Laid Off

Q. If an employer closes for lack of business or because of a stay-at-home directive, are employees entitled to receive Emergency Paid Sick Leave or EFML?

A. No. If a worksite is closed, even for a short period of time, employees are not entitled to receive Emergency Paid Sick Leave or EFML.

Q. Is an employee who has been furloughed or laid off entitled to receive Emergency Paid Sick Leave or EFML?

A. No. An employee who has been furloughed or laid off is not entitled to receive Emergency Paid Sick Leave or EFML, but may be eligible for unemployment insurance benefits. This is true whether the furlough or layoff is for lack of business or because the employer was required to close pursuant to a federal, state, or local directive. An employee who is furloughed or laid off while on Emergency Paid Sick Leave or EFML is only entitled to receive paid leave benefits through the date of his or her furlough or layoff.

Q. If an employee's scheduled work hours are reduced while on Emergency Paid Sick Leave or EFML, is the employee entitled to be paid for hours that he or she is no longer scheduled to work?

A. No. If an employee's hours are reduced because of lack of work, the employee is not entitled to receive Emergency Paid Sick Leave or EFML for the hours that the employee is no longer scheduled to work.

Q. Am I prohibited from furloughing or laying off an employee who is on Emergency Paid Sick Leave or EFML?

A. No. An employee is not protected from employment actions, such as furloughs or layoffs, that would have affected the employee regardless of whether he or she took leave. The employer, though, must be able to demonstrate that it would have taken that same action if the employee had not taken Emergency Paid Sick Leave or EFML.