

# FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)<sup>(1)</sup>

Effective Wednesday, April 1, 2020 - December 31, 2020 <sup>(2)</sup>

Remember that the Federal Government is fully funding these leaves. The leaves are for eligible employees who continue to work and get paid by companies that are still **open/operating**; otherwise, employees may be eligible for Unemployment Benefits.

I. Emergency Paid Sick Leave (EPSL) is to care for their own or someone else's coronavirus-related issues.

II. Emergency Family Medical Leave (EFMLA) leave is paid leave that will be provided when parents can't work because their children's schools or child care services are closed due to the pandemic. The child must be younger than 18.



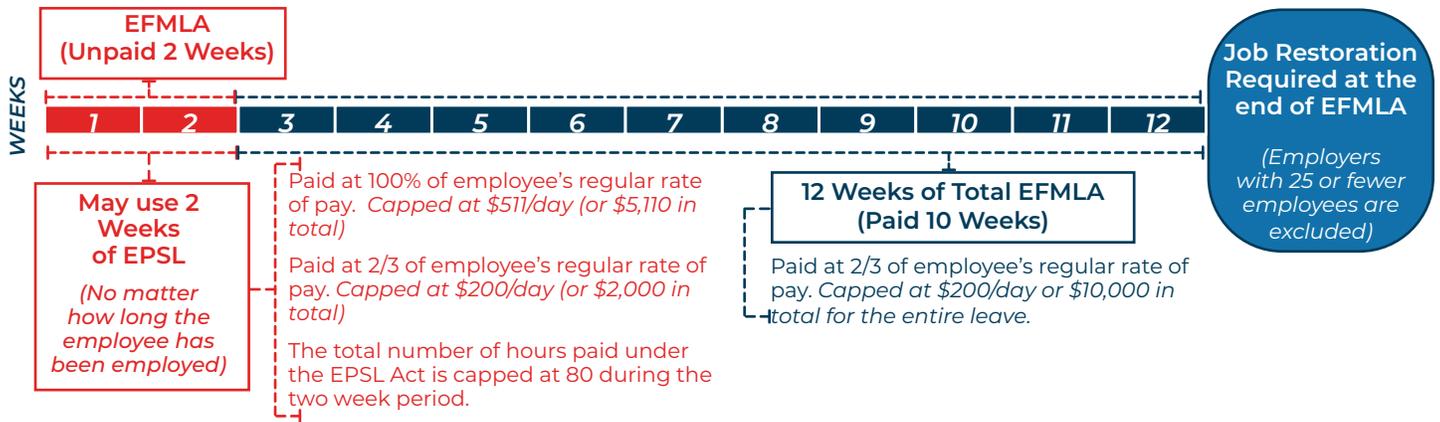
Please refer to references for additional details.

This informational purposes only and does not constitute a legal opinion or medical advice. Contact your legal representative or medical professional for information specific to your needs.

Insurance Risk Advisory Employee Benefits

**HORTON**

# Families First Coronavirus Response Act (FFCRA) Timeline



Please refer to references for additional details.

## FFCRA Decision Chart Reference Notes

- What? FFCRA guarantees free coronavirus testing, establishes paid family and medical leave and corresponding tax credits, enhances unemployment insurance, expands food security initiatives, and increases federal Medicaid funding.  
  
Why? All the public health guidance is that employers should encourage employees who are sick to stay home. And, to the extent possible, the health authorities want to remove incentives to go to work while employees are sick. Employers should make sure they remind employees about the existing paid and unpaid leave programs available to them.
- The new paid leave requirements go into effect on April 1, 2020 and will be in effect through December 31, 2020. There is no retroactive effect. Employees who are provided paid leave prior to April 1 will still be eligible for the full paid leave beginning April 1 if they are out on leave for a qualifying reason. In addition, employers may not qualify for the refundable tax credit for paid leave provided prior to April 1.
- Generally, if they are currently on your payroll, then you would count them. To determine the employee count, count all employees (full-time and part-time) in the U.S. at the time leave is requested. This means that an employer may need to repeat the count multiple times.**  
  
In making this determination, you should include employees on leave; temporary employees who are jointly employed by you and another employer (regardless of whether the jointly-employed employees are maintained on only your or another employer's payroll); and day laborers supplied by a temporary agency (regardless of whether you are the temporary agency or the client firm if there is a continuing employment relationship). Workers who are independent contractors under the Fair Labor Standards Act (FLSA), rather than employees, are not considered employees for purposes of the 500-employee threshold.
- Furlough v. Layoff: Distinction Without A Difference?** Questions have also been raised over the difference between "furloughs" and "layoffs." For purposes of ESL or EFMLA, DOL's updated comments appear to suggest that the agency equates "furlough" to any layoff where employees are no longer working. Furloughed employees are not entitled to Emergency Paid Sick Leave or Emergency FMLA regardless of whether their employment has officially ended.
- Employees must be given the option to use this new pool before any other type employer-provided leave.
- Regular FMLA time is not usually available for a normal bout of the flu. However, eligible employees who contract the coronavirus or who have an immediate family member who contracts the virus and needs the employee's care may meet the FMLA definition of a serious health condition.
- If I am home with my child because his or her school or place of care is closed, or child care provider is unavailable, do I get paid sick leave, expanded family and medical leave, or both—how do they interact?** You may be eligible for both types of leave, but only for a total of twelve weeks of paid leave. You may take both ESL and EFMLA to care for your child whose school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons. The Emergency Paid Sick Leave Act provides for an initial two weeks of paid leave. This period thus covers the first ten workdays of expanded family and medical leave, which are otherwise unpaid under the Emergency and Family Medical Leave Expansion Act unless the you elect to use existing vacation, personal, or medical or sick leave under your employer's policy. After the first ten workdays have elapsed, you will receive 2/3 of your regular rate of pay for the hours you would have been scheduled to work in the subsequent ten weeks under the Emergency and Family Medical Leave Expansion Act.
- Special Rules**
  - For both EPSL and EFMLA, employers may exempt health care providers and emergency responders.
  - Secretary of Labor may exempt small businesses with fewer than 50 employees if the paid leave requirements would jeopardize the viability of the business as a going concern. See more detail in FAQ #56 – 57 found here – <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions> #52.
- Calculating Rate of Pay for EFMLA and ESL for Full time employees:
  - Regular rate of pay, hours normally scheduled to work.
  - Part time employees, variable hour employees: Average number of hours employees worked for six months prior to taking leave.
  - Employees with less than six months of service: Average number of hours the employee would normally be scheduled to work over two-week period.
- These leaves are not available to employees with reduced hours, furloughed employees, or employees' whose workplaces are closed.
  - These leaves are not available to employees whose workplaces are closed due to a federal, state, or local shelter-in-place or stay-at-home orders, or due to business slowdowns.
  - Both emergency paid sick leave (EPSL) and emergency Family and Medical Leave (EFMLA) can be taken on an intermittent basis in certain situations.
  - Employees may not be required to use other forms of paid leave prior to or concurrently with EPSL or EFMLA.

### SOURCES

- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>
- <https://www.thehortongroup.com/covid-19-employer-resource-center>
- <https://benefitcomply.com/coronavirus/>
- [https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA\\_Posters\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Posters_WH1422_Non-Federal.pdf)
- <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/dol-guidance-ffcra-paid-parental-leave.aspx>

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