



# **The Families First Coronavirus Response Act: Emergency Paid Sick Leave and Expanded FMLA**

Presented by  
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## Poll Question

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How would you describe the current state of your HR department as a result of COVID-19?

# Agenda

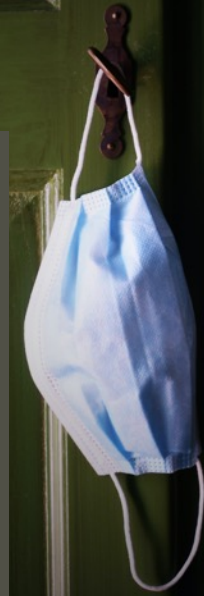
- Emergency Paid Sick Leave
- Expanded FMLA
- Exceptions and Exemptions

# **Emergency Paid Sick Leave (EPSL)**



## Who does EPSL apply to?

- All private employers with fewer than 500 employees (including non-profits and religious organizations)
- Most public employers
- All employees of covered employers; there is no minimum hours or length of employment requirement
- Not independent contractors





## **When can EPSL be used?**

1. If subject to a federal, state, or local quarantine or isolation order affecting the employee (cannot be used during a furlough or business closure)
2. When advised by health care provider to self-quarantine because the provider knows or believes the employee has COVID-19 or is particularly vulnerable
3. To seek a diagnosis for symptoms of COVID-19

## When can EPSL be used?

4. To care for someone who is subject to a government isolation or quarantine order or who is advised to quarantine by their healthcare provider and *requires the employee's care*

The relationship must be one that would create an expectation of care. That said, don't be the relationship police.



## When can EPSL be used?

5. When an employee is unable to work because they need to care for their child whose school or place of care has been closed, or whose care provider is unavailable because of COVID-19, but only if no other suitable person is available to care for the child during the leave

This doesn't mean that if both parents are working from home that neither get leave, just that both parents don't get to take leave to care for the same child at the same time.



## Does it have to be used all at once?

No. It can be used in chunks (e.g., a week now, a week three months from now) so long as the reason it was taken for no longer exists.

It can also be used intermittently if:

- The employer agrees *and*
- The person is teleworking *or*
- The person is taking leave for childcare, not illness





## Who counts as a child?

A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age.

The definition includes children 18 years of age or older who are incapable of self-care because of a mental or physical disability.

If employees take leave to care for a child who is 15 or older, they should provide a statement or otherwise affirm that there are special circumstances.



## How much do we pay employees?

- 100% of their regular pay, up to \$511 per day, when they are taking care of themselves (total max of \$5,110)
- 2/3 of their regular pay, up to \$200 per day, when they are taking care of someone else who is sick or quarantining or taking care of a child (total max of \$2,000)



## How do we calculate regular rate of pay?

**Total compensation** over the last six months  
(*including* commissions, non-discretionary bonuses, piece rate payments, and tip credits, but *not including* overtime premiums, tips in excess of the employee's base wage, or paid leave)

*divided by*

Total **hours actually worked** over the last six months  
(not including any leave time)





## Is this program forever?

EPSL (and EFMLA) are only available through December 31, 2020 – at least for now.

Leave does not roll over into the new year and employers don't have to pay it out if it's unused.

**Emergency Family and Medical Leave  
Expansion Act  
(EFMLA)**

# Who does EFMLA apply to?

- All private employers with fewer than 500 employees (including non-profits and religious organizations)
- Most public employers
- All employees who have worked 30 or more calendar days for an employer
- Not independent contractors



A photograph showing a child's hand reaching for a yellow wooden block on a light-colored wooden surface. Several other colorful blocks (blue, orange, red, green) are scattered around. The blocks are of various shapes, including rectangles and a semi-circle.

## When can EFMLA be used?

Leave can be taken when an employee is unable to work because they *need* to care for their child whose school or place of care has been closed, or whose care provider is unavailable because of COVID-19. (Same as reason #5 for EPSL)

You are welcome to discuss an employee's level of need with them, but ultimately, we recommend deferring to their judgment rather than risk a lawsuit.

A close-up photograph of a child's hands typing on a silver laptop keyboard. The child is wearing a light-colored sweater with a black and white cartoon bear pattern. The laptop is on a wooden desk.

## If the child's school has gone online, is it “closed”?

Yes. If the *physical location* where the child receives instruction or care is now closed, then it's “closed” for purposes of EPSL and EFMLA, even if some or all instruction is being provided online or through some other kind of “distance learning.”

## Examples of EFMLA requests

- Two parents are working from home with a 3-year old
- Two parents are working from home with four kids under 12 during the school year, and school is now online
- A mother is scheduled to come back from maternity leave but the places or people she intended to use for childcare are no longer available due to COVID
- A parent needs a few hours off on days when the child is schooling from home



# JUL

*Appreciate the little moments that's life happening!*

M	T	W	T
01	02	03	04
08	09	10	11
	16	17	18
		24	25
	30	31	

## How much EFMLA do employees get?

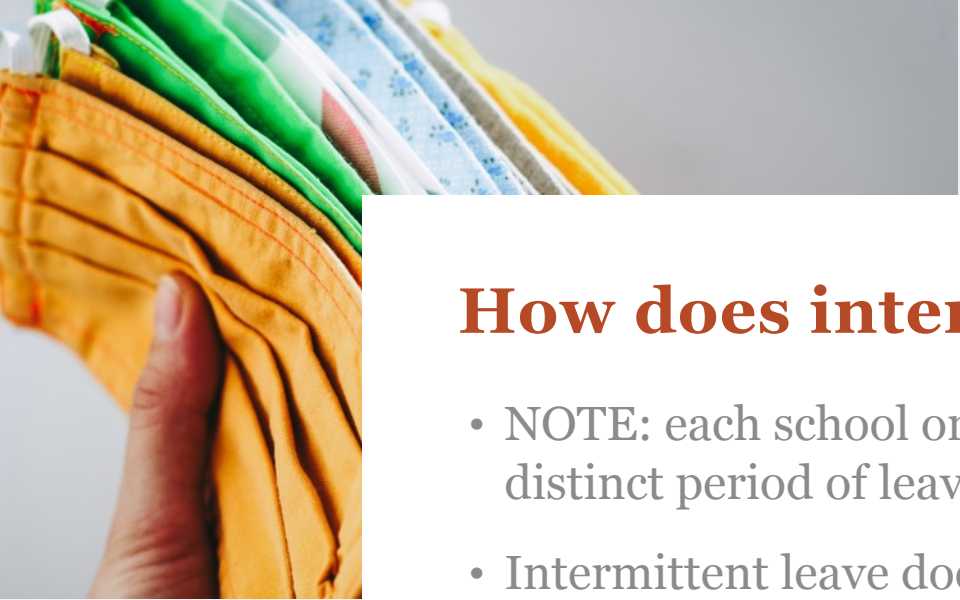
- 12 weeks at their usual number of hours per week; use a six-month lookback if their schedule is irregular
- If leave is used intermittently, count hours taken (a 40-hour per week employee has 480 hours to use)
- EMFLA is **not** in addition to traditional FMLA; if the employee has already used some FMLA leave in their 12-month tracking period, EFMLA will be reduced by that much, and weeks used for EFMLA will count against future use of FMLA in their 12-month tracking period

A close-up, slightly blurred image of several US dollar bills, including a \$100 bill and a \$20 bill, with a blue tint. The bills are stacked and overlapping, showing details like the 'FEDERAL RESERVE NOTE' and 'UNITED STATES OF AMERICA' text.

## How much do we pay for EFMLA?

- First 10 days are unpaid, but the employee can *choose* to use EPSL or other paid leave available during that time
- After 10 days, 2/3 of their regular pay, up to \$200 per day
- Maximum of \$10,000 total
- After the 10 unpaid days, employers can require employees to use up any available paid time off that would normally be available for childcare (e.g., vacation or personal time but not sick leave)
- If forcing PTO use, employees must receive full pay





## How does intermittent leave work?

- NOTE: each school or childcare closure counts as a distinct period of leave
- Intermittent leave does not have to be granted unless the employer agrees
- Track it like other paid time off that you'd count by the minute or hour
- The DOL encourages negotiation
- Many parents will be able to do some work – consider whether some is better than none

# Exceptions and Exemptions



**Leaves don't apply if  
you don't have work  
available, such as  
during a furlough or  
business closure**



**Employers *may* exempt health care workers from either type of FFCRA leave but are not required to. The DOL encourages flexibility.**

## Exempt Health Care Workers – Definition

Anyone who is a licensed doctor of medicine, nurse practitioner, or other health care provider permitted to issue a certification for purposes of the FMLA.

Any other person who is employed to provide diagnostic services, preventive services, treatment services, or other services that are integrated with and necessary to the provision of patient care and, if not provided, would adversely impact patient care. This group includes employees who provide direct diagnostic, preventive, treatment, or other patient care services, such as nurses, nurse assistants, and medical technicians. It also includes employees who directly assist or are supervised by a direct provider of diagnostic, preventive, treatment, or other patient care services.

Employees who do not provide direct health care services to a patient but are otherwise integrated into and necessary to the provision those services—for example, a laboratory technician who processes medical test results to aid in the diagnosis and treatment of a health condition—are health care providers.

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# Exempt Emergency Responders - Definition

An emergency responder is anyone necessary for the provision of transport, care, healthcare, comfort and nutrition of such patients, or others needed for the response to COVID-19. This includes but is not limited to military or national guard, law enforcement officers, correctional institution personnel, fire fighters, emergency medical services personnel, physicians, nurses, public health personnel, emergency medical technicians, paramedics, emergency management personnel, 911 operators, child welfare workers and service providers, public works personnel, and persons with skills or training in operating specialized equipment or other skills needed to provide aid in a declared emergency, as well as individuals who work for such facilities employing these individuals and whose work is necessary to maintain the operation of the facility.

This also includes any individual whom the highest official of a State or territory, including the District of Columbia, determines is an emergency responder necessary for that State's or territory's or the District of Columbia's response to COVID-19.

## Small Business Childcare Exemption Number One

Employers with fewer than 50 employees may be exempt if:

Providing leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause it to cease operating at a minimal capacity.





## Small Business Childcare Exemption Number Two

The absence of the employee or employees requesting leave 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.



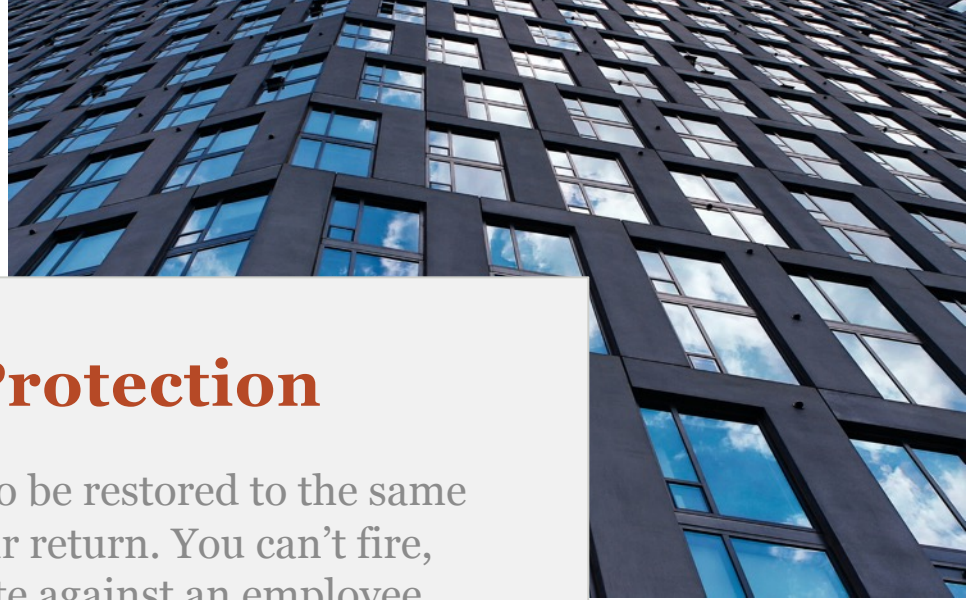




## Small Business Childcare Exemption Number Three

There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, and these labor or services are needed for the small business to operate at a minimal capacity.

Don't send paperwork to the DOL about exempting yourself, but do create and keep solid documentation.



## Exceptions to Job Protection

Generally, employees are entitled to be restored to the same or an equivalent position upon their return. You can't fire, discipline, or otherwise discriminate against an employee for taking leave, filing a complaint, or participating in a proceeding.

But an employee is not protected from an employment action – like a layoff – that would have happened even if they were not on leave.

The “key employee” exemption from traditional FMLA also applies.

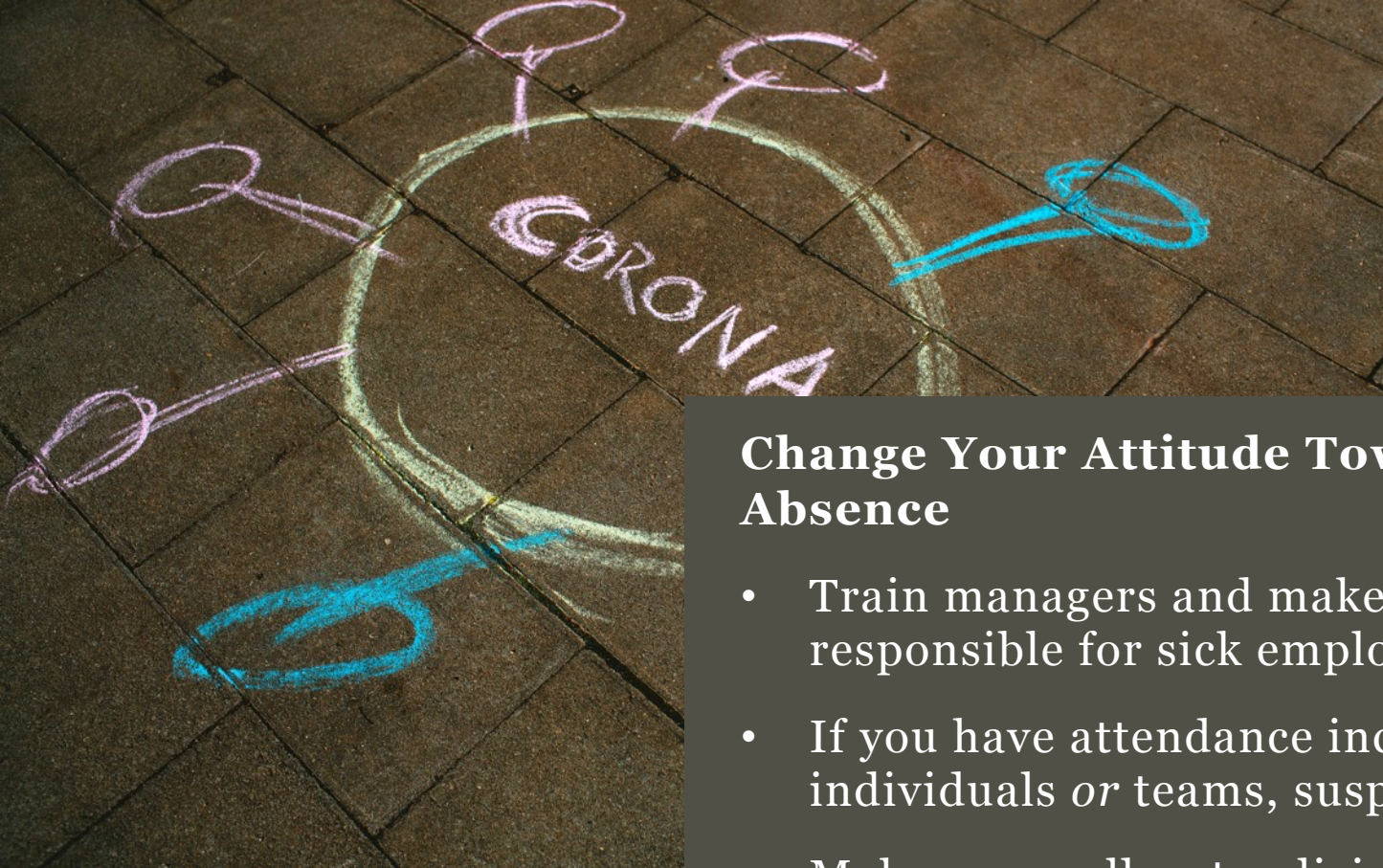
# Documentation for EPSL and EFMLA

You **cannot require** more information than this (like a doctor's note). You need this documentation to support your claim for a tax credit. Your request form should ask for:

- The employee's name
- The date or dates for which leave is requested
- A statement of the reason the employee is requesting leave; and
- A statement that the employee is *unable to work, including by means of telework*, for such reason.

For quarantine orders or advice, also get the name of the governmental entity or the name of the health care professional advising isolation or quarantine. If the employee is caring for someone else, that person's name and relation to the employee.

For a school closure or childcare provider unavailability, get the names and ages of the children, name of the school or place of care that is closed, and a representation that no other person will be providing care for the child during the leave. If the child is 15 or older, employees should verify that there are special circumstances.



## Change Your Attitude Toward Absence

- Train managers and make them responsible for sick employees
- If you have attendance incentives for individuals *or* teams, suspend them
- Make your call-out policies reasonable so employees don't show up sick just to avoid violating them

Thank You For Joining Us Today

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